

# JLARC Impacts

Actions Taken on Report Recommendations

2021 Session



COMMISSION DRAFT

**JLARC**  
JOINT LEGISLATIVE AUDIT  
AND REVIEW COMMISSION

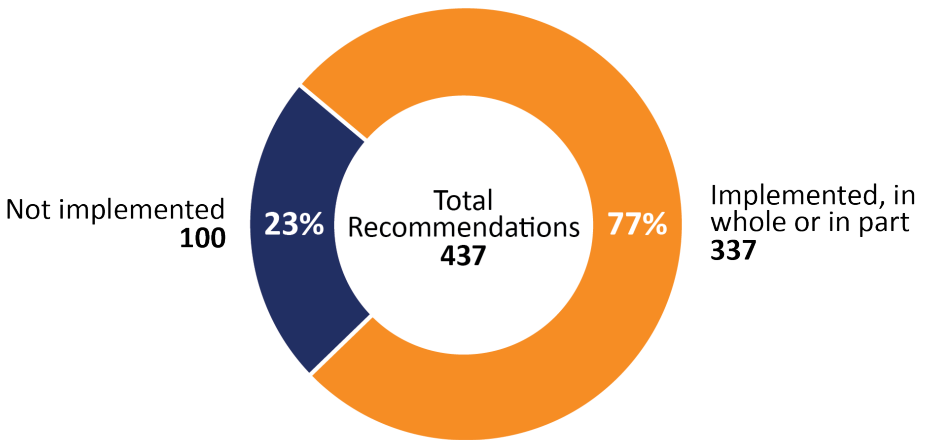
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## JLARC Performance: Recommendations



Reports published 2017-2020

May 3, 2021

Members of the Virginia General Assembly

Dear Members:

In JLARC's biennial JLARC Impacts: Actions Taken on Report Recommendations, JLARC staff report on agency performance, recap actions taken on key recommendations, and highlight recommendations that are still outstanding. Over the last two years, JLARC studies have had impact on a broad range of public policy areas in Virginia, including special education; the workers' compensation system; resources for small, women, and minority-owned businesses; local and regional jails oversight; the state's IT infrastructure; and economic development.

In addition, JLARC staff's Key Considerations for Marijuana Legalization and Gaming in the Commonwealth reports helped guide the development of legislation that legalized recreational marijuana use and five casinos in the Commonwealth. The marijuana legalization legislation included 60 JLARC recommendations and policy options governing marijuana use, public safety and health, regulation, commercialization and taxation, and social equity policies to redress harm to Black Virginians caused by disproportionate marijuana enforcement. Casino authorizing legislation included JLARC staff recommendations on problem gambling prevention and treatment, casino oversight, integrity of gaming operations, and regulation of "gray" machines proliferating throughout the Commonwealth.

I would like to express my gratitude for your support of JLARC's vital work for the Commonwealth of Virginia. By taking action on a wide range of JLARC recommendations, the General Assembly has expressed its commitment to efficiency and effectiveness in state government.

Cordially,



Hal E. Greer  
Director



**JLARC**  
JOINT LEGISLATIVE AUDIT  
AND REVIEW COMMISSION



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# JLARC Mission, Goals, and Performance

## Mission

JLARC provides the Virginia General Assembly with objective and rigorous oversight of state agencies and programs.

## Goals

JLARC's goals are grounded in the state statutes that established its authority:

Provide the General Assembly with objective, non-partisan analysis and evaluation for use in legislative decision making.

Assess state agencies and programs for efficiency and effectiveness.

Offer timely, actionable recommendations and options for improvement.

Cultivate an exemplary work environment that sustains high levels of productivity and employee satisfaction.

## Performance

JLARC reports on its own performance to the General Assembly every two years. In 2019 and 2020, JLARC staff presented and published 93 research products: reports, briefings, fiscal impact reviews, and policy memos.

JLARC recommendations are intended to improve the efficiency and effectiveness of state government. When implemented, the recommendations can result in substantial savings to the state. Since JLARC was established in 1975, the Commission's work has saved an estimated cumulative \$1.3 billion (adjusted for inflation to 2020 dollars).

JLARC uses three performance measures to track its own agency performance: recommendations, legislation introduced, and savings.

## **Recommendations implemented through legislative or administrative action**

Recommendations made 2017–2020 .....	437
Recommendations implemented, in whole or in part.....	337
Percentage implemented .....	77

## **Legislation introduced in 2020 and 2021 in response to JLARC recommendations**

Bills.....	82
Budget amendments.....	49

## **Savings attributable to implementation of recommendations**

Estimated savings FY19–FY20 .....	\$11.5 million
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Estimated FY19–FY20 savings are due to reforms to Virginia's Medicaid program related to recommendations from JLARC's 2016 report on Managing Spending in Virginia's Medicaid Program. Virginia saved \$5.5 million in FY19 because managed care organizations (MCOs) returned a portion of their underwriting gains (i.e., profits) to the state, and the state saved \$6 million in FY20 because the state reduced the rates paid to MCOs to reflect inefficient spending. Although the 2016 report was published prior to the timeframe covered by this JLARC Impacts report, the savings are reflected here because it is the first time they have accrued to the state since the recommendations were implemented.

An additional \$26.2 million was saved in FY18 as a result of MCOs returning a portion of their underwriting gains. The state will also experience savings in FY20 from this action, but accurate estimates were not available at the time this report was printed.

Recommendations are tracked for reports published over the prior four calendar years. The status of all recommendations made over these four years is reflected in the performance measures. Only actions taken since the 2019 JLARC Impacts: Actions Taken on Report Recommendations are included in the following pages.






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## Special Education

*Report issued in 2020*

Federal law requires public schools to provide students with disabilities specially designed instruction and services to ensure their education is appropriately ambitious for the student's circumstances. In the 2018–19 school year, about 164,000 K–12 students were enrolled in special education, about 13 percent of Virginia's total student population.

### **JLARC found**

The proportion of K–12 students receiving special education in some school divisions is more than twice as high as others. In addition, students in some divisions are more likely to be enrolled in special education because of a certain disability than other divisions. Insufficient guidance and vague terms in the state's eligibility criteria likely contribute to variation in eligibility determinations among school divisions.

Individualized education programs (IEPs), which are legal documents that outline the services children in special education will receive, are not consistently designed to be effective guides for special education services, and many lack key data. For example, a JLARC review of a sample of IEPs found that half lacked academic or functional goals.

Part of the variation in IEP quality is likely attributable to inconsistent knowledge about IEPs among staff who contribute to the development of IEPs, including special education and gen-

eral education teachers and building-level administrators.

JLARC found many IEPs' postsecondary transition plans were of poor quality, and about one-quarter of the reviewed IEPs lacked transition services for the students. The majority of transition plans reviewed also did not include measurable, specific, or useful goals. Several stakeholders interviewed shared concerns about the quality of postsecondary transition planning for students with disabilities.

About 20 percent of Virginia students with disabilities graduate with an applied studies diploma, which provides limited value for accessing future educational and career opportunities. To earn an applied studies diploma, students need only to meet requirements of their IEP. Community colleges and four-year higher education institutions do not recognize these diplomas as a high school diploma. In addition, families of students with disabilities are not made aware of the applied studies diploma's limitations, and educational decisions that can affect whether a student can qualify for a standard diploma are made as early as elementary school.

Most students with disabilities (71 percent) receive most of their educational instruction in the general education classroom, but many general education teachers do not have the skills necessary to teach students with disabilities effectively. Many general education teachers are likely not equipped to adapt instruction for students with disabilities because they are not required to have much special education-specific training.

VDOE has identified special education as one of the state's most critical teacher shortage areas but does not collect the basic information necessary to understand the magnitude of shortages across the state and among school divisions. For example, VDOE does not collect the number of special education teachers in the state.

Because of special education teacher shortages, many school divisions fill these shortages with provisionally licensed teachers, who are required to have only one class on the foundations

of special education. During the 2019–20 school year, an estimated 15 percent of special education teachers were provisionally licensed, compared with 5 percent in other subjects.

VDOE's process to address complaints against school divisions does not ensure that identified problems are resolved. VDOE rarely ensures found non-compliance is corrected or that any negative effects of non-compliance are remedied through make up (compensatory) services. Instead, VDOE only requires schools to hold an IEP meeting and to submit evidence that compensatory services were discussed.

While VDOE conducts useful on-site monitoring reviews of school divisions, too few divisions are subject to them.

## ► ACTION TAKEN BY THE GENERAL ASSEMBLY

### **Improving guidance for eligibility determinations**

*HB 2316 (2021) – Delegate King*

The General Assembly enacted legislation requiring VDOE to update its special education eligibility worksheets, including clarifying ambiguity in the eligibility criteria, and provide guidance to local divisions on eligibility determinations for special education and related services.

### **Improving IEP development guidance and training**

*HB 2299/SB 1288 (2021) – Delegate Carr and Senator*

*Dunnavant*

*Appropriation Act*

The General Assembly passed legislation instructing VDOE to provide training and guidance documents to local school divisions on developing individualized education programs (IEPs) for children with disabilities and include examples of high quality present level of performance descriptions, annual goals, and postsecondary transition sections.

The legislation also instructs VDOE to create a required training model for participants in an IEP meeting (other than parents) that effectively describes each member's role in the IEP meeting, the IEP development process, and effective IEPs.

### **Reviewing quality of IEPs**

*HB 2299/SB 1288 (2021) – Delegate Carr and Senator Dunnavant*

VDOE will be required to review annually a sample of IEPs from school divisions to determine compliance with state and federal laws and regulations, under legislation enacted by the General Assembly. VDOE will provide school divisions (superintendents, special education directors, special education advisory committees, and school boards) with a summary of its findings and any necessary corrective actions needed. The legislation directs VDOE to determine whether the special education and related services, supplementary aids and services, and program modifications will allow students to participate in nonacademic and extracurricular activities.

### **Improving VDOE's oversight of special education**

*Appropriation Act*

Through budget language, the General Assembly directed VDOE to develop a plan to improve its ongoing oversight of special education. The plan should explain how VDOE will ensure school divisions' compliance with laws and regulations for special education identification processes, IEP development and implementation, postsecondary transition planning, inclusion in academic and extracurricular experiences, and special education staffing. The plan should also propose ways to increase monitoring capacity and on-site visits using existing resources and by leveraging federal funding. VDOE is to submit its plan to the General Assembly's education committees and JLARC by November 1.

### **Improving VDOE's oversight of postsecondary transition plans for students with disabilities**

*HB 2299/SB 1288 (2021) – Delegate Carr and Senator Dunnavant*

The General Assembly passed legislation that directs VDOE to develop a plan to improve its oversight and assistance to localities' post-secondary transition planning and services for stu-

dents with disabilities. The plan should lay out how the department will assess compliance and quality of transition plans for students with disabilities on an ongoing basis and communicate findings to local school division staff and local school boards. Annual updates to these plans should be provided to the chairs of the General Assembly's education committees.

### **Developing new requirements for applied studies diplomas**

*HB 2299/SB 1288 (2021) – Delegate Carr and Senator*

*Dunnavant*

*Appropriation Act*

The General Assembly enacted legislation directing the Board of Education to develop statewide requirements for students with disabilities to earn applied studies diplomas and instructing local school boards to provide guidance to parents about the limitations of the applied studies diploma. These limitations should be presented to parents annually at IEP meetings in grades three through 12 or when decisions are being made about the type of diploma the student can qualify for. Budget language also instructs VDOE to create guidance for families of students with disabilities that explains the limitations of the applied studies diploma and key curriculum and testing decisions that reduce a student's likelihood of earning a standard diploma.

### **Training teachers and administrators on strategies for working with students with disabilities**

*HB 2299/SB 1288 (2021) – Delegate Carr and Senator*

*Dunnavant*

*Appropriation Act*

Legislation requires teachers renewing their teaching license to complete training on instructing students with disabilities, including differentiating instruction for students' needs; understanding general education teachers' roles on the IEP team; effective models of collaborative instruction; and understanding benefits of inclusive education for all students.

### **Recruiting special education teachers**

*HB 2299/SB 1288 (2021) – Delegate Carr and Senator*

*Dunnavant*

*Appropriation Act*

Legislation instructs VDOE to develop and implement a state-wide strategic plan to recruit and retain special education teachers. The plan should use data analyses to determine staffing needs in each school division; evaluate the effectiveness of strategies to address recruitment and retention challenges; and estimate the costs of implementing the strategy.

### **Encouraging inclusion for students with disabilities**

*HB 2299/SB 1288 (2021) – Delegate Carr and Senator*

*Dunnavant*

Legislation requires each school division to complete a self-assessment and address inclusion practices for students with disabilities once every three years. These assessments must be submitted to VDOE, the division superintendent, special education director, and chairs of the local school board and local special education advisory committee.

### **Improving VDOE’s special education complaint process**

*Appropriation Act*

Legislation requires VDOE to revise the state’s special education complaint process to ensure school divisions provide remedies for found non-compliance with special education laws and regulations. When VDOE determines school divisions did not provide legally obligated services to students with disabilities, the legislation directs VDOE to require school divisions to provide compensatory services to these students. The legislation also directs VDOE to ensure personnel understand how to avoid non-compliance in the future.



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## Key Considerations for Legalizing Marijuana

*Report issued in 2020*

The 2020 General Assembly directed JLARC to study and make recommendations for how Virginia could legalize adult marijuana use and commercial sales. JLARC did not recommend whether the General Assembly should legalize marijuana, but provided a roadmap of recommendations and policy options if it chose to do so.

The 2021 General Assembly enacted legislation authorizing adult use of marijuana and the development of a statewide market for commercial sales to adults. JLARC's Key Considerations for Legalizing Marijuana guided key parts of the legislation and was cited during House of Delegates and Senate deliberations. The enacted legislation and budget bill incorporated 60 report recommendations and policy options (fully or partially implemented 37 recommendations and 23 policy options). Certain provisions of the legislation are subject to reenactment by the 2022 General Assembly. The legislation also requires JLARC to analyze and compare the legislation to its recent report on legalization by November 1, 2021.

## ► ACTION TAKEN BY THE GENERAL ASSEMBLY

### Most legislative action included in HB 2312/SB 1406 (2021) - Delegate Herring and Senators Lucas and Ebbin

#### **Legalizing adult use of marijuana**

JLARC found the General Assembly would need to determine legal possession limits; where marijuana could legally be smoked or consumed; the legal age for marijuana use; and whether to allow home cultivation. Legislators would also need to determine whether to adjust existing penalties for illegal distribution and possession above the legal amount and determine penalties for marijuana use in vehicles, driving under the influence of marijuana, and youth possession and use.

- The General Assembly enacted legislation that will allow anyone 21 years of age or older to possess up to one ounce of marijuana or an equivalent amount of marijuana product. Anyone 21 years of age or older may also cultivate up to four marijuana plants for personal use at their residence. The legislation prohibits consumption of marijuana or marijuana products by drivers and passengers of motor vehicles.

#### **Ensuring public health and safety**

JLARC concluded the state would need to establish marijuana prevention efforts to publicize the risks associated with marijuana use. While the full health implications of marijuana legalization are not fully understood, marijuana use has several health risks including overconsumption, mild respiratory issues, and cognitive and mental health issues.

JLARC found Virginia would need to regulate product potency, packaging, labeling, and advertising to reduce the appeal of marijuana to youth and help prevent accidental consumption and overconsumption. Virginia should conduct a statewide youth prevention campaign and adequately fund community substance use prevention programs.

- The General Assembly created the Cannabis Public Health



Advisory Council to assess and monitor marijuana-related health issues and trends. The legislation also directed the marijuana regulatory agency to establish the maximum allowable THC level and requirements for health and safety warning labels. Retail marijuana and retail marijuana products packaging will be required to be in child-resistant, tamper-evident packaging and not appealing to children. The legislation restricts marijuana advertising, including limiting advertisements seen by children.

- The legislation allocates 30 percent of marijuana sales tax revenue to public health-related programs, 25 percent to community services boards for disorder prevention and treatment programs, and 5 percent to other public health programs, including prevention of youth marijuana use.

### **Commercial sales and taxation**

JLARC found Virginia would need to issue licenses for five types of business operations that comprise the marijuana industry: cultivation, processing, distribution, retail sales, and testing. Licenses should be capped to ensure proper supply and demand.

Virginia would need to decide whether to allow or prohibit “vertically integrated” businesses, in which a single business can be licensed to cultivate, process, distribute, and sell marijuana at retail. A vertically integrated market would be more efficient, while prohibiting vertical integration could improve small businesses’ opportunity to participate in the marijuana market. Regardless of the market structure, independent licensed labs would be needed to test products for purity and quality.

JLARC also found that most states tax marijuana through a retail sales tax of 20 to 30 percent. A combined marijuana sales tax in Virginia of 25 to 30 percent would include (i) a new 20 to 25 percent marijuana retail sales tax and (ii) the existing 5.3 percent standard sales tax. JLARC also noted that the General Assembly would need to decide whether to authorize localities to add

their own retail sales tax to any state taxes levied.

- The General Assembly enacted legislation directing the development of regulations limiting the number of licenses issued by type or class to operate a marijuana establishment up to a maximum of 450 cultivation facilities, 60 manufacturing facilities, 25 wholesalers, and 400 retail stores. The legislation directs the development of regulations to narrowly limit vertical integration to small businesses and ensure that all licensees have an equal opportunity to participate in the market.
- The legislation also directed the creation of a licensing process for independent labs to test marijuana products' quality and THC content.
- The legislation authorizes a 21 percent tax on all retail marijuana sales, in addition to the existing retail sales tax. The legislation also grants localities the authority to levy an additional 3 percent sales tax on retail marijuana sales in their jurisdiction.

### **Redressing harm to Black Virginians of disproportionate enforcement of marijuana prohibition**

JLARC found Black Virginians were nearly four times more likely to be arrested for a marijuana-related offense than white Virginians, despite using marijuana at a similar rate. To redress past disproportionality in marijuana enforcement and ensure Black Virginians have an opportunity to benefit from the new commercial market, JLARC identified several "social equity" initiatives for consideration.

JLARC noted the state could remove, or "expunge," simple possession offenses from criminal records, which would likely benefit substantially more Black individuals than any other social equity initiatives. JLARC observed that an automatic expungement process would be more equitable and effective.

JLARC presented ways to encourage social equity ownership of marijuana businesses. Several states have attempted but failed to accomplish this. The vast majority of current marijuana busi-

ness owners are white, and there are few Black-owned marijuana businesses. JLARC noted the state could attempt to encourage social equity ownership by establishing a licensing process and business assistance program needed for these businesses to compete with well-established, larger marijuana businesses.

Additionally, the state could allocate marijuana tax revenue to existing programs in communities most affected by drugs and the enforcement of drug laws or create a new community reinvestment program to fund initiatives in these communities.

- The legislation incorporates several social equity initiatives to attempt to redress the historical negative impact of marijuana prohibition. The legislation creates a process to automatically expunge prior marijuana offenses and directs the development of social equity criteria to evaluate and award licenses.
- The legislation also creates a Virginia Cannabis Equity Business Loan Fund and a Cannabis Equity Reinvestment Fund. The loan fund will be used to provide low and zero-interest loans to licensees who qualify under certain social equity criteria. Thirty percent of all marijuana sales tax revenue will be dedicated to the reinvestment fund, which will be administered by the Cannabis Equity Reinvestment Board. The board will help direct funding to programs that support people and communities harmed by disproportionate enforcement of marijuana laws.

### **State regulatory agency**

JLARC concluded that Virginia should vest commercial marijuana regulation with a single board and agency. JLARC noted that Virginia could grant regulatory authority for commercial marijuana to an existing agency—the Virginia Alcoholic Beverage Control Authority—or create a new board and agency. JLARC identified the tradeoffs associated with each approach.

- The General Assembly chose to create a new entity—the Virginia Cannabis Control Authority—to authorize and regulate a commercial marijuana market. The authority will

regulate the possession, sale, transportation, and delivery of marijuana within the state. The authority will have the power to grant and revoke licenses related to cultivation, processing, distribution, and retail sales. The authority will also establish a testing regulatory program to ensure marijuana product quality and safety. A board of directors will govern the authority, which will include five citizens appointed by the governor and confirmed by a majority of the General Assembly.




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

*Report issued in 2020*

JLARC reviewed the Children's Services Act (CSA) and the cost of private special education day schools. CSA was created to more efficiently and effectively serve Virginia children who require services from multiple state and local programs. For example, state and local CSA funds provide services for children in foster care, or those at risk of foster care placement, and for children with disabilities who are educated in a private special education day school. The program served 15,656 children in FY19 and spent \$427 million. The Office of Children's Services (OCS) is the state agency that oversees local implementation of the CSA program.

### **JLARC found**

CSA spending for private special education day school services has grown approximately 14 percent per year since 2010, from \$81 million to \$186 million. The increase in private day school costs is primarily driven by increased enrollment (50 percent), tuition (25 percent), and use of private day school services (25 percent). JLARC staff also found there is little transparency into private day school tuition rates and costs. Better information on tuition rates and costs of additional private day school services would help local CSA programs and school divisions understand the range of tuition and service rates charged for private

day school, how those rates change from year to year, and the extent to which rate increases contribute to increases in program spending.

Under state law, school divisions cannot use CSA funds on services designed to keep students with disabilities in public school or transition students from private day schools back to public schools. Instead, state law restricts CSA funds to services delivered in private special education day schools. This restriction may encourage private day school use and prolong private day school placements, which are more expensive than special education services delivered in the public school. Federal law requires children to be educated in the least restrictive environment appropriate for their abilities, and private day schools are considered restrictive placements because students are not educated alongside non-disabled peers. Virginia places a higher percentage of students with disabilities in more restrictive out-of-school settings than 37 other states, and Virginia's out-of-school placement rate has increased over the past 10 years.

VDOE oversees special education services in Virginia, including the development of individualized education programs (IEPs), which determine placements for students with disabilities. Therefore, VDOE would be a more logical administrator of funds for private special education day schools than OCS. The CSA program currently pays for private day school placements but cannot affect placement decisions or students' service plans.

Stakeholders and parents of private day school students do not have information on the same basic metrics that are reported for every public school in the Commonwealth. In addition, state regulations on the use of restraint and seclusion in private day schools were more permissive than restraint and seclusion regulations for public schools.

JLARC found that children in the CSA program generally benefit from services provided, but some localities serve fewer youth than allowed by law. CSA requires the state and localities to share the cost of services for children in foster care or who are

at risk of a foster care placement and for students with disabilities who require placements in private day schools or residential facilities. However, CSA also will pay a share of costs to provide community services for “non-mandated” children who have less severe or emotional behavioral needs if localities will also participate in paying the costs. Nearly half of Virginia’s localities choose not to do so. Serving non-mandated children could be an effective preventative strategy, and the General Assembly could consider requiring local programs to pay for services for these children, resulting in more than 300 additional children receiving CSA-funded services.

The CSA program gives localities flexibility in implementing the CSA program, but the Code of Virginia does not give OCS sufficient responsibility for ensuring that these local programs operate effectively. Neither OCS nor any other state entity has clear authority to intervene when a local CSA program is ineffective, only when it is not in compliance.

### ► ACTION TAKEN BY THE GENERAL ASSEMBLY

#### **New requirements for private special education day schools** *HB 2177 and SB 1313 (2021) – Delegate VanValkenburg and Senator Mason*

The General Assembly enacted legislation that requires private special education day schools to report their tuition rates annually to be eligible to receive state funds. In addition, the legislation prohibits the use of state funds for unlicensed private day schools. The bill also directs the Board of Education to develop new regulations regarding the use of restraint and seclusion in private day schools.

#### **Transitioning students back to public schools** *HB 2177 and SB 1313 (2021) – Delegate VanValkenburg and Senator Mason*

The General Assembly enacted legislation allowing CSA state funds to be used to help students enrolled in private special education day schools transition back to public schools when

appropriate. Students eligible to receive these services in public schools must have been enrolled in private day schools for at least six months, and state funds can be used for transitional services for a maximum of 12 months.

**Strengthening the authority of the Office of Children’s Services (OCS)**

*HB 2212 (2021) – Delegate Plum  
Appropriation Act*

The General Assembly strengthened OCS’s supervisory authority of the CSA program. Legislation enacted requires the OCS director to monitor performance measures and child and family outcomes of local CSA programs; use audit, performance, and outcomes data to identify local programs that need technical assistance; and help underperforming local programs develop corrective action plans. Budget language requires OCS to report on implementation of these new requirements to the chairs of the Senate Finance & Appropriations and the House Appropriations committees by November 1, 2021.

Budget language also requires OCS to develop a plan to modify its staffing and operations to ensure effective local implementation of the CSA program. The General Assembly, also through budget language, directed OCS to better understand local CSA program resources by collecting local programs’ staff and administrative budgets annually.

**Reporting requirements for private special education day schools**

*Appropriation Act*

Budget language requires VDOE to collect and publish additional performance data on private special education day schools, including the number of teachers not fully endorsed in their subject area; the number of teachers with less than one year of classroom experience; the number of provisionally licensed teachers; teachers’ academic credentials; the number of career and technical credentials earned by students in the previous three years; accreditation status; and the number of



incidents of seclusion and restraint.

## ► ACTION NEEDED

### **Allowing CSA funds to be used for services designed to keep students from restrictive placements**

(The General Assembly enacted legislation in 2021 to create a workgroup that will study several issues related to implementing JLARC's recommendations, including the following recommendation.)

- 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 (IEP) team has determined that the services may prevent a more restrictive placement. (Recommendation 4)

### **Transferring CSA funds to VDOE**

(The General Assembly enacted legislation in 2021 to create a workgroup that will study several issues related to implementing JLARC's recommendations, including the following recommendation.)

- 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)



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## Operations and Performance of the Department of Small Business and Supplier Diversity

*Report issued in 2020*

The Department of Small Business & Supplier Diversity's (SBSD) mission is to promote the growth of small, women, and minority-owned (SWaM) businesses in Virginia through certifying these businesses to help them compete for government contracts and by providing business assistance. The Virginia Small Business Financing Authority (VSBFA), a part of SBSD, helps small businesses by offering direct loans and supporting loans from private banks.

### **JLARC found**

SBSD had improved its management and operations since it was created by merging two business assistance agencies in 2014. SBSD was also processing business certifications 49 percent faster than it was in 2017. Better communication, though, could reduce the thousands of businesses that require follow-up with SBSD to complete their certification application. In addition, JLARC found SBSD's certification process was generally accurate and fair. The appeals process, however, was only available to businesses seeking recertification, and businesses were unclear on what grounds they could appeal a denial.

SBSD also collected state agencies' annual plans to increase spending with SWaM-certified businesses as required in statute, but few agencies found these plans helpful or received

feedback from SBSB. SBSB is also required to maintain Virginia's Business One Stop, which is meant to serve as a single source for registrations and information required to start a business in Virginia. JLARC found the website lacked functionality and did not fulfill statutory requirements.

JLARC found VSBFA had failed to meet its mission to provide credit to small businesses who may not qualify for lending from private banks without government support. In 2018 and 2019, VSBFA used only 8 to 10 percent of available funds for its loan programs and did not set goals for or track its loan program utilization. In addition, a lack of loan risk policies and risk assessment tools led to overly conservative loan decisions. VSBFA also did not regularly monitor the risk associated with its outstanding loan portfolio, and the VSBFA board could benefit from members with small business lending experience.

### ► ACTION TAKEN BY THE GENERAL ASSEMBLY

#### **Ability to appeal SBSB certification decisions**

*HB 2172 (2021) – Delegate King*

The General Assembly enacted legislation requiring SBSB to establish a process that allows businesses that are denied initial certification as a small, women-owned, or minority-owned business to appeal SBSB's decision on the basis that SBSB made a mistake during its application review.

#### **Virginia Small Business Financing Authority (VSBFA) lending**

*HB 2170 (2021) – Delegate King*

*HB 2171 (2021) – Delegate King*

The General Assembly enacted legislation requiring VSBFA to report how much of its available loan and grant funding has been utilized or awarded each year. The legislation also requires VSBFA to conduct a risk-based review of all its outstanding loans and report the results of the review to the board.

## **VSBFA board membership**

### *HB 1830 (2021) – Delegate Head*

The General Assembly passed legislation requiring that five of VSBFA's board members have experience in lending to small businesses.

## **Improving Business One Stop**

### *Appropriation Act (2021)*

Through budget language, the General Assembly instructed SBSB to submit an improvement plan for the Business One Stop that includes the purpose and benefit of the website, the resources needed to fully implement and maintain it, and a recommendation on whether the website should be kept.

## **► ACTION TAKEN BY STATE AGENCIES**

### **Improving communication with businesses and state agencies**

#### *SBSB*

SBSB improved communication for several of its programs. SBSB is creating precertification webinars for applicants, revised its denial letters to better explain grounds to appeal a certification decision, and is developing a marketing plan to better advertise its business assistance services. SBSB has also assigned staff as "agency advocates" to help state agencies meet their SWaM procurement goals.

### **Improving VSBFA's operations**

#### *SBSB*

VSBFA is developing an improvement plan to submit to the House Appropriations and Senate Finance & Appropriations committees and the secretary of commerce and labor by June 30, 2021. As part of the planned improvements, VSBFA is developing a Loan Policy Manual to govern loan decisions and create a system to assess the risk of loan applicants. The authority is also developing utilization goals for its loan programs, creating a dashboard to monitor loan utilization, and establishing timeliness goals for processing loan applications.



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## Operations and Performance of the Virginia Department of Education

*Report issued in 2020*

JLARC reviewed the operations and performance of the Virginia Department of Education (VDOE) in 2020. VDOE and the Board of Education provide general supervision of school divisions.

### **JLARC found**

School divisions generally viewed VDOE, its leadership, and services and assistance provided by the agency positively. The agency also efficiently collected compliance information from school divisions for 41 federal and state requirements. However, VDOE's longstanding approach to supervision of school division compliance relies too heavily on self-certification from school divisions, and the agency independently verified compliance for only some standards. JLARC determined that more comprehensive and effective state supervision for key standards could help ensure that all school divisions fulfill their educational responsibilities.

VDOE's school improvement program needed to more effectively help low-performing schools and school divisions. Staff from VDOE's Office of School Quality had begun a pilot program to provide more customized support to low-performing school divisions, but the COVID-19 pandemic slowed implementation. The previous school improvement program was too compliance based, according to many VDOE staff and school divisions that

were part of the program. JLARC also found that Virginia did not devote enough staff to effectively support low-performing schools and had far fewer staff devoted to school improvement than neighboring states.

VDOE could better support teacher recruitment and retention. Only about half of school divisions responding to a JLARC survey found VDOE's teacher recruitment assistance helpful. In addition, the Office of Teacher Education needed to support school divisions through better data collection to identify teacher shortages, targeted fund allocation, and teacher mentorships.

## ► ACTION TAKEN BY THE GENERAL ASSEMBLY

### **Pilot program for comprehensive supervision of school division compliance**

#### *Appropriation Act*

The General Assembly included \$120,000 in the budget for VDOE to implement more comprehensive supervision of school division compliance. The pilot program would evaluate a subset of key educational standards by requiring submission of more comprehensive compliance information, verifying compliance for selected standards, monitoring corrective action implementation, and analyzing compliance issues and trends. The pilot program will be conducted during the 2021–22 school year. The legislation requires VDOE to submit a report on the results of the program to the Board of Education and the General Assembly's money and education committees no later than November 30, 2022.

### **Creating a more effective and appropriately resourced school improvement program**

#### *Appropriation Act*

The General Assembly directed VDOE through budget language to develop a plan to implement an effective school improvement program. The plan should identify additional resources and staff the Office of School Quality needs to effectively support school divisions in the school improvement program. In addition, VDOE must define performance measures to evalu-

ate the office's services to school divisions and how these will be used to make needed changes over time. VDOE must submit the plan to the Board of Education and the education and money committees by November 1, 2021.

### **Supporting school divisions' teacher recruitment and retention**

#### *Appropriation Act*

The General Assembly appropriated nearly \$400,000 to strengthen VDOE's support for school divisions with the most substantial teacher recruitment and retention challenges. The funds should also be used to implement a statewide strategic plan to better recruit and retain special education teachers.





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## Infrastructure and Regional Incentives

*Report issued in 2020*

JLARC evaluated Virginia’s infrastructure and regional incentives as part of an ongoing series evaluating the effectiveness of the state’s economic development incentives. Virginia provides 10 incentives to promote business growth through financial incentives for infrastructure development and to encourage business activity in distressed regions of the state.

### **JLARC found**

Between FY10 and FY18, Virginia spent an estimated \$690 million on infrastructure and regional incentives. Nearly half of this amount was for two tax credits designed to boost coal mining in the state: the Coalfield Employment Enhancement Tax Credit and the Coal Employment and Production Incentive Tax Credit. The tax credits are among the state’s largest incentives, but they generate economic losses for the state and no longer appear relevant. Virginia’s coal mining productivity has met that of nearby coal-producing states, and by 2025 only one coal-fired electric plant will remain in Virginia, which already uses Virginia coal for energy production.

Virginia’s enterprise zone grants—the Real Property Investment Grant and Job Creation Grant—are designed to reduce regional economic disparities and encourage community revitalization by incentivizing investment and job creation in designated distressed areas of the state. However, enterprise zones are not

well targeted to the state's most distressed areas, and the Real Property Investment Grant is not well targeted to industries that have a high economic impact.

The Tobacco Region Opportunity Fund (TROF) grants likely influence only a small percentage of business decisions, and a high percentage of projects did not materialize. This meant grant awards were canceled before funds were disbursed or funds were recaptured. TROF has a moderate economic benefit per \$1 million in state spending compared with other incentives because it is moderately well targeted to projects in industries that have a higher economic impact. The benefits are lower than those estimated for Virginia grants, on average, because of poor performance of early projects.

Virginia's economic development transportation incentives provided mixed economic impact. The Economic Development Access Program, which provides grants to bring roads to industrial or business sites, has a low economic benefit per \$1 million in state spending. The program has only one selection criterion—that businesses be in export-based industries to be eligible.

## ► ACTION TAKEN BY THE GENERAL ASSEMBLY

### **Eliminating the state's coal tax credits**

*HB 1899/SB 1252 (2021) – Delegate Hudson and Senator McPike*

The General Assembly enacted legislation that sunsets the state's coal tax incentives on January 1, 2022. The legislation also directs the Department of Mines, Minerals, and Energy to convene a stakeholder process to report recommendations on how Virginia can provide economic transition support for the coalfield region.

## **Adding criteria to the Economic Development Access Program**

*HB 1253 (2021) - Senator McPike*

The General Assembly enacted legislation directing the Commonwealth Transportation Board, in consultation with the secretaries of transportation and commerce and trade, to strengthen criteria for projects eligible under the Economic Development Access Program. Guidelines should consider the expected job creation, capital investment, and other relevant data.

### **► ACTION NEEDED**

#### **Targeting enterprise zones**

- The Department of Housing and Community Development should review and revise the process for designating and renewing enterprise zones to ensure that the enterprise zone program targets distressed areas in the state. (Recommendation 3)

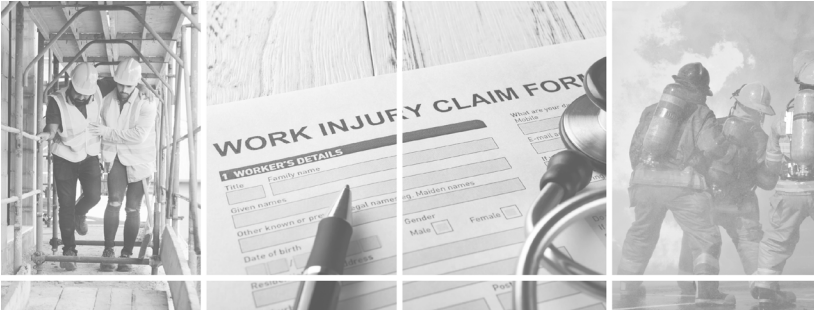
#### **Targeting real property investment grant to high-multiplier industries**

- 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-based industries or to projects that would contribute to community revitalization. (Recommendation 4)

#### **Strengthening selection of projects that receive Tobacco Region Opportunity Fund grants**

- The Tobacco Region Revitalization Commission should adopt a checklist of standard information required of Tobacco Region Opportunity Fund grant applicants to strengthen the due diligence process for awarding the grants and require that all grant applicants submit this information for consideration as part of the application process. (Recommendation 7)

- The Tobacco Region Revitalization Commission should collaborate with the Virginia Economic Development Partnership (VEDP) to develop a process for sharing the results of the VEDP Project Review and Credit Committee for projects that are seeking grants from one of the VEDP programs and the Tobacco Region Opportunity Fund. (Recommendation 8)



## Workers' Compensation and Disease Presumptions

*Report issued in 2019*

JLARC reviewed Virginia's workers' compensation system and use of disease presumptions for public safety workers. Workers' compensation systems compensate workers who are injured at work or who develop an occupation-related disease. The Virginia Workers' Compensation Commission (VWC) oversees the system, maintains records, and adjudicates disputes between injured workers and their employers or insurers. Like many other states, certain workers in Virginia (mostly public safety) can seek compensation under the workers' compensation system for "presumptive diseases," such as certain cancers and infectious, respiratory, and cardiovascular diseases. If the workers contract these diseases, it will be presumed that the disease was caused by their work as long as they meet specific requirements, such as length of service. In 2019, the General Assembly passed legislation (HB 1804) that, subject to re-enactment in 2020, would add three additional cancers to Virginia's disease presumption statute for firefighters (brain, colon, and testicular cancer).

### **JLARC found**

Disputes between employers/insurers and workers involving workers' compensation claims are adjudicated by VWC in a timely manner, and workers' and employers' attorneys are generally satisfied with the timeliness and fairness of VWC's han-

dling of disputed claims. However, VWC could take steps to improve the timeliness of hearings held in the Fairfax office and deputy commissioners' issuance of opinions.

Virginia is the only state in the U.S. that does not require employers to pay benefits for work-related injuries that occur over time, such as back injuries that occur from lifting boxes over several weeks or months. However, the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health considers cumulative trauma a type of workplace injury.

JLARC staff found some workers' compensation insurers are not making timely decisions on injured workers' claims. Virginia was one of few states where workers' compensation insurers are not legally required to notify a worker of their decision on the claim within a certain timeframe.

JLARC found injured workers are often confused about how to navigate Virginia's workers' compensation system. Surveys and interviews with injured workers found they often didn't understand VWC's role, their right to file a claim with the VWC to dispute an insurer's denial, and their responsibility to file a claim with the VWC to protect their workers' compensation claim.

Epidemiologists at Johns Hopkins University's Bloomberg School of Health found some scientific evidence to support the disease presumptions already in Virginia statute and the new presumptions proposed in 2019. (JLARC contracted with Johns Hopkins University during the study.) Employees in the occupations (mostly public safety) covered by disease presumptions must meet certain requirements to claim workers' compensation benefits under the presumption. JLARC found that the requirements firefighters in particular must meet to establish the cancer presumption are unreasonably burdensome, lack scientific basis, or are contrary to the intent of the presumption. For example, the evidence needed for firefighters to meet the toxic exposure requirement is nearly impossible to obtain, and Virginia's requirement that firefighters serve 12 continuous years to be eligible for the cancer presumption lacks scientific basis and was longer than other states.

## ► ACTION TAKEN BY THE GENERAL ASSEMBLY

### **Evaluating coverage of repetitive injuries**

*HB 617 (2020) – Delegate Guzman*

The General Assembly enacted legislation directing VWC to hire an independent and reputable national research organization with expertise in workers' compensation policy to study options for covering workers' injuries caused by repetitive motion. The legislation directs the study to consider the number of workers' injuries by repetitive motion; other states' evidentiary requirements for claiming workers' compensation benefits; required changes to statute; and potential impacts on workers, employers, and insurers.

### **Improving timeliness and transparency of insurer decisions**

*HB 46 (2020) – Delegate Carter*

The General Assembly enacted legislation requiring employers to respond within 30 days to workers who have filed a workers' compensation claim. The legislation requires the employer to inform the worker whether it will approve or deny the claim or whether additional information is needed. If the employer is denying the claim, it must explain why.

### **Helping workers navigate the workers' compensation system**

*HB 1588 (2020) – Delegate Kilgore*

The General Assembly enacted legislation authorizing VWC to create an ombudsman program to provide neutral education and assistance to workers and employers not represented by an attorney.

### **Adjusting requirements for disease presumptions**

*HB 783/SB 9 (2020) – Delegate Askew and Senator Saslaw*

The General Assembly enacted legislation removing the requirement that firefighters prove exposure to a toxic substance while working to be eligible for the cancer presumption. The law reduces the service length required to be eligible for the cancer presumption from 12 to five years and strikes the requirement that the service be continuous. To be eligible for a hypertension

or heart disease presumption, the law adds a service requirement of five years. (Previously, there was no length of service requirement.) The law also adds cancers of the colon, brain, and testes to the list of cancers that are presumed to be an occupational disease when developed by firefighters.

## ► ACTION TAKEN BY STATE AGENCIES

### **Improving clarity of communications and operations** **VWC**

VWC improved several communications to help injured workers and employers understand Virginia's workers' compensation system. VWC updated its written and online materials to improve clarity and comprehensiveness of information provided to workers, employers, and insurers. The commission also created a comprehensive guide for injured workers that explains the rights of Virginia workers under the Workers' Compensation Act, the role of VWC, the process for filing claims and resolving disputes, available VWC services, and how injured workers can find an attorney to represent them.

VWC also implemented several initiatives to improve timeliness of some deputy commissioners' opinions. VWC issued guidance to deputy commissioners that they can prioritize the order in which they write opinions and began monitoring how long it takes deputy commissioners to issue opinions. VWC added a deputy commissioner to the Fairfax office.

## ► ACTION NEEDED

### **Monitoring timeliness of insurers' compensability determinations**

- 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)

### **Notifying injured workers of their rights to repeal denied claims**

- 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)

### **Covering cumulative injuries**

- 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 workers' compensation medical fees to Medicare reimbursement rates**

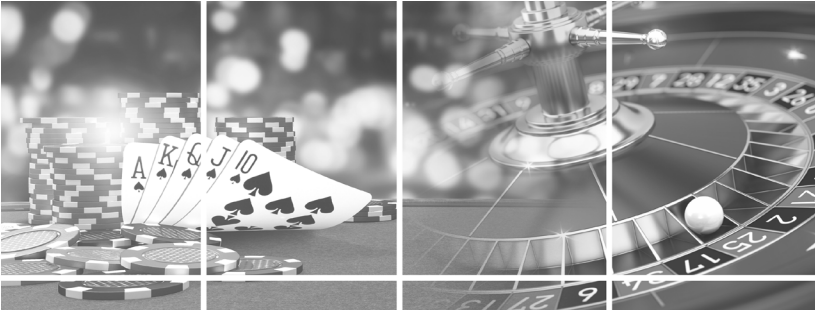
- The General Assembly may wish to consider amending § 65.2-605.2 of the Code of Virginia to authorize and direct the Virginia Workers' Compensation Commission (VWC) to include in its existing biennial reviews of Virginia's workers' compensation medical costs a comparison of Virginia's medical fees to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

### **Reviewing 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)

### **Changing disease presumption eligibility requirements**

- 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)



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## Gaming in the Commonwealth

*Report issued in 2019*

The 2019 General Assembly directed JLARC to review the potential impacts and opportunities associated with expanded legalized gaming, including five casinos, sports betting, and online gaming. The 2020 General Assembly enacted legislation legalizing casino gaming in five localities (Bristol, Danville, Norfolk, Portsmouth, and Richmond), contingent on local voter referenda. The legislation incorporated many of JLARC’s recommendations to ensure gaming integrity, expand the state’s problem gambling prevention and treatment efforts, and conduct casino oversight.

### **JLARC found**

Although Virginia previously had several forms of legal gambling, the state provided little funding for problem gambling prevention and treatment. Staff found expanding gambling options in Virginia would increase the risk of problem gambling in Virginia, which can negatively affect mental health, financial stability, and relationships for problem gamblers and their family and friends. In addition, most states with casinos require casinos to implement “responsible gaming practices,” such as gaming time limits, voluntary self-exclusion lists, and restricted advertising.

JLARC identified several practices states use to help ensure the integrity of casino gaming operations. For example, states with

casinos require in-depth financial and background investigations of casino owners and executives and licensure of casino employees and manufacturers involved in gaming operations (e.g., table dealers and equipment manufacturers). JLARC also found that states that limit the number of casino licenses available—like Virginia proposed to do—charge substantial license fees for the right to operate a casino for a specific period of time.

JLARC found that the Virginia Lottery would require 30 percent more staff to adequately oversee casino gaming, sports wagering, and any additional forms of gaming. JLARC also found the responsibilities and time commitment of the Virginia Lottery Board would need to change significantly to oversee expanded gaming oversight.

In its gaming report, JLARC staff also reviewed the proliferation of unregulated and untaxed “gray machines” (also referred to as “skill game” machines) in restaurants and retailers throughout the state. JLARC staff estimated that Virginia had as many as 9,000 machines that were not taxed or regulated, leaving no protection for businesses who hosted the machines and consumers who played them.

## ► ACTION TAKEN BY THE GENERAL ASSEMBLY

### **Creating a problem gambling prevention and treatment program**

*HB 4/SB 36 (2020) – Delegate Knight and Senator Lucas*

The General Assembly enacted legislation establishing the Problem Gambling Treatment and Support Fund and directing DBHDS to administer the fund and create a comprehensive problem gambling prevention and treatment program. The law directs the Virginia Lottery Board to create a self-exclusion program to allow gamblers to prevent themselves from participating in gaming and requires casino license applicants to submit a responsible gaming plan.

### **Licensing casino owners and employees**

*HB 4/SB 36 (2020) – Delegate Knight and Senator Lucas*

The General Assembly included in its 2020 casino legislation a requirement that casino owners and executives undergo in-depth background checks and financial investigations and pay \$50,000 to cover the cost.

### **Expanding the Virginia Lottery to monitor gaming**

*HB 4/SB 36 (2020) – Delegate Knight and Senator Lucas  
Appropriation Act*

The General Assembly's casino-authorizing legislation expanded membership of the Virginia Lottery Board to seven members and required that at least one member be a certified public accountant and at least one member be a law enforcement officer. The legislation also prevents lottery board members from participating in casino gaming or sports wagering or having a financial interest in casinos or gaming vendors. The General Assembly appropriated \$16 million annually for the lottery to reorganize and add staff for oversight of expanded gaming, which matches the additional funding JLARC estimated the lottery needed for adequate oversight.

### **Banning "skill game" machines**

*HB 881/SB 971 (2020) – Delegate Bulova and Senator Howell*

The General Assembly enacted legislation banning "skill game" machines. Legislators approved the governor's recommendation to delay the ban until July 1, 2021. During the one-year phase out, the machines were taxed to benefit the state's response to the COVID-19 pandemic.

## ► ACTION NEEDED

### **Ongoing evaluation of and collaboration on preventing and treating problem gambling**

- 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)

### **Process to evaluate and select future casino development proposals**

Although operators have already been chosen for several of the permitted casino projects, the General Assembly may wish to consider implementing the following recommendations to govern the evaluation and selection of future casino owners/operators.

- 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)
- 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)
- 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)



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## Office of the State Inspector General

*Report issued in 2019*

Virginia's Office of the State Inspector General (OSIG) was created in 2012 as a centralized, independent authority to investigate waste, fraud, and abuse in state government. The agency also was given responsibility to oversee Virginia's facilities and providers offering behavioral health and developmental disabilities services and to conduct performance audits of state agencies.

### **JLARC found**

OSIG operates the State Fraud, Waste, and Abuse Hotline, which accepts and screens allegations of wrongdoing in state government to determine whether they merit an investigation. JLARC found that OSIG's screening process was generally effective, but some allegations were dismissed prematurely. JLARC staff found that OSIG's law enforcement investigators generally conducted effective investigations into criminal allegations of wrongdoing in state government. However, OSIG delegated almost all investigations of administrative violations (even serious allegations) back to the agencies where the wrongdoing allegedly took place. Some allegations were sent to agencies without internal audit divisions, which are less equipped to conduct rigorous and independent investigations.

JLARC staff also found that OSIG had limited statutory authority to investigate allegations of waste, fraud, and abuse at higher

education institutions and referred nearly all of them back to the institutions to investigate.

OSIG has oversight of the Department of Behavioral Health and Developmental Services (DBHDS) facilities and the community-based behavioral health providers DBHDS oversees. OSIG is statutorily required to inspect these facilities and providers and make recommendations to improve their programs and services. OSIG set up a behavioral health hotline (separate from its waste, fraud, and abuse hotline) to receive allegations of abuse, neglect, or inadequate care at DBHDS facilities and community providers. JLARC staff found that OSIG's inspections of DBHDS facilities were of mixed usefulness. JLARC found that OSIG has done little oversight of community-based providers and conducted only limited analysis of DBHDS data to identify systemic problems across DBHDS facilities and community-based providers. OSIG was not adequately promoting its behavioral health hotline and therefore received and investigated few complaints related to behavioral health facilities.

OSIG's performance audits have been of uneven quality and take too long to conduct. This is largely due to the difficulty OSIG had building a staff to effectively conduct performance audits.

## ► ACTION TAKEN BY THE GENERAL ASSEMBLY

### **Strengthening OSIG's investigative role**

*HB 1100 (2020) - Delegate Carr*

The General Assembly implemented JLARC's recommendations to improve OSIG's role as the state's central investigative authority into wrongdoing in state government. The legislation requires OSIG's own investigators to investigate allegations of serious administrative violations submitted to the hotline and only refer less serious investigations to state agencies with qualified internal audit divisions. In addition, the law requires the inspector general or a designee to review each decision to dismiss an allegation without further investigation. The legislation also gives the inspector general more authority to directly



investigate serious allegations of waste, fraud, and abuse at the majority of the state's 15 public higher education institutions.

### **OSIG's behavioral health oversight**

*HB 1100 (2020) - Delegate Carr*

The General Assembly enacted legislation directing OSIG to identify systemic problems affecting the quality of care and safety at DBHDS facilities and the community providers they regulate and to recommend ways to alleviate any problems. The legislation also requires OSIG to better promote its complaint line for residents of DBHDS facilities and people receiving services from community-based behavioral health providers.

#### **► ACTION TAKEN BY STATE AGENCIES**

##### **Dedicating fewer staff to performance audits and more staff to investigations**

*OSIG*

The agency reduced its performance auditing unit from 12 to nine auditors and more narrowly defined the unit's scope. The agency added two investigators and transferred a data analyst to the investigations unit to serve as an accreditation officer. In addition, the agency worked with the Department of Human Resource Management to better define employee work profiles.

#### **► ACTION NEEDED**

##### **Planning for behavioral health oversight**

- The General Assembly may wish to consider including language in the Appropriation Act to direct OSIG to develop and implement a plan to conduct system-level oversight of quality of care and safety across DBHDS 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. (Recommendation 11)



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## Local and Regional Jail Oversight

*Report issued in 2019*

Virginia's 59 jails are operated by localities and regional authorities but are subject to state oversight. Two separate groups, the Board of Corrections (BOC) and inspections staff from the Virginia Department of Corrections (DOC), had specific responsibilities for jail oversight. BOC established mandatory standards for jail operations and reviewed all inmate deaths, a responsibility required by the General Assembly beginning in FY18. Two inspections staff from DOC annually inspected all jails and conducted more in-depth audits every three years to ensure jails meet the BOC's standards.

### **JLARC found**

Jail inspections conducted by DOC staff were thorough but lacked rigor for ensuring compliance with some of the most critical standards. Additionally, jail inspection results were not used to improve state policy or support broad improvement in Virginia's jails. For example, inspections were not used to identify the most commonly violated standards or to help jails comply with these standards.

BOC's new death review process was generally effective. However, the board had a significant backlog of inmate death reviews and needed to improve its timeliness through several administrative changes. In addition, jail oversight was fragmented across DOC and BOC. BOC and DOC did not adequately coordinate

even though they have shared goals: to create a safe and secure jail environment and to ensure jails are meeting state standards.

JLARC staff also found that little information about the results of death investigations was shared with the public. Several other Virginia state agencies that conduct death investigations publish annual reports summarizing the deaths reviewed and include recommendations to change state policies to reduce the risk of future deaths.

### ► ACTION TAKEN BY THE GENERAL ASSEMBLY

#### **Improving cohesion and transparency of state's jail oversight** *SB 622/SB 215 (2020) - Senators Deeds and Suetterlein* *Appropriation Act*

The General Assembly enacted legislation authorizing the board to employ an executive director to integrate the inspection and death review functions to ensure a more cohesive jail oversight program. The Appropriation Act authorized the creation of four staff positions to fulfill the board's oversight role. The legislation also renamed the Board of Corrections the State Board of Local and Regional Jails.

In addition, the legislation requires the board to report annually to the legislature and governor on the results of inspections and audits of local and regional jails and jail death reviews conducted that year. The report must include the types of standards most typically violated and trends among inmate deaths and recommend policy changes to improve operations in local and regional jails.

### ► ACTION TAKEN BY STATE AGENCIES

#### **Improving timeliness of death investigations and clarifying** **DOC administrative support** *State Board of Local and Regional Jails*

The board requires its death investigator to send investigation reports to board members before the meetings in which the case is scheduled, giving board members the opportunity to

request and review additional information before the case is considered.

The chairman also signed a memorandum of understanding with the Department of Corrections director to clarify the administrative support DOC will provide to BOC for the state's jail oversight program.

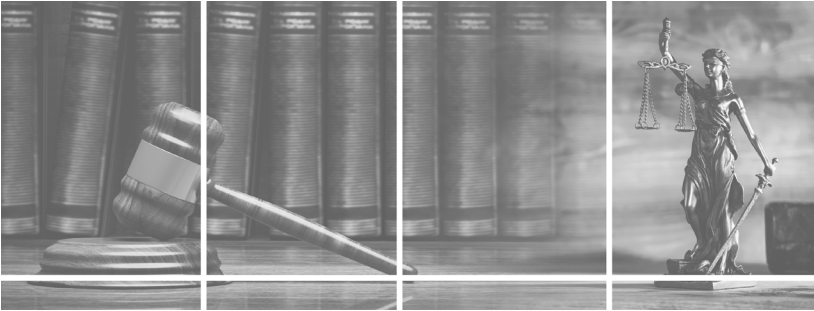
## ► ACTION NEEDED

### **Clarifying FOIA and jail death review cases**

- The State Board of Local and Regional Jails should work with the Virginia Freedom of Information Act (FOIA) Advisory Council to examine whether and how FOIA should be amended to clarify or expand the circumstances in which the board may conduct closed meetings to consider jail death review cases. (Recommendation 3)

### **Medical training for death investigation staff**

- The State Board of Local and Regional Jails should ensure that at least one of its staff receive training on the medical conditions, treatment protocols, and medications most commonly necessary to understand when reviewing jail inmate deaths. (Recommendation 6)




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## Office of the Attorney General

*Report issued in 2019*

JLARC reviewed the operations and performance of the Office of the Attorney General (OAG). Virginia's OAG performs a variety of critical legal functions for state agencies, especially providing legal advice and litigation representation when needed. OAG spends, or oversees spending of, about \$85 million and has about 500 employees.

### **JLARC found**

Overall, Virginia's OAG was found to be efficient and effective in the performance of its responsibilities. JLARC found that OAG's clients were satisfied with the legal services they receive, and the agency competently provided legal advice and litigation representation. OAG appropriately approved the use of outside counsel and effectively controlled the cost of hiring outside counsel. Its Medicaid fraud control unit effectively investigated cases of civil or criminal Medicaid fraud.

OAG charged state agencies substantially less than private legal counsel, but its practices for billing client agencies needed improvement. OAG could have collected an additional \$2.7 million revenue in FY19 if billing practices were more accurate. OAG did not bill non-general fund clients for an estimated \$3.3 million in legal services because many attorneys did not record their hours. In contrast, OAG billed an estimated \$600,000 for general fund-related legal services even though these services should be funded through OAG's general fund appropriation.

OAG's clients generally reported having good working relationships with their assigned attorneys. However, in the few instances where clients were not satisfied, client agencies lacked a way to address their concerns outside of taking complaints directly to their assigned attorneys and risking damaging these relationships. For example, OAG clients who thought their attorneys might have a conflict of interest or that encountered service problems did not know how to escalate and resolve those issues.

### ► ACTION TAKEN BY STATE AGENCIES

#### **Billing agencies accurately**

##### **OAG**

OAG implemented several recommendations to ensure that agencies are billed appropriately. OAG is requiring attorneys to record all hours worked on behalf of all clients and using that information as the basis for client billing. OAG more clearly defined its billing policy for clients that are funded wholly or in part through nongeneral funds. OAG also developed a policy to ensure clients are not billed for legal services provided to general fund programs.

### ► ACTION NEEDED

#### **Funding and implementing client services policy and feedback**

- 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)
- OAG should develop and implement a (i) client services policy detailing roles and expectations, how problems will be resolved, and staffing levels; and (ii) process to ask clients for feedback and use the information to improve services as needed. (Recommendations 6, 7, 8, and 9)



## VITA's implementation of a multi-supplier service model

*Report issued in 2019/Follow-up in 2020*

JLARC has ongoing oversight of the Virginia Information Technologies Agency (VITA), which provides IT infrastructure services to the state's executive branch agencies. As part of its ongoing oversight, in 2018 JLARC directed staff to review VITA's implementation of a new multi-supplier service model. Previously, a single supplier provided the state's IT services. In 2020, JLARC conducted a follow-up review on the status of the new model.

### **JLARC found**

In 2019 VITA's implementation of a multi-supplier service model was significantly behind schedule, and the agency initially was not properly organized or staffed to manage eight supplier contracts. VITA did not track many contract deliverables or any obligations. The agency did not hold suppliers accountable when they failed to meet performance requirements, although contracts allowed the state to automatically collect financial penalties. In addition, VITA was not providing deliverables' deadlines to suppliers in a timely manner and was taking too long to review submitted deliverables.

VITA has an issue resolution platform to address unresolved and widespread service issues, but the platform was not resolving many issues in a timely manner. The platform lacked policies guiding how issues should be referred to the platform and

escalated within it.

VITA did not work with state agencies to validate their base IT infrastructure service needs for the upcoming year or provide agencies with rates early enough in the budget cycle to allow them to effectively manage their budgets for IT infrastructure services.

JLARC's 2020 follow-up VITA report found VITA had completed full implementation of its multi-supplier model. VITA had also improved its contract management and is enforcing contractual requirements. The creation of the chief operating officer position at VITA contributed significantly to improvements in managing the model, including monitoring and enforcing contractual requirements, resolving incidents and agency billing disputes in a more timely manner, and enhancing the issue resolution platform.

However, JLARC found VITA needed to improve its customer service for state agencies and found that many agencies continue to have network connectivity problems. In addition, the agency still needed to conduct a comprehensive assessment to determine if it was organized and staffed to effectively manage a multi-supplier model.

## ► ACTION TAKEN BY STATE AGENCIES

### **VITA**

VITA has fully or partially implemented all of the recommendations from the 2019 report. It is too soon to evaluate its implementation of recommendations from the 2020 report.

#### **Contract management**

VITA is now consistently tracking the status of contractually required deliverables and obligations and is also addressing suppliers' late or rejected deliverables and missed performance requirements. VITA is assessing financial penalties or implementing a remediation plan when suppliers do not meet these contractual requirements. For example, between



the summers of 2019 and 2020, VITA increased the percentage of supplier performance requirements it was enforcing from 30 to 97 percent.

VITA is also communicating deliverables' deadlines to suppliers and reviewing submitted deliverables more quickly. VITA posts deadlines on a SharePoint site and reviews deliverables in a median of nine days, which is faster than contractual timeframes.

### **Management and staffing**

JLARC passed a resolution in October 2020 for JLARC staff to conduct a comprehensive assessment of whether VITA is structured and staffed correctly to operate a multi-supplier service model. In addition, VITA hired KPMG in December 2020 to conduct a study of whether VITA's business units are appropriately structured and whether VITA has the right staffing competencies and levels to meet current and future needs.

### **Issue resolution platform**

VITA created new policies to escalate issues to and through its issue resolution platform, which is used to address widespread or complex issues with suppliers. The agency implemented policies to automatically escalate major and minor issues that were considered at least a moderate priority by summer 2020. VITA, however, had not created policies for moving lower-priority issues through the platform.

### **Agency billing**

VITA is providing agencies with annual IT infrastructure service consumption estimates and a preliminary rate schedule earlier in the budget cycle to help agencies better budget for IT costs.

## ► ACTION TAKEN BY THE GENERAL ASSEMBLY

### Agencies' network adequacy

#### *Appropriation Act*

- Through budget language, the General Assembly directed VITA to provide an annual network infrastructure report to the General Assembly money committees and JLARC by November 1 each year. The report should identify any needed upgrades and their estimated costs, and indicate whether they are needed on the network portion maintained by VITA or a customer agency.




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## Department of Wildlife Resources (formerly Department of Game and Inland Fisheries)

*Report issued in 2019*

JLARC reviewed the operations and performance of the Department of Game and Inland Fisheries, which changed its name to the Department of Wildlife Resources (DWR) in 2020. DWR enforces hunting and fishing laws and regulations and undertakes several activities to conserve wildlife habitat, such as purchasing and maintaining wildlife management areas. DWR hired a new executive director in mid-2019, during the time JLARC staff were reviewing the agency.

### **JLARC found**

DWR's colonel position, which heads the conservation police force, had been vacant for almost 3.5 years. Staff indicated this had led to indecisiveness and a lack of direction for the conservation police force. The colonel position remained vacant for several reasons, including a statutory requirement that the director hire current agency staff to fill law enforcement leadership positions unless no one on staff was qualified for the position. The agency's lack of a structured internal leadership development program had also contributed to challenges filling vacant leadership positions within the conservation police force.

DWR's conservation police officers were professional and helpful but lacked adequate procedural guidance. Only 30 percent of sergeants, lieutenants, and captains surveyed by JLARC

reported that “all or most” procedural guidance was accurate. Conservation police officers also gave varying responses to JLARC when asked how they might enforce certain laws and regulations.

DWR had a generally effective process to decide which land to acquire for its conservation efforts, but it has not followed the process on some occasions. DWR also lacked a meaningful and up-to-date land acquisition strategy and did not adequately budget and staff for the maintenance that will be required for its 220,000 acres of land holdings.

The new director inherited several staffing and leadership issues. A JLARC survey of agency staff (held before the new director was hired) found only one-third of staff considered agency leadership to be effective at identifying agency challenges or motivating employees. In addition, agency staff said problems with IT infrastructure made it difficult for them to complete their work.

### ► ACTION TAKEN BY THE GENERAL ASSEMBLY

#### **Appointing conservation police force leadership**

*HB 882 (2020) – Senator Locke*

The General Assembly removed a provision that prohibited the director of DWR from making an external appointment for any law enforcement position above the rank of conservation police officer.

### ► ACTION TAKEN BY STATE AGENCIES

#### **Improving leadership in the state conservation force**

*DWR*

DWR hired a colonel for its Law Enforcement Division in November 2020. DGIF is also in the process of implementing several initiatives to strengthen the development and retention of its conservation officers. A leadership development program for 20 officers was scheduled to begin in February 2021. As part of the program, DGIF has hired a consultant to help create val-

idated promotional testing by the end of 2021. The agency has also submitted an officer progression plan for non-supervisory positions to the Department of Human Resource Management.

### **Providing more strategic guidance for land conservation acquisitions**

#### *DWR*

DWR updated its land acquisition process and trained staff on the updates. The agency plans to seek approval from the Board of Wildlife Resources for any deviation from the new process. In addition, the board has adopted updated land acquisition guidance to establish a more comprehensive land purchase/conservation strategy and to better align with the governor's ConserveVA initiative and agency priorities.

### **Improving agency administration**

#### *DWR*

DWR has upgraded networks at each of its regional and district offices to improve connectivity and operational efficiency. To improve communication from agency leadership, DWR provides a quarterly newsletter on agency operations and decisions and emails minutes from senior leadership meetings to all staff.

The agency also conducted strategic planning for all of its divisions, and the Board of Wildlife Resources adopted the DWR Visioning document at its December 2020 meeting. DWR also has begun to focus on better aligning its budget with agency priorities.

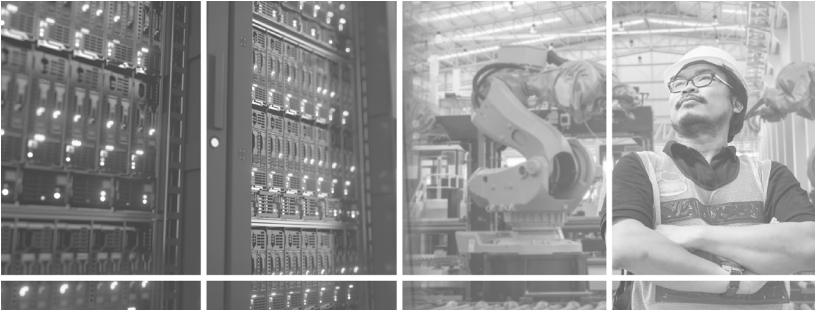
### **► ACTION NEEDED**

### **Training for conservation police officers**

- The Department of Game and Wildlife Resources should conduct additional training and provide written guidance as needed to ensure all conservation police officers have a consistent understanding of which enforcement actions are most appropriate for given violations. (Recommendation 7)

### **Guidance for conservation police officers**

- The Department of Wildlife Resources should annually analyze enforcement action data for each conservation police officer to identify officers who may need additional guidance or training on which enforcement actions are most appropriate for given violations. (Recommendation 8)




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## Data Center and Manufacturing Incentives

*Report issued in 2019*

JLARC evaluated Virginia's data center and manufacturing incentives as part of an ongoing series evaluating the effectiveness of the state's economic development incentives. Virginia provides 11 incentives to encourage data center and manufacturing growth and environmentally friendly practices.

### **JLARC found**

Between FY10 and FY17, Virginia spent an estimated \$559 million on the state's data center and manufacturing incentives. The data center sales and use tax exemption is by far the largest incentive in the state, making up one-fifth of all incentive spending during that time period. JLARC found the data center exemption had moderate economic benefits per \$1 million in state revenue forgone but the incentive had not provided much benefit to economically distressed localities. In addition, the state should collect more information on this large incentive to determine its full fiscal and economic impact. An increasing number of states are creating data center incentives, so JLARC recommended the creation of a workgroup to evaluate how to best maintain the state's competitiveness and determine whether the state could reduce its reliance on the exemption.

JLARC found that Virginia's Pollution Control Equipment and Facilities Sales Tax Exemption helped reduce manufacturers' expenses for purchases of pollution-controlling equipment.

However, many businesses reported they did not apply for the exemption because of the administrative burden of achieving certification, which is required to receive the exemption. In addition, current law allowed certification only after a facility's completion, which increases the burden to receive certification.

Virginia's Green Job Creation Tax Credit and Biodiesel and Green Diesel Fuels Producers Tax Credit have low rates of utilization and little effect on the activity they were designed to encourage. The Green Job Creation Tax Credit has had little to no effect on employment in green energy jobs, and the Biodiesel and Green Diesel Fuel Producers Tax Credit has had no effect on Virginia's biodiesel production rate.

## ► ACTION TAKEN BY THE GENERAL ASSEMBLY

### **Encouraging data center growth in distressed localities**

*HB 2273/SB 1423 (2021) – Delegate Morefield and Senator McPike*

The General Assembly enacted legislation that reduces the job creation and capital investment requirements to qualify for the data center sales and use tax exemption in distressed localities. The legislation reduces the job creation requirement from 25 to 10 jobs and the capital investment requirement from \$150 million to \$70 million. A distressed locality is defined as one with unemployment and poverty rates higher than the state-wide average.

### **Adding reporting requirements for data centers claiming exemption**

*HB 2273/SB 1423 (2021) – Delegate Morefield and Senator McPike*

The General Assembly enacted legislation requiring data centers using the tax exemption to report annually to the Virginia Economic Development Partnership (VEDP) on the data center's employment, capital investments, average annual wages, qualifying expenses, tax benefit, and any additional information VEDP deems relevant. Every two years VEDP and the Vir-



ginia Department of Taxation are required to publish a report on the exemption that aggregates the total fiscal and economic impacts of the exemption.

### **Claiming pollution control tax exemption before localities build utilities facilities**

*SB 685/HB 1173 (2020) – Senator Mason and Delegate Lopez*

The General Assembly enacted legislation that allows localities, before construction is complete, to receive tax-exempt certification of water, storm-water, or solid waste management equipment and facilities.

#### **► ACTION NEEDED**

### **Establishing a data center workgroup**

- The General Assembly may wish to consider including language in the Appropriation Act directing the Secretary of Finance to convene a workgroup consisting of the Secretaries of Transportation, Commerce and Trade, and Administration; the staff directors of the House Appropriations Committee and Senate Finance & Appropriations 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)

### **Improving guidance for pollution control tax exemption**

- The Department of Environmental Quality and Department of Mines, Minerals, and Energy should develop guidance documents on (1) the types of pollution control equipment and facilities that are exempt from the retail sales and use tax and (2) the decision-making process for approving certification. (Recommendation 6)
- The Department of Environmental Quality should develop

a list of pre-approved equipment and facilities that typically meet the pollution control certification requirements and create an expedited certification process. (Recommendation 7)

**Eliminating the green job and green diesel fuel 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)




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## Behavioral health

*Report issued in 2019*

JLARC staff reviewed the implementation of STEP-VA, a long-term initiative to improve the quality of public behavioral health services available at community services boards (CSBs) throughout Virginia. JLARC staff reviewed STEP-VA two years into a four-year timeline and assessed CSBs' overall preparedness to implement the remaining steps in the program by July 2021.

### **JLARC found**

The Virginia Department of Behavioral Health and Developmental Services (DBHDS) had not dedicated sufficient resources to implementation of a large-scale program like STEP-VA. The agency did not have a full-time staff person dedicated to STEP-VA for the first 18 months of the program and had not dedicated any funds for administration of the program. JLARC staff found insufficient leadership led to fragmented communication between DBHDS and community services boards and slowed planning and implementation of new services.

All 40 CSBs had implemented same-day access to behavioral health assessments, which reduced wait times when previously it could take up to 40 days to schedule an assessment. However, the number of hours available per week for same-day access and locations that offer it varies among CSBs, and DBHDS had not developed measures to evaluate consumer access to same-day assessments and whether the available hours meet community need.

## ► ACTION TAKEN BY STATE AGENCIES

### **Dedicated employee to oversee STEP-VA implementation** *DBHDS*

As part of an agency reorganization, DBHDS assigned the chief deputy commissioner for its new Division of Community Behavioral Health as executive leader and project manager to STEP-VA.

## ► ACTION NEEDED

### **Assessing timeliness of same-day access**

- The Department of Behavioral Health and Developmental Services should work with community services boards (CSBs) to develop at least one performance measure to indicate whether each CSB is performing same-day behavioral health assessments for each consumer who visits the CSB during same-day assessment hours. (Recommendation 1)

### **Assessing whether community services boards offer enough same-day access hours**

- The Department of Behavioral Health and Developmental Services should work with community services boards (CSBs) to develop at least one performance measure to assess whether each CSB is offering a sufficient number of same-day assessment hours at each clinic within its service area to meet community demand. (Recommendation 2)

### **Dedicating funding to STEP-VA administration**

- The General Assembly may wish to consider including language in the Appropriation Act allowing the Department of Behavioral Health and Developmental Services (DBHDS) to use a portion of future STEP-VA funding for STEP-VA oversight and administration functions at DBHDS. (Recommendation 5)




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## Foster Care

*Report issued in 2018*

JLARC reported on the performance of Virginia’s foster care system, which serves over 5,000 children and their families. The 2019 General Assembly enacted 21 of JLARC’s recommendations to improve outcomes for children in Virginia’s foster care system. The 2020 General Assembly implemented an additional seven recommendations from the study.

### **JLARC found**

Virginia placed foster care children with relatives (often called kinship care) far less frequently than other states, even though national research finds foster care children placed with relatives typically experience better outcomes. JLARC staff also found local social services departments could provide better training for relatives of foster care children and make better use of emergency approval requirements to place children with relatives before they have the chance to become fully licensed foster parents.

The Virginia Department of Social Services (VDSS) lacked a reliable and comprehensive way to identify problems in Virginia’s foster care system, and Virginia did not have a confidential mechanism to receive complaints about any problems related to foster care.

Many children in Virginia’s foster care system stay longer than necessary, which can negatively affect their development and

outcomes. JLARC also found Virginia's rate of children aging out of foster care is among the highest in the country. Delays in the adoption process can lead to unnecessarily long stays. JLARC found local social services departments were not consistently filing for termination of biological parents' parental rights within legally required timeframes. For children aging out of foster care, JLARC staff found local departments of social services boards were not providing legally required services to help them transition to adulthood.

## ► ACTION TAKEN BY THE GENERAL ASSEMBLY

### **Helping relatives become foster parents**

*SB 1025 (2020) – Senator Dunnivant*

The General Assembly enacted legislation to remove potential barriers for placement of children in foster care with relatives. The legislation allows local social services boards to waive training requirements for relatives prior to their initial approval as foster parents. The law also prohibits boards from removing children from relatives' care while their approval as foster parents is pending if that placement remains in the best interest of the child. In addition, the legislation directs the Virginia Department of Social Services (VDSS) to develop a comprehensive training program and guidance for relative foster parents and to provide better guidance to local social services boards about the approval process for relative foster parents.

### **Oversight: Children's Ombudsman Office**

*HB 1301 (2020) – Delegate Hurst*

*Appropriation Act*

The General Assembly enacted legislation creating the Office of the Children's Ombudsman to receive and investigate complaints involving VDSS, local social services departments, child-placing agencies, or child-caring institutions. The office's goal will be to respond to complaints, effect meaningful changes in foster care policies, and ensure compliance with relevant statutes and policies for children in foster care and adoptive homes. The General Assembly funded 4.5 full-time equivalent employees for the

new office.

**Reducing long stays in foster care**  
*SB 472 (2020) – Senator Reeves*  
*Appropriation Act*

The General Assembly enacted legislation to help prevent delays in the termination of parental rights process for children who have been in the foster care system for 15 of the last 22 months. If the local social services agency has not filed for termination of parental rights for such a child, the agency must document reasons for the delay when it petitions the court to hold a permanency planning hearing for the child.

► **ACTION NEEDED**

**Identifying and addressing safety problems found in agency case reviews**

- The General Assembly may wish to include language in the Appropriation Act directing the Virginia Department of Social Services to thoroughly review all the information collected through the agency case reviews conducted in 2017 and 2018 by regional staff, re-communicate all serious case-specific or systemic safety-related concerns identified in past reviews to the relevant departments of social services, communicate such concerns to the relevant local boards of social services, and work with local department staff to resolve all identified safety problems. The commissioner should be directed to submit a letter to the House Health, Welfare and Institutions Committee and the Senate Rehabilitation and Social Services Committee certifying that all safety-related concerns identified in the 2017 and 2018 reports have been resolved no later than November 1, 2019. (Recommendation 1)

**Evaluating how to expedite “termination of parental rights” when doing so is in a child’s best interest**

- The General Assembly may wish to include language in the Appropriation Act directing the Supreme Court of

Virginia to evaluate the feasibility, costs, and effectiveness of the following options to expedite the appeals process for termination of parental rights (TPR) cases: (i) designate juvenile and domestic relations courts as courts of record for TPR hearings and send appeals directly to the court of appeals; (ii) originate TPR hearings in circuit courts; (iii) shorten the 90-day deadline for circuit courts to hold TPR hearings; (iv) establish a deadline for the court of appeals to hold TPR hearings; and (v) any other options that could expedite the appeals process for TPR cases. The executive secretary of the Supreme Court of Virginia should submit the results of this evaluation to the House and Senate Courts of Justice Committees; the House Health, Welfare and Institutions Committee; and the Senate Rehabilitation and Social Services Committee by November 1, 2020. (Recommendation 18)





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## Virginia Community College System

*Report issued in 2017*

JLARC reviewed the operations and performance of Virginia's Community College System (VCCS). The General Assembly and VCCS implemented, or are in the progress of implementing, almost all of JLARC's recommendations to improve advising for community college students, the quality of dual enrollment courses, and the transfer process and resources for students who want to transfer to a four-year higher education institution.

### **JLARC found**

Just 39 percent of Virginia's community college students earn a degree or other credential, and community college students accumulate nearly a semester's worth of excess credits by the time they earn a bachelor's degree. VCCS's open enrollment policy is key to expanding access to higher education, but many students who enroll exhibit factors that challenge their ability to succeed. Proactive mandatory advising for at-risk students can improve retention and credential attainment rates. Virginia's community colleges need to be more strategic and purposeful about identifying at-risk students and ensuring they have many points of contact with academic support.

JLARC staff found VCCS needs more information from four-year institutions on which dual enrollment courses are accepted for credit at higher education institutions. This information would allow VCCS and the State Council for Higher Education in Vir-

ginia to evaluate the extent to which dual enrollment course credits are not accepted by higher education institutions and improve the quality and transferability of these courses.

## ► ACTION NEEDED

### **Providing advising for students at-risk of dropping out**

- The Virginia Community College System should develop a proposal for improving the capacity of community colleges to provide proactive, individualized, mandatory advising services to students who are at risk for not completing a degree or credential and could benefit from more regular, comprehensive advising services. (Recommendation 4)

### **Collecting information on dual enrollment students**

- The General Assembly may wish to include language in the Appropriation Act to require the state's public four-year institutions of education to report, for dual enrollment students, (i) the total number of dual enrollment credits on students' transcripts, (ii) the total number of those credits that were accepted for credit by the institutions, and (iii) whether the credits were applied to elective requirements, program requirements, or other requirements. This information should be reported to the State Council of Higher Education for Virginia (SCHEV) and the Virginia Community College System (VCCS) at the end of the 2017-18 academic year and in subsequent years as necessary to help improve the quality of dual enrollment courses and the state's dual enrollment policies. VCCS and SCHEV should use this information to identify dual enrollment courses that are not routinely accepted for credit. (Recommendation 7)



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## Ongoing Evaluation and Oversight

JLARC provides ongoing legislative evaluation and oversight of the state's economic development incentives, the Virginia Retirement System (VRS), the Virginia Information Technologies Agency (VITA), the Virginia College Savings Plan (Virginia529), Cardinal, and proposed health insurance mandates. Ongoing evaluation and oversight help ensure proper stewardship of the state's resources and taxpayer dollars.

### **Economic development incentives**

JLARC is responsible for ongoing evaluation of the state's economic development incentives. Areas of evaluation include spending on incentives, business activity generated by incentives, economic benefits of incentives, and the effectiveness of incentives. JLARC contracts with the University of Virginia's Weldon Cooper Center for Public Service to assist with the evaluations.

JLARC issued an in-depth report of the state's data center and manufacturing incentives (see page 56) in 2019 and an in-depth report on the state's infrastructure and regional incentives (see page 27) in 2020. JLARC also issued reports on overall spending and business activity for Virginia's economic development incentives in 2019 and 2020. The 2020 report provided estimates of the collective impact of Virginia's economic development incentives.

## **Virginia Retirement System**

JLARC regularly reports on the structure and governance of VRS, including the structure of the investment portfolios, investment practices and performance, actuarial policy and soundness, and administration and management.

In 2019, JLARC staff reported that the VRS board had lowered its long-term investment rate of return assumption from 7.0 percent to 6.75 percent because of lower projected future returns, particularly in the near term. VRS adopted a blended rate of return that assumes lower investment returns in the near term and moderate investment returns over the long term. This approach fulfills a recommendation from the 2018 Quadrennial Actuarial Audit of VRS performed by JLARC's actuary, GRS Retirement Consulting, to consider both the near-term and long-term investment horizons when setting the long-term rate of return assumption.

In 2019 and 2020, JLARC staff reported on the voluntary contribution participation rate for hybrid plan members. JLARC staff found that, as expected, voluntary contribution rates increase after statutory automatic rate escalations that occur every three years but decline in the years between the automatic escalations. This is partly because of employee turnover; new employees tend not to initiate a voluntary contribution when they start employment. JLARC reported that a plan change, such as automatically enrolling new employees at a minimum contribution rate or having more frequent automatic rate escalations, would likely be required to significantly increase the percentage of hybrid plan members making voluntary contributions and to continue improving the participation rate.

## **Virginia Information Technologies Agency**

JLARC is responsible for ongoing review and evaluation of VITA. Areas of review include VITA's infrastructure outsourcing contracts; adequacy of VITA's planning and oversight, including IT projects, security, and agency procurement; and cost effectiveness and adequacy of VITA's procurement services.

In 2019, JLARC issued a report on VITA's transition to a multi-supplier IT infrastructure model (see page 48). In 2020, JLARC issued an update on VITA's implementation of the multi-supplier model. Both reports addressed the status of implementation of the new model, management of the multi-supplier model and supplier contracts, the resolution of IT service issues, and agency satisfaction with VITA's IT infrastructure services.

### **Virginia College Savings Plan**

JLARC staff periodically report on the structure and governance of Virginia529, including the structure of the investment portfolios, investment practices and performance, actuarial policy and soundness, and administration and management.

In 2020, JLARC reported on the new defined benefit college savings program that Virginia529 was developing to replace the Legacy Prepaid529 program. JLARC recommended in 2018 that if Virginia529 began offering such a program, it should offer a mobile or web-based application to guide customers on their purchase of units through the program. Virginia529 now provides such guidance on its website, including a web-based calculator to help customers estimate how much they need to purchase to cover tuition and fees at different colleges.

In 2020, JLARC indicated that Virginia529 would need to give careful consideration before adding a pricing reserve to contracts in the new defined benefit program. A pricing reserve can be used to protect a program against financial risk. The new defined benefit program carries less actuarial risk than the Legacy Prepaid529 program. The Virginia529 board ultimately decided that a pricing reserve is not needed for the new program.

JLARC monitored Virginia529's efforts related to the creation of a state-facilitated private retirement program. JLARC gave Virginia529 feedback on a study that it was directed to complete by the 2020 General Assembly on the development of such a program in Virginia. To provide the most useful information for the General Assembly, JLARC indicated that the study should

include a thorough and objective review of how a state-facilitated retirement program could best be implemented. JLARC also indicated that the study should carefully examine which state agency could best sponsor such a program, and that giving Virginia529 responsibility would significantly expand the agency's mission beyond educational savings programs. The 2021 General Assembly (HB2174, Delegate Torian) enacted legislation to establish a state-facilitated private retirement program, which named Virginia529 as the sponsor. To recognize Virginia529's expanded mission, the legislation requires that the Virginia529 board have at least one member with expertise in the management and administration of private defined contribution retirement plans.

### **Cardinal**

JLARC is responsible for ongoing review and evaluation of Cardinal, the Commonwealth's enterprise resource planning system. Areas of review include procurements and contracts related to Cardinal; the implementation, performance, and cost of Cardinal; the viability of technologies used in Cardinal; governance of Cardinal; and the security of information contained in Cardinal.

In 2019 and 2020, JLARC staff provided the commission with updates on the state's efforts to expand Cardinal to include Human Capital Management (HCM) functions. The updates covered the history of Cardinal; the status of the HCM expansion, including schedule and projected costs; and risks and considerations related to the HCM expansion.

### **Mandated health insurance benefits**

JLARC staff participate in assessments of bills that would mandate insurance coverage of specific health-care benefits, when requested by the Health Insurance Reform Commission. JLARC's assessments focus on the medical effectiveness of the proposed coverage, current availability and use of the treatment, financial impact on people without coverage, and the proposed mandate's consistency with the purpose of health insurance and the public health impact.

In 2020, JLARC issued two assessments of proposed mandated health insurance benefits—coverage of medically necessary formulas and enteral nutrition (HB2177) and coverage of hearing aids for children and youth under the age of 19 (SB423).

## **Fiscal Analysis Services**

JLARC staff provide several fiscal analysis services to the General Assembly, many of which are required by statute.

### **Fiscal impact reviews**

JLARC was asked to review the fiscal impact statements for seven bills during the 2019 and 2020 sessions. The reviewed bills addressed health and human services, general government, revenue, and public safety.

### **Spending and benchmarking reports**

JLARC staff issue annual reports on total state spending and on state spending for the K–12 Standards of Quality. Staff also produce an annual publication comparing Virginia with other states on taxes, demographics, state budget, and other indicators. These publications are popular sources of information for the General Assembly and the public and are frequently referenced in the media.



## **JLARC Reports**

Joint Legislative Audit and Review Commission (JLARC) research is directed by resolution of the General Assembly or by the Commission. JLARC's full-time staff conduct research; develop recommendations for improving operations, services, and programs; and report their findings and recommendations in a public briefing before the Commission. Reports are available in print and on the JLARC website, [jlarc.virginia.gov](http://jlarc.virginia.gov).

### **Forthcoming in 2021**

Trade and transportation incentives

Virginia Information Technologies Agency: Staffing and organizational review

Guardianship and conservatorship

Virginia Employment Commission

Transportation infrastructure and funding

Affordable housing

Juvenile justice system

Virginia's income tax system (2022)

### **Recent reports**

K–12 Special Education in Virginia

Key Considerations for Marijuana Legalization

Children's Services Act and Private Special Education Day School Costs

Operations and Performance of the Virginia Department of Education

Update on VITA's Implementation of a Multi-Supplier Service Model

VITA's Transition to a Multi-Supplier Model

Operations and Performance of the Virginia Department of Small Business and Supplier Diversity

Infrastructure and Regional Incentives

Workers' Compensation System and Disease Presumptions

Operations and Performance of the Department of Game and Inland Fisheries

Gaming in the Commonwealth

Operations and Performance of the Office of the Attorney General

State Oversight of Local and Regional Jails

Operations and Performance of the Office of the State Inspector General

CSB Funding

Implementation of STEP-VA

Data and Manufacturing Incentives

### **Periodic updates**

Virginia Compared with the Other States (annual)

State spending (annual)

State spending on the K–12 Standards of Quality (annual)

Oversight: Virginia Retirement System (semi-annual)

Oversight: Virginia529 (biennial)

Oversight: Virginia Information Technologies Agency (periodic)

Oversight: Cardinal (periodic)





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