

JLARC Impacts

Legislative Actions on Report Recommendations

2020 Session



COMMISSION DRAFT

JLARC
JOINT LEGISLATIVE AUDIT
AND REVIEW COMMISSION

Commission members

Delegate Kenneth R. Plum, **Chair**

Delegate Terry L. Austin

Delegate Betsy B. Carr

Delegate M. Kirkland Cox

Delegate Eileen Filler-Corn

Delegate Charniele L. Herring

Senator Janet D. Howell

Senator Mamie E. Locke

Senator Jeremy S. McPike

Senator Thomas K. Norment, Jr.

Delegate Robert D. Orrock, Sr.

Delegate Mark D. Sickles

Senator Lionell Spruill, Sr.

Delegate Luke E. Torian

Martha S. Mavredes, Auditor of
Public Accounts

December 14, 2020

Members of the Joint Legislative Audit and Review Commission

Dear Members:

JLARC staff report each year on actions taken in response to its report recommendations. In even years, staff report only on legislation passed by the General Assembly. The 2020 General Assembly enacted legislation in several major policy areas based on JLARC studies. This year, legislation based on JLARC recommendations will strengthen the state's workers' compensation system, the Office of the State Inspector General, local and regional jails oversight, the foster care system, water resources planning, elections oversight, and economic development.

In addition, JLARC staff's *Gaming in the Commonwealth* report helped guide the development of legislation that legalized five casinos in the commonwealth. The casino 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 demonstrated its commitment to improve and strengthen state government by making it more efficient, effective, and accountable.

Sincerely,



Hal E. Greer
Director

Contents

JLARC recognized for “Excellence in Evaluation” 1

JLARC Impacts (2020 session)

 Gaming in the Commonwealth 3

 Virginia’s Workers’ Compensation
 System and Disease Presumptions 8

 Office of the State Inspector General 14

 Local and Regional Jails Oversight 17

 Foster care 20

 Water Resources Management Planning 24

 Elections 26

 Employee misclassification 28

 Economic development 30

JLARC recognized for “Excellence in Evaluation”

Award given to one legislative office each year

JLARC has received the National Legislative Program Evaluation Society’s 2020 “Excellence in Evaluation” Award.

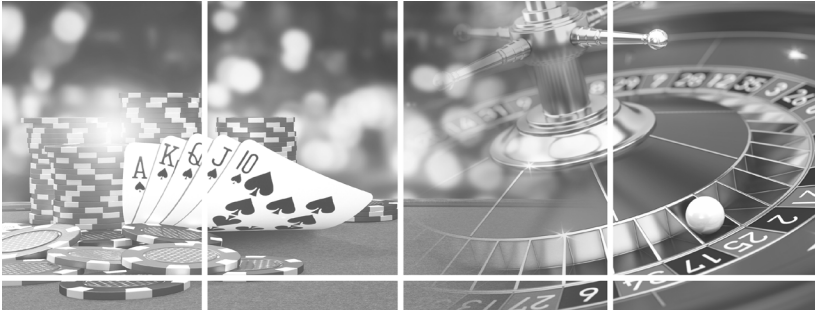
The award is given to one legislative office nationwide for significant contributions to program evaluation based on impact, body of work, and contributions to the field of legislative program evaluation. This year’s award recognized JLARC’s studies and impacts made between 2016 and 2019. NLPES is part of the National Conference of State Legislatures.

Over the last four years, JLARC conducted 27 in-depth program evaluations on major areas of state government, such as education, natural resources, and Medicaid; as well as several in-depth reports on the Virginia Retirement System, the Virginia College Savings (529) Plan, health and human resources’ agencies and programs, state economic development incentives, and the Virginia Information Technologies Agency.

For studies conducted between 2016 and 2018, 77 percent of the 319 recommendations in JLARC studies have been fully or partially implemented by the General Assembly and state agencies. Recent JLARC evaluations have led to major changes, including:

- the overhaul of Virginia’s foster-care system and economic development authority,
- a framework for the introduction of casino gambling in Virginia,
- strengthened oversight of the state’s election system, and
- improvement of the post-secondary education and career transfer pathways for community college students.

Over the last four years, JLARC’s implemented recommendations saved Virginia an estimated \$104 million. (Estimates for 2019 are not yet available.)



Impact: Gaming in the Commonwealth

Study mandate: SB1126 (2019) Lucas and 2019–2020 Appropriation Act

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. Legislation directed JLARC to review casino gaming laws in other states, evaluate potential governance structures, and project revenues from expanded gaming and its impacts on existing legal 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. The legislature also legalized sports wagering in the commonwealth through legislation that incorporated similar licensure and gaming integrity recommendations from JLARC's *Gaming in the Commonwealth* report.

Problem gambling: prevention and treatment

JLARC found that despite offering several legal forms of gaming, Virginia 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.

JLARC found that all states that have casinos fund problem gambling and prevention efforts, typically through the state's behavioral health system. 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 recommended that the General Assembly create dedicated funding for a problem gambling prevention and treatment program—regardless of whether the legislature expanded gaming. In addition, JLARC recommended that the General Assembly direct the Department of Behavioral Health and Developmental Services (DBHDS) to create a comprehensive problem gambling prevention and treatment program. To complement these efforts, JLARC recommended that casino operators be required to submit a responsible gaming plan and that the state gaming oversight agency implement a voluntary self-exclusion list for gamblers.

► Action by 2020 General Assembly

HB 4 Knight

SB 36 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.

Casino operations: licensing

JLARC identified several practices states use to help ensure the integrity of casino gaming operations and recommended Virginia include these in any casino-authorizing legislation. 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). In addition, other states require prospective executives, gaming employees, and gaming manufacturers to pay for the cost of licensure and designate these licenses as revocable.

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.

► Action by 2020 General Assembly

HB 4 Knight and SB 36 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. The legislation also requires licensure of casino employees and vendors involved with gaming operations and designates licenses of casino executives and gaming employees as revocable.

Virginia Lottery Board: Gaming responsibilities

JLARC found that establishing a gaming oversight agency independent of the Virginia Lottery would cost an additional \$2 million per year and take longer to establish. However, JLARC determined the Virginia Lottery would require significant changes to adequately oversee casino gaming, sports wagering, and any additional forms of gaming. JLARC's analysis found the Virginia Lottery would need to increase its staff by 30 percent to handle the additional responsibilities in areas such as investigations, licensing, audits, and technology.

JLARC also found the responsibilities and time commitment of the Virginia Lottery Board would need to change significantly to oversee expanded gaming oversight and recommended membership be expanded from five to seven members. Other states also require some members to have certain backgrounds, and JLARC recommended that lottery board membership should include expertise in areas like accounting and law enforcement. In addition, JLARC staff found other states prohibit board members of casino oversight agencies from participating in casino gambling and recommended Virginia include similar restrictions to prevent real and perceived conflicts-of-interest.

► Action by 2020 General Assembly

*HB 4 Knight and SB 36 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.

Gray machines: regulation

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. JLARC staff estimated that these machines generated revenues between \$83 million and \$468 million in fall 2019 and likely competed with existing forms of gaming.

JLARC summarized how other states had regulated these “gray” machines and recommended that the state regulate them to ensure gaming integrity, protect consumers and businesses hosting the devices, and minimize the adverse impacts to Virginia’s existing authorized gaming.

► Action by 2020 General Assembly

SB 971 Howell and HB 881 Bulova

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 will be taxed to benefit the state’s response to the COVID-19 pandemic.



Impact: Virginia's Workers' Compensation System and Disease Presumptions

Study mandate: Commission resolution (2018)

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 these workers contract these diseases, they can "presume" the disease was caused by their work if 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).

Repetitive motion injuries: options for coverage

JLARC found that 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, and other states compensate workers for such injuries. In addition, JLARC staff found states require different levels of evidence to prove cumulative trauma injuries are caused by work and that cumulative trauma claims are not major expenses for other states.

JLARC recommended that the General Assembly expand coverage of workplace injuries to include cumulative trauma. JLARC staff also recommended that the General Assembly direct the Virginia Workers' Compensation Commission to hire a reputable research organization with workers' compensation experience to develop options for how Virginia's workers' compensation system could cover cumulative trauma, including the level of evidence required to prove injuries were work-related and how to avoid unintended consequences for workers, employers, and insurers.

► Action by 2020 General Assembly

HB 617 Guzman

The General Assembly enacted legislation directing the Virginia Workers' Compensation Commission 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. The study is to be submitted to the chairs of the House Appropriations and Senate Finance and Appropriations committees by November 30, 2020.

Insurers: Improving transparency and timeliness of claims decisions

JLARC staff found some workers' compensation insurers are not making timely decisions on injured workers' claims. Employers purchase workers' compensation insurance, and the insurance companies pay the cost of workers' compensation claims awarded to injured workers. A worker cannot appeal a workers' compensation claim decision to the Virginia Workers' Compensation Commission until the insurer has notified the worker of its decision to award or deny the claim. Virginia is 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 recommended that Virginia legally require workers' compensation insurers to notify workers about their approval or denial of a claim within a certain timeframe. A statutorily required timeframe would give workers greater certainty about the status of their claims and adequate time to contest a denial through the workers' compensation process if they choose to do so.

► Action by 2020 General Assembly

HB 46 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.

Ombudsman's office: Helping workers navigate the workers' compensation system

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 insurers' denial, and their responsibility to file a claim with the VWC to protect their workers' compensation claim.

JLARC recommended that the VWC provide clear information to injured workers and that the General Assembly create an ombudsman office to help workers navigate the workers' compensation system and understand their rights and responsibilities.

► Action by 2020 General Assembly

HB 1558 Kilgore

The General Assembly enacted legislation authorizing the Virginia Workers' Compensation Commission to create an ombudsman program to provide neutral education and assistance to workers and employers not represented by an attorney.

Disease presumptions: Basing eligibility criteria on scientific evidence

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 among the longest of other states.

For the cancer presumptions, JLARC recommended that the General Assembly reduce the service length requirement and remove the continuous service requirement needed for firefighters to claim a cancer presumption.

JLARC also presented several policy options. Because some scientific evidence supports a plausible connection between firefighting and brain, testicular, and colon cancers, JLARC presented options to add these diseases to the state's presumptions.

Johns Hopkins epidemiologists also found a plausible connection between cardiovascular disease and public safety occupations, and the risk of developing cardiovascular disease increases with service length. However, Virginia did not have a length of service requirement to claim the cardiovascular disease presumption, and so public safety employees could claim workers' compensation benefits under the presumption even if they had only worked for a short amount of time.

JLARC staff presented a policy option for the General Assembly to add a 5-year service requirement for public safety officers to claim the cardiovascular disease presumption.

► **Action by 2020 General Assembly**

SB 9 Saslaw and HB 783 Askew

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. 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 firefighters develop these cancers.



Impact: Office of the State Inspector General

Study mandate: Commission resolution (2017)

In 2019 JLARC reviewed the operations and performance of the Office of the State Inspector General (OSIG). OSIG was created in 2012 to give Virginia a centralized, independent authority to investigate waste, fraud, and abuse in state government. The agency also was given statutory responsibility to oversee Virginia's facilities and providers offering behavioral health and developmental disabilities services and to conduct performance audits of state agencies.

Investigating serious allegations of administrative wrongdoing

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 conduct effective investigations into *criminal* allegations of wrongdoing in state government. However, OSIG delegated almost all investigations into *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 determined these practices were inconsistent with the General Assembly's intent

to create an independent agency to investigate the state's most serious allegations of waste, fraud, and abuse.

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 institution to investigate.

To ensure allegations are not dismissed prematurely, JLARC staff recommended that every hotline allegation that is dismissed without an investigation be approved by OSIG's chief of investigations. In addition, JLARC recommended that the General Assembly require OSIG to investigate the most serious administrative allegations of waste, fraud, and abuse in state government. Internal audit divisions should investigate allegations of wrongdoing only if the allegations fall below a certain financial threshold, will not reflect poorly on leadership, and appear relatively straightforward. JLARC recommended OSIG no longer forward allegations to agencies without an internal audit division.

JLARC also recommended that the General Assembly give OSIG full discretion to investigate serious allegations of wrongdoing at higher education institutions.

► Action by 2020 General Assembly

HB 1100 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 investigators to investigate allegations of serious administrative violations submitted to the hotline and refer only less serious investigations to state agencies with qualified internal audit divisions. 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. In addition, the law requires the inspector general or a designee to review each decision to dismiss an allegation without further investigation.

Behavioral health oversight

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 is also required to receive complaints related to these facilities and providers. 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 does not adequately promote its behavioral health hotline and therefore receives and investigates few complaints related to behavioral health facilities.

To improve oversight of the state's publicly funded behavioral health programs, JLARC staff recommended that the General Assembly clarify that OSIG's primary goal of behavioral health oversight is to address systemic problems at DBHDS' facilities and community-based providers. JLARC recommended OSIG better promote its behavioral health hotline and create a structured process to decide which complaints to investigate.

► Action by 2020 General Assembly

HB 1100 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.



Impact: Local and Regional Jails Oversight

Study mandate: Commission resolution (2017)

In 2019, JLARC staff reviewed Virginia's oversight of local and regional jails. 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, 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 the Virginia Department of Corrections annually inspected all jails and conducted more in-depth audits every three years to ensure jails meet the BOC's standards.

Cohesive state oversight of jails

JLARC found that jail inspections conducted by the Department of Corrections staff were thorough but lacked rigor for ensuring compliance with some of the most critical standards. For example, inspections staff review records to ensure jails are checking on inmates at least twice hourly at random intervals but do not review video footage to verify the records. Additionally, jail inspections 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.

JLARC's review found the BOC's new death review process was generally effective. However, the board had a significant backlog of inmate death reviews and could improve its timeliness through several administrative changes.

JLARC staff determined the state could improve its jail oversight through a cohesive program. JLARC found the BOC and inspections staff from the Department of Corrections do 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. For example, the Board of Corrections found jails in violation of standards when investigating the death of five inmates; yet in each of these cases the most recent Department of Corrections inspections or audits found the jails in compliance with these standards.

JLARC staff recommended that the state create a cohesive jail oversight program and provide better support for the BOC's citizen members. JLARC recommended the state create a director of jail oversight and move jail inspections under this authority. Staff also recommended changing the name of the Board of Corrections to reflect its primary responsibility of jail oversight. Since 2011, the board has not had oversight of state prisons or the Department of Corrections.

Transparency of jail oversight program results

JLARC staff also found that little information about death review results 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.

JLARC recommended that the state's oversight program produce summary reports of both jail inspections/audits and death reviews. These would allow the state to better identify broad improvements needed for safety and security at Virginia's jails.

► Action by 2020 General Assembly

SB 622 Deeds

SB 215 Suetterlein

Appropriation Act

The General Assembly enacted legislation authorizing the board to employ an executive director who can integrate the inspection and death review functions to ensure a more cohesive jail oversight program. The Appropriation Act authorizes the creation of four staff positions to fulfill the board's oversight role. The legislation also renames 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.



Impact: Foster care

Study mandate: Commission resolution (2017)

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 23 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.

Helping relatives become foster parents

JLARC staff 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 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.

JLARC staff recommended that the Virginia Department of Social Services offer local social services departments clear guidance on their options to approve relatives as foster parents.

► Action by 2020 General Assembly

SB 1025 Dunnavant

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. In addition, the local services board may request a waiver if it determines these requirements are a barrier to placement with a relative. 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

JLARC staff found that VDSS lacked a reliable and comprehensive way to identify problems in Virginia's foster care system. In addition, Virginia did not have a confidential mechanism to receive complaints about any problems related to foster care. JLARC staff found foster care families, service providers, and other stakeholders were reluctant to report problems for fear of retribution from VDSS or local social services departments.

JLARC staff recommended that Virginia create an independent child welfare ombudsman to receive and respond to complaints about the well-being of foster care children and to make recommendations to improve services and outcomes for foster children and their families.

► Action by 2020 General Assembly

HB 1301 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 using JLARC staffing estimates.

Reducing long stays in foster care

JLARC found many children in Virginia's foster care system are staying longer than necessary, which can negatively affect their development and outcomes later in life. JLARC also found the 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, which could delay adoptions and prolong children's stays in foster care.

For children aging out of foster care, JLARC staff found local social services boards were not providing legally required services to help them transition to adulthood. For example, JLARC found that 76 percent of children aged 14 or over in Virginia's foster care system had not received any independent living services.

JLARC staff also found that many foster care managers in local departments of social services were supervising too many caseworkers, limiting managers' ability to adequately oversee and support caseworkers. In fact, 12 local social services departments had one manager for more than 12 case workers. JLARC recommended VDSS conduct a study of the costs and feasibility of limiting the number of case workers a manager could supervise to five.

To reduce unnecessarily lengthy stays in foster care, JLARC staff made several recommendations to prevent delays in the process to terminate the parental rights of children's biological parents. Staff also recommended that the State Board of Social

Services create regulations to require that independent living needs assessments and transition plans be conducted within 30 days of a child turning 14 (or entering the system after 14 years old) and that these plans be updated annually.

► **Action by 2020 General Assembly**

SB 472 Reeves

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.

To help ensure children aging out of Virginia's foster care system are prepared for adulthood, the legislation directs the state's Board of Social Services to create regulations requiring local social services agencies to conduct independent living needs assessments and develop transition plans within 30 days of a child in foster care turning 14 or for any child who enters the system at age 14 or older.

The legislation also creates a workgroup to study the feasibility and costs of limiting the number of caseworkers managers can supervise.



Impact: Water Resources Management Planning

Study mandate: HJR 625 (2015) Hodges and SJR 272 (2015) Norment

In 2016 JLARC reviewed the effectiveness of Virginia's water resource management and planning, which help ensure water supplies will be available to meet human and environmental needs.

Improved water supply planning

JLARC found Virginia's state and local water plans were based on jurisdictional boundaries and not adequately coordinated across localities using the same water source. JLARC found this lack of coordination prevented water plans from identifying and addressing sustainability challenges.

To improve regional water planning, JLARC recommended that the State Water Control Board designate regional water planning areas (based on shared water sources and geographic proximity) and create groups of local representatives and water users to develop regional plans for these areas. JLARC staff also recommended that the board require these regional groups to evaluate water projects based on standardized criteria and to address the region's water supply needs.

Better prediction of surface water supply shortfalls

JLARC found Virginia's surface water planning needed improvement to accurately predict potential surface water supply shortfalls. JLARC recommended several strategies to better predict

the location, timing, and magnitude of potential water supply shortfalls in Virginia. JLARC recommended DEQ improve its models by using multiple demand and supply assumptions and creating modeling scenarios at multiple intervals between 10 and 30 years. JLARC also recommended that DEQ identify the river and stream segments in Virginia at the greatest risk of a water shortfall and establish a more robust methodology to determine the reasons for water shortfalls.

► Action by 2020 General Assembly

HB 542 Carr

Appropriation Act

The General Assembly passed legislation directing the State Water Control Board to adopt regulations designating regional water supply planning areas based on river basins and identify stakeholders that should take part in cross-jurisdictional regional water planning (such as local representatives, water users, and economic development organizations). The law directs DEQ to coordinate locality planning and ensure each regional plan identifies water shortfall risks and proposes strategies to address them. The bill directs the board and DEQ to prioritize planning funds to localities that sufficiently participate in regional planning.

The legislation also directs the DEQ to improve its ability to predict water supply shortfalls by using data and multiple assumptions over varying time frames to estimate the risk that each locality and region in Virginia will experience water supply shortfalls.

The Appropriation Act includes funding for DEQ to conduct more robust water resource planning and modeling.



Impact: Elections

Study mandate: Commission resolution (2017)

In 2018 JLARC staff reviewed the operations and performance of the Virginia Department of Elections (ELECT).

Local elections: Improving oversight

JLARC staff found ELECT provided inadequate oversight of locally administered elections to ensure their integrity. ELECT did not provide oversight of several important functions, such as election day operations, vote tallying, and responses to voter complaints. In addition, ELECT did not use the oversight activities that it did conduct to improve elections administration in a meaningful way.

JLARC recommended that ELECT use a risk-based oversight model focused on identifying, assessing, and addressing the greatest risks to election integrity and uniformity.

Agency operations: Continuity

JLARC also found that ELECT needed stability in leadership to effectively carry out its core functions over the long term. Three of the agency's leadership positions are political appointees, meaning they change frequently.

To provide continuity in agency operations, JLARC staff recommended that the state create and fund a director of operations position at ELECT.

► **Action by 2020 General Assembly**

HB 539 Carr

HB 540 Carr

Appropriation Act

The General Assembly enacted legislation requiring ELECT to identify, assess, and address major risks to election integrity.

Through legislation and budget language, the General Assembly created and funded a director of operations at ELECT. To provide continuity, the position must be filled by a classified state employee, rather than a political appointee. The position is responsible for managing day-to-day operations at the agency and ensuring compliance with state and federal election laws and regulations and compliance with the department's business, administrative, and financial policies.



Impact: Employee misclassification

Study mandate: SJR 345 – Puckett (2011)

In 2012 JLARC reviewed the misclassification of employees in Virginia as independent contractors. Employee misclassification occurs when employers do not understand the legal distinction or because employers are trying to avoid paying the taxes and benefits required for employees.

Misclassification of independent contractors

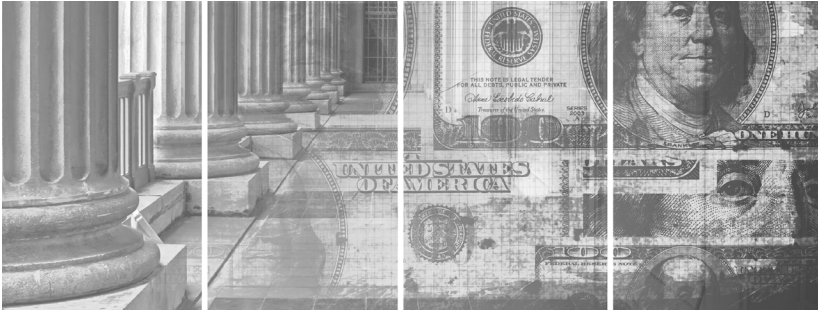
JLARC staff estimated that Virginia could have as many as 214,000 misclassified workers in Virginia, which reduces state income tax revenue. JLARC found that several other states use civil and criminal penalties to deter employee misclassification. For example, some states use financial penalties to remove the incentive to misclassify employees. Some states also prohibit employers found guilty of misclassifying workers from receiving state contracts.

JLARC staff recommended that the General Assembly make misclassification of workers illegal and impose financial penalties on employers who misclassify workers. Staff recommended the General Assembly pass legislation to authorize a stop work order for employers working on state contracts that have been found to misclassify employees as independent contractors.

► Action by 2020 General Assembly

SB 744 McPike and HB 1407 Ward

The General Assembly passed legislation that prohibits an employer from incorrectly classifying an employee as an independent contractor. The legislation directs the Department of Taxation (TAX) to review referrals of employee misclassification from state agencies and determine whether a worker is a contractor or employee based on Internal Revenue Service guidelines. Violators are subject to civil penalties of up to \$1,000 per misclassified individual for a first offense, \$2,500 per individual for a second offense, and up to \$5,000 for a third or later offense. The legislation also prevents workers found to be misclassifying workers from seeking state contracts for one year after a second offense and two years after a third or subsequent offense. In addition, TAX must report annually to the governor and General Assembly on the investigations and findings of worker misclassifications, the fees and taxes collected, and the number of referrals received from agencies. The bill has a delayed effective date of January 1, 2021.



Impact: Economic development

JLARC provides evaluation of the effectiveness of Virginia's economic development incentives based on economic analysis by the University of Virginia's Weldon Cooper Center for Public Service. Each year, JLARC provides a high-level report on all business incentives and an in-depth report on certain incentives. JLARC evaluated data center and manufacturing incentives in 2019.

Study mandate: Appropriation Act

Incentives: Manufacturing

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 required to receive the exemption. In addition, current law allowed certification only after a facility's completion, which increases the burden to receive certification.

JLARC made several recommendations to lessen the administrative burden for businesses seeking the pollution control exemption. Staff presented a policy option for the General Assembly to clarify that the equipment or facility does not need to be built before exemption certification is granted.

► **Action by 2020 General Assembly**

SB 685 Mason

HB 1173 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.



JLARC.VIRGINIA.GOV

919 East Main Street, Suite 2101
Richmond, VA 23219