

JLARC Impacts

Legislative Actions on Report Recommendations

2022 Session



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May 2, 2022

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 2022 General Assembly enacted legislation in several major policy areas based on JLARC studies.

This year, legislators enacted significant legislation based on JLARC recommendations to improve operations of the Virginia Employment Commission (VEC), which has been struggling to keep up with unemployment insurance (UI) benefits since the start of the pandemic. Through legislation and budget language in the pending Appropriation Act, the General Assembly made changes to improve VEC's operations processes, reduce claims backlogs, increase legislative oversight, help Virginians better understand the UI program and their rights, collect incorrect overpayments from the state's UI trust fund and reduce future overpayments, monitor the state's UI benefit levels, and better prepare all state agencies to handle future emergencies.

The 2022 General Assembly also enacted legislation that will improve state oversight of Virginia's adult guardian and conservator system. The legislation will improve the reports circuit court judges use to make guardianship decisions, create a workgroup to study the potential impacts of increasing visitation requirements for private guardians, and improve the annual reports guardians must submit to their local departments of social services.

Other legislation based on JLARC recommendations will strengthen the state's IT security and the Department of Education's school improvement program.

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,

A handwritten signature in blue ink that reads "Hal E. Greer". The script is fluid and cursive, with the first letters of each name being capitalized and prominent.

Hal E. Greer
Director



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Impact: Virginia Employment Commission

Study mandate: Commission resolution (2020)

In 2021, JLARC reviewed the operations and performance of the Virginia Employment Commission (VEC). VEC administers two key employment programs for the state: unemployment insurance (UI) and workforce services. VEC's UI program, which provides temporary financial assistance to eligible individuals who have lost their jobs, received a surge of unemployment claims during the COVID-19 pandemic. VEC received 236,000 initial claims in April 2020, a 34 times increase compared with the number of initial claims filed two months earlier.

Insufficient funding, staffing, and information technology contributed to VEC's inability to operate effectively during the pandemic. VEC was also required to implement six temporary federal UI programs, adding to its workload. Backlogs quickly accrued, its call center was overwhelmed and unable to answer most customer calls, and many claimants' payments were significantly delayed.

The pandemic also prompted VEC to pause its UI IT modernization project, which had already been significantly delayed and was eight years behind schedule. VEC's outdated UI IT system, which was developed in 1986, contributed significantly to its inability to respond to the pandemic. VEC launched most features of its new UI IT system in November 2021, which is expected to help improve operations.

VEC's UI operations are almost entirely dependent on federal funding. The agency and its programs are overseen by the U.S. Department of Labor and Virginia's secretary of labor.

Improving VEC's operations

VEC did not operate efficiently before the COVID-19 pandemic and was unprepared for the surge in UI claims during the pandemic. VEC was insufficiently staffed, had an antiquated IT system that required many paper-based, time-intensive processes, and had several inefficient policies and procedures that further slowed workflows.

In addition, VEC had not planned for periods of high unemployment. This lack of strategic planning along with longstanding inefficiencies plagued VEC's key UI operations during the pandemic, leading to backlogs in initial claims intake, adjudications of potential eligibility issues, and appeals of claims determinations.

VEC had not met DOL's timeliness standard for adjudications of claims eligibility issues for several years, and timeliness worsened during the pandemic. For the first half of 2021, less than 3 percent of adjudications were completed within the DOL's standard of 21 days. Significant adjudication backlogs accrued, and VEC was slow to hire additional adjudication staff. VEC also lacked a clear prioritization strategy for periods of high claims volume.

VEC also had an inefficient workflow to handle appeals of claims determinations, JLARC found. Claimants who disagreed with VEC's decision to reject a claim because the claimant did not meet monetary eligibility requirements were routed to VEC's appeals division, even though VEC's monetary determination unit needed to review these claims.

JLARC found VEC's tax division staff could devote more time to detect and collect delinquent taxes if certain workflow processes improved. For example, employers choose whether to pay taxes online or physically mail checks to VEC. The paper process adds significant work for staff, which combined with

staff shortages can contribute to delays in posting employer payments.

In addition to VEC's operational shortcomings, JLARC also found that VEC did not adequately explain UI application and eligibility requirements, which contributed to inefficiencies and customer confusion. Many VEC forms, notices, instructions, and guidelines were unclear, were written at or above a college reading level, and did not emphasize the most important information. For example, JLARC found that many claimants did not adequately understand the appeals process or their rights.

While VEC attributed many of its staffing shortages to fluctuating federal UI program funding that has not always met state needs, VEC's inefficiencies put Virginia at a disadvantage in the federal UI funding formula. JLARC also found that unlike Virginia, some states supplement UI operations funding.

JLARC recommended that if Virginia wants to consider using general funds to supplement federal UI funds for VEC operations, it should wait until after VEC's modernized IT system is complete, and an efficiency review has been conducted by a national firm selected by the secretary of labor. This will allow the General Assembly to better assess whether shortcomings remain and whether additional funds are needed to address them.

JLARC also made several recommendations to improve efficiencies at VEC and the system's responsiveness to Virginians, including:

- improving all customer documents and online resources, with assistance of a third-party contractor, to clearly explain UI eligibility and the application process;
- developing a detailed plan to resolve the current backlog of adjudications, including action items and staffing needs;
- creating a formal policy to prioritize and assign claims eligibility issues needing adjudication during periods of high

claims volume;

- developing a resiliency plan that outlines measures to be taken to address substantial increases in workload during periods of high unemployment;
- changing state law to clarify that claimants who disagree with VEC's determination that their claims are invalid because of monetary ineligibility should not be sent to VEC's appeals division;
- collecting regular feedback on the usability of its new UI IT system and making needed improvements; and
- requiring employers to submit tax payments online.

► **Action by 2022 General Assembly**

SB 219 McPike

HB 270 Byron

Appropriation Act (pending)

Budget language directs the secretary of labor to procure a national firm with expertise in organizational efficiency to conduct a comprehensive review of VEC's UI operations. The review should identify actions to improve efficiency, including staff and technology; recommend improvements to the agency's staffing and workflows to most effectively use existing federal funding for UI operations; and determine whether current funding is adequate for effective UI operations.

Also through budget language, the General Assembly directs VEC to develop a detailed plan to resolve outstanding adjudications and all issues on claims that VEC bypassed in 2020 and 2021. The plan should quantify the additional staff needed to resolve these claims, outline plans to hire needed staff, and identify potential risks and strategies. The Appropriation Act directs VEC to provide quarterly updates, beginning in November 1, 2022, to the House Commerce and Energy Committee, the Senate Commerce and Labor Committee, the Commission on Unemployment Compensation, and the governor.

The General Assembly also enacted legislation to make VEC's UI operations more efficient and responsive to Virginians. The legislation streamlines the process for individuals who disagree with VEC's claims decisions based on monetary ineligibility. These individuals will now be directed to VEC's monetary determinations unit.

The legislation also allows VEC to require employers to submit UI tax payments electronically unless the employer has received a waiver from VEC.

The legislation also seeks to improve VEC's communications with the public. The legislation directs VEC to create the Office of the Unemployment Compensation Ombudsman to assist individuals with the appeals process and the unemployment compensation process in general. The budget dedicates funding for at least two full-time employees to the office.

The bill also requires VEC to direct its internal audit division to review and revise all documents so that they clearly explain unemployment compensation requirements to claimants and employers. The internal audit division shall describe 1) eligibility criteria for UI; 2) how to navigate the UI claims and appeals process; and 3) how to determine the status or outcome of claims.

Through budget language, the General Assembly directs VEC to regularly collect feedback on the usability of the new UI benefits IT system from claimants and employers and make regular improvements to address this feedback.

To ensure VEC is prepared for future periods of high unemployment, the legislation directs VEC to include in its biennial strategic plan a comprehensive UI resiliency plan that describes how the agency will address staffing, communications, and other relevant information during periods of high UI claims volumes.

Reducing and recovering incorrect UI payments

JLARC found that VEC's incorrect UI payments increased drastically during the pandemic. VEC's Benefit Accuracy Measurement (BAM) program estimates VEC made \$930 million in incorrect

payments in 2020 and \$322 million in the first half of 2021. The surge in incorrect payments is likely attributable to practices VEC implemented to streamline the UI process during the pandemic, such as discontinuing fact-finding interviews for claims.

Two key drivers of incorrect payments are related to employer separation reports and work search requirements. VEC's BAM program estimates that 59 percent of VEC's UI overpayments in 2020, and 24 percent of overpayments between 2016 and 2019, were related to employer separation reports. VEC faced a significant backlog of employer separation reports during the pandemic, which were submitted on paper.

Federal law requires UI benefits recipients to actively search for new employment. However, VEC had stopped verifying any work search requirements before the pandemic. VEC's BAM program estimates that between 2016 and 2019, 27 percent of incorrect payments were related to work search requirements. Additionally, JLARC found Virginia's current work search policies do not fully align with DOL's guidance for reducing work search related incorrect payments and increasing employment.

Federal and state laws require states to collect incorrect payments from individuals. Incorrect payments, including payments based on fraudulent claims, can negatively affect the UI trust fund and therefore employers' UI tax rates. JLARC found that by late 2021 VEC had stopped all overpayment collections.

JLARC recommended that VEC immediately resume collection recovery activities for finalized overpayments. In addition, to minimize future incorrect payments related to employer separation reports, JLARC recommended that the General Assembly require employers to electronically provide separation information when requested from VEC, except when the employer receives a waiver.

JLARC staff also presented an option that the General Assembly could direct VEC to compare DOL's guidance on work search policies with VEC's current policies. The comparison could help VEC determine whether changes to work search policies may

lower incorrect payments related to work search requirements.

► **Action by 2022 General Assembly**

SB 769 Reeves

The General Assembly enacted legislation that directs VEC to conduct a full eligibility review of suspicious or improper claims and to conduct all of DOL's mandatory program integrity activities. The legislation also directs VEC to recover any improper benefits and submit an annual report on collection activities to the General Assembly's Commission on Unemployment Compensation.

SB 219 McPike

HB 270 Byron

The legislation directs employers to submit all claim-related forms requested by VEC, including separation forms, electronically, unless VEC has granted the employer a waiver.

Appropriation Act (pending)

Through budget language, the General Assembly directs VEC to review DOL's guidance and model legislation regarding work search requirements and evaluate how adopting these requirements would affect incorrect payments and reemployment. The language directs VEC to report any proposed legislative requirements to the House Committee on Commerce and Energy, the Senate Committee on Commerce and Labor, the Commission on Unemployment Compensation, and the governor by February 1, 2023.

IT security

JLARC found that while many of VEC's policies align with the Virginia Information Technologies Agency's (VITA) security requirements, a more comprehensive review is needed to confirm whether VEC is meeting these requirements.

In addition, JLARC found that VEC is one of the last state agencies to fully transition to the state's centralized IT infrastructure and that a portion of VEC's network exists outside of VITA's,

including more than 300 servers used for developing and testing the agency's modernized IT system. Therefore, these portions of the network do not receive the ongoing security scans and monitoring provided by VITA's IT security contractor.

JLARC recommended that VEC and VITA work together to facilitate a comprehensive IT security audit of VEC's security systems to identify any necessary improvements. JLARC also recommended that the VEC fully transition to the state's central IT infrastructure as soon as possible.

► **Action by 2022 General Assembly**
Appropriation Act (pending)

The budget provides \$200,000 in general funds for VEC to procure an independent IT security audit of VEC's IT systems to determine whether they meet Virginia's information security standards. Budget language directs VITA to facilitate the audit and help identify any necessary IT security improvements.

Budget language also directs VEC to fully transfer all agency IT systems and servers to the state's central IT infrastructure before November 1, 2023.

Legislative oversight of VEC

Through its authority as the General Assembly's oversight agency, JLARC made 40 recommendations to help improve VEC's performance. JLARC found the complexity and volume of these recommendations require continued legislative oversight.

The General Assembly's Commission on Unemployment Compensation is tasked with monitoring the state's UI program.

JLARC recommended that the General Assembly create a temporary subcommittee of this commission to monitor VEC's UI performance, including UI backlogs, incorrect payment recovery collection efforts, the modernized UI IT system, any state funds administered for UI operations, and implementation of JLARC's recommendations.

► Action by 2022 General Assembly

SB 219 McPike

HB 270 Byron

The General Assembly enacted legislation to create a temporary subcommittee of the Commission on Unemployment Compensation to monitor VEC's management of Virginia's UI system. The legislation directs the subcommittee to monitor: UI backlogs; efforts to identify, prevent, and recover incorrectly paid UI benefits, including fraud; modernization of the UI IT system; state funds used for UI administration; and implementation of JLARC's recommendations from its 2021 report. The subcommittee is to meeting quarterly from July 2022 through June 20, 2025 and will report on its findings annually.

Preparing state agencies for future emergencies

JLARC found that VEC's struggles during the pandemic highlighted the state's need to have policies in place that allow agencies to quickly increase staffing during emergencies. JLARC found VEC had insufficient staffing before the pandemic and was slow to create and fill new positions during the pandemic. VEC reported difficulty filling open positions in a timely manner because of certain state hiring requirements and challenges attracting and retaining new hires.

While VEC, DHRM, and cabinet officials met during the pandemic to discuss strategies that would give VEC flexibility to hire staff more quickly, these strategies were not planned previously, and their complexities and potential unintended consequences were a deterrent to using them. For example, VEC and state staff explored options to use employees from other state agencies to work temporarily at VEC, but no one volunteered to do so.

JLARC recommended that DHRM convene a workgroup to formalize how the state could help agencies quickly increase staffing during emergencies. JLARC recommended the workgroup consider criteria for what constitutes an emergency and outline policies to grant agencies exemptions from some competitive hiring requirements and require certain state employees to

temporarily help agencies in need of staff increases.

► **Action by 2022 General Assembly**

Appropriation Act (pending)

Through budget language, the General Assembly directs DHRM to convene a multi-agency workgroup to examine the feasibility of 1) granting agencies exemptions from certain competitive hiring requirements during emergencies; 2) requiring selected state agency staff to support other agencies that need increased staffing during emergencies; and 3) providing necessary funding. The Appropriation Act directs the workgroup to propose criteria to determine when emergency hiring policies should be implemented and a process for invoking and ending the authority.

UI benefits in Virginia

JLARC found that many Virginians who are eligible for UI benefits do not claim them. Virginia's UI reciprocity rate, an estimate of the percentage of unemployed Virginians receiving UI benefits, is one of the lowest in the country. In addition, Virginia's benefit levels are relatively low. In 2019, Virginia's average benefits wage replacement ratio, which measures how much income UI benefits replace, was 34 percent, ranking 33rd in the country.

JLARC found that neither VEC nor the General Assembly's Commission on Unemployment Compensation regularly tracked UI benefits metrics. JLARC recommended that VEC annually calculate and compile information on average UI benefits, average income replacement of UI benefits, and the reciprocity rate, and provide this information to the Commission on Unemployment Compensation.

► **Action by 2022 General Assembly**

SB 219 McPike

HB 270 Byron

The legislation directs VEC to track UI benefits metrics and establish a mechanism to assess the adequacy of the state's UI benefits. Each year, VEC is directed to calculate the average

unemployment insurance benefit levels; the average income replacement of UI benefits; and the reciprocity rate in Virginia.

The General Assembly also created an advisory committee to its Commission on Unemployment Compensation to review these UI benefits metrics; identify factors that affect UI benefits and reciprocity, such as calculations or eligibility criteria; evaluate potential advantages or disadvantages to changing benefits; and recommend when changes to the state's UI benefits are needed.



Impact: Adult Guardianship and Conservatorship

Study mandate: Commission resolution (2020)

In 2021, JLARC staff reviewed Virginia’s adult guardianship and conservatorship system. Guardianship is a legal process where a court-appointed individual supervises the personal affairs of an adult who is incapacitated because of a disability or illness. A conservator is a court-appointed individual who manages the financial affairs of an incapacitated adult.

Adults under guardianship and conservatorship are among the most vulnerable Virginians; they typically have long-term, complex physical or mental conditions such as dementia, traumatic injury, or autism. Guardians make potentially life-altering decisions for these adults, such as where they live, the medical and mental health care they receive, and who can contact or visit the adult.

JLARC found that about 12,000 adults were under guardianship in Virginia in FY20. About 1,000 of these adults are in Virginia’s public guardianship program, which serves indigent, incapacitated adults who do not have family or friends willing to serve as their guardian. The program, which is administered by the Virginia Department for Aging and Rehabilitative Services (DARS), is at capacity and has a long waitlist. Most adults under guardianship are served by private guardians, who may be a relative, friend, or professional, such as an attorney. In contrast to the public guardianship program, private guardians are not

subject to standards, such as specific visitation, maximum case-load, or training requirements.

Improving guardian ad litem reports to the court

Guardians ad litem (GALs) reports are the primary sources of information circuit court judges use to decide whether to place an adult under guardianship. GALs conduct in-depth investigations to determine the adult's circumstances. State law requires GALs' court reports to include several key recommendations, such as whether a guardian or conservator is needed, whether an alternative to guardianship is appropriate, an assessment of the "propriety and suitability" of the recommended guardian, where the adult should live, and whether legal counsel should be appointed to represent the adult being considered for guardianship.

However, JLARC found that GALs' court reports are not required to support recommendations that are key to protecting the interests and rights of an adult being considered for guardianship. GALs are not required to support their recommendations on counsel or whether alternatives to guardianship are appropriate. Defense counsel can be important to protect an adult's interests, especially if more than one person wants to be guardian. In addition, because guardianship removes an adult's rights, it is important that less stringent alternatives be fully considered.

JLARC recommended that state law be amended to require GALs to explain in their court reports their reasoning for recommending that an adult under consideration for guardianship does not need counsel and why an alternative to guardianship is not appropriate.

► Action by 2022 General Assembly

SB 514 McPike

HB 623 Hudson

The General Assembly passed legislation requiring GALs to document their reasoning when they recommend that an adult

being considered for guardianship does not need an attorney. In addition, the legislation requires GALs to report why alternatives to guardianship are not appropriate. The legislation also directs GALs to notify the court as soon as practicable if the respondent requests counsel.

Recommending an alternative guardian

JLARC found that adults being considered for guardianship and their family members may not be fully aware of their ability to contest a proposed guardian in court. State law currently requires that the notice of a guardianship appointment proceeding, which is sent to the adult being considered for guardianship and the adult's family members, inform them of 1) the adult's right to request counsel, 2) the adult's right to a hearing, and 3) the potential that the adult could lose some or all of his or her rights if found to be incapacitated. However, state law does not require the petitioner to notify adults and their family members that they can request that the court consider an alternative guardian.

JLARC recommended that the General Assembly enact legislation requiring court petitioners to require guardianship hearing notices to state that anyone may file a petition or motion with the relevant circuit court to become a party to the guardianship appointment case if they want to recommend that someone else be considered for guardianship.

► Action by 2022 General Assembly

SB 514 McPike

HB 1212 Glass

The General Assembly enacted legislation requiring that each notice of a guardianship hearing explain that any adult individual or entity who receives the notice may become a party to the proceeding by filing a pleading with the circuit court where the guardianship or conservatorship proceeding is pending. Becoming party to the case allows the family member to suggest an alternative guardian.

Visitation requirements for private guardians

JLARC found that private guardians have wide discretion to determine how frequently they visit adults under their guardianship, with some guardians visiting adults infrequently or not at all. State law requires only that guardians visit “as often as necessary” to know of a person’s capabilities, needs, and limitations. JLARC staff also found that some guardians with high caseloads do not visit guardians in person.

Visiting adults under guardianship in person allows guardians to determine whether adults are receiving adequate care and better understand and serve the adults’ needs. Visits allow a guardian to assess the individual’s physical appearance and appropriateness of living conditions, talk with caregivers, and learn about the person’s needs and preferences.

JLARC recommended that private guardians be required to visit adults under their guardianship at least once every three months to assess several important aspects of their condition, including well-being, living environment, contact and involvement with family and friends, and participation in social or educational activities.

► Action by 2022 General Assembly

HB 634 Roem

The General Assembly enacted legislation directing DARS to form a workgroup to evaluate guardianship visitation requirements. The legislation directs the workgroup to evaluate whether requiring private guardians to visit adults under their guardianship at least once every 90 days would reduce the availability of private guardians in Virginia; consider whether a less frequent requirement would better balance resource constraints; and determine whether any additional resources would help increase the number of available guardians if visitation requirements were increased. The legislation also directs the workgroup to determine whether expansion of the Virginia Public Guardian and Conservator Program would substantially reduce any concerns related to the availability of individuals able

to serve as guardians. The legislation directs the workgroup to submit a summary of its recommendations to the chairs of the House Committee for Courts of Justice and the Senate Committee on the Judiciary by November 1, 2022.

Improving guardians' annual reports

JLARC found that annual guardianship reports, the primary mechanism for overseeing private guardians in Virginia, were not designed to adequately protect adults under guardianship. JLARC found that the reports, which must be submitted to the local department of social services (LDSS), included information that was too broad to allow for adequate oversight. In addition, the reporting form lacked many relevant questions for monitoring the quality of care the adult receives or for identifying problems.

JLARC recommended redesigning the annual guardianship report to require key information for each relevant LDSS and court to understand the condition, treatment, and well-being of adults under guardianship. JLARC's recommendation listed a series of questions that should be answered in the annual report, such as questions about detailed medical information and any contact restrictions in place.

► Action by 2022 General Assembly *SB 514 McPike*

The General Assembly enacted legislation to improve the annual guardianship report that all guardians are required to submit to their local LDSS. First, the legislation directs that the annual report form from the Office of the Executive Secretary of the Supreme Court of Virginia should be standardized and designed to encourage detailed responses. The legislation also requires additional information that should be included in guardians' annual reports, including: a change in diagnosis of mental, physical, or social condition over the past year of the adult under guardianship; social and recreational activities; names of medical providers and dates seen; date, reason, and location for hospitalizations; descriptions of educational, voca-

tional, social, and recreational activities the adult participated in; whether the adult has been an alleged victim in a report of abuse, neglect, or exploitation; names of anyone restricted from visiting the adult and reasons why; whether the guardian is able to carry out his powers and duties; frequency of guardians' in-person visits; reasons the guardian hasn't visited if he/she hasn't visited in the last six months; general description of activities taken by the guardian for the adult over the past year; any other information the Virginia Supreme Court's Office of the Executive Secretary or DARS determine are needed; and any additional information deemed important by the guardian.

Assessing guardian-client ratios in Virginia's public guardianship program

JLARC found that Virginia's public guardianship program has effective requirements, training, and oversight that help ensure adults under public guardianship are receiving quality care. For example, DARS's contracts with public guardianship provider organizations require public guardians to serve no more than 20 adults, visit adults under their guardianship at least once a month, and develop care plans that address how they will meet the needs and preferences of adults under their guardianship.

While the caseload maximum of 20 adults per guardian matches national standards, a JLARC survey found that 55 percent of public guardianship staff indicated their workload was "too much" or "way too much," and 47 percent said they worked overtime frequently. JLARC recommended that DARS review the caseload maximum at least once each decade to ensure public guardians are able to carry out their responsibilities.

► Action by 2022 General Assembly

HB 96 Head

The General Assembly enacted legislation requiring DARS to review the ideal staff-to-client ratios for public guardian and conservator programs every 10 years. The legislation directs DARS to recommend whether the ratio should be revised to ensure public guardians can meet their obligations to adults

under guardianship. The legislation directs DARS to conduct its first review by December 1, 2022.

Investigating financial exploitation of incapacitated persons

JLARC found that Adult Protective Services (APS) staff at each LDSS need more authority to investigate suspected financial exploitation of elderly and incapacitated adults in Virginia. Financial exploitation cases have increased since Virginia made financial exploitation of a person with diminished mental capacity a specific crime in the state. However, JLARC found that federal law allows financial institutions to share information related to financial exploitation but does not require it. State law did not require financial institutions to share information and records with APS investigators, and JLARC found that some financial institutions will not share information with APS investigators without a court order.

► Action by 2022 General Assembly

HB 95 Head

The General Assembly enacted legislation that requires financial institutions to cooperate with LDSS staff who are investigating alleged adult abuse, neglect, or exploitation. The bill directs financial institutions to provide financial records or information to LDSS staff when requested or to voluntarily provide relevant information to LDSS staff or a court-appointed guardian ad litem for the adult under investigation. The bill says financial institutions are immune from civil and criminal liability for providing such information.



Impact: Virginia Department of Education

Study mandate: Commission resolution (2018)

In 2020 JLARC staff reviewed the operations and performance of the Virginia Department of Education (VDOE). VDOE, through the Virginia Board of Education, has the broad statutory direction to provide “general supervision of the public school system” and to conduct “proper and uniform enforcement of the provisions of the school laws in cooperation with the local school authorities.” The 2021 General Assembly implemented recommendations from the report related to supervision of school division compliance, school improvement, and teacher retention and recruitment. The 2022 General Assembly implemented additional recommendations from the report.

Staffing: school improvement

JLARC found that VDOE’s school improvement program needed to more effectively help low-performing schools and school divisions. The 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 (12) to the VDOE Office of School Quality to effectively support low-performing schools and had far fewer staff devoted to school improvement than neighboring states. With 12 staff, each Office of School Quality staff member had about two weeks per year to work with each school needing improvement.

JLARC recommended VDOE develop an Office of School Quality improvement plan (implemented last year) and that the General Assembly fund additional staff positions in the office.

► **Action by 2022 General Assembly**

Appropriation Act (pending)

VDOE will receive funds for additional Office of School Quality staff. VDOE will receive up to \$1.6 million in the first year and up to \$3.3 million in the second year of the biennial budget. VDOE is to use the additional funding to implement an improved, regional approach to school improvement by hiring additional staff. The additional staff will allow more time to be devoted to each individual school needing improvement and bring staffing levels more in-line with other states.



Impact: Information Technology

Study mandate: Commission motion (2020)

JLARC staff reviewed the Virginia Information Technologies Agency’s (VITA) organizational structure and staffing in 2021. JLARC has ongoing oversight of VITA, which is the Commonwealth’s consolidated IT agency that provides infrastructure services to most state agencies and oversees the state’s IT functions. VITA transitioned to a multi-supplier IT services model in 2018. In 2019 and 2020, JLARC reviewed VITA’s implementation of this model. Under its oversight authority, JLARC directed staff to review VITA’s organizational structure and staffing, including whether it is appropriately staffed to carry out its responsibilities under the new model.

IT security staff

JLARC staff found that VITA’s Commonwealth Security and Risk Management (CSRM) group, which is responsible for the state’s IT security, was not adequately staffed to handle its increasing responsibilities. CSRM is responsible for mitigating and responding to the increasing threat of cybersecurity attacks, developing IT security standards, and ensuring new statewide IT services and custom solutions for agencies meet these IT standards. CSRM’s responsibilities also increased with the implementation of the multi-supplier services model, requiring IT staff to review contracts and services of eight suppliers as well as contract obligations and deliverables.

JLARC found that while CSRM staffing more than doubled in the last decade, from 11 in 2011 to 28 in 2020, it was not enough to keep pace with these growing IT security responsibilities. Most CSRM managers said in interviews they lacked sufficient staffing levels to handle demands, and nearly two-thirds of CSRM staff responding to JLARC's survey disagreed they had sufficient staff to effectively perform mission-critical functions; just 7 percent agreed.

JLARC recommended that VITA determine the additional IT security staff needed to carry out its security, risk management, and enterprise architecture functions, and submit a staffing plan to the Senate Finance and Appropriations and the House Appropriations committees.

► **Action by the 2022 General Assembly**
Appropriation Act (pending)

The General Assembly's budget provides funding for VITA to hire 11 additional IT security staff by FY24 in response to the IT security staffing plan submitted by VITA to the Senate Finance and Appropriations and the House Appropriations committees.

Replacing contractors with full-time staff

JLARC found that contractors make up about one-fourth of VITA's workforce. Contractors allow VITA to fill hard-to-staff positions, develop staff expertise, and meet short-term needs. However, they are often more expensive than classified staff and turn over more frequently. For several positions, VITA has hired contractors without basis for doing so. In addition, VITA has several contractors who are filling functions that are similar to roles of full-time classified staff.

JLARC staff recommended that VITA develop guidelines that specify circumstances when hiring contractors would be most beneficial and only hire contractors to fulfill those roles. JLARC staff also recommended the agency develop a plan to hire classified staff to replace contractors who are carrying out long-term functions or who do not meet these guidelines.

► **Action by the 2022 General Assembly**

Appropriation Act (pending)

Budget language gives VITA authority for eight additional full-time equivalent staff (FTE) positions in FY23 and 20 FTEs in FY24 to allow the agency to convert some contractors to classified staff. Additional funding for these positions is not provided because VITA anticipates that converting contractors to state employees will cost less.



Impact: Small Business & Supplier Diversity Procurement

Study mandate: Commission resolution (2018)

In 2020 JLARC staff reviewed the operations and performance of the Department of Small Business & Supplier Diversity (SBSD), including the agency's role in planning to meet the state's goals to award contracts to small, women-owned, and minority-owned (SWaM) businesses.

Helping state agencies increase procurement spending with SWaM businesses

JLARC found that many state agencies reported the plans they are required to develop to meet the state's goals for procurement from SWaM businesses are of limited value. On a survey of state agencies, less than half agreed that their SWaM plans helped maintain or increase their SWaM expenditures. In addition, JLARC found SBSD collected the plans but gave agencies little to no feedback about how to improve the plans.

JLARC recommended improving SBSD's process to help state agencies meet SWaM spending goals. Staff recommended that SBSD provide specific feedback on agencies' plans for increasing SWaM spending and meet one-on-one with agencies to advise them.

JLARC staff also recommended that SBSD research and compile the best strategies for agencies to increase spending with SWaM businesses.

► Action by 2022 General Assembly

HB 814 Torian

The General Assembly enacted legislation directing SBSD to annually review and provide feedback on state agencies' plans to increase their procurement of goods and services from SWaM businesses. The law directs SBSD to assist agencies with strategies for their plans that will enable them to achieve their SWaM goals. Under the legislation, state agencies may also request to meet one-on-one with SBSD to discuss SWaM plan goals and strategies.

In addition, the legislation directs SBSD to research strategies agencies can use to increase SWaM spending and publish guidance on how state agencies can implement these strategies.



Impact: Transportation Funding

Study mandate: Commission resolution (2020)

In 2021 JLARC staff reviewed Virginia’s surface transportation system and funding. A major motivation for the review was concern over the state’s gas tax revenue as vehicles become more fuel efficient. To begin to address this concern, Virginia created a voluntary mileage-based user fee program so owners of fuel-efficient and electric vehicles can choose to be taxed based on how much they drive rather than on a flat rate.

Privacy and participation in the mileage-based user fee program

JLARC’s review concluded the state’s recent gas tax rate increases and new transportation revenue sources will offset any decline in revenue from reduced fuel consumption over the near term. However, in the long-term, user fees may become a major revenue stream for the state’s surface transportation system.

JLARC found the long-term success of Virginia’s voluntary mileage-based user fee program will likely depend on overcoming key challenges faced by other states that have implemented similar programs. Participation needs to increase for the program to grow into a viable long-term revenue stream. Other

states emphasized the importance of clearly addressing privacy concerns about location tracking and how information about program participation can be used.

JLARC recommended addressing potential participant concerns about data privacy so they will feel comfortable participating in the program, which may facilitate program growth over time.

► **Action by 2022 General Assembly**

SB 237 McPike

SB 612 Boysko

The General Assembly enacted legislation addressing two key potential data privacy concerns: location tracking and access to user data. Program participants will have the option to participate in the program but not allow the state to track their vehicle's location. (Participants who select this option will likely pay based on total reported mileage.) Statute also now dictates that use of information collected about program participants shall be exclusively limited to what is necessary for program administration. Moreover, information that is collected shall not be open to the public or subject to public disclosure, sold for solicitation or marketing purposes, or otherwise disclosed except to collect unpaid fees.



Impact: Economic Development

Study mandate: Appropriation Act

JLARC contracts with the University of Virginia's Weldon Cooper Center for Public Service to provide evaluation of the effectiveness of Virginia's economic development incentives. Each year, JLARC provides a high-level report on all business incentives and an in-depth report on certain incentives. JLARC evaluated the state's trade and transportation incentives in 2021.

Incentives: transportation

JLARC found that the aircraft parts, engines, and supplies (aircraft repair parts) exemption, which was adopted in 2017, is not likely to have a substantive impact on aircraft maintenance activity in the state and has, at least preliminarily, generated economic losses for the state. The economic impact should become positive over time, but is expected to remain minimal because tax-exempt parts are often produced out of state. In FY19, aircraft owners saved \$5.4 million by using the exemption.

JLARC recommended that if the General Assembly extended the sunset date of the aircraft repair parts exemption, it should better target the exemption to businesses. Private aircraft owners can currently use the exemption on leisure and recreation aircraft, but Virginia typically reserves consumer sales tax exemptions for necessities, such as food and medicine, rather than luxury goods. Restricting eligible aircraft to licensed or nonscheduled airline carriers or to a minimum take-off weight

threshold would better target businesses. In addition, JLARC recommended that the exemption be re-evaluated in a few years to determine whether it has influenced aircraft maintenance and repair activity in the state.

► **Action by 2022 General Assembly**

HB 462 Austin

SB 701 Kiggans

The General Assembly, which extended the sunset for the aircraft repair parts exemption to July 1, 2025, enacted legislation restricting use of the exemption to aircraft with a maximum takeoff weight of at least 2,400 pounds.



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919 East Main Street, Suite 2101
Richmond, VA 23219