

### **Request to Study State Funding of CSBs**

JLARC, through its new HHR oversight and review responsibility, has been asked by the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century to review the state's current model for funding the operations of community services boards (CSBs). The four items that JLARC is requested to include in its study are:

- (1) An inventory of sources of funding for CSBs that identifies each federal, state, and local source of funding for each community services board in the Commonwealth and the amount of funds from each source received by each CSB;
- (2) A description of the criteria used to determine the amount of funds provided to each CSB for the primary funding streams identified in the inventory of sources of funding;
- (3) A description of alternative models for funding publicly funded behavioral health services, which should include models and formulas for funding (i) publicly funded behavioral health services in other states and (ii) other public services such as health, social, education, and other services in the Commonwealth; and
- (4) A description of the potential impact of adopting alternative models of funding publicly funded behavioral health services in the Commonwealth, along with recommendations for the appropriate criteria to be considered in determining the proper allocation of funds under each model.

## Ongoing Oversight In-depth Review

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### **Review of the Virginia Information Technologies Agency (VITA)**

The Appropriation Act directs JLARC to review and evaluate VITA on a continuing basis. Under JLARC's existing oversight authority, staff propose to conduct a more in-depth review of VITA in 2019 than is typical. With the significant IT infrastructure transition that has occurred, JLARC staff plan to assess

- (1) VITA's new IT infrastructure model, including procurements, contract management, and the transparency of rates charged to agencies;
- (2) current governance structures in light of the new model; and
- (3) other relevant topics that may be identified during the course of the review.

While staff seem to clearly have the authority to conduct the review under JLARC's existing oversight authority, the Commission's approval of this more in-depth work will emphasize the importance of receiving cooperation from VITA, state agencies, and other relevant entities during the review.

## Study Resolution

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### Review of Virginia's Court System

Authorized by the Joint Legislative Audit and Review Commission on December 10, 2018

WHEREAS, Virginia's judicial system is established in Article VI of the Virginia Constitution to assure that all disputes are resolved justly, promptly, and economically; and

WHEREAS, the judicial function is discharged through the court system that consists of four levels of courts: Supreme Court, Court of Appeals, circuit courts, and district courts; and

WHEREAS, under the Virginia Constitution the Supreme Court functions as the administrative head of the judicial system, and it performs this function through the Office of the Executive Secretary of the Supreme Court (OES); and

WHEREAS, in FY18 the court system received general fund appropriations of \$475.8 million and had 3,255 general fund positions; and

WHEREAS, the National Center for State Courts conducted a judicial workload assessment in 2017 which concluded that 435 judges were needed in Virginia's circuit and district courts to ensure the efficient, effective, and equitable resolution of cases, and those positions have been authorized and funded; and

WHEREAS, the Chief Justice of the Supreme Court stated in his 2018 State of the Judiciary Address that 54 district courts are well below their staffing needs; and

WHEREAS, the court system does not have a fully functional statewide case management system, and the Auditor of Public Accounts has found that the OES has not followed best practices to manage information technology and ensure its security; and

WHEREAS, the circuit and district courts are responsible for collecting the fines and fees imposed on criminal defendants, and the Auditor of Public Accounts has found that the courts often do not follow collections best practices; and

WHEREAS, there are a growing number of specialty courts in Virginia, including 49 drug treatment dockets and nine mental health dockets; now, therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission (JLARC) that staff be directed to review the operation and performance of the court system. In conducting its study, staff shall assess (i) the operational efficiency of the court system; (ii) the reliability of the judicial workload study; (iii) district court staffing; (iv) whether the OES is organized, staffed, and structured to ensure the efficient and effective operation of the courts; (v) information technology management and the functionality of the systems; (vi) the court system's practices and performance in the collection of fines and fees;

and (vii) the adequacy of the oversight and supervision of the specialty dockets. JLARC shall make recommendations as necessary and review other issues as warranted.

All courts of the Commonwealth shall provide assistance, information, and data to JLARC for this study, upon request. JLARC staff shall have access to all information related to operations and performance in the possession of the courts pursuant to § 30-59 and § 30-69 of the Code of Virginia. No provision of the Code of Virginia shall be interpreted as limiting or restricting the access of JLARC staff to information pursuant to this statutory authority.

### **Review of the Department of Small Business and Supplier Diversity**

Authorized by the Joint Legislative Audit and Review Commission on December 10, 2018

WHEREAS, the Virginia Department of Small Business and Supplier Diversity (SBSD) was created in 2014 by consolidating the powers and duties of the Department of Business Assistance and the Department of Minority Business Enterprise; and

WHEREAS, the mission of SBSD is to enhance growth opportunities for Virginia's small businesses to prosper through increased revenue and job creation thereby raising the standard of living for all Virginians; and

WHEREAS, SBSD was appropriated \$7.3 million in FY19 and \$6.8 million in FY20, of which approximately 60% is from general funds; and

WHEREAS, SBSD developed an agency workplan for 2018 establishing agency goals, objectives, and performance metrics; and

WHEREAS, SBSD administers the Commonwealth's business certification programs, including the Small-Woman-owned and Minority-owned Businesses (SWaM) program, which is designed to improve state procurement opportunities for SWaM businesses, and the Disadvantaged Business Enterprise program, which is designed to increase the participation of disadvantaged business enterprises in projects funded by the U.S. Department of Transportation; and

WHEREAS, SBSD's Virginia Small Business Finance Authority (VSBFA) promotes economic development by administering loan and loan assistance programs for small businesses, not-for-profits, and economic development authorities that may not be able to obtain financing from conventional private sources, such as commercial banks; and

WHEREAS, VSBFA administers two economic development grant programs, the Small Business Investment Grant Program and the Small Business Jobs Grant Program, which awarded over \$1 million in grants in FY17 and which recent legislation sought to transfer to the Virginia Economic Development Partnership; and

WHEREAS, SBSD's Business Development and Outreach Services Division provides programs designed to assist entrepreneurs and business owners in obtaining the information and resources to establish and grow their businesses; now, therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission (JLARC) that staff be directed to review the operations and performance of the Department of Small Business and Supplier Diversity. In conducting its study, staff shall (i) determine whether SBSD's operations are focused on the topics that will most effectively support and accomplish its mission; (ii) evaluate the staffing, performance, spending, and management of SBSD, including the VSBFA; (iii) assess whether SBSD's

business certification programs and related processes are efficiently and effectively administered; (iv) determine whether SBSB is the most suitable state agency to administer the state's business certification programs and assist businesses with the state's procurement processes; (v) compare the definition of "small business" used by SBSB to federal and other state definitions; (vi) assess the effectiveness of SBSB's economic development and outreach programs in assisting applicable businesses; (vii) assess the need for SBSB programs and assistance to temporarily or permanently facilitate individual businesses; (viii) evaluate whether other state agencies could more effectively administer SBSB's economic development and outreach programs; and (ix) review the scope and scale of programs in other states designed to assist similar businesses. JLARC shall make recommendations as necessary and review other issues as warranted.

All agencies of the Commonwealth, including the Department of Small Business and Supplier Diversity, the Virginia Department of General Services, and the Virginia Economic Development Partnership shall provide assistance, information, and data to JLARC for this study, upon request. JLARC staff shall have access to all information in the possession of state agencies pursuant to § 30-59 and § 30-69 of the Code of Virginia including all documents related to proceedings or actions of the Virginia Small Business Financing Authority board of directors. No provision of the Code of Virginia shall be interpreted as limiting or restricting the access of JLARC staff to information pursuant to its statutory authority.

### Effectiveness of Virginia's Special Education Programs

Authorized by the Joint Legislative Audit and Review Commission on December 10, 2018

WHEREAS, the federal Individuals with Disabilities Education Act (IDEA) cites improving educational results for children with disabilities as essential to ensure equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities; and

WHEREAS, the Code of Virginia directs the Board of Education to ensure that children with disabilities have free access to an appropriate education meeting their needs (§ 22.1-214 A); and

WHEREAS, school divisions are legally required to provide physical, medical, psychological, rehabilitation, occupational, therapeutic, and speech and auditory services, as needed, to each child deemed to have a disability (including a developmental delay); and

WHEREAS, Virginia's 132 school divisions provide special education services in elementary and secondary schools, as well as 11 regional special education programs that serve multiple school divisions, and other settings such as a home or a hospital, as appropriate; and

WHEREAS, school divisions are required to develop and follow an individualized education program (IEP) for children identified as having a disability; and

WHEREAS, through its Training and Technical Assistance Centers, the Virginia Department of Education (VDOE) seeks to provide special education guidance and technical support to school divisions; and

WHEREAS, in Virginia, more than 150,000 school-age children have been identified as having a disability (12 percent of all school age-children in Virginia public schools), and more than 17,000 children under the age of six have been identified as having a disability; and

WHEREAS, federal IDEA grants total \$263 million, state funds total \$513 million, and localities also provide substantial funding for special education services; and

WHEREAS, Virginia's school divisions are generally meeting federal IDEA targets for graduation and parental involvement, but missing federal targets for serving children in the least restrictive environment and developing reading and math skills; and

WHEREAS, court decisions—especially the 2017 U.S. Supreme Court decision in *Endrew F. v. Douglas County School* that schools need to ensure students make “appropriately ambitious” progress—necessitate robust special education services and public resources; and

WHEREAS, the Joint Legislative Audit and Review Commission (JLARC) has not systematically reviewed special education since 1984; now, therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission that staff be directed to review the effectiveness of Virginia's special education programs. In conducting its study, staff shall assess (i) spending trends in special education and related services, and major drivers of spending changes

over time; (ii) the processes used to identify, refer, and determine eligibility for services for children who may have a disability or developmental delay; (iii) the effectiveness and consistency of the process used to determine the services needed for each child, and least-restrictive settings in which to provide those services, including services and settings funded through the Comprehensive Services Act; (iv) the process through which school divisions determine placements for students, in regional special education programs or in private facilities; (v) the performance, as measured through federal IDEA and other relevant performance indicators, of programs and services for children with disabilities; (vi) the effectiveness of VDOE's special education monitoring, guidance, and support, including through Training and Technical Assistance Centers; (vii) the adequacy and consistency of school division training and expertise in special education; and (viii) coordination across programs and services, including early childhood, K-12 programs, private facilities, educational services, social services, and other programs and services. JLARC shall make recommendations as necessary and review other issues as warranted.

All agencies of the Commonwealth, including local school divisions and school boards, local departments of social services and boards, and Community Services Boards shall provide assistance, information, and data to JLARC for this study, upon request. JLARC staff shall have access to all information in the possession of state agencies pursuant to § 30-59 and § 30-69 of the Code of Virginia. No provision of the Code of Virginia shall be interpreted as limiting or restricting the access of JLARC staff to information pursuant to its statutory authority.

### **Operations and Performance of Virginia’s Department of Education**

Authorized by the Joint Legislative Audit and Review Commission on December 10, 2018

WHEREAS, the Virginia Department of Education (VDOE) is led by the Superintendent of Public Instruction, who is tasked with providing “such assistance in his office as shall be necessary for the proper and uniform enforcement of the provisions of the school laws in cooperation with the local school authorities” (§ 22.1-23); and

WHEREAS, Virginia’s educational environment has become increasingly complex for many reasons including: a more competitive global economy necessitating a highly educated workforce; evolving standards for student readiness, and teacher and school assessment and accountability; a greater percentage of students living in poverty, with limited English proficiency, and with unique or special educational needs; and

WHEREAS, VDOE distributes more than \$8 billion annually in federal and state general funds to Virginia’s 132 school divisions for the purpose of educating 1.25 million public school students; and

WHEREAS, VDOE seeks to assist school divisions to design and implement instructional and special education programs; to regulate licensure of school personnel and preparation programs; and to administer statewide assessment tests; and

WHEREAS, Virginia’s 132 school divisions are of widely varying sizes and levels of administrative expertise, and receive substantially differing levels of state and local funding; and this wide variation necessitates effective and tailored state support; and

WHEREAS, the General Assembly appropriated \$108 million for VDOE operations (comprising 57 percent general funds and 43 percent non-general funds); and VDOE was authorized to employ about 330 full-time equivalent staff in FY19; and

WHEREAS, VDOE classified and wage employee staffing declined following the Great Recession then subsequently increased; and

WHEREAS, a 2016 review by the Auditor of Public Accounts found several material weaknesses in VDOE’s budgeting and fiscal oversight and internal controls; and

WHEREAS, the Joint Legislative Audit and Review Commission (JLARC) has never reviewed VDOE central office operations; now, therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission that staff be directed to review the operations and performance of the Virginia Department of Education. In conducting its study, staff shall assess (i) whether VDOE successfully identifies major, statewide challenges to improving student performance—such as low performing schools and poor instructional quality—and implements workable strategies to address those challenges; (ii) whether VDOE adequately helps school divisions in the design and implementation of effective instructional and instructional support programs; (iii) whether VDOE sufficiently incorporates best practices into the assistance it provides and effectively facilitates sharing of evidence-based and innovative practices among school divisions; (iv) whether VDOE adequately monitors compliance with educational and operational requirements

that apply to school divisions; (v) whether VDOE effectively coordinates with other education and workforce agencies; (vi) whether the Board of Education has an effective relationship with VDOE; and (vii) whether VDOE is organized, staffed, and structured to ensure efficient and effective internal operations. JLARC shall make recommendations as necessary and review other issues as warranted.

All agencies of the Commonwealth, including local school divisions and boards, shall provide assistance, information, and data to JLARC for this study, upon request. JLARC staff shall have access to all information in the possession of state agencies pursuant to § 30-59 and § 30-69 of the Code of Virginia. No provision of the Code of Virginia shall be interpreted as limiting or restricting the access of JLARC staff to information pursuant to its statutory authority.

## Study Resolution

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### Review of Workers' Compensation

Authorized by the Joint Legislative Audit and Review Commission on December 10, 2018

WHEREAS, the Virginia Workers' Compensation Act (hereinafter referred to as "the Act") was enacted in 1918 to balance the interests of injured workers, employers, insurers, and other stakeholders in the spirit of the "compensation bargain" between employers and employees; and

WHEREAS, under the "compensation bargain" and the Act, in exchange for agreeing not to sue employers in tort via common law for workplace injuries, employees were guaranteed a no-fault system of wage replacement and medical treatment for injuries they might sustain due to their employment; and

WHEREAS, the Virginia Workers' Compensation Commission administers the workers' compensation program in Virginia and oversees the resolution of claims in accordance with the Act through mediation and hearings; and

WHEREAS, the Virginia Workers' Compensation Commission received more than 48,000 claims, and docketed nearly 12,000 cases for adjudication in 2017; and

WHEREAS, in most cases, in order to receive benefits under the Act, employees are required to prove by a preponderance of the evidence that they were injured and that they suffered the injury during and in the scope of the employment; and

WHEREAS, exceptions were created in the Act over the years to allow the presumption that certain conditions and diseases occur as a result of certain types of employment, unless these presumptions are overcome by a preponderance of evidence to the contrary; and

WHEREAS, at the time these presumptions were enacted, employees were having a difficult time proving claims for these particular types of conditions and diseases due to limitations in medical science, and there have been significant advancements in medical knowledge, diagnostic technology, and in exposure prevention since these presumptions were enacted; now, therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission (JLARC) that staff be directed to review the operation and performance of the Virginia workers' compensation system and use of presumptions. In conducting its study, staff shall assess (i) whether claims are reviewed and processed promptly and fairly; (ii) whether the dispute resolution process is timely, effective, and equitable toward all parties; (iii) whether appropriate measures are in place to minimize the potential for fraud and abuse; (iv) whether Virginia's disease presumptions are appropriate and how they compare to presumptions established in other states; (v) whether the level of evidence required to claim or rebut a disease presumption is reasonable and appropriate; and (vi) whether workers' compensation benefits are appropriately coordinated with other benefits available to injured workers. JLARC shall make recommendations as necessary and review other issues as warranted.

All agencies of the Commonwealth, including the Workers' Compensation Commission, local governments, the Virginia Association of Counties, the Virginia Association of Counties Risk Pool, the Virginia Municipal League, the Virginia Municipal League Insurance Programs, public safety and firefighter stakeholder groups, and private employers of firefighters shall provide assistance, information, and data to JLARC for this study, upon request. JLARC staff shall have access to all information in the possession of state agencies pursuant to § 30-59 and § 30-69 of the Code of Virginia, including all documents related to all claims adjudicated or otherwise resolved by the Workers' Compensation Commission. No provision of the Code of Virginia shall be interpreted as limiting or restricting the access of JLARC staff to information pursuant to its statutory authority.