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# VIRGINIA STATE BUDGET

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2019 Session

## Budget Bill - HB1700 (Chapter 854)

Bill Order » Legislative Department » Item 31

Joint Legislative Audit and Review Commission

### Item 31

First Year - FY2019

Second Year - FY2020

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| <b>Legislative Evaluation and Review (78300)</b> | <del>\$5,194,132</del><br><b>\$5,694,132</b> | <b>\$5,545,132</b> |
| Performance Audits and Evaluation (78303)        | <del>\$5,194,132</del><br><b>\$5,694,132</b> | \$5,545,132        |
| Fund Sources:                                    |  |                    |
| General  | <del>\$5,075,187</del><br><b>\$5,575,187</b> | \$5,426,187        |
| Trust and Agency                                 | \$118,945                                    | \$118,945          |

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Authority: Title 30, Chapters 7 and 8, Code of Virginia.

A. Out of this appropriation shall be paid the annual salary of the Director, Joint Legislative Audit and Review Commission (JLARC), \$161,451 from July 1, 2018, to June 24, 2019, and \$161,451 from June 25, 2019, to June 30, 2020.

B. JLARC, upon request of the Department of Planning and Budget and approval of the Chairman, shall review and provide comments to the department on its use of performance measures in the state budget process. JLARC staff shall review the methodology and proposed uses of such performance measures and provide periodic status reports to the Commission.

C. Expenses associated with the oversight responsibility of the Virginia Retirement System by JLARC and the House Appropriations and Senate Finance Committees shall be reimbursed by the Virginia Retirement System upon documentation by the Director, JLARC of the expenses incurred.

D. Out of this appropriation, funds are provided to continue the technical support staff of JLARC, in order to assist with legislative fiscal impact analysis when an impact statement is referred from the Chairman of a standing committee of the House or Senate, and to conduct oversight of the expenditure forecasting process. Pursuant to existing statutory authority, all agencies of the Commonwealth shall provide access to information necessary to accomplish these duties.

E.1. The General Assembly hereby designates the Joint Legislative Audit and Review Commission (JLARC) to review and evaluate the Virginia Information Technologies Agency (VITA) on a continuing basis and to make such special studies and reports as may be requested by the General Assembly, the House Appropriations Committee, or the Senate Finance Committee.

2. The areas of review and evaluation to be conducted by the Commission shall include, but are not limited to, the following: (i) VITA's infrastructure outsourcing contracts and any amendments thereto; (ii) adequacy of VITA's planning and oversight responsibilities, including VITA's oversight of information technology projects and the security of governmental information; (iii) cost-effectiveness and adequacy of VITA's procurement services and its oversight of the procurement activities of State agencies.

3. For the purpose of carrying out its duties and notwithstanding any contrary provision of law, JLARC shall have the legal authority to access the information, records, facilities, and employees of VITA.

4. Records provided to VITA by a private entity pertaining to VITA's comprehensive infrastructure agreement or any successor contract, or any contractual amendments thereto for the operation of the Commonwealth's information technology infrastructure shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise. In order for the records specified in clauses (i) and (ii) to be excluded from the Virginia Freedom of Information Act, the private entity shall make a written request to VITA:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

VITA shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. VITA shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision. Once a written determination is made by VITA, the records afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of VITA or JLARC.

Except as specifically provided in this item, nothing in this item shall be construed to authorize the withholding of (a) procurement records as required by § 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by VITA and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of the private entity under the comprehensive infrastructure agreement, or any successor contract, or any contractual amendments thereto for the operation of the Commonwealth's information technology infrastructure.

5. The Chairman of JLARC may appoint a permanent subcommittee to provide guidance and direction for VITA review and evaluation activities, subject to the full Commission's supervision and such guidelines as the Commission itself may provide.

6. All agencies of the Commonwealth shall cooperate as requested by JLARC in the performance of its duties under this authority.

F.1. The General Assembly hereby designates the Joint Legislative Audit and Review Commission (JLARC) to conduct, on a continuing basis, a review and evaluation of economic development initiatives and policies and to make such special studies and reports as may be requested by the General Assembly, the House Appropriations Committee, or the Senate Finance Committee.

2. The areas of review and evaluation to be conducted by the Commission shall include, but are not limited to, the following: (i) spending on and performance of individual economic development incentives, including grants, tax preferences, and other assistance; (ii) economic benefits to Virginia of total spending on economic development initiatives at least biennially; (iii) effectiveness, value to taxpayers, and economic benefits to Virginia of individual economic development initiatives on a cycle approved by the Commission; and (iv) design, oversight, and accountability of economic development entities, initiatives, and policies as needed.

3. For the purpose of carrying out its duties under this authority and notwithstanding any contrary provision of law, JLARC shall have the legal authority to access the facilities, employees, information, and records, including confidential information, and the public and executive session meetings and records of the board of VEDP, involved in economic development initiatives and policies for the purpose of carrying out such duties in accordance with the established standards, processes, and practices exercised by JLARC pursuant to its statutory authority. Access shall include the right to attend such meetings for the purpose of carrying out such duties. Any non-disclosure agreement that VEDP enters into on or after July 1, 2016, for the provision of confidential and proprietary information to VEDP by a third party shall require that JLARC also be allowed access to such information for the purposes of carrying out its duties.
4. Notwithstanding the provisions of subsection A or B of § 58.1-3 or any other provision of law, unless prohibited by federal law, an agreement with a federal entity, or a court decree, the Tax Commissioner is authorized to provide to JLARC such tax information as may be necessary to conduct oversight of economic development initiatives and policies.
5. The following records shall be excluded from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), and shall not be disclosed by JLARC:
  - (a) records provided by a public body as defined in § 2.2-3701, Code of Virginia, to JLARC in connection with its oversight of economic development initiatives and policies, where the records would not be subject to disclosure by the public body providing the records. The public body providing the records to JLARC shall identify the specific portion of the records to be protected and the applicable provision of the Freedom of Information Act or other provision of law that excludes the record or portions thereof from mandatory disclosure.
  - (b) confidential proprietary records provided by private entities pursuant to a promise of confidentiality from JLARC, used by JLARC in connection with its oversight of economic development initiatives and policies where, if such records are made public, the financial interest of the private entity would be adversely affected.
6. By August 15 of each year, the Secretary of Commerce and Trade shall provide to JLARC all information collected pursuant to § 2.2-206.12, Code of Virginia, in a format and manner specified by JLARC to ensure that the final report to be submitted by the Secretary fulfills the intent of the General Assembly and provides the data and evaluation in a meaningful manner for decision-makers.
7. JLARC shall assist the agencies submitting information to the Secretary of Commerce and Trade pursuant to the provisions of § 2.2-206.12, Code of Virginia, to ensure that the agencies work together to effectively develop standard definitions and measures for the data required to be reported and facilitate the development of appropriate unique project identifiers to be used by the impacted agencies.
8. The Chairman of JLARC may appoint a permanent subcommittee to provide guidance and direction for ongoing review and evaluation activities, subject to the full Commission's supervision and such guidelines as the Commission itself may provide.
9. JLARC may employ on a consulting basis such professional or technical experts as may be reasonably necessary for the Commission to fulfill its responsibilities under this authority.
10. All agencies of the Commonwealth shall cooperate as requested by JLARC in the performance of its duties under this authority.
11. The Joint Legislative Audit and Review Commission (JLARC) is hereby directed to review Virginia529's proposed weighted average tuition (WAT) payout model for the Prepaid529 program and report how the WAT payout model would change Prepaid529 relative to the existing model. In conducting the review, JLARC should address how the

proposal would impact 1) program payout, 2) contract costs, 3) program sustainability, 4) overall complexity of the program, 5) any other factors relevant to the program. JLARC should complete the review and submit a final report, including any recommendations, to JLARC and the Chairman of the House Appropriations and Senate Finance Committee by November 30, 2018. Virginia529 shall provide assistance on this review upon request.

12. Since the Virginia College Savings Plan's (Virginia529) Prepaid529 is a public fund, and accurate benchmarks are necessary to ensure accountability and transparency for plan participants and other stakeholders such as the state, the Joint Legislative Audit and Review Commission (JLARC) is directed to contract with a third-party consultant to conduct an independent review of investment performance benchmarks used for the fund. The consultant, which should have expertise in institutional investment, shall determine whether Virginia529 is using appropriate benchmarks to measure performance, given the investment goals, strategies, and risk tolerance that the Virginia529 Board and Investment Advisory Committee have adopted for the fund. The contract should be procured through a request for proposal (RFP). The consultant shall report its findings and make recommendations, as warranted, for changes to existing benchmarks, by December 15, 2018. JLARC's expenses related to its duties under this amendment shall be reimbursed by Virginia529 as required under § 30-335. The consultant's recommendations shall be considered by the Virginia529 Board and Investment Advisory Committee.

G. Notwithstanding the salaries listed in paragraph A. of this item, the Joint Legislative Audit and Review Commission (JLARC) may establish a salary range for the Director of JLARC.

H.1. The General Assembly hereby designates the Joint Legislative Audit and Review Commission (JLARC) to review and evaluate the agencies and programs under the Secretary of Health and Human Resources (HHR) on a continuing basis.

2. Review and evaluation work shall be directed by JLARC in consultation with the Joint Committee for Health and Human Resources Oversight.

3. Review and evaluation shall include, but not be limited to (i) studies of agencies or programs; (ii) targeted analysis of spending trends and other issues warranting examination; and (iii) assessment of the soundness and accuracy of population and spending forecasts, including the process, assumptions, methodology, and results.

4. For the purpose of carrying out its duties and notwithstanding any contrary provision of law, JLARC shall have the legal authority to access the information, records, facilities, and employees of all agencies within the HHR secretariat.

5. The following records shall be excluded from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), and shall not be disclosed by JLARC:

(a) records provided by a public body as defined in § 2.2-3701, Code of Virginia, to JLARC in connection with its evaluation of agencies and programs within the HHR secretariat, where the records would not be subject to disclosure by the public body providing the records. The public body providing the records to JLARC shall identify the specific portion of the records to be protected and the applicable provision of the Freedom of Information Act or other provision of law that excludes the record or portions thereof from mandatory disclosure.

(b) confidential proprietary records provided by private entities pursuant to a promise of confidentiality from JLARC, used by JLARC in connection with its evaluation of agencies and programs within the HHR secretariat where, if such records are made public, the financial interest of the private entity would be adversely affected.

6. The Chairman of JLARC may appoint a permanent subcommittee to provide guidance and direction for ongoing review and evaluation of agencies and programs within the HHR secretariat, subject to the full Commission's supervision and such guidelines as the Commission itself may provide.

7. JLARC may employ on a consulting basis such professional or technical experts as may be reasonably necessary for the Commission to fulfill its responsibilities under this authority.

8. All agencies of the Commonwealth shall cooperate as requested by JLARC in the performance of its duties under this authority.

*I. Included within the appropriation for this item is \$200,000 in the first year from the general fund for the Joint Legislative Audit and Review Commission to contract with one or more third-party independent reviewers to evaluate the Commonwealth's current and potential gaming governance structures, current and potential revenues to the Commonwealth, and any other relevant subjects it deems necessary pursuant to the study. In conducting this evaluation, the Joint Legislative Audit and Review Commission shall consider the impact of additional gaming and sports wagering, including both physical casino facilities and online gaming and sports wagering, as well as increased charitable gaming, on existing thoroughbred racing, breeding and related agribusiness industries, as well as the current and future revenues of the Virginia Lottery. The Joint Legislative Audit and Review Commission shall coordinate the study, and all state agencies, public bodies, and officials shall cooperate with the Joint Legislative Audit and Review Commission pursuant to completion of the study, as it deems necessary, upon its request.*

*J. Included within this appropriation is \$300,000 the first year from the general fund to support the cost of actuarial analysis and consultant costs in the completion of the JLARC review of Virginia Workers' Compensation program and policies.*

*K.1. The General Assembly hereby designates the Joint Legislative Audit and Review Commission (JLARC) to review and evaluate the Commonwealth's enterprise resource planning and related financial, payroll, personnel management and benefit eligibility systems (Cardinal) on a continuing basis and to provide such special studies and reports as may be requested by the General Assembly, the House Appropriations Committee, or the Senate Finance Committee.*

*2. The areas of review and evaluation to be conducted by the Commission shall include, but are not limited to, the following: (i) procurement for the planning, development, implementation, operation, and maintenance of Cardinal and any subsequent contracts and amendments thereto; (ii) the development, implementation, performance, and costs of Cardinal; (iii) the long-term viability of the technologies utilized in Cardinal; (iv) the adequacy of the system of governance for Cardinal, including the responsibility for, and control of specific data in Cardinal, the responsibility for systems support and maintenance, and the appropriate role of the Virginia Information Technologies Agency; and (v) the security of governmental and personally identifiable information contained in Cardinal.*

*3. For the purpose of carrying out its duties and notwithstanding any contrary provision of law, JLARC shall have the legal authority to access the information, records, facilities, and employees of all state agencies and institutions.*

*4. The following records shall be excluded from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), and shall not be disclosed by JLARC:*

*(a) records provided by a public body as defined in § 2.2-3701, Code of Virginia, to JLARC in connection with its evaluation of Cardinal, where the records would not be subject to disclosure by the public body providing the records. The public body providing the records to JLARC shall identify the specific portion of the records to be protected and the applicable provision of the Freedom of Information Act or other provision of law that excludes the record or portions thereof from mandatory disclosure.*

*(b) confidential proprietary records provided by private entities pursuant to a promise of confidentiality from JLARC, used by JLARC in connection with its evaluation of Cardinal where, if such records are made public, the financial interest of the private entity would be adversely affected.*

*5. The Chairman of JLARC may appoint a permanent subcommittee to provide guidance and direction for Cardinal review and evaluation activities, subject to the full Commission's supervision and such guidelines as the Commission*

*itself may provide.*

*6. JLARC may employ on a consulting basis such professional or technical experts as may be reasonably necessary for the Commission to fulfill its responsibilities under this authority.*

*7. All agencies and institutions of the Commonwealth shall cooperate as requested by JLARC in the performance of its duties under this authority.*

*8. To aid in this effort, the Department of Accounts shall provide the following information to the Commission not later than June 30, 2019: (i) a history of the Commonwealth's efforts from 2004 to date in developing an Enterprise Resource Planning (ERP) application, including budgeting, financials, payroll, personnel management and benefit eligibility systems; (ii) all initial and revised project schedules for each current and proposed module or phase of Cardinal and the actual date of completion, including modules initially developed for use by the Department of Transportation; (iii) all initial and revised cost estimates for each current and proposed module or phase of Cardinal and the actual cost to date, including modules initially developed and funded by the Department of Transportation; (iv) the total amount of spending authorized to date including all working capital advances and appropriated amounts from all sources; and (v) the estimated ten-year total cost for the planning, development, implementation, operation and maintenance of all current and planned modules or phases of Cardinal.*

*L. The Joint Legislative Audit and Review Commission staff shall have access to all information and operations of the Board of Corrections and to observe closed or executive sessions of the Board of Corrections and any of its committees. This authority shall not be limited by §2.2-3712 or any other provision of law.*