2022 Special Session I

Budget Bill - HB29 (Enrolled)

Secretary of Labor

Item 111.10	First Year - FY2021	Second Year - FY2022
Administrative and Support Services (79900)	**$0**	**$599,192**
General Management and Direction (79901)	$0	$599,192
Fund Sources:		
General	$0	$599,192

A.1. Pursuant to the provisions of House Bill 2321 of the 2021 General Assembly, there is hereby created a new Secretary of Labor effective July 1, 2021. Included in this item is funding for the salary of the Secretary of Labor and authorization for four positions. The Secretary shall be responsible to the Governor for the following agencies: Department of Labor and Industry, Virginia Employment Commission, and Department of Professional and Occupational Regulation. Effective July 1, 2021, the appropriations and positions of the agencies listed in this section shall be transferred from the Secretary of Commerce and Trade to the Secretary of Labor. The Governor, by executive order, may assign any state executive agency to the Secretary of Labor or reassign any agency to another Secretary. In addition, the Governor is hereby authorized to transfer positions and associated funding from agencies within the new Secretariat to the office of said Secretary up to a maximum of four positions.

2. Pursuant to the provisions of House Bill 2321 of the 2021 General Assembly any budgetary item acted on by the 2021 General Assembly pertaining to the Chief Workforce Development Advisor shall be transferred to this new Secretariat, accordingly. This includes provisions contained under Items 52 and 111 of this act.

3. The Director, Department of Planning and Budget, shall include implementation of the actions set forth in this item in the Budget Bill submitted to the 2022 Session of the General Assembly.

B.1. The Chief Workforce Development Advisor to the Governor/Secretary of Labor in coordination with the Secretary of Administration, Secretary of Finance, and Secretary of Commerce and Trade shall convene a workgroup to review the Commonwealth's state public works payment process to contractor employees. The workgroup shall identify and make process improvement recommendations to correct any identified issues with the intent to put forward a comprehensive legislative and budgetary package for consideration in the 2022 General Assembly Session.

2. The workgroup shall consist of the Commonwealth's Chief Workforce Advisor to the Governor/Secretary of Labor, Secretary of Finance, Secretary of Administration, and Secretary of Commerce and Trade, or their designees, staff from the House Appropriations and Senate Finance and Appropriations Committees, representatives from Virginia public colleges and universities and state agencies, two representatives from labor organizations that can bring forth to the workgroup documented situations where such misclassification has occurred on Commonwealth public work projects, two representatives from the general contractor business community with experience in providing construction services to the Commonwealth, and representatives from agencies deemed relevant by the their corresponding cabinet official, which may include the Department of General Services, Department of Small Business and Supplier Diversity, Department of Labor and Industry, Department of Professional and Occupational Regulation, Virginia Employment Commission, Virginia Worker's Compensation Commission, and Department of

Taxation. It is the intent of the General Assembly that the representatives on this workgroup shall be representative of all perspectives to protect workers engaged on state contracts and to balance financial and workload impacts for state agencies.

3. The Chief Workforce Advisor/Secretary of Labor shall submit a final report to the Chairs of the House Appropriations and General Laws Committees, and Senate Finance and Appropriations and General Laws and Technology Committees on or before October 1, 2021.

4. In making recommendations for its October 2021 report, the workgroup shall consider the findings, recommendations, and insights from the initiatives established in Item 82 of this act, and paragraphs C. and D. of this item. Among other things the workgroup shall, examine the procurement, wage theft, worker misclassification, and prevailing wage laws in offering potential recommendations for legislation and budgetary actions in the 2022 General Assembly Session that can address prevention and enforcement of the state's labor laws on capital construction projects. The workgroup shall provide state fiscal impact estimates by fiscal year and fund source for any recommendation contained in its final report to ensure the General Assembly understands the costs of these recommendations prior to the start of the 2022 General Assembly Session. Additionally, the workgroup shall discuss ideas to incentivize positive business behavior by general contractors, models that require subcontractors to get authorization prior to outsourcing any work on state contracts, such as the one deployed by the Virginia Military Institute, and data collection and verification of employee payrolls for independent contractors working on state contracts.

5. Initial ideas from the workgroup are implemented in paragraphs C. and D. of this item. The workgroup may make recommendations to continue, stop, or modify these items in its final report.

C.1. The Secretary of Commerce and Trade, the Secretary of Administration, the Secretary of Finance, and the Chief Workforce Development Advisor/Secretary of Labor, with the assistance of their relevant agencies shall work to establish a state government infrastructure to identify and investigate potential worker misclassification and wage theft issues on the Commonwealth's capital construction projects. The infrastructure shall include an initial resolution process for project owners to work with the prime contractor. If the identified matter cannot be resolved with the initial step, it shall be referred to the Secretary of Finance and the Chief Workforce Development Advisor/Secretary of Labor to direct the claim to the agency with the appropriate statutory authority to launch an investigation. The investigating agency shall notify the Secretary of Finance and the Chief Workforce Development Advisor/Secretary of Labor of any violation committed by the contractor. This includes issues of wage theft and worker misclassification. The Secretary of Finance or the Chief Workforce Development Advisor/Secretary of Labor shall notify the appropriate project owner of such violation of the state's worker misclassification or wage theft laws by a contractor performing work on a state project. The agency finding such violation occurred shall address the matter pursuant to the applicable provisions under the law, which may include debarment by the Department of Taxation under the state's worker misclassification laws. The project owner shall take appropriate contractual remedies to address the violation in addition to those pursued by the investigating agency.

2. The Secretary of Commerce and Trade and the Chief Workforce Development Advisor/Secretary of Labor, will identify, or develop its own, national and state labor laws training program for the Commonwealth's capital project managers. The Department of General Services, and institutions of higher education with capital outlay autonomy, shall include in their construction of administration procedures a requirement that project managers that oversee capital projects complete the training by July 1, 2023. The Secretary of Administration and the Chief Workforce Development Advisor/Secretary of Labor shall ensure any state employee who oversees capital outlay construction projects take an online or face to face course on national and state labor laws related to construction projects by July 1, 2023. The Secretary of Commerce and Trade shall report to the Governor, Chairs of the House Appropriations Committee and Senate Finance and Appropriations Committee costs to implement and support this professional development training on or before September 1, 2021, or include these costs in the report required in paragraph B. of this item.

3. In implementing the provisions of paragraph C. of this item, the Chief Workforce Development Advisor/Secretary of Labor shall develop legislative recommendations and implementation procedures that require the Department of Labor and Industry, the Virginia Employment Commission, the Department of Occupational Regulation, and the Workers Compensation Commission to debar contractors for workplace-related violations. These recommendations shall be reviewed and incorporated into the final report of the workgroup created in paragraph B.1. of this item.

D.1. The Secretary of Commerce and Trade, Secretary of Administration, the Secretary of Finance and the Chief Workforce Development Advisor/Secretary of Labor shall convene an interagency taskforce to meet regularly to share data on any recent substantiated findings of worker misclassification and wage theft issues in the Commonwealth including any on state capital projects. For any such findings identified that pertain to public bodies the taskforce will provide its findings to the State Inspector General for further investigation. The taskforce shall include representatives from the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the Virginia Employment Commission, and the Virginia Worker's Compensation Commission. The taskforce may consider signing a data sharing agreement or Memorandum of Understanding to share information on employers who are currently being investigated or found guilty of unlawful business practices, such as wage theft and worker misclassification.

2. The taskforce shall recommend measures to improve transparency for construction contractors on public works projects, which may include requiring all contractors for public works to submit on a monthly or biweekly basis certified payrolls for employees, certified payrolls for independent contractors, and the number of employees and independent contractors present on the worksite. These recommendations shall be reviewed and incorporated into the final report of the workgroup created in paragraph B.1. of this item.

3. The taskforce shall advise the public works process workgroup in paragraph B.1. of this item on topics including the implementation status of Virginia's new labor laws on worker misclassification and wage theft, and other relevant ideas to preventing and enforcing wage theft and worker misclassification on state capital construction projects including those contained in paragraph 2. above.

E.1. The Office of the Chief Workforce Advisor/Secretary of Labor shall convene a workgroup that includes representatives from the Departments of Education, Social Services, Professional and Occupational Regulation, Health Professions; the Health Workforce Development Authority; Office of Diversity, Equity, and Inclusion; the Virginia Community College System; Commonwealth Catholic Charities, Catholic Charities; Migration and Refugee Services; International Rescue Committee; Church World Services; Lutheran Social Services; Ethiopian Development Council; NoVA Friends of Refugees; ReEstablish Richmond; local one-stop career centers that have experience serving refugees; an employer; and at least one refugee or special immigrant visa holder. The workgroup shall identify barriers that recent refugees in Virginia face to entering the workforce; assess participation in adult education and workforce training programs; compare, to the extent practicable, the current employment of recent refugees to that of their employment, including any occupational and professional credentials and academic degrees earned, prior to resettling in the United States; and identify the top occupations that recent refugees seek to work in Virginia and make recommendations for addressing any barriers that prevent them from using their work experience gained outside of the United States to obtaining employment in these occupations in Virginia.

2. The Chief Workforce Advisor/Secretary of Labor shall submit a report containing the recommendations of the workgroup on or before November 1, 2021 to the Chairs of the House Committee on Labor and Commerce and the Senate Committee on Commerce and Labor.

F.1. The Secretary of Labor shall prioritize improvements and modernization of the Virginia Employment Commission (VEC) as outlined in the November 2021 JLARC Report, "Operations and Performance of the Virginia Employment Commission," including an analysis of the report's 40 recommendations and 10 policy options. Emphasis shall be placed on improving customer service and interactions with the public in the immediate time

frame while still dealing with pandemic-related issues and long-range plans to improve the transparency of processes and services. Additional focus shall be placed on (i) overall funding and management of the Unemployment Insurance (UI) trust fund; (ii) reviewing benefit levels for income replacement; (iii) ensuring appropriate staffing levels and well-trained personnel; and (iv) addressing technology needs. The current backlog of 2020 and 2021 claims shall be expedited for resolution immediately, including but not limited to resolving any outstanding claims; accounting for overpayments or inappropriate payments; and improving processes to prevent fraud and better identify valid claims.

2. The Secretary of Labor shall competitively procure a national firm with expertise in evaluating the efficiency of an organization's staffing structure, delegation of staff duties, and work processes to conduct a comprehensive efficiency review of the UI operations of the Virginia Employment Commission to (i) identify specific actions that could be taken to improve the efficiency of VEC's UI operations, including through more efficient and effective use of staff and technology; (ii) recommend improvements to the agency's staffing and workflows to most effectively use existing federal funding for UI operations; and (iii) determine whether current funding is adequate to ensure effective UI operations. The Secretary shall issue an interim report of its findings and recommendations to the General Assembly no later than December 1, 2022, and a final report no later than September 1, 2023.