

Public Body Procurement Workgroup

Report of the Public Body Procurement Workgroup on Prohibiting Public Bodies from Acquiring Electric Vehicles or Components of Electric Vehicles Produced with Forced or Oppressive Child Labor

October 2024

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2. Final Recommendation for SB 492
3. Approved Meeting Minutes

I. Introduction

The Public Body Procurement Workgroup (Workgroup) was tasked with studying SB 492, patroned by The Honorable Senator William M. Stanley Jr. during the 2024 General Assembly session. SB 492 aims to prohibit public bodies from acquiring electric vehicles or components produced with forced labor or oppressive child labor.

In response to this directive, stakeholders were identified, and three Workgroup meetings were held at which SB 492 was discussed. This report summarizes the information presented to the Workgroup by stakeholders and subject matter experts and the Workgroup's findings and recommendations.

II. Background

Overview of Public Body Procurement Workgroup Authority and Duties

Item 73 of the 2024 Appropriations Act Title 2.2, Chapter 11 and Chapter 24, Article 1, Code of Virginia directs DGS to lead, provide administrative support, and convene an annual public body procurement workgroup to review and study proposed changes to the Code of Virginia in the areas of non-technology goods and services, technology goods and services, construction, transportation, and professional services procurements. The Appropriations Act language specifies that that Workgroup's membership shall be composed of the following individuals or their designees:

- Director of the Department of Small Business and Supplier Diversity
- Director of the Department of General Services
- Chief Information Officer of the Virginia Information Technologies Agency
- Commissioner of the Virginia Department of Transportation
- Director of the Department of Planning and Budget
- President of the Virginia Association of State Colleges and University Purchasing Professionals
- President of the Virginia Association of Governmental Procurement

Additionally, the Appropriations Act language requires that a representative from each of the following provide technical assistance to the Workgroup:

- Office of the Attorney General's Government Operations and Transactions Division
- Staff of the House Appropriations Committee
- Staff of the Senate Committee on Finance and Appropriations
- Division of Legislative Services

The Appropriations Act language outlines a few avenues by which bills may be referred to the Workgroup for study. First, the Chairs of the House Committees on Rules, General Laws, and Appropriations, as well as the Senate Committees on Rules, General Laws and Technology, and Finance and Appropriations, can refer legislation by letter to the Workgroup for study. This is how SB 492 was referred. Second, the Chairs of the House Committees on Rules and Appropriations, as well as the Senate Committees on Rules and Finance and Appropriations, can

request that the Workgroup review procurement-related proposals in advance of an upcoming legislative session to assist in obtaining a better understanding of the legislation's potential impacts. Additionally, bills may also be referred to the Workgroup for study by the General Assembly, which can pass a bill that includes an enactment clause directing the Workgroup to study a particular topic.

Overview of SB 492

As introduced, SB 492, sought to align Virginia's procurement practices with the Commonwealth of Virginia's ethical standards by focusing on the ethical implications of electric vehicle and component production, especially concerning forced labor and child labor.

The bill reads as, “prohibits public bodies from awarding contracts to acquire an electric vehicle or electric vehicle component from a business unless such business provides a sworn declaration from the manufacturer of such electric vehicle or electric vehicle component certifying that every person involved in the production of such electric vehicle or electric vehicle component and every person involved in the sourcing, manufacturing, or mining of the material used in such electric vehicle or electric vehicle component did not use forced labor or oppressive child labor, both terms defined in the bill, in the sourcing, manufacturing, or mining of such electric vehicle or electric vehicle component.”

The bill, which was patroned by the Honorable Senator William M. Stanley, Jr., was referred to the Committee on General Laws and Technology, where it will be continued to the 2025 Session in the aforementioned committee. The Honorable Senator Adam P. Ebbin, Chair of Senate General Laws and Technology, directed the Department of General Services (DGS) Public Body Procurement Workgroup to study SB 492 with specific consideration to the use of forced labor and oppressive child labor as defined in the legislation generally, rather than focused on electric vehicles.

Study Participants Stakeholders

The Workgroup's Appropriations Act language directs it to hear from stakeholders identified by the patron of referred legislation and other interested individuals. As such, the Workgroup's staff contacted Senator Stanley and Brett Vassey with the Virginia Manufacturer's Association to solicit their input regarding stakeholders they would like included in the Workgroup's review of SB 492. The Workgroup's staff compiled the names of the stakeholders identified into a stakeholder email distribution list, which it used to communicate information about the Workgroup's study of SB 492 and opportunities for public comment to the identified stakeholders. The Workgroup's staff also added any interested individual to the stakeholder email distribution list upon request by such individual.

The stakeholder email distribution list was composed of the following individuals:

- The Honorable William M. Stanley, Jr.—Senate of Virginia
- Wendy Inge—Virginia Department of Labor and Industry
- aidcryafrica@gmail.com

- Brett Vassey—Virginia Manufacturer’s Association

Meeting Discussion and Recommendations Summary

The Workgroup held three meetings during which it discussed SB 492. At its August 6, 2024, meeting, Workgroup staff introduced SB 492 and shared that the bill was before the Workgroup for study at the direction of Senator Ebbin, Chair of the Senate General Laws and Technology Committee.

During the August 6, 2024, Workgroup meeting Senator Stanley presented remarks supporting SB 492, a bill prohibiting Virginia's public bodies from acquiring electric vehicles or components produced with forced or oppressive child labor. He emphasized the significance of ethical procurement, noting that Virginia must make a strong statement against forced labor practices, particularly in cobalt mining. Stanley referenced unethical cobalt mining practices in countries like Congo, juxtaposing this with examples of responsible mining elsewhere. He read a letter from Francois Justin Mukumbilwa and showed photographs of poor labor conditions to highlight the severity of the issue.

Drawing parallels to the movie *Blood Diamonds*, Stanley argued that Virginia should similarly take a stand against unethically sourced cobalt, as the United States did against blood diamonds. He stressed the responsibility of Virginia when spending taxpayer money, particularly as the state increasingly procures electric vehicles. Stanley clarified that he supports electric vehicles but emphasized the importance of ensuring ethical sourcing of materials like cobalt. He concluded by asserting that by changing procurement practices, Virginia could lead by example and inspire global change in ethical sourcing.

There was no more public comment, pertaining to the bill.

At the next meeting, held on August 21, 2024, Sandra Gill, Chair of the Workgroup and Deputy Director of the Department of General Services, asked if the Workgroup needed any additional information to help develop preliminary recommendations for SB 492. Receiving no requests, Joshua Heslinga from the Virginia Information and Technologies Agency discussed the bill's goal to prevent child labor and oppressive labor in the production of electric vehicles, while also considering if this policy should apply more broadly beyond electric vehicles.

Gill confirmed this understanding and mentioned existing procurement terms, such as those ensuring a drug-free workplace, as a model for preventing the use of child and oppressive labor by contractors. She directed staff to formalize this into a recommendation for review at the next meeting.

At its following meeting, held on September 4, 2024, the Workgroup voted to approve the language of the final recommendation that it had developed at its previous meeting.

See Appendices B, C and D for the meeting materials, including meeting minutes for each of the three meetings.

III. Summary of Information Presented to the Workgroup

The Workgroup was directed to review SB 492 patroned by Senator Stanley which aims to prohibit public bodies from acquiring electric vehicles or components produced with forced labor or oppressive child labor. The Workgroup was tasked with reporting its findings to the General Assembly by November 1, 2024. Below is a summary of the testimony and presentations that the Workgroup received pertaining to this task.

At the second Workgroup meeting on August 6, 2024, Stanley spoke to the bill. He began his remarks by sharing the importance of procurement in Virginia and making sure we always get it right. He stated that SB 492 is a policy decision bill, but it also makes sure Virginia makes a statement to its citizens and other states that Virginia will not tolerate, nor accept, products, including cobalt, that are mined in countries where slave labor, child labor, or forced labor is used. He explained that in Congo, and other countries, cobalt is being mined; some countries mine it responsibly, but other countries do not. Senator Stanley then read a letter from Francois Justin Mukumbilwa and provided photographs reflecting the terrible working conditions of people forced into labor.

Next, Stanley pointed to the movie, Blood Diamonds, and shared that the United States took a stand against unethically mined diamonds, sharing that it is his hope that Virginia will take a stand against unethically mined cobalt. He emphasized the importance of Virginia being responsible when buying products using tax dollars.

Stanley continued his remarks stating that as technologies emerge, the Commonwealth is engaging in purchasing and procuring electric buses, electric cars, and electric vehicles for government workers to operate, which is a policy decision of the Commonwealth. He shared that he does not contest the efficacy of electric cars, and in fact, embraces them and believes that we can determine, through a general inquiry, if the manufacturers of electric vehicles and other products that use cobalt, are doing so ethically and without harm to their children or citizens of their country. He explained that there are many countries that mine cobalt ethically, and that we can identify those countries and then ensure that the companies we purchase from are sourcing from said countries.

He concluded his remarks stating that Virginia will not support cobalt mined unethically and if we can change how we procure products that include cobalt, then we can change our world and convince others to change theirs, ultimately having a positive impact.

There was no other public comment on Bill 492.

IV. Workgroup Findings and Recommendations

At the Workgroup's third meeting on August 21, 2024, Sandra Gill, Chair of the Workgroup and Deputy Director of Department of General Services, asked the Workgroup members if they needed additional information to help facilitate the discussion to develop preliminary recommendations for SB 492. Hearing none, Joshua Heslinga, Virginia Information and Technologies Agency, shared his understanding of the bill, explaining the desire to ensure that child labor and oppressive labor are not used in the production process for electric vehicles. Heslinga stated that there are also other areas in which child labor or oppressive labor may be used, so it should be a policy decision on narrowing it to electric vehicles or applying to all.

Gill confirmed his understanding and pointed to existing terms and conditions utilized through the procurement process, such as the drug free workplace term and condition, as an example for ensuring contractors are not using child labor or oppressed labor. Gill directed Workgroup staff to compile this into a formal recommendation for review at the next meeting.

At its fourth meeting, on September 4, 2024, Workgroup staff read the final recommendation for SB 492 aloud, after which Heslinga brought to the Workgroup's attention if a \$10,000 threshold should be included as part of this recommendation. Gill asked if instead of a dollar threshold, would it be appropriate to include the language "in every written solicitation." Kimberly Dulaney, Virginia Association of State Colleges and University Purchasing Professionals, pointed out that this is currently included in the general terms and conditions on any state contract, therefore, it would not be needed. Rebecca Shultz, Division of Legislative Services, added that the Workgroup needs to consider what level of knowledge for which the contractors should be responsible. She suggested using language of "no known child labor."

Staff amended the recommendation to include Shultz's language. The Workgroup members voted to approve the following final recommendation on SB 492 by a vote of 7-0:

The Workgroup recommends that the General Assembly amend Chapter 43 of Title 2.2 to explicitly prohibit the use of forced labor and oppressive child labor by requiring that public bodies include in public contracts a provision stipulating that contractors, subcontractors, and suppliers certify that they have no knowledge of the use of forced labor or oppressive child labor in the performance of their obligations under the contract.

V. Conclusion

The Workgroup would like to thank the stakeholders and interested parties for their participation, as well as the subject matter experts from various state agencies who provided presentations and technical expertise to assist the Workgroup in its deliberations.

Appendix A: Letter to Workgroup and Text of SB 492

This appendix contains the letter from the Chair of the Senate General Laws and Technology Committee, Senator Adam P. Ebbin, directing the Workgroup to study SB 492 and the text of SB 492.

SENATE OF VIRGINIA

ADAM P. EBBIN
39TH SENATORIAL DISTRICT
ALL OF THE CITY OF ALEXANDRIA;
AND PART OF ARLINGTON AND
FAIRFAX COUNTIES
POST OFFICE BOX 26415
ALEXANDRIA, VIRGINIA 22313



COMMITTEE ASSIGNMENTS:
GENERAL LAWS AND TECHNOLOGY, CHAIR
COMMERCE AND LABOR
FINANCE AND APPROPRIATIONS
PRIVILEGES AND ELECTIONS
RULES

May 28, 2024

Acting Director Michael Bisogno
Department of General Services
Washington Building
1100 Bank Street, Suite 420
Richmond, Virginia 23219

Dear Acting Director Bisogno:

During the 2024 Session of the General Assembly, Senator Stanley introduced Senate Bill 492 to prohibit public bodies from awarding contracts to acquire an electric vehicle or electric vehicle component from a business unless such business provides a sworn declaration from the manufacturer of such electric vehicle or electric vehicle component certifying that every person involved in the production of such electric vehicle or electric vehicle component and every person involved in the sourcing, manufacturing, or mining of the material used in such electric vehicle or electric vehicle component did not use forced labor or oppressive child labor, both terms defined in the bill, in the sourcing, manufacturing, or mining of such electric vehicle or electric vehicle component.

The Senate General Laws and Technology Committee voted (9-Y 6-N) to continue the bill to 2025 with the recommendation that the Department of General Services (DGS) Procurement Workgroup study the issues identified in the legislation. This study should consider the use of forced labor and oppressive child labor as defined in the legislation generally, rather than focused on electric vehicles.

Please contact my office if you have any questions or need further assistance.

Sincerely,

A handwritten signature in black ink that reads "Adam Ebbin".

Senator Adam P. Ebbin
Chair, Senate General Laws and Technology

cc: Senator William M. Stanley, Jr.
via senatorstanley@senate.virginia.gov

AE:lp

24103609D

SENATE BILL NO. 492

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend the Code of Virginia by adding a section numbered 2.2-4311.3, relating to Virginia Public Procurement Act; procurement of electric vehicles; forced and child labor prohibition.

Patron—Stanley

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 2.2-4311.3 as follows:****§ 2.2-4311.3. Electric Vehicle Procurement; forced and child labor prohibition.****A. For the purposes of this section:****"Forced labor" means:**

1. Any work or service that is obtained by (i) any force, fraud, or coercion, including by threat of serious harm to, or physical restraint against, an individual; (ii) a scheme, plan, or pattern intended to cause an individual to believe that if the individual did not perform the labor or service, that individual, or another individual, would suffer serious harm or physical restraint; or (iii) any abuse or threatened abuse of law or the legal process;

2. Any work or service that is imposed on the basis of a protected characteristic;

3. Any work or service that is not offered or provided voluntarily by the individual; or

4. Any work or service that is produced through oppressive child labor.

"Oppressive child labor" means a condition of employment under which an individual who is under 16 years of age is employed in an occupation that is hazardous for the employment of children, including, sourcing, manufacturing, or mining.

B. In the awarding of contracts to acquire an electric vehicle or electric vehicle component, no public body shall enter into a contract with a business unless such business provides a sworn declaration from the manufacturer of such electric vehicle or electric vehicle component certifying that every person involved in the production of such electric vehicle or electric vehicle component and every person involved in the sourcing, manufacturing, or mining of the material used in such electric vehicle or electric vehicle component, did not use forced labor or oppressive child labor in the sourcing, manufacturing, or mining of such electric vehicle or electric vehicle component.

INTRODUCED

SB492

Appendix B: August 6, 2024, Meeting Materials

This appendix contains the meeting materials from the August 6, 2024, Workgroup meeting.

1. Agenda
2. Approved Meeting Minutes

Public Body Procurement Workgroup

<https://dgs.virginia.gov/dgs/directors-office/pwg/>

Meeting # 2

Tuesday, August 6, 2024, 10:00 a.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

AGENDA

- I. **Call to Order; Remarks by Chair**
- II. **Approval of Meeting Minutes from the July 17, 2024 Workgroup Meeting**
- III. **Presentation on SB 492**
The Honorable William M. Stanley, Jr.
Senate of Virginia
- IV. **Public Comment on SB 492**
- V. **Workgroup Requested Presentations on HB 1355**
- VI. **Public Comment on HB 1355**
- VII. **Discussion**
- VIII. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and
University Purchasing Professionals

Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
Senate Finance Committee

House Appropriations Committee
Division of Legislative Services

Staff

Jessica Hendrickson, Director of Policy and Legislative Affairs, DGS
Kimberly Freiburger, Legislative Analyst, DGS

DRAFT Meeting Minutes

Public Body Procurement Workgroup

Meeting # 2

Tuesday, August 6, 2024, 10:00 a.m.

House South Subcommittee Room, 2nd floor

General Assembly Building

201 North 9th Street, Richmond, Virginia 23219

<http://dgs.virginia.gov/dgs/directors-office/pwg/>

The Public Body Procurement Workgroup (the Workgroup) met in-person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting began with approval of the previous meeting minutes, presentation of SB 492 by Senator William M. Stanley, Jr., public comment on SB 492, Workgroup requested presentations on HB 1355, public comment on HB 1355, and discussion by the Workgroup members. Materials presented at the meeting are available through the [Workgroup's website](#).

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Verniece Love (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Andrea Peeks (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations Committee), Robin McVoy (Office of the Attorney General), and Rebecca Schultz (Division of Legislative Services).

I. Call to Order; Remarks by Chair

Sandra Gill, Deputy Director
Department of General Services

Gill called the meeting to order and moved into the second agenda item.

II. Approval of Meeting Minutes from the July 17, 2024 Workgroup Meeting

Heslinga made a motion to approve the meeting minutes from the July 17, 2024, meeting of the Workgroup. The motion was seconded by Saunders, and unanimously approved by the Workgroup.

III. Presentation on SB 492

Senator Stanley began his remarks by sharing the importance of procurement in Virginia and making sure we always get it right. He stated that SB 492 is a policy decision bill but also makes sure that Virginia makes a statement to its citizens and other states that Virginia will not tolerate, nor accept, products, including cobalt, that are mined in countries where slave labor, child labor, or forced labor is used. He explained that in the Congo, and other countries, cobalt is being mined and some countries mine it responsibly, but other countries do not. Senator Stanley then read a letter from Francois Justin Mukumbilwa and provided photographs reflecting the terrible working conditions of people forced into labor.

Next, Senator Stanley pointed to the movie, Blood Diamonds, and shared that the United States took a stand against unethically mined diamonds, sharing that it is his hope that Virginia will take a stand against unethically mined cobalt. He emphasized the importance of Virginia being responsible when buying products using tax dollars.

Senator Stanley continued his remarks stating that as technologies emerge, the Commonwealth is engaging in purchasing and procuring electric buses, electric cars, and electric vehicles for government workers to operate, which is a policy decision of the Commonwealth. He shared that he does not contest the efficacy of electric cars, and in fact, embraces them and believes that we can determine, through a general inquiry, if the manufacturers of electric vehicles and other products that use cobalt, are doing so ethically and without harm to their children or citizens of their country. He explained that there are many countries that mine cobalt ethically, and that we can identify those countries and then ensure that the companies we purchase from are sourcing from said countries.

He concluded his remarks stating that Virginia will not support cobalt mined unethically and if we can change how we procure products that include cobalt, then we can change our world and convince others to change theirs, ultimately having a positive impact.

IV. Public Comment on SB 492

There were no public comments regarding the bill.

V. Workgroup Requested Presentations on HB 1355

The first presentation to the Workgroup was on website modernization program and accessibility from Josh Jones with the Virginia Information Technologies Agency (VITA). He began his remarks by providing an overview of the website modernization program that began in 2023 with a goal of reviewing all agency websites and striving to make agency websites more secure while improving design and accessibility. He shared that about 44 percent of websites reviewed initially met accessibility standards, adding that over the past year, VITA has provided new training and resources and that agency website compliance has risen to over 88 percent. Jones pointed out that Commonwealth

official websites now contain a branding bar at the top to provide assurance to users that they are on an official Commonwealth website. Jones explained that VITA partnered and worked with both executive and non-executive agencies in these efforts sharing that the monthly trainings are well attended and there are on-demand accessibility trainings available for web developers and designers. He added that this project has required a lot of resources and a massive collaborative effort.

Continuing through the presentation, Jones shared the tools and vendor partners that VITA utilized to ensure a successful program thus far, which included the creation of a custom Accessible Virginia training program. He explained that VITA has many state-wide contracts for content management systems, web hosting, and design, and that VITA is currently working to ensure accessibility is incorporated. Jones emphasized that he is working to ensure entities conform their digital content to the WCAG 2.1 Level AA, which are a set of guidelines and criteria for making web content more accessible to a wider range of people with disabilities. Title II of the Americans with Disabilities Act (ADA) requires that areas with a population of fifty-thousand or more must comply with the standard by April 24, 2026 and areas with a population under fifty-thousand have an additional year to comply. He shared that VITA focused heavily on public websites but wanted to also look at applications and realized that in order to make a web application accessible, generally it needs to be rebuilt. To make a whole new website from scratch – to do a full redesign – can cost anywhere from \$50,000 to \$250,000. Implementing accessibility one website or application at a time involves large amounts of effort and money. Jones concluded his remarks by sharing that there is more to consider with accessibility and gave examples of individuals coming into a building to fill out a form and being mindful of accessibility in such design and the steps required for a disabled person to complete the task.

Peeks asked Jones if the Title II compliance deadline of April 24, 2026 is a federal deadline to which Jones replied that it is a federal deadline set by the Department of Justice. Peeks then asked if Jones felt there was overall cooperation from entities or hesitation about the costs associated with implementation, to which Jones replied that there has been a lot of cooperation, however, there are concerns about costs and in the past year, VITA covered the costs for agencies which was helpful, but VITA cannot continue to carry the cost without funding to support the efforts. Jones added that many agencies know where they fall short on accessibility, but do not have the resources to do anything about it, sharing that for FY25 he has put in a decision package for website modernization so VITA can continue to support and handle procurements instead of entities having to do individual procurements.

The second presenter was Daniel Aunspach with the Department for the Blind and Vision Impaired. He began his remarks stating that many things he will speak about regarding challenges in procurement have been addressed with the cooperation of VITA, the modernization program, and other partners. Aunspach shared that challenges include accessibility awareness, accessibility tools, methods and practices that continually change to adapt and meet rapidly evolving trends in technology, explaining that it can be difficult to keep up with the pace of change. He stated that vendors, and developers, may have

limited accessibility knowledge or misinterpret conformance specifications, which becomes more complicated when vendors use subcontractors. Aunspach shared that practical usability challenges occur where products may not be practically usable under the performance expectations that are met by peers who do not require accommodations. He said that he has often heard that a particular resource is not for public use, or there are only a few members of the team that will use the resource, none of which have a disability, which leads to the belief that accessibility should not be considered or required for the resource, explaining that this excludes qualified persons with disabilities from the team.

Aunspach continued his remarks stating that by including accessibility through the software lifecycle it improves adoption by everyone and ensures continuity of operation as the workforce changes. He added that by including accessibility throughout all business operations, both internal and external, that ensures success in adapting to planned and unforeseen changes. Aunspach stated that the concept of alternate but equal can be misleading, explaining that by providing an alternate format with equal content is thought to be an appropriate solution, and in some cases is, but this may also preclude the individual from accessing the material with the same proficiency and accuracy as those who have access to the original resource. He gave an example that an original resource in PDF may be reproduced as a simple linear Microsoft Word or text document which requires much more navigational work and interpretation than using a truly accessible PDF which can impede productivity and introduces opportunities for data inaccuracy. He said that this example requires an entity to maintain two separate versions of the same resource which often leads to the official version being updated and the accessible version becoming outdated.

Aunspach shared strategies for overcoming accessibility challenges, such as ongoing training and resources to enable users of accessibility technologies to effectively use accessibility tools. He explained that producers of assistive technology products typically maintain self-service resources for using the accessibility features in their products, and other online resources like W3 schools, webaim, and W3C offer free guidance, resources, and testing tools. He concluded his remarks emphasizing the importance of accessibility being included in the procurement process and throughout software development lifecycles with subjective testing of performance requirements and product testing by end users who rely on accessibility technology tools that can quickly identify areas of improvement and remediation.

Before moving to public comment, Gill shared with the Workgroup that Innocenti is working to secure a presenter from K-12 and that the OAG is planning to present at the next meeting.

VI. Public Comment on HB 1355

Public comments in support of HB 1355.

The first stakeholder to comment was Bonnie O'Day with the National Federation of the Blind of Virginia (NFBV). O'Day began by expressing appreciation for the work the workgroup does. She stated that in terms of HB 1355 she would like to update the language to harmonize with federal law under the ADA, including revising the definition of accessibility and accessibility conformance report to refer the web content accessibility guidelines (WACG) 2.1 level AA. She explained that these revisions would harmonize the ITAA with regulations under Title II of the ADA. O'Day stated that at the last meeting there was confusion between Section 508, 504, ADA, ITAA, and more and wants to eliminate confusion and duplicative efforts for covered entities. She shared that the access requirements need to be consistent with Title II of the ADA regulations and that the DOJ considered using the Section 508 standard, however WACG 2.1 is more recent and adds important criteria for accessibility. She added that by being consistent with federal law, it will streamline processes for covered entities and eliminate confusion and redundancy. O'Day stated that it would be helpful to have a contact person identified for instances where there is a problem with a state website, and that she has encountered more problems with local government and higher education. She concluded her remarks stating that vendors need to document the extent to which they are, or are not, in compliance.

The second stakeholder to speak was Corey Singleton representing Virginia Higher Education Accessibility Partners (VHEAP) which includes state agencies and K-12, in addition to higher education institutions. Singleton shared that there are approximately sixty-eight public higher education institutions in Virginia and about five of those review accessibility as a part of the procurement process. He noted that entities are constantly purchasing and implementing inaccessible technology which impacts employees and students with disabilities, explaining that this goes beyond websites and includes learning management systems. He explained the efforts being made to work around some of these challenges, such as partnering together and figuring out how to better utilize cooperative purchasing agreements for services like captioning transcription, braille, but people still need to understand the importance of accessibility.

Singleton shared that the updates to Title II of the ADA have changed how we need to approach accessibility and while there is a two year timeline to comply, he does not think most entities are in a position to address those needs in that timeframe due to a lack of staffing and resources. He said less than ten higher education institutions have staff dedicated to dealing with assistive technology and/or accessibility and that most state entities are not well resourced or equipped to address what is coming down in the next couple of years. He shared an example of the learning management system, Canvas, and that there are some higher education institutions that already use Canvas, but each institution transitioning to Canvas should not have to duplicate the same efforts over and over, so doing a collaborative approach in procurement and addressing accessibility upfront it will be easier to address accessibility and with vendor transparency about the

accessibility of their product everyone can have a better understanding of the gaps and issues. He stated that he wants to ensure that vendors provide a timeline on how long it will take to make their product accessible and that it is important for institutions to put together an alternative accessibility plan if someone shows up needing access to a tool that is not accessible.

Comments in opposition to HB 1355.

The first stakeholder to speak was Chris Carey with Metis Services Inc, explaining that his company provides risk management services to local governments and schools in Virginia. He stated that he is not opposed to the bill conceptually, explaining that there are 1,000 local governments in Virginia, including K-12 school districts and that updates and new websites are expected to cost between \$50,000 and \$250,000 each in order to comply over the next thirty-six months. Carey explained that the Title II ADA final ruling that was mentioned earlier requires conformance to that standard for state and local governments, therefore developers are required to develop to that standard and implementing requirements that beyond will increase the cost more. He shared that local governments have been faced with significant increases to staff salaries and still struggle with staff shortages, adding that this will likely be an unfunded mandate which needs to be taken into consideration. He concluded his remarks agreeing that Virginia needs to be in conformance with Title II of the ADA.

The second stakeholder to speak was Tim Wyatt with the Virginia Local Government Information Technology Executives (VaLGITE). He shared that most all of VaLGITE supports the concept of this bill and that the challenge is on the wording and how it will be implemented. Wyatt explained that in his local government there are over three-hundred pieces of software and trying to assess this all with limited resources is not doable in a short amount of time. He concurred with the costs that Carey shared and stressed that each locality uses different programs.

The third stakeholder to speak was JT Kessler with the Virginia School Boards Association. Kessler echoed the comments of previous two speakers emphasizing the concerns around cost and implementation. He added that he does not see a need for Virginia to implement requirements beyond those the federal government require at this time. Kessler stated that schools are required to comply with serving the needs of students through 504 plan or IEP.

The fourth stakeholder to speak was Jeremy Bennett representing the Virginia Association of Counties (VACo). Bennett stated that they are not opposed to the intent of the bill but have concerns regarding implementation and the potential for unfunded mandates for local governments. He encouraged members to look at fiscal impact from session on the bill stating that the fiscal impact will be anywhere from thousands to millions of dollars for local governments.

Peeks asked Bennett and the other presenters who spoke in opposition, if they have recommendations on how to accommodate the costs of implementation, adding that a

response right now is not required, but asked that input be provided on how to make this feasible. Carey responded that the minimum cost for a website is between \$50,000 and \$250,000, and that everyone will have to incur these costs to be compliant with the standard and the fear is that Virginia will add additional requirements on top of the Title II of the ADA requirements, making it even more complicated and expensive. Carey added that schools do not receive money to implement these new requirements and suggested that Virginia conform to Title II of the ADA and once those changes are implemented, Virginia can determine if there are any gaps that need to be addressed.

Saunders addressed the fiscal impact issued during session, stating that the new federal standard was finalized after session and we need to take into account the cost to public bodies for implementing the new standards. He asked for an explanation of which sections of HB 1355 would be in excess of the new federal standards and what those additional costs would be?

The fifth stakeholder to speak was Scott Brabrand, the Executive Director for the Virginia Association of School Superintendents and represents superintendents across 132 school divisions across Virginia. Brabrand shared the following potential solutions to the Workgroup; (i) Virginia Department of Education (VDOE) could post a list of vendors that are in compliance and signal to school divisions which vendors and software are already meeting the standards, (ii) address unfunded mandates by focusing first on funding to implement the existing federal regulation requirements then once implemented identify if there are gaps in what Virginia needs that are not addressed in the federal regulations and allow time to implement with appropriate funding, and (iii) ask JLARC to do an assessment around digital accessibility and help layout a roadmap for school divisions to meet these requirements.

The sixth stakeholder to speak was Josette Bulova with the Virginia Municipal League (VML) and echoed previous comments regarding cost and implementation for equipment, employees, potential litigation, specifically for smaller localities with budgets smaller than the cost of new equipment.

The seventh stakeholder to speak was Jennifer Van Ee with Fairfax County. Van Ee echoed prior comments sharing that Fairfax County is already in compliance with Title II. She explained that this effort has been a priority and the county has invested a lot of money into this effort. Van Ee stated that there are three levels of compliance and this bill would push everyone to meet the highest level which will cost a lot of money and go beyond the current ADA compliance requirements. She noted the broad language in the bill and the challenge to know exactly how to implement and exactly what all will be impacted. She stated, for example, would the bill apply to an internal accounting software, or just public facing software, it's not clear. She concluded her remarks offering potential solutions such as, better defining what this would apply to and to first being the law into compliance with the federal standards before Virginia implements standards beyond those.

VII. Discussion

Saunders stated that he would like to know what happens for entities that are not in compliance with Title II of the ADA by the deadline of April 2026, asking if there are penalties in place or if it only results in potential lawsuits from those with unmet needs.

Saunders also asked, regarding VITA's presentation, for an explanation of what counts as digital content? Public facing websites, applications, other things?

The above questions will be answered at the next meeting.

VIII. Adjournment

Gill adjourned the meeting at 11:18 a.m. and noted that the Workgroup's next meeting is scheduled for August 21, 2024 at 10:00 p.m.

For more information, see the [Workgroup's website](#) or contact that Workgroup's staff at pwg@dgs.virginia.gov.

Appendix C: August 21, 2024, Meeting Materials

This appendix contains the meeting materials from the August 21, 2024, Workgroup meeting.

1. Agenda
2. Approved Meeting Minutes

Public Body Procurement Workgroup

<https://dgs.virginia.gov/dgs/directors-office/pwg/>

Meeting # 3

Tuesday, August 21, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

AGENDA

- I. **Call to Order; Remarks by Chair**
- II. **Approval of Meeting Minutes from the August 6, 2024 Workgroup Meeting**
- III. **Presentation on HB 1404**
Gwendolyn S. Davis, M/WBE Administrator Procurement Office
Portsmouth Public Schools
- IV. **Public Comment on HB 1404**
- V. **Presentations on HB 1355**
Nathan Moberley
Office of the Attorney General
- VI. **Public Comment on HB 1355**
- VII. **Discussion on HB 1355, Preliminary Findings and Recommendations**
- VIII. **Public Comment on SB 492**
- IX. **Discussion on SB 492**
- X. **Discussion**
- XI. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and
University Purchasing Professionals

Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
Senate Finance Committee

House Appropriations Committee
Division of Legislative Services

Staff

Jessica Hendrickson, Director of Policy and Legislative Affairs, DGS
Kimberly Freiburger, Legislative Analyst, DGS

APPROVED Meeting Minutes

Public Body Procurement Workgroup

Meeting # 3

Wednesday, August 21, 2024, 1:00 p.m.

House South Subcommittee Room, 2nd floor

General Assembly Building

201 North 9th Street, Richmond, Virginia 23219

<http://dgs.virginia.gov/dgs/directors-office/pwg/>

The Public Body Procurement Workgroup (the Workgroup) met in-person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting included with approval of the previous meeting minutes, presentation on HB 1404 by Gwendolyn S. Davis, public comment on HB 1404, Workgroup requested presentations on HB 1355, public comment on HB 1355, discussion of preliminary findings and recommendations on HB 1355, public comment and discussion on SB 492, and discussion by the Workgroup members. Materials presented at the meeting are available through the [Workgroup's website](#).

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Verniece Love (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Andrea Peeks (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations Committee), Leslie Haley (Office of the Attorney General), and Rebecca Schultz (Division of Legislative Services).

I. Call to Order; Remarks by Chair

Gill called the meeting to order and moved into the second agenda item.

II. Approval of Meeting Minutes from the August 21, 2024 Workgroup Meeting

Heslinga made a motion to approve the meeting minutes from the August 21, 2024, meeting of the Workgroup. The motion was seconded by Love, and unanimously approved by the Workgroup.

III. Presentation on HB 1404

Gwendolyn Davis, M/WBE Administrator with the Portsmouth Public Schools presented HB 1404 to the Workgroup and asked for support of the bill in its current form, stating that she requested the bill. Davis explained that Senator Louise Lucas requested the first disparity study in 1997 and provided two handouts while informing the Workgroup that HB 1404 codifies executive orders that have been issued, noting the first executive order was issued in 2014 by Governor McAuliffe. Davis stated that with the executive orders, DGS and other agencies stepped up and the numbers went up for women and minority spend from \$75 million to \$3.1 billion spend.

Davis explained that the bill creates the small business procurement enhancement program within the Department of Small Business and Supplier Diversity (DSBSD). She stated that in 2004 MWBE's received only 1.26% of spend and the 2020 disparity study reported that spend should be at 32% instead of 11%, adding that the issue has been studied so much and now they want to see action. Davis explained that during the pandemic business owners in the 757 were impacted and have not recovered so the General Assembly needs to act, stating that the numbers don't lie. She explained that the disparity study is good for about five years and needs to be redone to determine progress.

Davis stated that the bill has been vetted by many administrations and the Office of the Attorney General for years and it is one of the best pieces of legislation, sharing that the numbers are not aspirational, that they are concrete, which is needed to make progress in Virginia. Davis shared that business owners have told her that they had to leave the state because they are not getting the help that they need. She shared that she believes the 42% is achievable. Davis continued her remarks pointing out that the bill assures prompt payment which is important because a lot of business owners say it takes 90-100 days before they receive payment. The bill also addresses the set asides for WM businesses up to 100K for the purchase of all goods, services, and construction but does not include transportation because that has not been studied. Davis stated that the bill requires subcontracting plans, sharing that in procurement when verifying a subcontracting plan a lot of times subcontractors do not know that their names are included on the plan, so that's why the plan is important. The bill allows local governments to establish purchase procedures that don't require competition for a single term contract. Lastly, the bill requires DSBSD to conduct a disparity study every five years because that's the only way we will know if we are doing business with all qualified businesses available.

IV. Public Comment on HB 1404

Public comments in support of HB 1404.

The first stakeholder to comment was Tonya Poindexter of the Northern Virginia Black Chamber of Commerce. Poindexter said that she wants to ensure that her members receive the resources they need and many members say that they go through the procurement process for state contracts and are unable to get through the process and unable to achieve their goals of getting a state contract. She concluded her remarks

expressing support for this bill as it stands and says it will help her members achieve their goals of getting state contracts.

The second stakeholder to comment was Samuel Wiggins, the CEO of Virginia Minority Chambers. Wiggins shared his support for the bill and explained that when a minority business applies for a state contract and sees that their SWaM certification has been reduced to bonus points, that is disheartening. He shared that prior experience is asked for in procurements and if you don't have prior state experience then it drives you to the private sector or federal government because they have better programs.

The third stakeholder to comment was Loranna Justine who expressed support for the bill.

Public comments in opposition.

The first stakeholder to comment was Chris Stone, past chairman for the Hampton Roads Chamber of Commerce. Stone said that they are not against the bill but have concerns about two aspects. The first concern is about codifying the 42%, explaining that executive orders are flexible, and codifying will remove the flexibility requiring the General Assembly to make any adjustments. The second concern is the definition of small business, sharing that the definition has not been updated since 1960 and no one knows where it came from. Stone said the way the definition is written, it allows companies to have up to 250 employees with unlimited revenue while still being classified as a small business. Stone shared that in 2018 DSBSD conducted a study with the Virginia Commonwealth University (VCU) and concluded that the definition of what a small business needs to be updated and made consistent with today's business environment. He shared that in 2020 JLARC conducted a study recommending that the small business definition be changed as well and pointed to page 63 of the report. He concluded his remarks stating that the current definition does not help small businesses and asked for consideration on amending the small business definition.

The second stakeholder to comment was Melissa Ball, a member of the Small Business Commission and a local small business owner. Ball said she supports initiatives that promote and help level the playing field for minority owned, women owned, and small businesses allowing them to participate in the procurement process, adding that it is very important to health of Virginia's economy. Ball stated that the addition of the micro business definition did the opposite of what it was intended to do; by codifying the micro business definition, it removed many of the small businesses from the process and implements a one size fits all approach that only looks at businesses headcount. Ball said that small businesses that are transactional were impacted by the micro business definition, sharing that her business was impacted by the micro business definition which caused her company to be placed the same category as Staples. She added that micro businesses contact her to purchase products from her company then the micro business sells to the Commonwealth, which results in the Commonwealth paying double or triple the cost of the item. Ball shared other commodities that this occurs with, such as police safety items, wildlife trail cams, tools, and maintenance supplies. She concluded her

remarks by agreeing with Davis that the federal government has a lot to offer on this subject and that we should consider the SBA approach to size and numbers for small businesses.

V. Presentations on HB 1355

The Workgroup received a presentation from Nathan Moberley of the Office of the Attorney General (OAG). Moberley shared that the primary concern is ambiguity with respect to the definition of accessibility. He explained that the bill defines accessibility as alignment with federal Section 508 Standards and Section 255 Guidelines adopted pursuant to 29 U.S.C. § 794d and 47 U.S.C. § 255. Moberley explained that the two statutes implement two different standards to accommodate disabilities and both are potentially in conflict with one another and referencing both could make it difficult for covered entities to interpret the standards that apply to them. *(Moberley provided his comments in writing after the meeting. They are available on the PWG website.)*

VI. Public Comment on HB 1355

Public comments in support of HB 1355.

The first stakeholder to comment was Barbara Sunder with the University of Virginia (UVA), representing VHEAP. Sunder shared with the Workgroup that she works with students with disabilities daily, and supports HB 1355. She stated that everyone will be impacted by the Title II ADA update and shared that the bill does two things that Title II does not. First, it addresses outdated state code that has not kept up with the changing technology world. Second, it provides structure and outlines a plan for how public entities can begin the uphill battle towards compliance. She explained that Title II sets the mandate but falls short on providing concrete guidance on how to achieve these goals. HB 1355 gives public entities a framework and allows pushback to vendors who fall short on accessibility.

The second stakeholder to comment was Teri Morgan with the Virginia Board for People with Disabilities. Morgan expressed support for HB 1355, adding that the new ADA rules go into effect April 2026 which gives the opportunity to create a framework for agencies and organizations to demonstrate that Virginia understands the importance of accessibility for all.

The third stakeholder to comment was Ann Flippin with the Autism Society of Central Virginia. Flippin shared that there are gaps and expressed the importance of the bill for their community and ensure that Virginia has accessible technology for all.

There were no comments in opposition, in part support/in part opposition, or neutral.

VII. Discussion on HB 1355, Preliminary Findings and Recommendations

The Workgroup began discussion on the information received regarding HB 1355. Saunders commented that a recommendation could be made to conform the state law to Title II of the ADA requirements for now, and after the implementation of Title II of the ADA in April 2026, the General Assembly can determine if additional changes are needed to Virginia's accessibility standards. Innocenti and Gill both expressed support for the recommendation. Peeks requested that the recommendation include the same entities that are required to adhere to the Title II of the ADA.

Innocenti stated that when bringing the state into compliance with the federal requirements, it would be helpful to determine the priority of compliance and if first the outward facing systems and applications should be addressed. Peeks sought clarification as to whether or not outward facing systems would include systems used by students, to which Innocenti confirmed that students would be included. Gill asked if the federal government defines outward facing systems or if that is a definition that would be new.

Gill asked the Workgroup to consider a recommendation to change the reporting requirements, which currently requires reporting to the Secretary of Administration (SOA), because stakeholders have indicated that the reporting is not being done. She recommended that reporting go to the General Assembly instead of the SOA and that the reporting requirements be expanded to include noncompliant websites and fiscal impact to obtain compliance. Heslinga added that expanding the reporting in that way will make it more impactful as the current reporting pertains only to instances where the accessibility clause is excluded. Dulaney asked who would be responsible for the reporting, to which Gill responded with an example for consideration that SCHEV could report for Higher Education, DOE for local public schools, etc. Saunders replied that it would be good to have an entity be responsible for facilitating the reporting instead of having each covered entity submit individual reports.

Innocenti recommended that lines 131-141 of the bill should be removed to not incorporate consequences as the procurement process provides the Commonwealth the authority to address any nonperformance issues that may arise. Peeks clarified that it is not being removed entirely as it exists elsewhere, it's being removed because the procurement process allows contractors to be held responsible, and, if in breach of contract, the Commonwealth can debar.

Heslinga recommended that the parts of the bill that designate an accessibility coordinator and the grievance procedure be addressed. He shared that most organizations have a designated person to handle ADA matters, and in the engrossed bill, it is not specific about making the accessibility coordinator contact information easily available and is permissive about designating an accessibility coordinator, then on lines 183 a grievance procedure is incorporated. Heslinga stated that the accessibility coordinator information should be easy to identify and readily available, however the surrounding language regarding the grievance procedure should be removed. Tweedy added that it

would be helpful to clarify that when contacting the accessibility coordinator that the barrier to accessibility be provided.

Peeks added that once the general alignment with the federal regulations is made, it would be helpful to know the additional requirements in the bill that do not align with the federal requirements.

Innocenti pointed out to the Workgroup that OAG identified issues with the bill using acquisition and procurement interchangeably and the Workgroup may wish to address that.

Gill did a review of the recommendations the Workgroup offered and directed staff to compile into formal recommendations for review at the next meeting.

VIII. Public Comment on SB 492

No public comment.

IX. Discussion on SB 492

Gill asked the Workgroup if there is any additional information needed to help facilitate the discussion to develop preliminary recommendations for SB 492. Hearing none, Heslinga shared his understanding of the bill, explaining the desire to ensure that child labor and oppressive labor are not used in the production process for electric vehicles. Heslinga stated that there are also other areas in which child labor or oppressive labor may be used, so it should be a policy decision on narrowing it to electric vehicles or applying to all. Gill confirmed his understanding and pointed to existing terms and conditions utilized through the procurement process, such as the drug free workplace term and condition, as an example for ensuring contractors are not using child labor or oppressed labor. Gill directed staff to compile this into a formal recommendation for review at the next meeting.

X. Discussion

No additional discussion.

XI. Adjournment

Gill adjourned the meeting at 2:00 p.m. and noted that the Workgroup's next meeting is scheduled for September 4, 2024 at 10:00 a.m.

For more information, see the [Workgroup's website](#) or contact that Workgroup's staff at pwg@dgs.virginia.gov.

Appendix D: September 4, 2024, Meeting Materials

This appendix contains the meeting materials from the September 4, 2024, Workgroup meeting.

1. Agenda
2. Final Recommendation
3. Approved Meeting Minutes

Public Body Procurement Workgroup

<https://dgs.virginia.gov/dgs/directors-office/pwg/>

Meeting # 4

Wednesday, September 4, 2024, 10:00 a.m.

House South Subcommittee Room, 2nd floor

General Assembly Building

201 North 9th Street, Richmond, Virginia 23219

AGENDA

- I. **Call to Order; Remarks by Chair**
- II. **Approval of Meeting Minutes from the August 21, 2024 Workgroup Meeting**
- III. **Presentation on HB 1524**
The Honorable Alfonso H. Lopez
House of Delegates
- IV. **Public Comment on HB 1524**
- V. **Public Comment on Draft Recommendations on HB 1355**
- VI. **Finalize Recommendations on HB 1355**
- VII. **Public Comment on Draft Recommendations on SB 492**
- VIII. **Finalize Recommendations on SB 492**
- IX. **Public Comment on HB 1404**
- X. **Discussion on HB 1404**
- XI. **Discussion**
- XII. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and
University Purchasing Professionals

Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
Senate Finance Committee

House Appropriations Committee
Division of Legislative Services

Staff

Killeen Wells, Deputy Director of Communications
Jessica Hendrickson, Director of Policy and Legislative Affairs, DGS
Kimberly Freiburger, Legislative Analyst, DGS

Public Body Procurement Workgroup

Final Recommendation for SB 492

Recommendation 1:

The Workgroup recommends that the General Assembly consider amending Chapter 43 of Title 2.2 to explicitly prohibit the use of forced labor and oppressive child labor by requiring that public bodies include in public contracts a provision requiring contractors certify that the contractor and its subcontractors and suppliers have no knowledge of the use of forced labor or oppressive child labor in the performance of their obligations under the contract.

APPROVED Meeting Minutes

Public Body Procurement Workgroup

Meeting # 4

Wednesday, September 4, 2024, 10:00 a.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

<http://dgs.virginia.gov/dgs/directors-office/pwg/>

The Public Body Procurement Workgroup (the Workgroup) met in-person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting included with approval of the previous meeting minutes, presentation on HB 1524 by Delegate Alfonso H. Lopez, public comment on HB 1524, public comment on draft recommendations for HB1355, and public comment and finalization of draft recommendations for SB 492. Materials presented at the meeting are available through the [Workgroup's website](#).

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Verniece Love (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Andrea Peeks (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations Committee), Leslie Allen (Office of the Attorney General), and Rebecca Schultz (Division of Legislative Services).

I. Call to Order; Remarks by Chair

Gill called the meeting to order and moved into the second agenda item.

II. Approval of Meeting Minutes from the August 21, 2024, Workgroup Meeting

Heslinga made a motion to approve the meeting minutes from the August 21, 2024, meeting of the Workgroup. The motion was seconded, and unanimously approved by the Workgroup.

III. Presentation on HB 1524

The Honorable Delegate Alfonso H. Lopez presented HB 1524 to the Workgroup. He began by giving some background, stating that in 1990 SB 101 enacted a tax credit for recycling equipment purchased for fixed facilities. That code was updated in 2015 to state that due to the move towards more economically and sustainable asphalt paving techniques used on the roadway, this expensive equipment was not eligible for tax credits under the current code. Lopez said he introduced HB 1524 during the 2024 Session to create a tax credit for such machinery to alleviate this issue. He explained that the issue goes beyond the machinery to the large stockpiles of Recycled Asphalt Pavement (RAP). Lopez explained these stockpiles keep growing, even though they could be used in asphalt mixes to make a quality product. Lopez said he requested the Workgroup and DEQ to work in conjunction to study his bill ahead and to expand the study to look at all of the challenges associated with using higher levels of RAP.

Lopez then described the issue in more detail, stating that as of August 2024, Virginia contractors have an excess of 5 million tons of RAP stockpiled at facilities. The most concentrated amount is in northern Virginia with 1.9 million tons. Fredericksburg has 358,000 tons, Richmond has 810,000, Hampton Roads has 612,000. He continued, saying that the recycling machinery in question aids in creating what is known as cold mix or CM asphalt, which is combined through a process that does not use heat. These CM mixes (called CIR and CCPR) are more sustainable than conventional mixes because they use fewer carbon emissions and allow for 100% use of RAP.

Lopez explained the limitations of using RAP—cost of machinery, availability of RAP, which is concentrated in mostly urban areas, and Virginia Department of Transportation (VDOT) project requirements. Lopez said VDOT does not allow for the use of CIR or CCPR on most construction/reconstruction projects.

In summary Lopez highlighted the problems: there are big stockpiles of RAP across the commonwealth; there are a lack of VDOT projects allowing the use of RAP in the form of cold mixes, which is inhibiting; and landfills across Virginia do not accept RAP due to the potential for burning. He then proposed some solutions to consider. He suggested new construction, reconstruction and rehabilitation projects must be bid with the option for a base mix asphalt produced at a conventional plant or a cold plant recycling (CCPR) and for rehabilitation and corrective maintenance, projects must be bid with the option for convenient deep mill or with cold in-place recycling (CIR). Lopez furthered there would be a cost savings for contractors and VDOT's procurement process. He also touched on environment benefits due to the reduced need for virgin materials, decreasing the carbon footprint, and the environmental benefit of reduced need for transporting materials to and from a project site.

Lopez pointed out the I-81 southbound project, stating that three sections of that project used recycled material, and it showed a 50%-70% energy reduction and a 40%-70% reductions of global warming potential when compared to conventional pavement. He said the I-64 project showed a 25%-40% energy reduction and a 15%- 40% reduction in global warming potential.

Lopez stated in Virginia we allow 30% to 35% RAP, and Virginia is using 27.8%, but there are a number of other states including Maryland, West Virginia, Tennessee, North Carolina, and Florida, that are allowing higher percentages like 40% in Florida and Georgia. He said Virginia could be catching up to these other states and taking advantage of the benefits. He briefly touched on how there were a significant number of international projects that were taking advantage as well in China, Japan and India.

Lopez said he has been in conversations with different environmental groups to flag issues, but they have not come up with any. He said that he has researched it himself and that the general consensus is that it is safe. The net emissions are less depending on how long the recycled road lasts. He divulged that there was less information on runoff. However, he said, several studies looked at using it unbound as gravel and that it is generally safe. He explained the Federal Highway Administration and most sources think in-place recycling is safe environmentally with possible upside of decreased carbon emissions, having been used since the 1970s. Lopez said he did not find during his research that the leaching of contaminants was a concern, and in fact most studies said that the runoff dissipates in the soil.

Lopez finished his presentation by posing a question; “what it comes down to is do we think it is beneficial enough for a tax credit or some other modification of the legislation from last year.” He addressed the Workgroup saying he wants their help in determining what are the things that are not being thought about that should be.

IV. Public Comment on HB 1524

Below are the public comments in support of HB 1524.

The first stakeholder to comment was Trenton Clark, president of the Virginia Asphalt Association who was in support of the bill. Clark said that he and the association had been working with Delegate Lopez since last year to bring forth this bill. He explained that Virginia Asphalt Association is the nonprofit trade association for Virginia’s paving industry, with over 130 members and over \$3 billion in business a year. He underscored that the reason for this legislation is because the original bills only applied to fixed facilities. He went further saying while we do a lot of advanced recycling, none of that equipment is eligible for a tax credit because it has to be at a fixed facility. Clark said as Virginia is moving forward with a cleaner economy, in-place recycling will be a key part of that because it saves on money and has environmental savings through mixing on site, not having to transport it and the process of not having to use heat. Clark said that the Virginia Asphalt Association has been working with VDOT and the Virginia Transportation Research Council for a decade to increase the amount of RAP in mixes by doing thorough research and pilot projects to make sure a quality product can be provided. He further commented that contractors are drowning in RAP in the urban crescent, and that this bill will address that by letting the asphalt community increase the amount of RAP used in mixes. He said the bill will help Virginia move forward with quality, economical and environmentally friendly mixes.

The second stakeholder to comment was Buzz Powell, a retired professor from Auburn University with a long-standing research relationship with VDOT and technical director of the Asphalt Pavement Alliance. He was in support of the bill. Powell ran the NCAT Test Track at Auburn University which encompasses two thirds of U.S. states. They studied asphalt mixes that were composed of half recycled asphalt with positive results. That research led to many states allowing more recycled milling in their hot mix. Powell stressed that the key to the mix is the glue that binds it all together. He explained that in his research they tested a 30% VDOT mix to a 45% RAP version of that same mix with equivalent performance. From the southeast to as far north as Minnesota, the recycled mixes had positive performance results. He went on to say that there is potential to reduce carbon and cost by a third by using these techniques.

The third stakeholder to comment was Paul Tarsovich, the CEO and executive vice president of Slurry Pavers, who expressed support for the bill. He emphasized that using special recycling equipment increases efficiency and helps the environment. Tarsovich said that this bill is about being good stewards of the planet. He also touched on the economic benefits, explaining there would be more equipment purchases, more employees, more roads at a cheaper cost and a better use of tax dollars. He finished by urging the workgroup to support the bill because it will reduce waste, reduce the use of urgent materials, and it will provide a great product for the commonwealth.

The fourth stakeholder to comment was David Horton with Virginia Paving Company. He expressed that he was in support of HB 1524 because his company operates in Virginia urban areas (Hampton Roads, Fredericksburg and northern Virginia) and they have a substantial amount of RAP. He said it is a valuable product that ends up getting wasted and that we should be putting it back in the roadways. He further stated that his company is pressured and also wants to decrease their carbon footprint and that this bill would help them achieve those goals.

The fifth stakeholder to comment was Gordon Dixon with the Virginia Transportation Construction Alliance who expressed support of the bill as written. He emphasized the amount of research available and the need to have the right people at the table helping to guide and make decisions for this bill. He applauded VDOT for being one the leading users of RAP across the country.

There were no comments in opposition, in part support/in part opposition, or neutral.

V. Public Comment on Draft Recommendations on HB 1355

There were no public comments in support, opposition, in part support, in part opposition or neutral to HB 1355.

VI. Finalize Recommendations on HB 1355

Gill announced that Delegate Tran reached out to the Workgroup and asked that the Workgroup abstain from voting on finalizing the bill today, as Delegate Tran was not able to be in attendance. Gill said the Workgroup will finalize the recommendations and take vote at the next meeting.

Jessica Hendrickson, who is on the Workgroup staff, then read the draft Recommendation 1 of HB 1355 aloud to the Workgroup: “The Workgroup recommends that General Assembly consider amending Chapter 35 of Title 2.2 to require compliance with Title 2 of the American with Disabilities Act for all covered entities and that after the federal deadline of April 2026 to comply with the federal standards then the General Assembly should determine if additional requirements should be added to the code.”

Saunders stated the regulations that have come out from the Department of Justice came through the federal registrar and are not specifically from Title 2. He then asked if the Workgroup needed to reference the CFR in the recommendation so that the bill is in compliance with the most recent regulations. Gill concurred.

Heslinga asked if the Workgroup wanted to reference specific regulations or if the Workgroup should use less specific language such as “in compliance with applicable law, including Title 2 of the American Disabilities Act and associated regulations.”

Gill concurred but said they will come back to this point once the Legislative Services member returns.

Hendrickson read Recommendation 2, “The Workgroup recommends that the General Assembly consider amending Chapter 35 of 2.2 to add public schools to the definition of public entity.”

Saunders asked a clarifying question of if the DOJ regulations include school divisions under those regulations as a covered entity. When hearing yes, he asked for confirmation that the Workgroup’s recommendation would be consistent with amending state statute as we set in Recommendation 1.” Gill replied that he was correct.

Hendrickson then read Recommendation 3, “The Workgroup recommends that General Assembly consider amending Chapter 35 of Title 2.2 to prioritize outward facing systems and applications.”

Heslinga posed a question to Workgroup Chair Gill, asking if the recommendation should be more general and about guidance rather than a specific amendment to the statute because he does not think anyone is questioning that the biggest impacts would be prioritized first. He continued that consistency with federal law is important and asked if the Workgroup were to add a prioritization that is not consistent with federal law if that introduced an inconsistency. He suggested the recommendation say, “The General Assembly charge stakeholder agencies with providing guidance about how to prioritize systems and applications.”

Peaks seconded Heslinga's suggested change, adding that it could be the General Assembly's preference and that she liked the idea of a creation of a policy.

Dulaney asked if the Workgroup should consider any type of an exemption or under \$10,000 threshold for prioritizing in Recommendation 3.

Saunders asked if the federal law requires a dollar threshold.

Gill said that she did not think there was a threshold in the federal law and said she did not think they should include one in this recommendation but deferred to the Workgroup.

Heslinga suggested that a dollar amount could be dealt with in a policy.

Tweedy added that it could clarify in the recommendation that the policies would be consistent with federal law and regulations.

Gill pivoted, asking Shultz, with the Division of Legislative Services, to opine on Recommendation 1, asking if it would be appropriate for the recommendation to say not just being in compliance with Title 2 of the American Disabilities Act, but also including the Code of Federal Regulations and the Federal Rehabilitation Act as appropriate. Shultz confirmed that would be acceptable.

Hendrickson read Recommendation 4, "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to expand the reporting requirements by covered entities on non accessible technology to include 1. identifying non accessible technology, and 2. estimating the fiscal impact of bringing such technology into compliance. Additionally, the General Assembly should consider requiring covered entities to report to their appropriate executive branch agencies such information on an annual basis and that agencies report to the General Assembly rather than the Secretary of Administration. And it provides an example of local public schools to the Department of Education."

There were no comments to Recommendation 4.

Hendrickson read Recommendation 5, "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require that covered entities publish in a clear, easily accessible area on their website who should be contacted when an accessibility barrier is identified.

Peaks asked if it were possible to have a policy where agencies were required to respond or have a process to respond to the contact. She shared drafted language for the

recommendation, “And that agencies develop an internal process to expediently seek remedy to the identified concern.”

Gill said it would be incorporated into the recommendation.

Hendrickson then read Recommendation 6, “The Workgroup recommends that when amending Chapter 35 Title 2.2, the General Assembly not include the following the grievance procedure language which is found in lines 183 to 189 that is found in the engrossed version of the bill because other federal and state laws already provide procedures for remedies or 2, specific contractual penalty or consequence language like found in lines 133-141 of the engrossed bill because public bodies already have the authority to address noncompliance with law or with contract provisions.”

Heslinga asked the Workgroup if procedurally that recommendation should be separated into two recommendations. The Workgroup agreed to draft them into two recommendations.

VII. Public Comment on Draft Recommendations on SB 492

There were no public comments in support, opposition, in part support, in part opposition or neutral to SB 492.

VIII. Finalize Recommendations on SB 492

Hendrickson read the Recommendation 1 for SB 492, “The Workgroup recommends that the General Assembly consider amending Chapter 43 of Title 2.2 explicitly prohibit the use of forced labor and oppressive child labor by requiring that public bodies include in public contracts a provision requiring contractors to agree that the contractor and its subcontractors and suppliers shall not employ or use forced labor or oppressive child labor in the performance of their obligations under the contract.”

Innocenti asked if the qualifier “oppressive” needed to be included. Gill said that it could stay in, and the General Assembly could make the decision to include it or not. Shultz agreed.

Heslinga brought to the Workgroup’s attention if a \$10,000 threshold should be included as part of this recommendation. Gill asked if instead of a dollar threshold, would it be appropriate to include language “in every written solicitation.”

Dulaney pointed out that this is currently included in the general terms and conditions on any state contract.

Shultz added that the Workgroup needs to consider what level of knowledge for which the contractors should be responsible. She suggested language of “no known child labor.”

Staff amended the Recommendation 1 to include Shultz’s language. The final recommendation read as follows: “The Workgroup recommends that the General Assembly consider amending Chapter 43 of Title 2.2 to explicitly prohibit the use of forced labor and oppressive child labor by requiring that public bodies include in public contracts a provision requiring contractors certify that the contractor and its subcontractors and suppliers have no knowledge of the use of forced labor or oppressive child labor in the performance of their obligations under the contract.”

The Workgroup voted in support of SB 492, 7-0.

IX. Public Comment on HB 1404

There were no public comments in support, opposition, in part support, in part opposition or neutral to SB 1404.

X. Discussion on HB 1404

Gill asked the Workgroup members what additional information would be helpful as the group moves into final recommendations for the bill.

Dulaney asked for data on the percentage of SWAM spend per agency over the last 10 years, as well as data on the micro-certification, specifically how many micro businesses have lost certifications due to exceeding the defined threshold since that category was defined in 2014. She also asked for data on the SWAM population and numbers of micro and small businesses.

Heslinga expressed interest in the 2020 JLARC report recommendations and how many of those recommendations have been incorporated into law or are reflected in this bill or are outstanding.

Dulaney asked for a presentation on the current workflow of the small/micro business certification process.

Gill asked for the Department of Small Business and Supplier Diversity and staff to research the definitions of small business.

XI. Discussion

No additional discussion.

XII. Adjournment

Gill adjourned the meeting at 11:13 a.m. and noted that the Workgroup's next meeting is scheduled for September 17, 2024, at 1:00 p.m.

For more information, see the [Workgroup's website](#) or contact that Workgroup's staff at pwg@dgs.virginia.gov.
