COMMONWEALTH *of* VIRGINIA
DEPARTMENT OF GENERAL SERVICES

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December 2, 2024

The Honorable Don Scott
Speaker of the House
Virginia House of Delegates
Post Office Box 406
Richmond, Virginia 23218

Subject: Public Body Procurement Workgroup's Final Report on Study of HB 1524

Dear Speaker Scott:

Please find attached the Department of General Services (DGS) Public Body Procurement Workgroup's final report on its study of HB 1524. During the 2024 General Assembly Session, the House Finance Committee continued HB 1524, introduced by Delegate Alfonso Lopez, to the 2025 General Assembly Session with the intent of further studying the legislation over the interim.

Thank you for giving the Public Body Procurement Workgroup the opportunity to study this bill. Please contact me if you have any questions.

Sincerely,

Banci E. Tewolde
Director

cc: The Honorable Delegate Alfonso H. Lopez
via DelALopez@house.virginia.gov
The Honorable G. Paul Nardo, Clerk of the House of Delegates
via gpnardo@house.virginia.gov

Public Body Procurement Workgroup

Report of the Public Body Procurement Workgroup on the Provision of Tax Credits for Mobile Asphalt Recycling Machinery

November 2024

Table of Contents

I. Introduction

The Public Body Procurement Workgroup (Workgroup) was tasked in a letter from the Honorable Speaker of the House Don Scott with studying HB 1524, patroned by The Honorable Alfonso H. Lopez during the 2024 General Assembly session. HB 1524 establishes a nonrefundable tax credit for taxable years 2025 through 2029, equal to 20% of the purchase price for machinery and equipment used to reclaim, recycle, or reprocess asphalt materials from pavements and roadways. Taxpayers must submit invoices with their tax returns to verify purchase costs. The program has a $3 million annual cap, administered by the Department of Taxation. Unused credits can be carried forward for up to 10 years. In Speaker Scott's letter, he outlined six points in which he directed the Workgroup to study pertaining to HB 1524.

In response to this directive, stakeholders were identified, and five Workgroup meetings were held at which HB 1524 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 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
- Divisions 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. 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. In this case, HB 1524 was referred to the Public Body Procurement Workgroup by the Chair of the House Committee on Rules, Speaker Don Scott.

Overview of HB 1524

As introduced, HB 1524 sought to create a nonrefundable tax credit for the purchase of mobile machinery and equipment used to reclaim, recycle or reprocess existing asphalt materials from pavements and roadways. The HB 1524 tax credit was in the amount equal to 20 percent of the purchase price paid and was for years 2025-2029. HB 1524 required taxpayers to submit invoices with an income tax return verifying the amount of purchase price paid for the mobile machinery and equipment. The bill included a $3 million aggregate annual cap on the number of credits to be distributed, administered by the Department of Taxation. Any credit that was not used for the taxable year in which the recycling machinery was purchased could be carried over for the next 10 years until the total credit amount was used.

The bill, which was patroned by the Honorable Delegate Alfonso H. Lopez, was referred to the House Finance Committee. From there, the bill was assigned to Finance Subcommittee #1 where it was voted to continue to the 2025 Session in the House Finance Committee. The Honorable Don Scott, Speaker of the House, directed the Department of General Services (DGS) Public Body Procurement Workgroup to study the following six topics pertaining to HB 1524.

1. Avenues to provide funding via tax credits or incentives to expedite the acquisition of asphalt recycling machinery and equipment used on project sites by contractors.
2. Increasing the percentage of RAP (Recycled Asphalt Pavement) in asphalt mixes allowed at fixed production facilities above current specification limits while not compromising quality.
3. Cost savings to the Commonwealth of Virginia where in-place asphalt pavement recycling and where asphalt mixes with higher than the current specified levels of RAP percentages are allowed.
4. The environmental impacts of increased RAP percentages compared to existing RAP percentages on asphalt mixes purchased for VDOT contracts.
5. The durability, safety, and longevity of pavement surfaces built with higher percentages of RAP in Virginia and in the United States.
6. Use of repurposed waste materials, such as tires, in asphalt mixes on VDOT projects.

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 Delegate Lopez's office to solicit input regarding stakeholders he would like included in the Workgroup's review of HB 1524. 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 HB 15 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 Alfonso H. Lopez—Virginia House of Delegates
- Kara N. Alley—Spotts Fain Consulting, Government Affairs Specialist
- Jay Ford—Chesapeake Bay Foundation, Virginia Policy Manager
- Patrick Fanning—Chesapeake Bay Foundation, Virginia Staff Attorney
- Trenton Clark—Virginia Asphalt Association, President
- Kristin Collins—Virginia Department of Taxation, Deputy Commissioner
- Brandon Bull—Virginia Department of Environmental Quality, Director of Policy
- Darren Hays II—Spotts Fain Consulting, Government Affairs Assistant

III. Workgroup Meetings on HB 1524

The Workgroup held five meetings during which it discussed HB 1524. At its September 4, 2024, meeting the Honorable Delegate Alfonso H. Lopez presented HB 1524 to the Workgroup. He emphasized the need for which this bill was introduced and asked the Workgroup for input on potential gaps in the proposal and whether a tax credit is warranted. After Delegate Lopez spoke, five stakeholders spoke in support of HB 1524: Trenton Clark, president of the Virginia Asphalt Association; Buzz Powell, retired professor from Auburn University; Paul Tarsovich, CEO and executive vice president of Slurry Pavers; David Horton, Virginia Paving Company; and Gordon Dixon with the Virginia Transportation Construction Alliance. There were no stakeholders who spoke in opposition to HB 1524. The Workgroup did not discuss the bill at the September 4, 2024, meeting.

At the next meeting, held on September 17, 2024, Brandon Bull, the director of the Division of Policy at Virginia Department of Environmental Quality (DEQ), presented on HB 1524 by addressing three of the six questions outlined in Speaker Don Scott's letter to the Workgroup. After the DEQ presentation, Michael Fitch, the director of Virginia Department of Transportation's (VDOT) Research Council, presented on several points in the Speaker's letter regarding the bill. There were two stakeholders in support of HB 1524: Charles Craddock, the president of Old Dominion Highway Contractors Association, and Trenton Clark. No one spoke in opposition. In the Workgroup's discussion on HB 1524 at this meeting, Mike Tweedy, Senate Finance and Appropriations Committee, asked for more details from the Virginia Department of Taxation on the utilization on the current tax credit that Bull talked about during his presentation.

During the October 8 meeting, the Workgroup discussed preliminary findings and recommendations on HB 1524. They workshopped one recommendation and abstained from making recommendations related to the tax credit until after they had heard the presentation from Virginia Department of Taxation, which was scheduled for the following meeting.

At the October 22 meeting, Ryan Cunningham, a senior policy analyst with Virginia Department of Taxation, presented on the Recyclable Materials Processing Equipment Tax Credit. This is a current tax credit after which the HB 1524 proposed tax credit is modeled. After the presentation, Trenton Clark spoke during the public comment period, providing context around a few questions asked by Workgroup members Mike Tweedy and Andrea Peeks. The Workgroup then moved to finalize the recommendation from the previous meeting, with staff member Killeen Wells reading the recommendation aloud and the Workgroup voting in support of it. The members drafted two other recommendations during their discussion and agreed to vote on them at the final meeting.

At the last meeting on November 8, 2024, the Workgroup finalized and voted on two more recommendations for HB 1524. There was no public comment.

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

IV. Summary of Information Presented to the Workgroup

The Honorable Don Scott, Speaker of the House, directed the Department of General Services (DGS) Public Body Procurement Workgroup via letter to study six topics pertaining to HB 1524. The topics for study are:

1. Avenues to provide funding via tax credits or incentives to expedite the acquisition of asphalt recycling machinery and equipment used on project sites by contractors.
2. Increasing the percentage of RAP (Recycled Asphalt Pavement) in asphalt mixes allowed at fixed production facilities above current specification limits while not compromising quality.
3. Cost savings to the Commonwealth of Virginia where in-place asphalt pavement recycling and where asphalt mixes with higher than the current specified levels of RAP percentages are allowed.
4. The environmental impacts of increased RAP percentages compared to existing RAP percentages on asphalt mixes purchased for VDOT contracts.
5. The durability, safety, and longevity of pavement surfaces built with higher percentages of RAP in Virginia and in the United States.
6. Use of repurposed waste materials, such as tires, in asphalt mixes on VDOT projects.

Over the course of five public meetings, the Workgroup members heard four presentations and numerous stakeholder comments surrounding HB 1524.

September 4, 2024, presentation by Delegate Alfonso H. Lopez on HB 1524

At its September 4, 2024, meeting the Honorable Delegate Alfonso H. Lopez presented HB 1524 to the Workgroup. During his comments he explained that a 1990 tax credit for recycling machinery was removed due to changing paving practices, prompting the need for HB 1524 to address large stockpiles of Recycled Asphalt Pavement (RAP). Virginia currently holds over five million tons of RAP, he said, with the largest concentrations in Northern Virginia. This RAP can be used in sustainable cold-mix asphalt, which reduces emissions and allows 100% RAP usage, but current Virginia Department of Transportation (VDOT) policies limit its use on projects.

Delegate Lopez highlighted several challenges: the high cost of recycling machinery, limited access to RAP in urban areas, and restrictive VDOT project requirements. He suggested policy changes to allow RAP-based cold mixes on new construction, rehabilitation, and maintenance projects, citing environmental benefits and potential cost savings. He noted that Virginia lags states like Florida and Georgia, which allow higher RAP usage. Delegate Lopez stated that research supports the environmental safety of RAP recycling, and he closed by asking the Workgroup for input on potential gaps in the proposal and whether a tax credit is warranted.

September 4, 2024, testimony in support of HB 1524

The first stakeholder, Trenton Clark, president of the Virginia Asphalt Association, supported HB 1524, explaining that the bill addresses limitations in existing laws that only apply to fixed facilities, thus excluding advanced recycling equipment. He emphasized that in-place recycling saves money and reduces environmental impact.

Buzz Powell, a retired professor and director at the Asphalt Pavement Alliance, also supported the bill, citing research that shows recycled asphalt performs well, even with high RAP content, and can reduce costs and carbon emissions by a third.

Paul Tarsovich, CEO of Slurry Pavers, highlighted the efficiency and environmental benefits of special recycling equipment, adding that the bill would create economic growth and lower project costs, urging the Workgroup to support it.

David Horton from Virginia Paving Company expressed support, noting that his company has substantial RAP stockpiles in urban Virginia. He emphasized the need to reuse RAP to reduce waste and lower their carbon footprint.

Gordon Dixon from the Virginia Transportation Construction Alliance also supported the bill, praising VDOT's leadership in RAP usage and emphasizing the importance of involving informed stakeholders.

September 17, 2024, Virginia Department of Environmental Quality presentation

Brandon Bull, Director of Policy at the Virginia Department of Environmental Quality (DEQ), presented feedback on HB 1524, noting that while DEQ has no official position, he was pleased to share technical insights based on Speaker Don Scott's letter, which asked the Workgroup, in consultation with DEQ, to explore six specific questions about the bill. Bull focused on three questions relevant to DEQ.

The first question concerned funding mechanisms like tax credits for acquiring asphalt recycling machinery. Bull explained that DEQ oversees several programs that may offer ideas, including an income tax credit for recycling equipment located at fixed facilities, a property tax exemption for certified recycling equipment, a tax credit for waste motor oil burning equipment, and a tax exemption for pollution control equipment. He noted that while these programs support recycling, they only apply to equipment located on fixed sites, excluding the mobile equipment addressed in HB 1524.

Bull then discussed Speaker Scott's fourth question regarding environmental impacts of using higher RAP percentages. He explained that increasing RAP usage would reduce stockpiles across the state and minimize emissions associated with transporting RAP back to plants. Reduced heating in the RAP mixing process could lower energy usage, leading to environmental benefits, though DEQ currently lacks the data needed to quantify these reductions.

Finally, Bull addressed the sixth question about reusing waste materials like tires in asphalt. He highlighted DEQ's tire waste program, which incentivizes beneficial reuse of waste tires, including for rubberized asphalt. Annually, Virginia generates around 6.5 million waste tires, with recent data indicating that only 3.8 million are repurposed, suggesting a growing waste tire issue.

Bull concluded his presentation, noting that DEQ is available to assist with further research if needed, and no questions were posed by the Workgroup.

September 17, 2024, Virginia Department of Transportation presentation on RAP

Dr. Michael Fitch, the director of Virginia Department of Transportation's Research Council, began his presentation stating he would not speak directly to the language in HB 1524, but he said he would address several points in the Speaker's letter regarding the bill. Fitch emphasized four main points:

1. **VDOT's Leadership in RAP Usage**: VDOT is a national leader in using high RAP, with its 2022 average RAP usage at 29% for the top and middle asphalt layers (near the 30% maximum) and 33% for the bottom layer (near the 35% maximum). This is significantly higher than the national average of 22%. Virginia ranks fourth nationally in RAP usage, behind Florida, Idaho, and Georgia. Fitch noted that VDOT's high usage is achieved with caution, as Virginia's DOT is the third largest in the country, managing $800 million in pavement maintenance each year, making any changes impactful at a large scale.

2. **Extensive RAP Research**: VDOT has conducted 25 recycling studies, implemented 27 recommendations, and published over 40 articles on RAP. VDOT's ongoing research focuses on both in-place RAP recycling (recycling directly on roadways) and fixed-facility recycling. The agency is currently studying 12 high RAP sites (over 30% RAP)

for long-term performance and durability. Of these, three sites were established in 2013-2014 and the remaining in 2019-2020, with completion expected in 2026. Fitch underscored that any move to increase RAP levels must be backed by specifications based on the mix's performance.

3. **Environmental Impacts of RAP**: Fitch discussed the environmental benefits of high RAP, such as reduced stockpiling and decreased emissions due to lower transport and heating requirements. VDOT recently received a national grant to document the environmental impact of 30% RAP usage, as data on this topic is limited. The agency has also applied for a second federal grant to gather benchmarking data on even higher RAP percentages, with a particular focus on ensuring that the longevity of high RAP materials supports the anticipated environmental benefits.

4. **Use of Other Recycled Materials**: VDOT is exploring the use of additional waste materials, such as ground tire rubber and recycled plastics, in asphalt. Due to the high cost and complexity of traditional ground tire rubber processes, VDOT is evaluating a less costly dry process. VDOT has also recently installed test sections of asphalt with recycled plastics and is monitoring their performance.

Fitch ended by saying VDOT is pushing the envelope in research and is leading a national study to quantify the impacts of high RAP. Gill questioned if the 12 research sites were for in-place RAP or all happening at a facility. Fitch clarified that the 12 research sites are all fixed-facility projects, though VDOT also monitors over 400 miles of in-place recycling projects. When asked about the timeline for results from the environmental impact grant, Fitch confirmed that results are expected by 2026. He also affirmed that VDOT's ongoing research on high RAP is progressing on schedule and aims to provide additional data soon.

September 17, 2024, testimony in support of HB 1524

Charles Craddock, vice president of Superior Paving Central Division and president of the Old Dominion Highway Contractors Association, spoke in support of HB 1524. He said that incentives given to companies for equipment purchases for recycling would be well received. He continued that Virginia is behind the times in the percentages of RAP allowed in asphalt mixes. He stressed the research done by NCAT showed that increased percentages of RAP in asphalt mixes can be done without reducing the quality of the product. He went on to say that his company put down higher percentage RAP mixes for testing at Virginia Tech and that both the 40% RAP mix and the 60% RAP mix have performed well. He said the Old Dominion Highway Contractors Association openly welcomes a partnership with VDOT and other regulating agencies to do what is right for the taxpayer and most importantly for the environment.

Trenton Clarke, president of the Virginia Asphalt Association, spoke in support of HB 1524. He said that the Virginia percentage of RAP is pretty much in line with North Carolina. He said last week that six contractors were asked by VDOT about running 40-50% RAP, and he said the contractors had some concerns about the specification because it is different from what we have been working with. It will be a company-by-company basis on how they move forward. He said he applauds VDOT reaching out. He stressed that companies need the assurance that there will be continued need for higher RAP to invest in the time and equipment to produce it. Clarke said that the Virginia Asphalt Association is interested in both the monetary and environmental savings related to this bill. He said it was time to implement based on what we know, which has been studied for the past two decades.

October 22, 2024, Department of Taxation Presentation on HB 1524

Ryan Cunningham, senior policy analyst with the Virginia Department of Taxation, provided an overview of the Recyclable Materials Processing Equipment Tax Credit. This nonrefundable credit applies to individual and corporate income taxes and offers a 20% credit on the purchase price of machinery and equipment used predominantly at manufacturing facilities to process or produce items from recyclable materials or for advanced recycling. The credit has specific limitations: it cannot exceed 40% of the taxpayer's income tax liability, has an annual aggregate cap of $2 million, and includes a 10-year carryover period for unused credits. Cunningham shared a history of the tax credit, noting that annual requests consistently exceed the aggregate cap, indicating high demand.

Cunningham then compared this current tax credit with the proposed HB 1524 tax credit. While both credits have similar structures, HB 1524 specifically includes equipment for reclaiming, recycling, or reprocessing asphalt for roadways, a category previously excluded because such equipment is typically mobile and not located on a fixed site. HB 1524 also proposes an increased annual cap of $3 million, compared to the current $2 million. Additionally, HB 1524 is designed to be effective from 2025 to 2030, while the current credit is set to expire in 2025 unless renewed.

Mike Tweedy from the Senate Finance and Appropriations Committee inquired whether there had been any recent legislation to extend the current tax credit. Cunningham confirmed there had not been. When asked whether the current credit primarily supports asphalt recycling, Cunningham clarified that it predominantly aids traditional recycling materials, not asphalt, with 15-25 taxpayers currently claiming it.

Andrea Peeks from the House Appropriations Committee asked if there was any overlap between the two credits. Cunningham responded that while the existing credit may support some asphalt recycling, it is limited to equipment at fixed sites, unlike the mobile equipment intended to qualify under HB 1524. Peeks also inquired about the projected demand for the HB 1524 credit and the rationale for its higher threshold. Cunningham acknowledged the limited data on demand and suggested that industry stakeholders might offer insight into the anticipated usage and associated costs, which could help determine the appropriate cap for the HB 1524 tax credit.

October 22, 2024, testimony in support of HB 1524

Trenton Clark with Virginia Asphalt Association spoke to provide some context around Tweedy and Peeks' questions. He said the reason for this legislation is because as of now, the equipment must exist at a fixed facility, it can't be mobile. So, a lot of the equipment that would be covered under HB 1524, is work that would be done out on the project site. He explained further, saying that as the industry moves to a more sustainable economy, a lot of our work is being done out in the field, so recycling is happening in the field. This cuts down on the trucking costs. He then addressed Peeks's second question about cost, saying that most of this equipment cost between ¾ of a $1 million and $3 million+.

Peeks asked if it would work to expand the existing bill to include the type of work covered as onsite work too. Clark said there was some discussion around that last year, and it was decided to keep them separate because of the different natures of the bills.

Clark finished by thanking the Workgroup and saying he thinks this will have a positive impact on the public.

7. Workgroup Findings and Recommendations

At the Workgroup's sixth meeting on October 8, 2024, the Workgroup began a discussion based on the input they had received regarding HB 1524. Chair Sandra Gill asked the members to pause on drafting any recommendations associated with funding or tax credits until after the Department of Taxation's presentation at the October 22 meeting.

Gill summarized the Workgroup's discussions, noting presentations from Delegate Lopez, industry leaders, DEQ, and VDOT, which highlighted VDOT's national leadership in using Recycled Asphalt Pavement (RAP). She recapped that VDOT currently allows up to 35% RAP in asphalt and uses an average of 29%, with 12 pilot projects underway to study RAP in relation to the items outlined in the delegate's letter.

Gill proposed a recommendation for the General Assembly to request a VDOT report on these studies in 2026, aligning with the expected completion date of the pilot projects. Lisa Pride from VDOT confirmed this timeline. Heslinga expressed support for the recommendation, as it would not disrupt VDOT's current initiatives and would provide useful insights upon completion.

The Workgroup members agreed to move forward with the following recommendation and vote on it at the next meeting:

> "The General Assembly could consider requiring VDOT to report out in 2026 regarding the 12 pilot programs which address the five items addressed in the Speaker's letter to include but not limited to: the use of recycled asphalt mixes, the cost savings to the commonwealth, if applicable, where in-place asphalt recycling occurred, the environmental impacts, and the durability, safety and longevity of pavement services built with higher percentage of RAP."

At the seventh meeting on October 22, 2024, Gill stated that the recommendations for HB 1524 would be finalized today, and she brought attention to the drafted recommendation in the meeting materials, saying the Workgroup would vote on that recommendation today. Lisa Pride, VDOT, had one addition to the drafted recommendation, adding in December of 2026 to the language. The Workgroup then voted on the recommendation. Please see below for the final wording and vote of the recommendation.

Gill asked the Workgroup for any additional recommendations for discussion, particularly regarding item one from Speaker Scott's letter, which had been paused pending input from the Department of Taxation. Joshua Heslinga proposed a two-part recommendation:

1. The General Assembly should consider continuing the current tax credit until VDOT completes its pilot studies in 2026 and reports on the findings.
2. Any changes or expansions to the tax credit should align with the outcomes of the pilot studies.

Gill questioned the Department of Taxation about funding availability for extending the tax credit. Ryan Cunningham with Virginia Department of Taxation clarified that revenue projections already assume the continuation of expiring tax credits, including this one. Verniece Love raised a concern that extending the tax credit would not resolve the issue of ineligible off-site recycling activities. Gill confirmed this and clarified that Heslinga's second recommendation seeks to address this gap.

Heslinga explained the rationale behind his recommendations: (1) to bridge the gap between the tax credit's expiration and VDOT's 2026 findings, given its long-standing history, and (2) to ensure decisions are informed by the pilot study data. Gill concluded by asking if the Workgroup wanted to vote on the recommendations now or at the next meeting. Heslinga suggested postponing the vote, and Gill agreed to revisit the recommendations at the next meeting.

At the last meeting held on November 6, 2024, Sandra Gill directed the Workgroup members' attention to the drafted recommendations provided in their meeting materials packets and asked staff member Killeen Wells to read the first of the two recommendations drafted.

Wells read draft Recommendation 2 for HB 1524 aloud: "The Workgroup recommends that the General Assembly may consider continuing the current tax credit until VDOT completes its pending pilot studies in 2026 and reports on those pilot studies." Gill asked if there were any edits or changes to the recommendation and Heslinga pointed out that the "may" was superfluous. Staff struck the "may" wording from the recommendation.

Wells read draft Recommendation 3 for HB 1524 aloud: "The Workgroup recommends that the General Assembly consider implementing any altered or expanded tax credit language, including RAP in-place equipment, to coincide with any changes that may be made after the completion of the pilot studies."

The Workgroup voted on the two additional recommendations, and Gill thanked everyone in the Workgroup and all stakeholders who presented on HB 1524. Below are the three recommendations for HB 1524.

Recommendation 1: "The Workgroup recommends that the General Assembly consider a section 1 bill to require the Virginia Department of Transportation (VDOT) to report in December of 2026 on the analysis and study of their pilot projects that have already begun as part of continuous improvement efforts. VDOT's Transportation Research Council is leading these 12 pilot projects at various locations throughout the state to determine the performance of mixes with RAP contents higher than currently allowed in VDOT specifications." The Workgroup voted in support of Recommendation 1 for HB 1524, 6-0 with DPB abstaining.

Recommendation 2: "The Workgroup recommends that the General Assembly consider continuing the current tax credit until VDOT completes its pending pilot studies in 2026 and reports on those pilot studies." The Workgroup voted in support of Recommendation 2 for HB 1524, 6-0 with DPB absent.

Recommendation 3: "The Workgroup recommends that the General Assembly consider implementing any altered or expanded tax credit language, including RAP in-place equipment, to coincide with any changes that may be made after the completion of the pilot studies." The Workgroup voted in support of Recommendation 3 for HB 1524, 6-0 with DPB absent.

8. 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 HB 1524

This appendix contains the letter from the Speaker of the House, the Honorable Don Scott, directing the Workgroup to study six topics as they pertain to HB 1524 and the text of HB 1524.

COMMONWEALTH OF VIRGINIA

HOUSE OF DELEGATES
RICHMOND

DON SCOTT
SPEAKER
Speaker's Room
State Capitol
Post Office Box 406
Richmond, Virginia 23218

COMMITTEE ASSIGNMENTS:
RULES (CHAIR)

May 23, 2024

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

RE: House Bill 1524

Dear Mr. Bisogno:

During the 2024 General Assembly Session, the House Finance Committee continued House Bill 1524 to the 2025 General Assembly Session with the intent of further studying the legislation over the interim.

House Bill 1524, introduced by Delegate Alfonso Lopez, sought to provide tax credits for mobile asphalt recycling machinery and equipment. In consultation with the Public Body Procurement Workgroup and the Department of Environmental Quality, I ask that the Department of General Services study the following:

1. Avenues to provide funding via tax credits or incentives to expedite the acquisition of asphalt recycling machinery and equipment used on project sites by contractors.
2. Increasing the percentage of RAP (Recycled Asphalt Pavement) in asphalt mixes allowed at fixed production facilities above current specification limits while not compromising quality.
3. Cost savings to the Commonwealth where in-place asphalt pavement recycling and where asphalt mixes with higher than the current specified levels of RAP percentages are allowed.
4. The environmental impacts of increased RAP percentages compared to existing RAP percentages on asphalt mixes purchased for VDOT contracts.
5. The durability, safety, and longevity of pavement surfaces built with higher percentages of RAP in Virginia and in the United States.
6. Use of repurposed waste materials, such as tires, in asphalt mixes on VDOT projects.

Please complete your work and advise me and the patron of the results of your review prior to the 2025 General Assembly Session.

Sincerely,

Don Scott
Speaker of the House

Cc: The Honorable Alfonso Lopez
The Honorable Vivian Watts
Cathy Hooe, House Committee Operations

COMMONWEALTH OF VIRGINIA

HOUSE OF DELEGATES
RICHMOND

DON SCOTT
SPEAKER
Speaker's Room
State Capitol
Post Office Box 406
Richmond, Virginia 23218

COMMITTEE ASSIGNMENTS:
RULES (CHAIR)

Britt Olwine, Division of Legislative Services
Troy Hatcher, Division of Legislative Services

2024 SESSION

HB 1524 Mobile machinery and equipment; tax credit for purchase.

Introduced by: **Alfonso H. Lopez** | **all patrons** ... **notes** | **add to my profiles**

SUMMARY AS INTRODUCED:

Tax credit for purchase of mobile machinery and equipment used by road contractors for processing recyclable aspha materials on pavements and roadways. Creates a nonrefundable tax credit for taxable years 2025 through 2029 in an amou equal to 20 percent of the purchase price paid, as defined in the bill, during the taxable year for machinery and equipment use to reclaim, recycle, or reprocess existing asphalt materials from pavements and roadways. The bill requires a taxpayer to subı invoices with an income tax return verifying the amount of purchase price paid for such machinery and equipment. The bill provides a $3 million aggregate annual cap on the number of credits to be distributed, as administered by the Department of Taxation. Any credit not used for the taxable year in which the purchasing price for recycling machinery was paid may be carried over for the next 10 years until the total credit amount is used.

FULL TEXT

01/19/24 House: Presented and ordered printed 24102343D pdf | impact statement

HISTORY

01/19/24 House: Presented and ordered printed 24102343D

01/19/24 House: Referred to Committee on Finance

02/02/24 House: Assigned Finance sub: Subcommittee #1

02/05/24 House: Subcommittee recommends continuing to 2025 by voice vote

02/07/24 House: Continued to 2025 in Finance by voice vote

24102343D

HOUSE BILL NO. 1524

Offered January 19, 2024

A BILL to amend the Code of Virginia by adding a section numbered 58.1-439.7:1, relating to tax credit for purchase of mobile machinery and equipment used by road contractors for processing recyclable asphalt materials on pavements and roadways.

Patron—Lopez

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 58.1-439.7:1 as follows:

§ 58.1-439.7:1. Tax credit for purchase of mobile machinery and equipment used by road contractors for processing recyclable asphalt materials on pavements and roadways.

A. 1. For taxable years beginning on and after January 1, 2025, but before January 1, 2030, a taxpayer shall be allowed a credit against the tax imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) in an amount equal to 20 percent of the purchase price paid during the taxable year for machinery and equipment used to reclaim, recycle, or reprocess existing asphalt materials from pavements and roadways in the Commonwealth. For purposes of determining "purchase price paid" under this section, the taxpayer may use the original total capitalized cost of such machinery and equipment, less capitalized interest.

2. The Department of Environmental Quality shall certify that such machinery and equipment are integral to the recycling process before the taxpayer shall be allowed the tax credit under this section. The taxpayer shall also submit purchase receipts and invoices as may be necessary to confirm the taxpayer's statement of purchase price paid with the income tax return to verify the amount of purchase price paid for the recycling machinery and equipment.

B. The total credit allowed under this section in any taxable year shall not exceed 40 percent of the Virginia income tax liability of such taxpayer.

C. Any tax credit not used for the taxable year in which the purchase price on recycling machinery and equipment was paid may be carried over for credit against the taxpayer's income taxes in the 10 succeeding taxable years until the total credit amount is used.

D. The Department shall administer the tax credits under this section. Beginning with credits allowable for taxable year 2025, in no case shall the Department issue more than $3 million in tax credits pursuant to this section in any fiscal year of the Commonwealth. A taxpayer shall not be allowed to claim any tax credit unless it has applied to the Department of Environmental Quality for certification as described in subdivision A 2 and the Department of Environmental Quality has issued a written certification stating that the machinery and equipment purchased are integral to the recycling process. If the amount of tax credits approved under this section by the Department for any taxable year exceeds $3 million, the Department shall apportion the credits by dividing $3 million by the total amount of tax credits so approved to determine the percentage of otherwise allowed tax credits each taxpayer shall receive.

E. In the event a corporation converts to a partnership, limited liability company, or electing small business corporation (S corporation), such business entity shall be entitled to any unused credits of the corporation. Credits earned by a partnership, limited liability company, or electing small business corporation (S corporation), or a predecessor corporation entitled to such credits, shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

Appendix B: September 4, 2024, Meeting Materials

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

1. Agenda
2. Meeting Materials
    a. Department of Taxation 2024 Fiscal Impact Statement
    b. HB 1524 Stakeholder Comments
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 Freiberger, Legislative Analyst, DGS

DEPARTMENT OF TAXATION
2024 Fiscal Impact Statement

1. **Patron** Alfonso H. Lopez

3. **Committee** House Finance

4. **Title** Asphalt Recycling Tax Credit

2. **Bill Number** HB 1524
House of Origin:
X **Introduced**
___ **Substitute**
___ **Engrossed**

Second House:
___ **In Committee**
___ **Substitute**
___ **Enrolled**

5. **Summary/Purpose:**

This bill would establish a nonrefundable tax credit in an amount equal to twenty percent of the purchase price paid for machinery and equipment used to reclaim, recycle, or reprocess existing asphalt materials from pavements and roadways in the Commonwealth of Virginia. No more than $3 million in credit could be issued each fiscal year.

This bill would be effective for taxable years beginning on and after January 1, 2025, but before January 1, 2030.

6. **Budget amendment necessary:** Yes.
Item(s): 257 and 258, Department of Taxation

7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)
7a. Expenditure Impact:

Fiscal Year	*Dollars*	*Positions*	*Fund*
2024-25	$239,430	1	GF
2025-26	$515,960	1	GF
2026-27	$69,640	1	GF
2027-28	$69,640	1	GF
2028-29	$69,640	1	GF
2029-30	$69,640	1	GF

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation estimates that the provisions of this bill would result in administrative costs of $239,430 in FY 2025, $515,960 in FY 2026, and $69,640 in each Fiscal Year thereafter. These costs include legal, tax processing, and technology costs associated with establishing this new credit. These costs also include the addition of one new full-time employee to monitor the credit and handle the Department's responsibilities under this credit.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact of up to $3 million beginning in Fiscal Year 2026 and each year thereafter. The impact is unknown because it is unknown how many taxpayers would apply for the credit, nor is the cost of qualifying equipment taxpayers claiming the credit would choose to purchase known. However, because this credit would be subject to an annual credit cap of $3 million, the revenue impact of this bill would not exceed $3 million per fiscal year.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Environmental Quality

10. Technical amendment necessary: No.

11. Other comments:

Recyclable Material Processing Equipment Tax Credit

The Recyclable Materials Processing Equipment Tax Credit is an individual and corporate income tax credit for purchases made during the taxable year of machinery and equipment used predominantly in or on the premises of manufacturing facilities or plant units that manufacture, process, compound or produce items of tangible personal property from recyclable materials within Virginia for sale.

The purchase of machinery and equipment used in advanced recycling is also eligible for the credit. "Advanced recycling" is defined as the operation of a single-stream or multi-stream recycling plants that convert waste materials into new materials for resale by processing them and breaking them down into their raw constituents. This includes the operation of a materials recovery facility or materials reclamation facility that receives, separates, and prepares recyclable materials for sale to end-user manufactures

The amount of the credit is equal to 20 percent of a taxpayer's qualifying expenditures and cannot exceed 40 percent of its Virginia income tax liability for the year. The credit is nonrefundable and nontransferable. Credits in excess of a taxpayer's income tax liability may be carried forward for up to 10 taxable years. The credit is subject to an annual credit cap of $2 million.

DEQ is tasked with certifying eligible recycling equipment. The Department is responsible for administering eligible tax credits for certified equipment.

Property Tax Exemptions for Recycling Equipment, Facilities, and Devices.

Local governments in Virginia have the option of exempting or partially exempting DEQ certified recycling facilities and equipment from property taxes. Once certified, the machinery and equipment may qualify for a local tax exemption based on current value assessment by taxing authority.

Proposed Legislation

This bill would create a nonrefundable tax credit in an amount equal to twenty percent of the purchase price paid during the taxable year for machinery and equipment used to reclaim, recycle, or reprocess existing asphalt materials from pavements and roadways in the Commonwealth of Virginia. In determining the "purchase price paid," the taxpayer would use the original total capitalized cost of the machinery and equipment minus the capitalized interest.

The amount of the credit allowed in any taxable year would be limited to no more than forty percent of the taxpayer's Virginia income tax liability, and any excess credit could be carried forward for up to ten years. The total amount of aggregate credits issued would be limited to no more than $3 million per fiscal year. If the amount of tax credits approved exceeds $3 million, the credit would be prorated.

The taxpayer would be required to apply with DEQ to certify that the machinery and equipment are integral to the recycling process before the taxpayer would be allowed the tax credit. The bill would require a taxpayer to submit invoices with their income tax return verifying the amount of purchase price paid for machinery and equipment.

If a corporation converts to a partnership, limited liability company, or electing small business (S corporation), the business entity would be entitled to any unused credits. Credits earned by a partnership, limited liability company, or electing small business corporation, or a predecessor corporation entitled to credits, would be required to allocate such credits to the individual partners, members, or shareholders in proportion to their ownership or interest.

This bill would be effective for taxable years beginning on and after January 1, 2025, but before January 1, 2030.

cc : Secretary of Finance

Date: 2/4/2024 ALS
HB1524F161

ARRA™
Asphalt Recycling & Reclaiming Association

August 30, 2024

Dear Public Procurement Working Group:

The Asphalt Recycling & Reclaiming Association (ARRA) is submitting this letter to the Public Procurement Working Group in support of Virginia HB 1524, The Asphalt Recycling Tax Credit, which sought to provide tax credits for mobile asphalt recycling machinery and equipment. The bill was introduced and supported by Delegate Lopez.

As background ARRA, established in 1976, is the association for asphalt recycling and reclaiming. Members include contractors, material and equipment suppliers, engineers and agencies involved in all aspects of asphalt recycling and reclaiming. ARRA works closely with public transportation agencies providing research and training and developing widely used specifications on asphalt recycling and reclaiming.

Flexible in-place asphalt recycling and reclamation treatments grind up and utilize a roadway's existing materials by processing them on-site and adding in asphalt, emulsified asphalt, rejuvenators or other additives. Treatments include the recycling techniques of hot in-place recycling (HIR), cold in-place recycling (CIR), cold central plant recycling (CCPR) and full depth reclamation (FDR). Documented performance of these innovative treatments show recycling processes are as good or better than conventional construction techniques and used at a lower financial and environmental cost. Not only is Virginia taking advantage of these cost effective and sustainable treatments but VDOT is leading the way in teaching other agencies how these treatments can work on interstate routes.

In-place recycling and reclaiming processes offer rapid roadway construction, safety, durability and resiliency; lower greenhouse gas (GHG) emissions; save natural resources; reduce energy consumption; increase landfill diversion and reduce construction times. Importantly they also result in a safer roadway surface for the driver while enhancing a roadway's lifecycle cost and performance. Because these technologies reuse existing materials, the need for new virgin aggregate sources is minimized, significantly slowing the depletion of these resources. Reusing this existing aggregate material also minimizes the need to dispose of the existing roadway material. With much of the highway system built in the 1960's and 1970's and currently in need of major rehabilitation or reconstruction, the value of reusing material and having minimal waste to absorb into our communities cannot be underestimated.

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The conditions for utilizing in-place recycling are not present on every road, however, every Virginia transportation agency and their engineers should have the option of utilizing this valuable tool IF they determine it can be an effective solution for the project in question. HB 1524 will substantially increase the likelihood that contractors invest in this capital intensive equipment increasing the likelihood of access to this beneficial approach to road rehabilitation and preservation.

Using in-place recycling and reclaiming techniques, has the advantage of greatly decreasing the number of trucks hauling material to and from job sites. Typically, shipping just two 25-ton truckloads of recycling additives to and from a project reduces the need for 240 18-ton truckloads of material hauled in and out. Fewer trucks on the road reduces Vehicle Miles Travel (VMT), emissions, roadway damage, congestion and the risk of construction-related accidents.

Recycling and reclaiming techniques can also enhance Emergency Response preparedness in Virginia, as damaged highways in disaster areas can be fixed/repaired in a relatively quick time with little to no imported materials.

Below are a few specific examples of Agency savings using in-place recycling:

-Here in Virginia, a 3.7- mile portion of I-81 that carries more than 7,000 trucks per day was rehabilitated using a combination of CIR, CCPR, and FDR. After 10 years, the project still has IRI values less than 50 inches per mile and rut depths less than 0.1 inches.

VDOT contracted to rebuild a portion of I-64 using CCPR and FDR. In addition to reconstructing the existing lanes, new lanes were added using these pavement recycling techniques. Several benefits were outlined in the online document, FHWA-HIF-19-078. These include:

- Cost savings of approximately $15 million
- 25-45% energy reductions
- 15-40% global warming potential reductions
- Use of one million tons of recycled materials (including 360,000 tons of stockpiled RAP)

- Since 2009, Los Angeles County has performed 18 CIR projects, 12 CCPR projects and 19 subgrade reclamation projects. They estimate that when combined with their pavement preservation treatments, the benefits from these projects included:

- $39.9 million in cost savings when compared to traditional methods
- 345,000 CY of material was diverted from local landfills
- Reduction of energy consumption by 151,995,000 kWh
-

- Reduction of GHG emissions by 43,700 metric tons (the equivalent of removing 9,256 passenger vehicles from the roads annually)

According to a report by TRP.NET published in May, a total of 46% of Virginia's major roads are in poor or mediocre condition. Driving on deteriorated roads costs Virginia motorists $4.3 billion a year – $736 per driver – in the form of additional repairs, accelerated vehicle depreciation, and increased fuel consumption and tire wear. Mobile pavement recycling projects can provide notable financial savings as well as environmental and safety benefits to communities in Virginia. Virginia transportation agency professionals deserve to have the tools in their toolbox which will enable them to improve Virginia's roads cost effectively and environmentally sustainably for state tax payers and drivers. Virginia HB 1524, which provides tax benefits for mobile asphalt recycling machinery and equipment will incentivize companies around the state to invest in this capital intensive equipment and expand mobile asphalt recycling in Virginia thereby making a valuable tool available which will improve Virginia roads at a lower cost and less impact to the environment, to transportation agency professionals around the state.

Sincerely,

Rick Church

Rick Church
Executive Director
ARRA
rickc@cmservices.com

S CROSS & ASSOCIATES, LLC

Bella Vista, Arkansas
August 29, 2024

Dear Public Procurement Working Group

As the recently retired Technical Director of the Asphalt Recycling & Reclaiming Association (ARRA), I am submitting this letter to the Public Procurement Working Group in support of Virginia HB 1524, the Asphalt Recycling Tax Credit, which seeks to provide tax credits for mobile asphalt recycling machinery and equipment.

ARRA's mobile asphalt recycling techniques include hot in-place recycling (HIR), cold in-place recycling (CIR), cold central plant recycling (CCPR) and full depth reclamation (FDR). Information on each of the techniques, including the equipment, processes, cost effectiveness, sustainability and performance can be found on the Pavement Preservation & Recycling Alliance's web page www.roadresource.org.

All of ARRA's techniques utilize in-place or existing materials, typically recycling 90 to 100% of the materials in-place, greatly reducing trucking and the need for new materials. Using existing materials that an agency has bought and paid for reduces costs and can greatly reduce the environmental impact. There is much work currently ongoing on sustainability of highway construction materials. One of the seminal papers is *The Environmental Road of the Future* by COLAS which shows the impact of in-place recycling on energy consumption and greenhouse gas production.

Some of the best work on performance of these treatments comes from the Virginia DOT and the Virginia Transportation Research Council (VTRC). Well documented cost and performance data is available from existing VTRC reports on I-81 and I-65 and well as performance studies from their test sections on the NCAT Test Track.

With all of the performance, cost and environmental benefits, the in-place recycling techniques are still underutilized in parts of the USA. FHWA has performed several studies in the past to determine why. Survey responses listed lack of available contractors as a major factor. The lack of contractors is the result of limited projects and the initial cost of the required equipment. Virginia HB 1524, which provides tax benefits for mobile asphalt recycling machinery and equipment, will incentivize companies to invest in this capital intensive equipment and expand mobile asphalt recycling in Virginia allowing agencies to do more with less funds while reducing the environmental impact of highway maintenance and reconstruction.

Sincerely,

Stephen A Cross

Stephen A, Cross, PhD, PE

NATIONAL ASPHALT PAVEMENT ASSOCIATION

August 30, 2024

Virginia's Public Procurement Working Group

Subject: HB1524 and Associated Legislative Study

Dear Members of the Public Procurement Working Group,

The asphalt pavement industry has a long history of innovating to reduce the environmental impact of its products, such as creating asphalt mix at reduced temperatures, increasing the recycled content of mixtures to reduce reliance on virgin materials, and partnering with ENERGY STAR® to find ways to reduce energy consumption at asphalt plants. We are always striving for efficiency, which results in lower emissions, lower cost, and lower environmental impact. Additionally, and importantly, asphalt pavement – vis-à-vis reclaimed asphalt pavement (RAP) – is the most recycled material in the country and is, in fact, 100% recyclable.

As the only organization representing asphalt mix producers, contractors, suppliers, and affiliated companies at the federal level, the National Asphalt Pavement Association (NAPA) counts more than 1,100 companies among its membership, including nearly three dozen headquartered in the Commonwealth of Virginia. NAPA works closely with state organizations like the Virginia Asphalt Association (VAA) to identify, innovate, and implement best practices in paving and pavement design, while advocating for sound policy, reliable funding, and financial and environmental stewardship in road building and maintenance. Since 2014, when NAPA began developing the first environmental product declaration (EPD) program for asphalt mixtures, NAPA, VAA, and our members continued to advance our efforts toward sustainability. For example, in 2022 alone, we updated the EPD program, became an ENERGY STAR Partner, and launched an industry-wide initiative called The Road Forward with the goal of creating net zero carbon asphalt pavements by 2050. We are actively partnering with FHWA, EPA, GSA, and academia to work toward this goal.

NAPA supports the tax credits proposed in HB 1524 for mobile asphalt plants used to increase the use of RAP at the job site. Recycling asphalt pavements using mobile plants at the job site has several economical benefits like reducing the amount of virgin materials needed for reconstruction, saving the taxpayers money by reusing high-quality materials the Commonwealth has already paid for. Environmentally, recycling through the use of mobile plants at the job site greatly reduces truck

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traffic and associated emissions. FHWA documented the economic and environmental savings in the report, "In-Place and Central Plant Recycling of Asphalt Pavements in Virginia" (FHWA-HIF-19-078).

NAPA supports the legislative study associated with HB 1524 to investigate a methodology to increase the amount of RAP and use of ground tire rubber (GTR) in new asphalt mixes. VDOT and others are already researching GTR as another tool for producing high-performing asphalt mixes.

The responsible use of RAP to produce quality asphalt mixes while providing economic and environmental savings is well researched and documented. For every 1 percent increase in RAP incorporated into a new mix, fewer virgin asphalt binder and aggregates are needed, eliminating the equivalent of annual emissions from 30,000 passenger vehicles. With today's commodity prices, a ton of RAP is worth approximately $50-$60. Put simply, the allowance of higher percentages of RAP in asphalt mixes has numerous economic and environmental benefits to the citizens of Virginia.

Further demonstrating this impact, NAPA's annual RAP use survey for FHWA shows that Virginia contractors report an average RAP use in VDOT mixes of approximately 27 percent, making Virginia one of the top 10 states in terms of RAP use. However, the specifications in Virginia limit RAP use, which could be higher. Other states and countries have RAP allowances up to 100 percent. By employing proper production techniques, use of softer asphalt binders and other mix modifiers, and an unwavering requirement for quality proved through sound engineering, testing, and performance data, Virginia could be the leader in responsible, effective RAP use for the nation while driving down the carbon footprint of the surface transportation system.

Thank you for the opportunity to comment and provide support for this legislation and legislative study.

Sincerely,

J. Richard Willis, Ph.D.
Vice President, Engineering, Research, & Technology
National Asphalt Pavement Association

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 know 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 Tittle 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 poised 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 contractorscertify 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.

Appendix C: September 17, 2024, Meeting Materials

This appendix contains the meeting materials from the September 17, 2024, Workgroup meeting.

1. Agenda
2. Meeting Materials
   a. HB 1524 Stakeholder Comments
   b. VDOT Presentation
3. Approved Meeting Minutes

Public Body Procurement Workgroup

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

Meeting # 5
Tuesday, September 17, 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 September 4, 2024, Workgroup Meeting**

III. **Public Comment on HB1355**

IV. **Finalize Recommendations on HB 1355**

V. **Presentation on HB 1524**
Brandon Bull, Director of Division of Policy
Department of Environmental Quality

VI. **Presentation on HB 1524**
Michael Fitch, Ph.D., Director, Virginia Transportation Research Council
Virginia Department of Transportation

VII. **Public Comment on HB 1524**

VIII. **Discussion on HB 1524**

IX. **Presentation on HB 1404**
Verniece Love, Deputy Director
Department of Small Business and Supplier Diversity

X. **Public Comment on 1404**

XI. **Discussion on HB 1404**

XII. **Discussion**

XIII. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Small Business and Supplier Diversity
Virginia Department of Transportation

Department of Planning and Budget
Virginia Association of State Colleges and University Purchasing Professionals
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, DGS
Kimberly Freiberger, Legislative Analyst, DGS

September 16, 2024
Public Procurement Working Group
Richmond, Virginia

Dear Public Procurement Working Group,

My name is Benjamin Bowers and I am the McCartney-Chase Distinguished Highway Engineering Associate Professor at Auburn University (AU) in the Department of Civil and Environmental Engineering. I am also closely affiliated with the National Center for Asphalt Technology (NCAT) at Auburn University. Prior to joining AU I worked as a Research Scientist at the Virginia Transportation Research Council for 4.5 years. My research and education efforts are in sustainable and resilient pavement materials and systems.

Pavement recycling is a method of constructing new roadways and reconstructing existing roadways in a cost effective, long-life, and low-carbon manner. Specifically, Full Depth Reclamation (FDR), Cold In-place Recycling (CIR), and Cold Central Plant Recycling (CCPR) of asphalt mixtures provide a proven way to recycle 100 percent of existing pavement materials and provide excellent performance when accompanied by thoughtfully implemented specifications and best practices, such as those put forth by VDOT.

VDOT sponsored research at the NCAT Pavement Test Track in 2012 that used Full Depth Reclamation (FDR) and Cold Central Plant Recycled (CCPR) asphalt mixtures, like the sections built on Virginia's Interstate 81 project outside of Staunton, VA. The test section containing both techniques was described in NCAT Report 21-03 as being a perpetual, long-life pavement. Economic comparisons showed that the test sections containing CCPR or CCPR and FDR saved between 11% and 31% compared to the full-depth asphalt sections used in the comparison. The information gathered from these test sections was then implemented on Interstate 64 near Williamsburg, VA. The recycling option was the competitive low bid compared to full-depth asphalt and concrete alternatives. Further, a study conducted by the Federal Highway Administration (FHWA-HIF-19-078) performed an environmental assessment of the FDR, CIR, and CCPR project on Interstate 81 in Staunton, VA as well as the FDR and CCPR project on Interstate 64 project in Williamsburg, VA. The I-81 project reduced energy consumption by roughly 50 to 70 percent and carbon dioxide equivalents (CO_2e) reductions of between 40 to 70 percent compared to a fictitious equivalent conventional pavement structure. The Interstate 64 project showed 25 to 45 percent energy reductions and 15 to 40 percent CO_2e reductions compared to a fictitious equivalent conventional pavement structure. The data provided on Virginia pavements and materials supports the economic and environmental savings associated with these tools to achieve long-life pavements, strengthening Virginia's pavement network and providing opportunities for future growth.

VDOT has active research efforts in higher reclaimed asphalt pavement (RAP) and use of other recycled materials such as recycled tire rubber in asphalt surface mixtures. Pairing the findings of these efforts with the development and implementation of approaches that further lead to ensuring performance, such as Balanced Mix Design of asphalt mixes, is important to the implementation of these materials. These approaches can lead to lower economic and environmental costs for asphalt surface mixes.

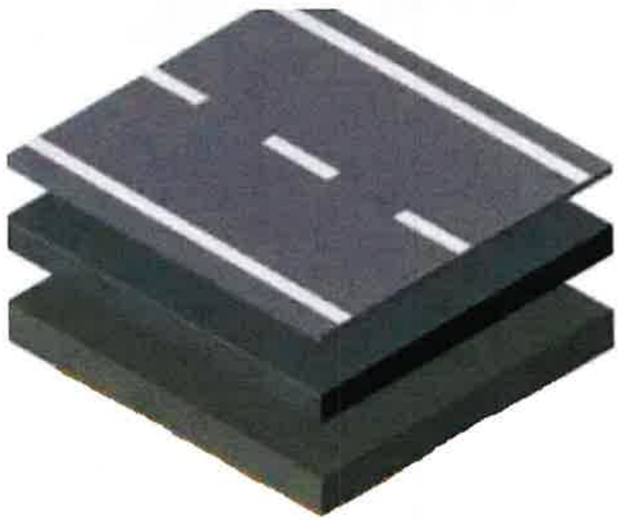
Thank you for the opportunity to provide comment.

Benjamin F. Bowers, Ph.D., P.E.
McCartney-Chase Highway Engineering Distinguished Associate Professor
Auburn University Department of Civil and Environmental Engineering
Phone: 334-844-6235 Email: bfbowers@auburn.edu

VDOT

Virginia Department of Transportation

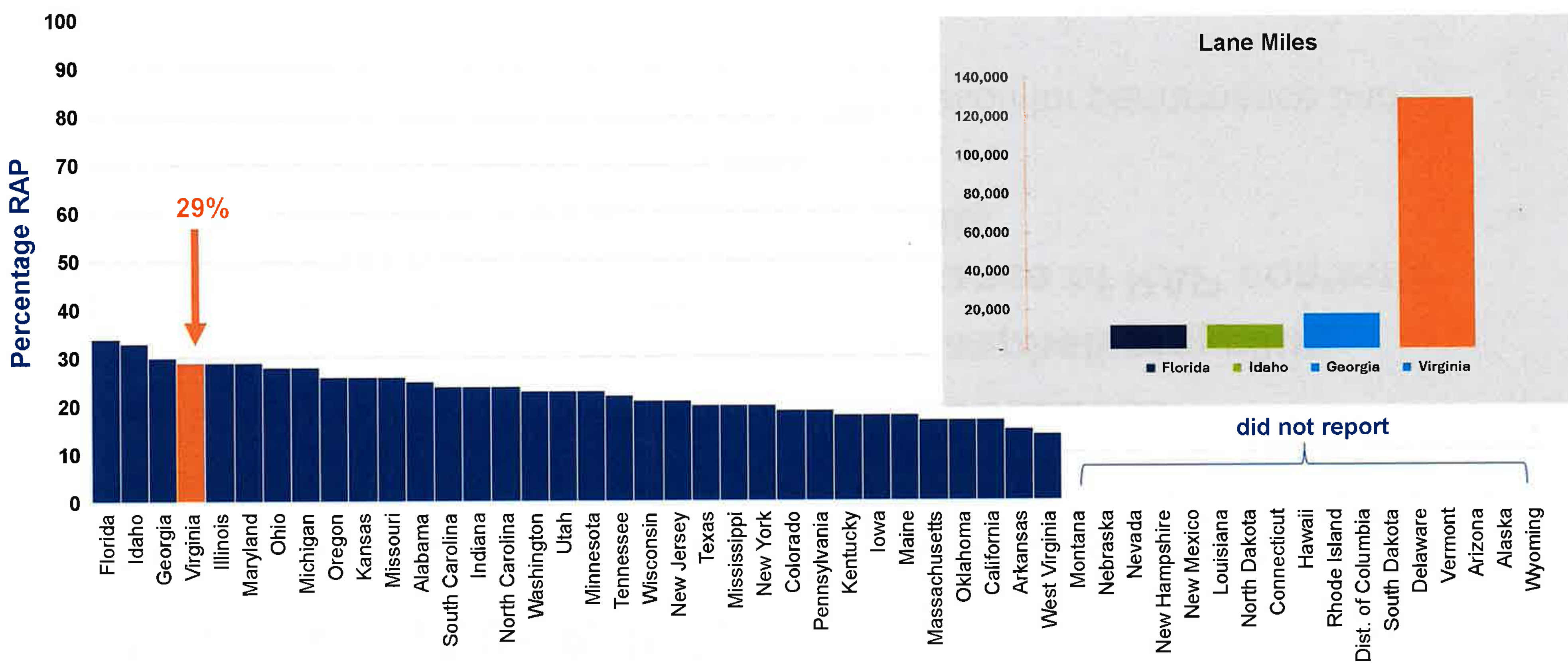
VDOT'S RAP USAGE



Asphalt Pavement Layer	VDOT Spec, Maximum (%)	Industry Usage	
		VDOT Average (%)	National Average (%)
Top	30	29[a]	22[b]
Middle	30	29[a]	
Bottom	35	33[a]	

Notes: (a) Based on 2022 data; (b) National Asphalt Pavement Association, *Industry Survey on Recycled Materials 2022 Information Series 138*, published March 2024.

AVERAGE ESTIMATED RAP USAGE BY STATE



Source: National Asphalt Pavement Association, *Industry Survey on Recycled Materials 2022 Information Series 138*, published March 2024.

ENVIRONMENTAL IMPACTS OF INCREASED RAP USE

- **Global warming potential (GWP) unknown for higher RAP mixes**
  - Environmental impacts of production changes due to the use of high RAP mixes are currently unknown
- **VDOT Participating in FHWA Climate Challenge Grant Program focused on:**
  - Environmental Product Declarations (EPDs) and GWP
  - Life Cycle Assessments (LCAs)

TAKEAWAY POINTS:

- VDOT is a national leader in the use of high RAP
- VDOT is a national leader in RAP research
- VDOT is leading a study quantifying the environmental impacts of high RAP pavements
- VDOT is evaluating the use of other recycled materials (Ground Tire Rubber, Recycled Plastics)

DRAFT Meeting Minutes

Public Body Procurement Workgroup

Meeting # 5

Wednesday, September 17, 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, public comment from the Honorable Delegate Kathy Tran on HB 1355, followed by the Workgroup voting in support of finalizing the seven recommendations to HB 1355, presentations by Virginia Department of Transportation (VDOT) and Virginia Department of Environmental Quality (DEQ) on HB 1524, public comment on HB 1524, discussion on HB 1524, a presentation by Virginia Department of Small Business and Supplier Diversity (DSBSD) on HB 1404 and discussion on HB 1404. 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), Michael Jay (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 September 4, 2024, Workgroup Meeting

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

III. Public Comment on HB 1355

The Honorable Delegate Kathy Tran spoke to her patron bill, HB 1355. She expressed her sincere appreciation to the Workgroup for the time and attention they have given HB 1355 and emphasized the importance of increasing access to government services and educational programs to all Virginia citizens. She stated she believes the recommendations the Workgroup have made will help make progress for individuals with disabilities, working towards the day when every Virginian is able to access resources and services available to them.

She then shared thoughts on the Workgroup's drafted recommendations. She said on Recommendation 1, the new WCAG version 2.1AA was not released until after the 2024 Legislative Session adjourned, so she very much appreciated the time that the Workgroup took to assess those new federal regulations and how they will affect Virginia. She stated that she agreed with the Workgroup that the new ADA Title 2 standards should be incorporated as well.

On Recommendation 2, she thanked the Workgroup for specifically recommending that the General Assembly add local school districts as a covered entity, because, she said, it will help ensure students with disabilities are able to fully participate in their classrooms. She added it will reduce the time teachers have to devote to making separate lesson plans for children with disabilities.

For Recommendation 6, Tran said she accepted it but focused her attention to the inclusion of Recommendation 5, which she said is important, as well as a feedback loop so that the public and covered entities can work together to address inaccessible technologies that remain. Tran added that Recommendation 5 would augment that collaboration.

Tran mentioned an Accessibility Conformance Report that was not in the Workgroup's recommendations, saying she hopes the General Assembly and the Workgroup will recognize this report is integral to the bill because it gives a roadmap to compliance.

Lastly, she suggested that higher education entities be included in the same implementation timeline as state governments. She said in her conversations with higher education, they relayed that's the timeline they were looking at nationally as well. She then thanked the Workgroup once more for their efforts.

IV. Finalize Recommendations on HB 1355

Gill asked Workgroup staff member Killeen Wells to read each recommendation aloud, after which the Workgroup would vote on each recommendation.

Wells read Recommendation 1 of HB 1355 aloud to the Workgroup: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require compliance with the Americans with Disabilities Act (ADA), the Code of Federal Regulations and the Federal Rehabilitation Act as appropriate 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." The Workgroup voted in support of Recommendation 1 of HB 1355, 7-0.

Wells read Recommendation 2 of HB 1355 aloud: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to add public schools to the definition of covered entity." The Workgroup voted in support of Recommendation 2 of HB 1355, 7-0.

Wells read Recommendation 3 of HB 1355 aloud: "The Workgroup recommends that the General Assembly charge stakeholder agencies with providing guidance on how to prioritize systems and applications." The Workgroup voted in support of Recommendation 3, 6-0, with DPB abstaining.

Wells read Recommendation 4 of HB 1355 aloud: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to expanding the reporting requirements by covered entities on non-accessible technology to include: (i) identifying non-accessible technology, and (ii) estimating the fiscal impact to bring such technology into compliance. Additionally, the General Assembly should consider requiring covered entities to report to their appropriate executive branch agency, such information on an annual basis to, and that agency report to the General Assembly, rather than to the Secretary of Administration. (like Local Public Schools to the Department of Education)." Allen commented that there is an extra "to" in this language that was not in the minutes. Wells struck the "to" and the comma following. The Workgroup voted in support of Recommendation 4, 6-0, with DPB abstaining.

Wells read Recommendation 5 of HB 1355 aloud: "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 its website who should be contacted when an accessibility barrier is identified and that agencies are required to develop procedures to review the identified concern and respond to individual(s) submitting the concern." The Workgroup voted in support of Recommendation 5, 7-0.

Wells read Recommendation 6 of HB 1355 aloud: "The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include grievance procedure language (like that found in lines 183-189 of the engrossed version of HB 1355), because other applicable federal and state laws already provide procedures for remedies." Heslinga suggested, to align with Delegate Tran's comments, that the following language be added to the end of this recommendation: "and this is addressed in Recommendation 5." The final wording for Recommendation 6 was read as follows: The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include grievance procedure language (like that found in lines 183-189 of the engrossed version of HB 1355), because other applicable federal and state laws already provide procedures for remedies, and this is addressed by Recommendation 5." The Workgroup voted in support of Recommendation 6, 6-0, with DPB abstaining.

Wells read Recommendation 7 of HB 1355 as follows: "The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include specific contractual penalty or consequence language like that found in lines 133-141 of the engrossed version of HB 1355 because public bodies already have the authority to address noncompliance with law or with contract provisions." The Workgroup voted in support of Recommendation 7, 6-0, with DPB abstaining.

V. Presentation on HB 1524

Brandon Bull, the director of the Division of Policy at the Virginia Department of Environmental Quality presented on HB 1524. He stated that DEQ has no position on the bill since it is an executive branch agency, but said he was pleased to share some technical observations and feedback with the Workgroup.

Bull referenced Speaker Don Scott's letter asking the Workgroup, in consultation with DEQ, to look at HB 1524 and look at six specific questions. Bull said three of those questions are beyond the scope of DEQ's purview, but his presentation focuses on the other three questions.

He then listed the questions from Speaker Scott's letter, the first of which pertained to avenues to provide funding via tax credits/incentives to expedite the acquisition of asphalt recycling machinery and equipment on project sites by contractors. The fourth question was about the environmental impacts of increased Recycled Asphalt Pavement (RAP) percentages, and the sixth question was about the use of repurposed waste material, such as tires, in asphalt.

Bull addressed question one by explaining that DEQ is involved in existing programs that provide tax credits or tax-exempt status to encourage the use of recycling or using pollution control equipment. He talked about four programs that DEQ thought might be helpful in generating ideas about what to consider when looking at HB 1524. He said DEQ administers an income tax credit for recycling equipment, and that HB 1524 was modeled after this program. This existing program is pursuant to section 58.1-439.7 of the Code of Virginia, and it provides, "an income tax credit for the purchase of machinery or equipment used predominantly in or on the premises of manufacturing facilities or plant units which manufacture, process, compound or produce items of tangible personal property from recyclable materials within the commonwealth and for machinery and equipment used predominantly in or on the premises of facilities that are predominantly engaged in advanced recycling." Bull furthered that this existing exemption is focused on machinery and equipment that is located on site at the facilities, so it does not include the mobile equipment talked about in HB 1524. This income tax credit can be claimed by either an individual or corporate income tax and is set at 20% of the original total capitalized cost. Bull said DEQ's role in administering the program is to certify that the equipment is being used for what it is claimed.

The second program Bull talked about is a property tax exemption for recycling equipment facilities and devices. He said this program is pursuant to section 58.1-3661 of the Code of Virginia. In this program, local governments have the option to partially or fully exempt DEQ certified recycling facilities and equipment from property taxes. Bull explained that again, this exemption is focused on things at a fixed location. DEQ administers this program through a form to apply for certification, and once certified, then depending on their locality they could qualify for a local tax exemption, explained Bull.

The third program Bull mentioned is a tax credit for waste motor oil burning equipment. Pursuant to section 58.1-439.10 of the Code of Virginia, the tax credit is for 50% of the purchase price paid for equipment used exclusively for burning waste motor oil at a facility that accepts waste motor oil from the public. Bull went on to explain that unlike the other tax credit program he had mentioned, this credit must be used in the year the purchase was made. DEQ once again certifies that the equipment qualifies for the tax credit.

The fourth program that Bull shared with the Workgroup is a tax exemption for pollution control equipment in facilities. Pursuant to section 58.1-3660 of the Code of Virginia, pollution control equipment is a separate class of property and is exempt from state and local taxation and retail sales and use taxes also do not apply, he said.

He summarized DEQ administers four existing programs, some are for tax credits, and some are for tax exemptions, and in all of the programs, DEQ's role is to certify the equipment meets the definition or eligibility.

Bull then turned to Speaker Scott's fourth question in the letter about the environmental impacts of increased RAP percentages. He said he understands that much of the discussion at the previous Workgroup meeting was about increasing percentages of RAP. He went on to say that doing this would decrease the amount of RAP that is stockpiled throughout the commonwealth and put it to beneficial use. Bull said that without more information, DEQ could not quantify how much RAP would be reduced. He continued that based on DEQ's understanding of what is proposed, it would eliminate the need to transport RAP back to a plant, which would in turn reduce emissions. However, he said DEQ could not quantify that based on the information they have now. He addressed the discussion at the last meeting about using less heat to mix the RAP, saying again that less heat would lead to less energy and that would lead to environmental benefits, but without more detailed information, DEQ is not prepared to quantify that either.

He then turned to question six from Speaker Scott's letter, and stated DEQ currently manages a tire waste user reimbursement program. The purpose of the program, Bull said, is to provide incentives in the form of direct payments to people who beneficially reuse waste tires. He further stated that the program does include reimbursement for making a product such as rubberized asphalt using waste tires. Bull explained that the number of waste tires generated in the Commonwealth of Virginia per year is about 6.5 million, using data from the past five years. And of that number, 5.9 million have been reused over the past five years; however, that data is skewed. From the past two years, which is more accurate data, Virginia has been reusing only 3.8 million of the 6.5 million waste tires. So, there is a waste tire issue in the Commonwealth of Virginia, he concluded.

There were no questions, and with that Bull concluded his presentation.

VI. Presentation on HB 1524

The Workgroup then turned their attention to the next presentation on HB 1524. Dr. Michael Fitch, the director of Virginia Department of Transportation's Research Council, began his presentation stating he would not speak directly to the language in HB 1524, but he said he would address several points in the Speaker's letter regarding the bill.

Fitch presented four takeaway points:

- VDOT is a national leader in the use of high RAP.
- VDOT is a national leader in RAP research.
- VDOT is leading a study quantifying the environmental impacts of high RAP pavement.
- VDOT is evaluating the use of other recycled material (ground tire rubber, recycled plastics.)

Fitch spent some time on VDOT's current use of RAP. There are three different layers in the asphalt structure that are measured for RAP. For pavement year 2022, the average usage was 29% for the top layer (maximum possible was 30%), 29% for the second layer (maximum was 30%) and 33% for the bottom layer (maximum was 35%). So VDOT was just under the maximum amount they could use. To put it in perspective, Fitch said that the national average was at 22%, and VDOT was well above that percentage in usage. Fitch then showed where Virginia fell as far as usage between states.

According to VDOT data, the commonwealth came in fourth in terms of total RAP usage for 2022. The three states in front of Virginia were Florida, Idaho and Georgia. Fitch noted that VDOT is cautious to make changes to the RAP mix percentages because Virginia is the third largest state DOT in the country. The other two larger—North Carolina and Texas—have lower RAP usage than Virginia. Fitch divulged that VDOT spends $800 million a year in pavement maintenance, so the implications are large.

Fitch moved on to his next point explaining how VDOT is a leader in RAP research. He said VDOT has completed 25 recycling reports, and it has implemented 27 recommendations from those reports. Fitch continued that VDOT researchers have authored over 40 journal articles and received numerous grants for the continued research of recycling.

Fitch made a point to distinguish the difference between in-place RAP and mixing RAP at a fixed facility. He said they have done research on in-place recycling and those results have been positive, but they need to be separated out from the results of fixed facility recycling.

Fitch said there are 12 sites where VDOT is researching high RAP content (above 30%) for durability and performance. Three of those sites were paved in 2013/2014, and the rest were paved in 2019/2020. They expect to complete most of the research in 2026. He finished this point saying that to use higher percentages of RAP, VDOT must have developed a specification based on the performance of the mix.

Fitch touched on environmental impacts of RAP stating that there are significant environmental benefits. He added that it is not as clear what the benefits of a high RAP at a fixed facility would be due to the transportation involved. VDOT has received a national grant to begin documenting the environmental benefits from 30% RAP, said Fitch, and the reason VDOT was given that grant is because this information is not widely known. He said VDOT has put in for another federal grant where, if they received it, they could start benchmarking data on even higher percentages of RAP. He stressed the importance of the longevity of the higher RAP material, so as not to take away from the environmental benefits.

The last subject Fitch touched on was the use of other waste products (ground tire rubber and recycled plastics). VDOT is monitoring ground tire rubber in asphalt. Fitch said it is an expensive and difficult process, and so they are looking at a dry process that would be less expensive. VDOT has also recently put down test areas of recycled plastics and are monitoring those as an additive to asphalt pavement.

Fitch ended by saying VDOT is pushing the envelope in research and is leading a national study to quantify the impacts of high RAP.

Gill questioned if the 12 research sites were for in-place RAP or all happening at a facility. Fitch responded that they were all from a facility. He made the distinction that VDOT does have over 400 miles of in-place recycling projects that they have put down and are monitoring as well. Gill then asked when the results from the climate grant are due. Fitch said he believed in 2026. Heslinga asked for confirmation that VDOT is researching the ask for higher RAP and is doing so under agreed upon timelines and will have more data soon. Fitch confirmed that was correct.

VII. Public Comment on HB 1524

Charles Craddock, vice president of Superior Paving Central Division and president of the Old Dominion Highway Contractors Association, spoke in support of HB 1524. He said that incentives given to companies for equipment purchases for recycling would be well received. He continued that Virginia is behind the times in the percentages of RAP allowed in asphalt mixes. He stressed the research done by NCAT showed that increased percentages of RAP in asphalt mixes can be done without reducing the quality of the product. He went on to say that his company put down higher percentage RAP mixes for testing at Virginia Tech and that both the 40% RAP mix and the 60% RAP mix have performed well. He said the Old Dominion Highway Contractors Association openly welcomes a partnership with VDOT and other regulating agencies to do what is right for the taxpayer and most importantly for the environment.

Trenton Clarke, president of the Virginia Asphalt Association, spoke in support of HB 1524. He said that the Virginia percentage of RAP is pretty much in line with North Carolina. He said last week that six contractors were asked by VDOT about running 40-50% RAP, and he said the contractors had some concerns about the specification because it is different from what we have been working with. It will be a company-by-company basis on how they move forward. He said he applauds VDOT reaching out. He stressed that companies need the assurance that there will be continued need for higher RAP to invest in the time and equipment to produce it. Clarke said that the Virginia Asphalt Association is interested in both the monetary and environmental savings related to this bill. He said it was time to implement based on what we know, which has been studied for the past two decades.

No one spoke in opposition or took a neutral stance to the bill. This concluded public comment for HB 1524.

VIII. Discussion on HB 1524

Gill asked if there was any additional information that the Workgroup would like staff to gather for the next meeting in relation to HB 1524. The staff will talk about potential recommendations at the next meeting, she said.

Mike Tweedy noted the existing similar tax credit and asked if the Workgroup could get further details from the Virginia Department of Tax on if that credit was fully utilized.

IX. Presentation on HB 1404

Verniece Love, deputy director of the Department of Small Business and Supplier Diversity, presented on HB 1404. Love gave a quick overview of SBSD, including its mission to help small businesses start and grow in Virginia.

She then responded to a question asked in the last meeting, saying that as of June 30, 2024, over 14,000 businesses were certified SWAM businesses. She added that it is important to note that businesses can be certified in multiple categories, so the numbers may overlap, and the total number of businesses will not match exactly. She delved further, explaining that of those SWAM businesses, a little over 13,000 are small businesses, just over 8,000 are certified micro-businesses, just over 6,200 are minority-owned businesses, approximately 5,600 women-owned businesses, 3,300 disadvantaged business enterprises and 810 service disabled, veteran-owned businesses.

Love then walked the Workgroup through the DSBSD electronic certification portal for businesses, which was launched in 2017. The processing time can take up to 60 business days she said, and the certification is valid for five years. Recertification is a streamlined process where previous business documentation is saved for ease of recertification.

She then talked about the three disparity studies that have been done—in 2002, 2009 and 2020. DSBSD currently has an RFP out in eVA for another disparity study which will be completed in 2026. The three disparity studies show an increase in women and minority-owned businesses with only 1.27% percent of businesses falling into this category in the 2002 study, 2.82% in the 2009 study and 13.3% in the 2020 study.

Love gave an analysis of the dollar amounts spent, showing that in FY2023, the Commonwealth of Virginia spent over $2.9 billion with SWAM businesses. Of that $2.9 billion, she said, approximately 6.06% was spent with women-owned businesses and 6.77% was spent with minority-owned businesses. She drew attention to the chart that showed over the past three years, the spend with SWAM businesses has increased.

Next, Love provided information about the 42% goal, in which she is referring to the goal for the Commonwealth of Virginia to spend 42% of total annual spending with SWAM businesses that was increased from 40% in 2014 by Governor McAuliffe. In the past 10 years, the closest the Commonwealth of Virginia has gotten to the goal occurred in 2016, at 36.9%, and in 2015 at 36.42%. The other years, the percentage has fluctuated around the low 30th percentile range.

Love mentioned that she provided a copy of the JLARC study recommendations and pointed out DSBSD's response to recommendation four of that study, saying that the agency pointed out that it is hard for agencies to meet the 42% goal, based on contracting and spend. She said DSBSD recommended the SWAM goal be based on each specific agency based on each agency's spend and contracting habits, rather than an overall goal for the commonwealth.

Love relayed the small business definition as defined in the Code of Virginia: " 'Small business' means a business that is at least 51 percent independently owned and controlled by one or more individuals, or in the case of a cooperative association organized pursuant to Chapter 3 of Title 13.1, as a nonstock corporation, is at least 51 percent independently controlled by one or more members, who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees or average annual gross receipts of $10 million or less averaged over the previous three years. One or more of the individual owners or members shall control both the management and daily business operations of the small business."

Love noted that the current definition is an "either or" situation, allowing for multi-million-dollar businesses to be certified as small businesses because they have less than

250 employees. She noted that every year since she has been doing the work (since 2010) there has been a bill introduced to change the small business definition, but it has not happened yet. She highlighted a few past recommendations, including changing the "or" in the small business definition to an "and" which would require businesses to meet the gross receipts limit and the employee limit in order to qualify. She divulged another recommendation has been to go with the federal definition as defined by the Small Business Administration, but she said the SBA definition is industry-specific and is based on federal contracting. She urged that this might not be the best definition for Virginia to adopt because it is not Virginia-specific. Lastly, she said, the federal definition goes by a different set of codes than the ones used in Virginia. In the JLARC study it was recommended that Virginia research and come up with industry-specific limits, explained Love.

In conclusion, Love shared that DSBSD/VSBFA have implemented 15 of the 16 JLARC recommendations. The only one that has not been implemented is Recommendation 5, which is based on a website called Business One Stop. The point of that website was for a business to be able to go to it and register for every procurement, license, set up tax accounts, and all the things they need to do to operate in one place online. In order to set up that website system, it would cost $1.2 million up front and another $4.7 million over four years for maintenance and license renewals. So, it was deemed to expensive to do this recommendation and the website now has information on where to go for businesses.

Love asked if there were any questions. Heslinga said that the JLARC 2020 study talked about there being substantial variation in agency ability to make SWAM purchases based on the goods and services, and in the bill the General Assembly passed this past Session, it seems to respond to that by saying the disparity study currently being conducted by DSBSD evaluate the differences between categories of goods and services. He asked if any prior disparity studies went that in-depth about the differentiation of categories of goods and services. Love responded, no, that the prior studies have simply looked at the availability of SWAM vendors and the amount of state contracting.

Gill asked if Love could clarify that the results of the disparity study being done now won't be complete until 2026. Love said that is correct, the study will begin January 1, 2025, with the report being due January 1, 2026.

Gill followed up, stressing the confusion associated with the goal. She said she thinks there has been confusion for years as to whether it is a Commonwealth of Virginia goal or an agency goal. And she asked if this bill was silent to addressing that and asked if it may create some confusion to that point. Love agreed.

Gill asked Love if she could gather information on what other states are doing, if they have industry-specific limitations like Maryland or how they are handling it. She asked specifically for bordering states. Love said of course she could present that information at the next meeting. Love added that it was also important to note that there are some states that have certification reciprocity, for example, in the Code of Virginia we have a clause that prohibits businesses from certain states that do not allow Virginia businesses to participate in their program from participating in the Virginia program. She used D.C. as an example because those businesses are not allowed to participate in the Virginia SWAM program because their program does not allow Virginia businesses to participate. And we do this, she explained, because we don't want to put Virginia businesses at a disadvantage.

Dulaney asked if the SWAM goal vs. actual numbers included all spend for all agencies across the state, and clarified by asking who is included. Love responded that yes, it is an aggregate number for all spend of all executive branch agencies across the Commonwealth of Virginia.

X. Public Comment on HB 1404

There was no public comment in support or opposition of HB 1404.

Chris Stone, the past chair for the Hampton Roads Chamber of Commerce, spoke in general terms about HB 1404. He brought a study to share with the Workgroup that was done in 2018 by DSBSD and VCU and a synopsis of the JLARC recommendations. He pointed out where in the study one could find information on the small business definition and said that the study also covered what other states were doing. He stated that the study says that Virginia is way out of alignment with our neighboring states on the definition of small business, especially as it pertains to the size of a business. He concluded by saying he would like to get the definition more aligned with the current business climate because, "the question before you is why would a company of 250 people and unlimited revenue need special consideration for public procurement?"

XI. Discussion on HB 1404

Gill asked if there was any additional discussion or any additional information the Workgroup members would like to see at the next meeting regarding HB 1404. She said that JLARC will be presenting at the next meeting, and she will ask them to speak to Appendix F in their report when they present.

Love followed up saying she has the VCU study in the electronic format and she would be happy to send that around electronically to the Workgroup. Gill thanked her and said that would be appreciated.

XII. Discussion

No additional discussion.

XIII. Adjournment

Gill adjourned the meeting at 2:27 p.m. and noted that the Workgroup's next meeting is scheduled for October 8, 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.

Appendix D: October 8, 2024, Meeting Materials

This appendix contains the meeting materials from the October 8, 2024, Workgroup meeting.

1. Agenda
2. Meeting Materials
3. Approved Meeting Minutes

Public Body Procurement Workgroup

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

Meeting # 6
Tuesday, October 8, 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 September 17, 2024, Workgroup Meeting**

III. **Public Comment on HB 1524**

IV. **Discussion on HB 1524, Preliminary Findings and Recommendations**

V. **Presentation on HB 1404**
Verniece Love, Deputy Director
Department of Small Business and Supplier Diversity

VI. **Presentation on HB 1404**
Justin Brown, Senior Associate Director
Joint Legislative Audit and Review Commission

VII. **Public Comment on HB 1404**

VIII. **Discussion on HB 1404**

IX. **Discussion**

X. **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, DGS
Kimberly Freiberger, Legislative Analyst, DGS

APPROVED Meeting Minutes

Public Body Procurement Workgroup

Meeting # 6

Tuesday, October 8, 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, Workgroup discussion on drafting recommendations for HB 1524, followed by, presentations by Virginia Department of Small Business and Supplier Diversity (DSBSD) and the Joint Legislative Audit and Review Commission (JLARC) on HB 1404 and Workgroup discussion on HB 1404. 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), 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 September 17, 2024, Workgroup Meeting

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

III. Public Comment on HB 1524

There was no public comment either in support or opposition or neutral stance to HB 1524.

IV. Discussion on HB 1524 Preliminary Findings and Recommendations

Sandra Gill said the Workgroup would move into discussion on HB 1524. She reminded the members that the Department of Taxation had been asked to come and present and that they could not present at the Oct. 8 meeting, so they will be presenting at the Oct. 22 meeting. Thus, she asked that the Workgroup pause on drafting anything associated with funding or tax credits until after the Department of Taxation presentation. Gill then reminded the Workgroup that in the letter from the member, the Workgroup was tasked with studying five items related to the bill:

- Increasing the percentage of RAP,
- Cost savings to the Commonwealth of Virginia,
- Environmental impacts,
- Durability and safety,
- And the use of repurposed waste materials.

Gill summarized that the Workgroup heard amazing presentations from the delegate, industry leaders who said that VDOT is a national leader around the topic of RAP, DEQ and VDOT. She said the Workgroup heard from the industry that VDOT currently has specifications around the use of RAP, allowing up to 35% RAP and that VDOT uses on average, 29%. Gill also mentioned that she thought it was particularly interesting that there are 12 VDOT pilot projects that are assessing and gathering information around the five items listed in the delegate's letter. After the summary she asked for any additional input or comments from the Workgroup.

Hearing none, Gill moved forward proposing a possible recommendation that the General Assembly would request VDOT to report on the above-mentioned items in 2026 when she said she believes the analysis will be complete on the 12 pilot projects. She asked Lisa Pride with VDOT to verify that timeframe, and Pride did. Gill asked the Workgroup for any thoughts on that recommendation.

Heslinga stated that it sounded good to him because the bill as he understands it, does not upset the work that VDOT is currently doing in the field. Therefore, it would make sense for VDOT to report its findings to the General Assembly in 2026 so that those findings could be considered at that time.

There was no other comment. Gill articulated the proposed draft recommendation once more, saying that the Workgroup is proposing to move forward with the recommendation: "The General Assembly consider requiring VDOT to report out in 2026 regarding the 12 pilot programs which address the five items in the bill to include but not limited to: the use of recycled asphalt mixes, the cost savings to the commonwealth, if applicable, where in-place asphalt recycling occurred, the environmental impacts, and the durability, safety and longevity of pavement services built with higher percentage of RAP."

Jason Saunders noted a technical consideration that Gill referenced the bill, when the five items came from the delegate's letter and not the bill. Gill thanked Saunders for that correction and re-read the proposed recommendation, switching out "bill" for "the Speaker's letter." The Workgroup agreed to move forward with that recommendation and vote on it at the next meeting.

> "The General Assembly could consider requiring VDOT to report out in 2026 regarding the 12 pilot programs which address the five items addressed in the Speaker's letter to include but not limited to: the use of recycled asphalt mixes, the cost savings to the commonwealth, if applicable, where in-place asphalt recycling occurred, the environmental impacts, and the durability, safety and longevity of pavement services built with higher percentage of RAP."

Gill said the Workgroup would be hearing from the Department of Taxation regarding avenues to provide the funding via tax credit and how the existing tax credits have been used.

V. Presentation on HB 1404

Verniece Love, Deputy Director of the Department of Small Business and Supplier Diversity (DSBSD) gave a presentation on HB 1404. She reminded the Workgroup that at the last meeting she gave a presentation on the certification process for small businesses and the small business definition. She said she was asked at the last meeting to provide additional information on neighboring states and how they define small business.

She asked the Workgroup members to let her know if there are any states she did not include on which they would like this information. She said she focused on states along the east coast from Maryland down to Florida.

First, she reminded everyone what Virginia's small business definition is explaining that it is 250 employees or fewer OR average gross receipts of $10 million or less averaged over the previous three years.

Love then moved to Washington D.C.'s definition, highlighting that their program is for industry firms only, and the businesses have to be located in the District of Columbia by meeting one of four standards: more than 50% of the employees of the business are residents or the District; or the owners of more than 50% of the business enterprise are residents of the District; or move than 50 % of the assets of the business, excluding bank accounts, are in the District; or more than 50% of the business gross receipts are District gross receipts. They have what they call the Certified Business Enterprise program which is similar to Virginia's program. They are different designations under their CBE program for which a business can qualify. Small Business Enterprise is a sub-category under their CBE program. Their size standards are based on a five-year average as opposed to Virginia's three-year average. Additionally, Love pointed out that like the federal SBA, they use industries, but they do not use the federal SBA definition, they have their own with each industry having their own limits.

Love then moved on to Maryland, summarizing that they have different designations within their program like their Small Business Reserve Program which requires businesses to be for profit, independently owned and operated, not a subsidiary, not dominant in its field of operation and either employee limit or gross receipts. But they have it broken out by industry as well.

Tennessee was next in Love's presentation. Love explained that Tennessee has a stipulation that the business must be in business for at least two years before it can qualify for the certification. She said for their size standards, the businesses can have no more than $10 million averaged over the past three years or no more than 99 full-time employees.

North Carolina, Love said, requires that the small business must be headquartered in NC, and their annual income cannot exceed $1.5 million. They can have no more than 100 employees in order to qualify. She pointed out a North Carolina caveat that the do deduct cost of goods sold when they are calculating the gross revenue for the companies.

Next Love highlighted South Carolina, saying that they do not certify just a small business. They certify small businesses that are owned by women or minorities. The use the SBA definition for the small business portion, and they require to owners to be socially, and economically disadvantaged individuals as defined by the federal definition.

Love presented on Georgia next, saying they do not have a formal certification for small businesses but allow businesses to self-certify as small businesses. They consider businesses with less than 300 employees and less than $30 million in gross receipts as a small business. So, their definition is even broader than Virginia's.

The last state in Love's presentation was Florida. She said Florida is like SC where they do not certify a small business, the owners must be women, minorities or veterans. They do consider size when they are certifying—200 or fewer full-time employees. The business must be based in Florida.

There were no questions, and with that Love concluded her presentation.

VI. Presentation on HB 1404

The Workgroup turned their attention to the next presentation on HB 1404 from the Joint Legislative Audit and Review Commission (JLARC) about a study they did a few years ago on the operations of DSBSD. Justin Brown began the presentation on the JLARC 2020 study, highlighting the findings that came from the study. The findings included:

SBSD's business process has become more timely and the appeal right was limited, VSBFA was not fully achieving the mission of helping small businesses access financing and lacked lending policies that set appropriate risk policies, state agency procurement spending with SWaM-certified businesses was substantial but didn't hit the 42% goal, and most of the state's procurements went to businesses much smaller than Virginia's definition of small business.

There were several recommendations that JLARC made based on this study and of those recommendations, DSBSD implemented or is in the process of implementing six of the seven recommendations.

Brown pointed out that JLARC also proposed 10 policy options for consideration in this report. Five of the options related to changing the state's small business definition, one option was for VSBFA to develop a pilot program to test including startup businesses in the microloan program, and two option were related to SWaM spending and goals.

Brown then handed the presentation over to his colleague Lauren Axselle, who went into a quick overview of the small business definition, the 2019 data on the number of small, micro, minority-owned, women-owned and other businesses. She pointed out that most of the small businesses (94%) that were certified, were in fact much smaller than the Virginia definition.

She then dived into policy options. The first of which was to require small businesses to meet both the employment and gross receipts thresholds. This would cut 6% (623) of certified businesses based on the 2019 data. Two more examples to narrow the definition that Axselle touched on were to lower the employee and gross receipts thresholds to the 95^{th} percentile (this would cut 3% of the certified businesses) or to the 75^{th} percentile (which would eliminate 13% of certified businesses).

Axselle's next slide talked about how the size of the business can vary significantly between industries. The federal government and several other states have industry-specific small business definitions. Then JLARC looked at how Virginia compared to other states on the definition and what JLARC discovered was that Virginia's definition allows more employees than other states, but the revenue threshold was comparable. So JLARC included a policy option to develop and adopt thresholds based on industry. This would require a lot of administrative work and would be a one-time fiscal impact. Axselle talked about one more policy option which was to consider broadening preferences to include more than business size.

She then shifted the presentation to focus on the effectiveness of the SWaM program. As of 2019 data, agencies procured over $2 billion through SWaM-certified businesses. Median sales increased approximately 20% for businesses after becoming SWaM-certified. Businesses also reported non-monetary benefits to being certified such as an improved image. However, the majority of agencies (60%) did not meet the 42% goal and there was a broad range of SWaM spending from 4% to 87%. Axselle explained that there were several reasons for this. Some goods and services are not offered by many SWaM vendors and the number and size of procurements vary greatly between agencies.

Axselle's next slide outlined how the SWaM planning process historically did not help agencies meet the SWaM goal. Another option JLARC suggested was to direct each state agency to set an ambitious but achievable SWaM goal that accounts for the agency's procurements and the availability of SWaM businesses for their specific goods and services. This concluded the JLARC presentation.

Heslinga asked JLARC where the 42% goal came from. Axselle said the number did not seem to have a clear origin. Brown said it bounced around a few executive orders and Aselle followed up saying that there were some years when the percentage that was achieved was higher, but not in the last few years. Gill said when staff summarized the executive orders, there seemed to be some confusion as to whether the 42% was the goal of the Commonwealth as a whole or of each agency. Gill then reminded the Workgroup that they need to take that into consideration when reviewing this bill.

Jason Saunders asked if someone could remind the Workgroup of what goes into discretionary spend and how it is measured. Love explained that agencies look at their budget and take out certain items like utilities, mandatory source contracts and things of that nature. After those items are taken out, what agencies are left with is their discretionary spend. Gill asked if Love could provide the different categories that are exempt from discretionary spending, and Love said that yes, she could provide those.

Kim Dulaney asked if we have any data on what other states' goals are and how they stack up against the 42% Virginia goal. Love said there is data on that, and she can provide that information. Love said most other states have goals around women and minority-owned spend.

VII. Public Comment on HB 1404

Gwendolyn Davis of Minority Women Business Advisory Committee spoke in favor of the bill. She read comments from the chair of the committee, Laquisha Atkinson, who thanked the delegate who brought forth the bill and expressed the need to promote minority and women businesses. She thanked the committee, the governors who have supported this small business goal and the General Assembly.

Brandon Robinson with Associated General Contractors of Virginia said he has a neutral position on the bill but wanted to bring up a few questions for consideration. One, he said, is the realism of a 42% goal and the ability to be able to achieve that goal. Robinson also pointed out the availability of small, women and minority-owned businesses play a part in being able to achieve that goal. Two, he said his association has heard antidotally about the difficulties of getting SWaM certified and that there isn't a whole lot in the bill that speaks to helping businesses with this process. Three, Robinson pointed out, there is some language about disbarring contractors that can't live up to an aspirational goal, and he said AGC thinks that is a big mistake to use on a goal such as this one. Robinson concluded by saying that the goal should be ambitious, achievable and that support should be provided for small businesses.

William Bullock, a contractor living in the City of Richmond, spoke in support of the bill. He said he wants to see the state spend money with minority and African American contractors in the state. He said this is important because there is a lot of poverty in the state right now, people are suffering, and the money is not being spread around. He expressed that is hard for small businesses to compete at the lowest price on projects against big businesses.

Julianne Hammond on behalf of National Federation of Independent Businesses (NFIB), Virginia's small business trade association and the largest one in the nation. She opposes codifying the executive order because it locks it down and takes away the flexibility. She explained that some of the solutions presented are limiting in nature. She said the goal is to increase participation of small businesses, so creating more defined limits seems counter to the overall goal. Additionally, she continued, if Virginia is going to look at increasing certification, shouldn't it be done in discretionary fields so that it is compared apples to apples and not apples to oranges. This would be a much better way to figure out who is available in those fields. She added that if there is any way that Virginia could automatically accept small businesses that have already qualified at a federal level, this would make it much easier on the small business owners, so that they don't have to get certified nationally and again at the state level.

Chris Stone, past chair of the Hampton Roads Chamber of Commerce said he was here to tell his personal experience with the 42%. He said he does not believe the 42% is a one size fits all approach. Stone said he is a licensed engineer who was appointed by Governor Northam to sit on the DPOR licensure board architects, engineers, land surveyors, interior designers and landscape architects. He has served eight years on this board and what he learned is that you can't get a four-year accredited degree from any HBCU in Virginia. So, there is no pipeline for minorities to even become a small business in these fields, if they don't offer that at HBCU. This is one example of how we need to expand opportunities for minorities so that they can start businesses.

VIII. Discussion on HB 1404

Gill asked if there was any additional information that the Workgroup would like staff to gather for the next meeting in relation to HB 1404.

Heslinga said there is one thing he wanted to clarify. The bill as it was passed in 2024 had a reenactment clause. However, should the GA introduce a new bill in 2025, then unless that new bill was given a reenactment clause, that bill would take effect. In other words, if we recommended changes, and the GA took those changes and passed a new bill with those included, it would not delay the effectiveness of whatever legislation may pass. Schultz concurred that Heslinga was correct in his statement.

Gill said the bill as introduced last year defined SWaM business as a small, a small women-owned, small minority-owned or small service-disabled veteran owned. So, the small SWaM business set aside is still for small business, regardless of if they are women or minority-owned, correct, she asked. Schultz confirmed she was correct.

Gill then confirmed with Love that she would be available to provide additional information about the procurement programs. Love said yes and confirmed that the Workgroup wanted exemptions from discretionary spend and the goals from other states and how those compare to Virginia's 42% goal. Gill said that working with VITA and DGS, she would like to know how that ties to procurement.

IX. Discussion

No additional discussion.

X. Adjournment

Gill adjourned the meeting at 1:53 p.m. and noted that the Workgroup's next meeting is scheduled for October 22, 2024, at 1:00 p.m. and announced that an additional meeting had been added to the calendar for Wednesday, November 6 at 1 p.m. in the same location.

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

Appendix E: October 22, 2024, Meeting Materials

This appendix contains the meeting materials from the October 22, 2024, Workgroup meeting.

1. Agenda
2. Meeting Materials
    a. Department of Taxation Presentation on HB 1524
    b. Final Recommendation for HB 1524
3. Approved Meeting Minutes

Public Body Procurement Workgroup

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

Meeting # 7
Tuesday, October 22, 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 October 8, 2024, Workgroup Meeting**

III. **Presentation on HB 1524**
James Savage, Policy Development Director and
Ryan Cunningham, Senior Policy Analyst
Department of Taxation

IV. **Public Comment on HB 1524**

V. **Finalize Recommendations on HB 1524**

VI. **Presentation on HB 1404**
Verniece Love, Deputy Director
Department of Small Business and Supplier Diversity

VII. **Public Comment on HB 1404**

VIII. **Discussion on Possible Recommendations for HB 1404**

IX. **Discussion**

X. **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
House Appropriations Committee

Staff

Killeen Wells, Deputy Director of Communications, DGS
Kimberly Freiberger, Legislative Analyst, DGS

Recyclable Materials Processing Equipment Tax Credit and House Bill 1524 (2024)

October 22, 2024

Virginia Tax

Virginia's Current Recyclable Materials Processing Equipment Tax Credit

- A nonrefundable individual and corporate income tax credit valued at 20% of the purchase price of machinery and equipment predominantly used in or on the premises of:
  - A manufacturing facility or plant unit which manufactures, processes, compounds, or produces items of tangible personal property from recyclable materials for sale OR
  - Facilities that are predominantly engaged in advanced recycling.
- Limits:
  - Annual per taxpayer—40% of the taxpayer's income tax liability.
  - Annual aggregate cap—$2 Million.
  - 10-year carryover period for unused tax credits.

History of the Recyclable Materials Processing Equipment Tax Credit

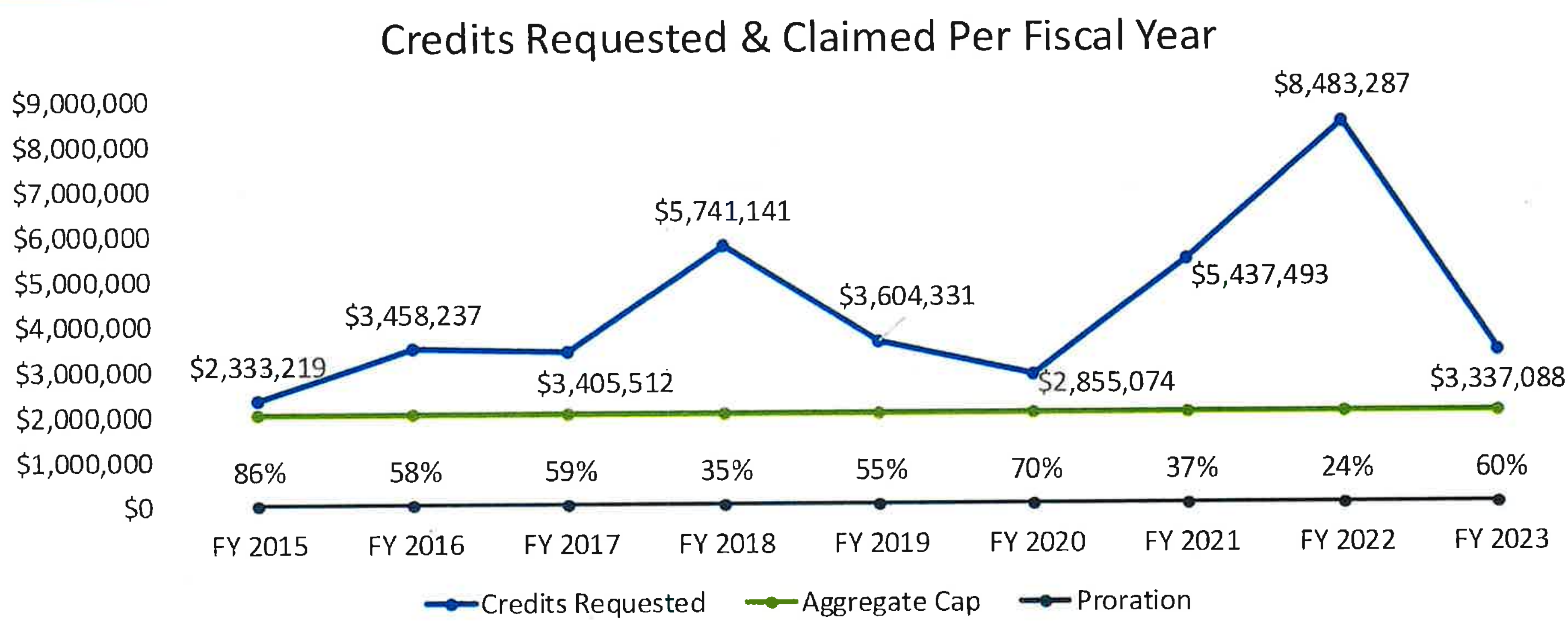
1990
- Tax Credit Established
- 10% of Equipment Price
- No Aggregate Cap

2015
- Increased to 20% of Equipment Price
- $2 Million Aggregate Cap

2020
- Expanded to Include "Advanced Recycling"

2025
- Expires January 1, 2025

Recyclable Materials Processing Equipment Tax Credit Usage



Note: The aggregate $2 million cap limits the amount of credits "issued" per fiscal year, but the amount of credits actually "claimed" by taxpayers in a fiscal year may exceed the aggregate $2 million cap, due to the 10-year carryover provision for unused credits from previous years.

Virginia Tax

2024 House Bill 1524

- This bill would have established a nonrefundable individual and corporate income tax credit valued at 20% of the purchase price of machinery and equipment used to reclaim, recycle, or reprocess existing asphalt materials from pavements and roadways.
- Limits:
  - Annual per taxpayer—40% of the taxpayer's income tax liability.
  - Annual aggregate cap—$3 Million.
  - 10-year carryover period for unused tax credits.

Recyclable Materials Processing Equipment Tax Credit and 2024 House Bill 1524

Current RMPE Tax Credit	2024 House Bill 1524 Proposed TC
Tax Credit Value	
20% of the purchase price of qualifying equipment	20% of the purchase price of qualifying equipment
Qualifying Equipment is Equipment Used For:	
Production of tangible personal property from recyclable materials OR advanced recycling	Recycling of existing asphalt materials
Per Taxpayer Annual Limit	
40% of Tax Liability	40% of Tax Liability
Aggregate Annual Limit	
$2 Million	$3 Million
Effective Dates	
January 1, 1999 to January 1, 2025 (Expires after this Year Unless Sunset Date is Extended)	January 1, 2025 to January 1, 2030

Virginia Tax

Additional Resources

Virginia Tax

Further Information

Online Resources

- Virginia Tax Homepage: https://www.tax.virginia.gov
- Laws, Rules, and Decisions: https://www.tax.virginia.gov/laws-rules-decisions
- Annual Reports: https://www.tax.virginia.gov/annual-reports
- Guidance Documents: https://www.tax.virginia.gov/guidance-documents
- Virginia Legislative Information system: http://lis.virginia.gov

Public Body Procurement Workgroup

Draft Recommendation for HB 1524

Recommendation:

The Workgroup recommends that the General Assembly consider a section 1 bill to require the Virginia Department of Transportation (VDOT) to report in 2026 on the analysis and study of their pilot projects that have already begun as part of continuous improvement efforts. VDOT's Transportation Research Council is leading these 12 pilot projects at various locations throughout the state to determine the performance of mixes with RAP contents higher than currently allowed in VDOT specifications.

APPROVED Meeting Minutes

Public Body Procurement Workgroup

Meeting # 7

Tuesday, October 22, 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, presentations by Virginia Department of Taxation (TAX) on HB 1524 and Virginia Department of Small Business and Supplier Diversity (DSBSD) on HB 1404, Workgroup discussion on recommendations for HB 1524, a vote on one recommendation for HB 1524, and Workgroup discussion on recommendations for HB 1404. 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), 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 October 8, 2024, Workgroup Meeting

Jason Saunders made a motion to approve the meeting minutes from the October 8, 2024, meeting of the Workgroup. The motion was seconded, and unanimously approved by the Workgroup.

III. Presentation on HB 1524

Ryan Cunningham, Senior Policy Analyst with Virginia Department of Taxation, presented on the Recyclable Materials Processing Equipment Tax Credit. He shared that this credit is a nonrefundable individual and corporate income tax credit valued at 20% of the purchase price of machinery and equipment predominantly used in or on the premises of a manufacturing facility of plant which manufactures, processes, compounds, or produces items of tangible personal property from recyclable materials for sale OR facilities that are predominantly engaged in advanced recycling. The limits to the credit include 40% of the taxpayer's income tax liability and an annual aggregate cap of $2 million. Additionally, there is a 10-year carryover period for unused tax credits.

Cunningham then gave a brief history of the tax credit and the different iterations it has gone through. Next, he showed a graph of the credits requested and claimed per fiscal year, pointing out that every year, the requests have exceeded the aggregate cap.

He then talked about the similarities and differences between the HB 1524 tax credit and the Recyclable Materials Processing Equipment Tax Credit. Cunningham they are very similar but the main difference is the equipment that can qualify for the credit. HB 1524 would allow equipment used to reclaim, recycle or reprocess existing asphalt materials for pavements and roadways to qualify for the credit. Previously, these types of devices did not qualify because they were not located on site at a facility. The limits between the two tax credits are very similar—they both have the 40% of the taxpayer's income tax liability and the 10-year carryover period for unused tax credits. However, HB 1524 has an annual aggregate cap at $3 million, instead of the $2 million for the Recyclable Materials Processing Equipment Tax Credit. The other difference is that the HB 1524 has an effective date of 2025-2030, and the Materials Processing Equipment Tax Credit is set to expire in 2025, unless extended. This concluded the presentation and Cunningham asked if there were any questions.

Mike Tweedy, Senate Finance and Appropriations, asked if there was a bill in this past Session to extend the Recyclable Materials Processing Equipment Tax Credit. Cunningham answered that there was not. He then asked if the people claiming the existing credit are all doing asphalt or if others outside the asphalt industry are claiming the credit as well. Cunningham replied that he does not know everyone who claims the current credit, but he did say not a lot of companies are claiming the current credit (15-25 taxpayers) and that it is not so much asphalt as it is traditional recycling materials.

Andrea Peeks, House Appropriations Committee, asked for Cunningham to confirm that there was not any crossover between the two credits. Cunningham said he was not aware of any crossover, but explained there might be some asphalt recycling, but it would all be done on site instead of mobile. She followed up, asking if Cunningham had any sort of gauge for the demand for the HB 1524 tax credit and why it would need to have a different threshold than the first one. Cunningham said he does not have a lot of data on that. He suggested having someone from the industry speak to how in-demand the credit is and how much it would cost because that is a big driver of deciding on the threshold amount.

IV. Public Comment on HB 1524

Sandra Gill said the Workgroup would move into public comment of HB 1524.

Trenton Clark with Virginia Asphalt Association spoke to provide some context around Tweedy and Peeks' questions. He said the reason for this legislation is because as of now, the equipment has to exist at a fixed facility, it can't be mobile. So a lot of the equipment that would be covered under HB 1524, is work that would be done out on the project site. He explained further, saying that as the industry moves to a more sustainable economy, a lot of our work is being done out in the field, so recycling is happening in the field. This cuts down on the trucking costs. He then addressed Peeks's second question about cost, saying that most of this equipment cost between ¾ of a $1 million and $3 million+.

Peeks asked if it would work to expand the existing bill to include the type of work covered as onsite work too. Clark said there was some discussion around that last year and it was decided to keep them separate because of the different natures of the bills.

Clark finished by thanking the Workgroup and saying he thinks this will have a positive impact on the public.

V. Finalize Recommendations on HB 1524

Gill announced the Workgroup would move into finalizing recommendations for HB 1524. She pointed attention to the drafted recommendation in the meeting materials and said the Workgroup would vote on that recommendation today and discuss any others. Gill then asked if there were any additional comments to the drafted recommendation and if the Workgroup would like it read aloud. Lisa Pride, VDOT, said she had an additional comment but would express it after the recommendation was read aloud.

Killeen Wells, staff, then read the drafted recommendation aloud: "The Workgroup recommends that the General Assembly consider a section 1 bill to require the Virginia Department of Transportation (VDOT) to report in 2026 on the analysis and study of their pilot projects that have already begun as part of continuous improvement efforts. VDOT's Transportation Research Council is leading these 12 pilot projects at various locations throughout the state to determine the performance of mixes with RAP contents higher than currently allowed in VDOT specifications."

Pride said she had one edit, to put "December of 2026" to clarify the timing of when in 2026. Gill said staff would incorporate that change of December 1, 2026, since reports are due on the first of December. Verniece Love, DSBSD, had one follow up clarification. She asked if the report was to be done by December of 2026 or if the pilot projects were to be completed by that time. Pride said that the projects would be completed throughout the year and the report due at that time. The Workgroup voted in support of the recommendation, 6-0 with DPB abstaining.

Gill then asked if there were any other recommendations the Workgroup wanted to bring forth for discussion. She reminded the Workgroup that they had paused on item one in Speaker Scott's letter until they heard from the Department of Taxation. She asked if there were any suggestions, now that they had heard from Tax, for item one. Heslinga said he had a recommendation, that was really broken out into two parts.

Heslinga said, "The General Assembly should consider (i) continuing the current tax credit until VDOT completes its pending pilot studies in 2026 and reports on them, and (ii) implementing any altered or expanded tax credit language to coincide with any changes that may be made after the pilot studies."

Gill said she had a question for the Department of Taxation. She asked, "If we were to include in our report that the Workgroup would recommend that the General Assembly consider extending the current tax credit are the funds available or the revenue stream to fund those tax credits available?" Cunningham said his understanding is that in the revenue projections they always assume the extension of all expiring tax credits so that funding would already be baked in, we would assume the General Assembly is going to extend this tax credit as well.

Love questioned, "So extending the current tax credit still does not solve the issue that the recycling that happens off site and not at the facilities would not be eligible, right?" Gill replied that is correct. She then clarified that Heslinga's second recommendation was aimed at addressing the in-place credit. Heslinga responded that he's trying to address two things in his recommendations from the presentations. One is that there will be a gap in time between the expiration of the current tax credit and when VDOT is done with its pilot study in December of 2026. So given the long history of the current tax credit, it seems appropriate to continue it until there is some clarity from the VDOT report about future direction. The second part, he explained, was to address the issue of trying to coordinate with the data VDOT develops through their pilot project study, so that decisions can be made with that data in mind.

Gill asked if there were any additional comments on those two recommendations and if the Workgroup wanted to vote during this meeting on them or at the next meeting. Heslinga said he would be fine withholding the vote until the next meeting. Gill agreed, saying they will be brought forward for a vote at the next meeting.

VI. Presentation on HB 1404

Verniece Love, Deputy Director of the Department of Small Business and Supplier Diversity (DSBSD) gave a presentation on HB 1404. She reminded the Workgroup that at the last meeting she was requested to bring forth some more information around the small business goal in Virginia and other states. She said she provided additional information included in the Workgroup's packets, and that she was asked to speak to the discretionary spend and exemptions, so she included the DOA reportable object codes and an additional handout about what discretionary spending is and how it is determined.

With that, she began her presentation. Love restated the Commonwealth of Virginia's goal is 42% for SWaM spending. She added that Virginia also has a 3% spending goal with certified veteran-disabled businesses. Next she covered that Virginia's set-asides are gender neutral and that we have micro-business set-asides (any purchase under $10,000) and small business set-asides ($10,000 to $100,000). Love also pointed out that micro and small businesses shall have a price preference over noncertified businesses as long as the bid of the certified micro/small business does not exceed the low bid by more than 5%.

Next, Love began covering other states, with the first being Washington D.C. D.C. has a CBE program that has a variety of categories included. They have a goal of procuring and contracting 50% of the dollar volume of goods and services, including construction goods and services, to Small Business Enterprises (SBEs). They award points to businesses based on the categories.

Love moved on to Maryland next, stating that Maryland has a Small Business Reserve (SBR) Program for spend with small businesses. Over 20% of all open solicitations are designated to Certified Small Businesses. They have three categories: less than $5,000, $5,000-$15,000, and more than $15,000 but not more than $50,000. If there is a construction procurement, it should not exceed $100,000. Maryland also offers a Minority Business Enterprise Program with an aspirational goal of 29% spend and a Veteran-owned Small Business Enterprise Program with a goal of 3%.

Love outlined Tennessee next. She said in Tennessee, each agency is given specific goals by category—MBE, WBE, DSBE, SDVBE and SBE. These are monitored by the Governor's Office of Diversity Business Enterprise, which is the office that sets these goals per agency, factoring in spend history, procurement opportunities, etc.

In Texas, explained Love, there is the Historically Underutilized Business (HUB) Program, which has annual goals for different industries, and they are based on expenditures for the state agencies and state universities.

She explained that in New Jersey there are two contract set-aside programs. One is a 25% set aside for certified Small Business Enterprises, and the other is a 3% set aside for Disabled Veteran-Owned Business Enterprises. Furthermore, the state aims to award 25% of its contracts and purchase orders to small businesses.

Love finished her presentation overview of states with New York, which she said has the highest MWBE utilization rate in the country at 32.3%. The overall state goal for MWBE utilization is 30%. The Office of Contractor and Supplier Diversity sets the MWBE and SDVOB project goals and monitors them. This concluded her presentation, and she opened it up for questions.

Heslinga asked where the cardinal categories and codes came from. Love said they come from the Department of Accounts website, and DSBSD is required to keep the list on its website as well.

Rebecca Schultz, Legislative Services, asked if the Texas HUB program was geared toward small businesses or women and minority-owned businesses. Love clarified that it is women and minority-owned businesses.

Gill asked if the subcontracting was prime awards or all-inclusive subcontracting. Love said she did not know.

VII. Public Comment on HB 1404

There was no public comment for HB 1404.

VIII. Discussion on Possible Recommendations for HB 1404

Gill opened the meeting to Workgroup discussion on possible recommendations for HB 1404. She said she had a few notes based on the many presentations given by Love and the public and stakeholder testimony. She mentioned the topic of the definition and the questions around the goal being codified and the question of whether it is a Commonwealth of Virginia goal or an agency goal. She reminded the Workgroup that the Disparity Study currently underway is different from previous disparity studies because it is looking at small and micro-businesses in relation to the commodities that the commonwealth is buying. She continued saying that the Workgroup has heard there need to be some technical amendments, that other states have made remedial plans based on outcomes of their own disparity studies that are specific to women and minorities. She questioned: "If the disparity study shows a need for a remedial or enhancement plan around women and minorities, if we codify the bill as it is today, would we have challenges in implementing that?" Gill said she would like to discuss that a little bit.

Love said she agreed with Gill and that the Workgroup could look at it two ways. Either you could say that the 2020 Disparity Study showed disparity and that recommendations were made from that study to implement programs and remedial measures to address the disparities, and you could use that data. Or, she continued, you could wait until the new disparity study report comes out in 2026 and make recommendations based on it.

Rebecca Schultz with DLS asked to make a few comments. She said that the bill in its current form is doing a lot of different things, so as the Workgroup thinks about and goes forward with recommendations to make sure they are clear on what the goal of the bill is. She said the bill will likely need to be a brand-new draft. She then highlighted all the different things the bill does—sets up a new enhancement program, sets up a new division within DSBSD—she thinks there may be some difficulty in implementation. She brought up what the Workgroup wants to do around the definition of small business. She asked if the division is supposed to be geared for women and minorities? Do we want a program? Do we want a division? She said getting some clarity on the focus of the bill would be a good place to start.

Gill asked Verniece to speak to the questions around the division. Verniece said based on her understanding, the division was to be created to implement whatever measures or programming to enhance the utilization of women and minority-owned businesses in state procurement contracting. So that division would be working directly with our state agencies, she clarified, to help them set their goals and source and find small women and minority-owned businesses.

Gill said her interpretation of the bill was to codify EO35. She clarified that the bill is different from EO35 in that it creates a new definition of small SWaM business and currently the VPPA does not contain that definition. So if the bill is to move forward, those type of amendments would need to happen, said Gill. Gill stated that the intent as she understood it, was that it was a small business enhancement plan, as opposed to doing anything specific for women or minority businesses.

Schultz followed up that in regard to the definition in the bill, she said it could be added but does not appear to be any different than the definition of SWaM, so adding that into the procurement code is a decision that will need to be made on whether it is necessary.

Gill said that an appropriate recommendation would be for the General Assembly to consider if reintroducing the bill, that they address the technical amendments to remove potential interpretation conflicts of definitions.

Schultz responded that as technical amendments, she could go ahead and make those changes to make those definitions between the VPPA and DSBSD terms the same, and she thinks it would be a good idea.

Gill asked if there were any other amendments. Heslinga responded that he would recommend that we consider that future changes/legislation continue to take into account the differences between state agencies and their procurements. We have seen in the JLARC report that it is significant, he said.

Gill restated his thoughts asking, "the General Assembly should consider setting a goal in code and providing clarity if it is a Commonwealth goal or an agency goal and base it on the commodities that they buy?"

Heslinga said that the federal government does it by agency and that different states also have different ways to do it. He said the phrasing he would use is, "future SWaM legislation take into account differences between state agencies and what they procure." Gill added, "and the commodities."

Schultz suggested that the new division being set up in this bill would perhaps be a good place to include this language.

Patti Innocenti pointed out that in enactment clause 3, it requires DGS to provide recommendations prior to the delivery to the disparity study, and she suggested altering the timing of that so that the disparity study could influence the recommendations. Gill suggested doing a similar recommendation as was just done for HB 1524.

Kim Dulaney pointed out that the fiscal impact of higher education was not taken into consideration, and she would like to see it be considered. So, one of the recommendations should be to review the fiscal impacts to higher education since they will be included in the bill, confirmed Gill. Mike Tweedy added that maybe the recommendation is a request that DPB gather information from the institutions with fiscal impact.

Gill followed up with Dulaney asking her to provide the fiscal impact to us, so we can include it as an attachment and use it to draft the recommendation language.

IX. Discussion

No additional discussion.

X. Adjournment

Gill adjourned the meeting at 1:50 p.m. and noted that the Workgroup's next and final meeting is scheduled for Wednesday, November 6 at 1 p.m. in the same location.

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

Appendix F: November 6, 2024, Meeting Materials

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

1. Agenda
2. Meeting Materials
    a. Final Recommendations HB 1524
    b. HB 1524 Stakeholder Commentary
3. Approved Meeting Minutes

Public Body Procurement Workgroup

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

Meeting #8

Wednesday, November 6, 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 October 22, 2024, Workgroup Meeting**

III. **Public Comment on HB 1524**

IV. **Finalize Recommendations on HB 1524**

V. **Public Comment on HB 1404**

VI. **Finalize Recommendations for HB 1404**

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

Killeen Wells, Deputy Director of Communications, DGS
Kimberly Freiberger, Legislative Analyst, DGS

Public Body Procurement Workgroup

Draft Recommendations for HB 1524

Recommendation 2:

The Workgroup recommends that the General Assembly may consider continuing the current tax credit until VDOT completes its pending pilot studies in 2026 and reports on those pilot studies.

Recommendation 3:

The Workgroup recommends that the General Assembly consider implementing any altered or expanded tax credit language, including RAP in-place equipment, to coincide with any changes that may be made after the completion of the pilot studies.

Outlook

Draft Recommendations #2 & #3

From Darren Hays <dhays@spottsfain.com>
Date Wed 11/6/2024 8:42 AM
To Procurement Workgroup (DGS) <pwg@dgs.virginia.gov>
Cc Lopez, Alphonso <delalopez@house.virginia.gov>

Hello again,

I am reaching out this morning on behalf of the Virginia Asphalt Association to express concern about draft recommendations #2 & #3. We are very concerned that neither recommendation addresses the intent or scope of the legislation that is being considered. Before finalizing recommendations in today's meeting, it could be very advantageous for the Work Group to correspond with Delegate Lopez to ensure there is clarity on his legislation. Brief details surrounding the Asphalt Association's concerns that have been communicated to the patron will be affixed below:

Draft Recommendation #2:
"The Workgroup recommends that the General Assembly may consider continuing the current tax credit until VDOT completes its pending pilot studies in 2026 and reports on those pilot studies."

- While the Tax Credit is directive #1 in the Speaker's letter to PWG, this recommendation attaches to directives #2- #6 (VRTC/VDOT and DEQ presentations) of the Speaker's Letter requesting the PWG consider this legislation which was already addressed in the finalized Recommendation #1 through the reporting legislation.
- This recommendation, similar to Recommendation #3, only considers the combination of two tax credits that are specifically intended to be independent of one another. A draft recommendation that considers HB1524's Mobile Asphalt Recycling Machinery Tax Credit independently could be a potential solution. There are no current considerations that do not combine this new tax credit with the existing but expiring Advanced Machinery Tax Credit.
- This recommendation also delays potential any potential legislative action until the 2027 session.

Recommendation 3:
"The Workgroup recommends that the General Assembly consider implementing any altered or expanded tax credit language, including RAP in-place equipment, to coincide with any changes that may be made after the completion of the pilot studies."

- While this recommendation would include our language, as previously stated, this only considers the new tax credit as language to be included under a pre-existing tax credit.
- Additionally, this recommendation is also somewhat connected to directives #2 through #6 of the Speaker's letter to PWG, while the recommendation was stated in meeting #6 to address specifically the first directive of the Speaker's Letter which is solely the feasibility of the proposed tax credit.

Darren Hays II
GOVERNMENT AFFAIRS SPECIALIST

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DRAFT Meeting Minutes

Public Body Procurement Workgroup

Meeting #8

Tuesday, October 22, 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, Workgroup discussion on recommendations for HB 1524, voting on two recommendations for HB 1524, Workgroup discussion on recommendations for HB 1404, voting on recommendations for HB 1404, and public commentary about the Workgroup's recommendations on HB 1404. 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), Dr. Jo'Wanda Rollins-Fells (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Charles Quagliato (Department of General Services), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Mike Tweedy (Senate Finance and Appropriations), 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 at 1:01 p.m. and moved into the second agenda item.

II. Approval of Meeting Minutes from the October 22, 2024, Workgroup Meeting

Kimberly Dulaney commented that on the fiscal impact for higher education mentioned in the meeting minutes. She said she assumed there was information available on that topic, but there was not. So, she will not be providing that information.

Kimberly Dulaney made a motion to approve the meeting minutes from the October 22, 2024, meeting of the Workgroup. The motion was seconded by Lisa Pride and unanimously approved by the Workgroup.

III. Public Comment on HB 1524

There was no public comment on HB 1524.

IV. Finalize Recommendations on HB 1524

Sandra Gill directed the Workgroup members' attention to the drafted recommendations provided in their meeting materials packets and asked staff member Killeen Wells to read the first of the two recommendations drafted.

Wells read draft Recommendation 2 for HB 1524 aloud: "The Workgroup recommends that the General Assembly may consider continuing the current tax credit until VDOT completes its pending pilot studies in 2026 and reports on those pilot studies." Gill asked if there were any edits or changes to the recommendation and Heslinga pointed out that the "may" was superfluous. Staff struck the "may" wording from the recommendation. The Workgroup voted in favor of the recommendation, 6-0, with DPB absent.

Wells read draft Recommendation 3 for HB 1524 aloud: "The Workgroup recommends that the General Assembly consider implementing any altered or expanded tax credit language, including RAP in-place equipment, to coincide with any changes that may be made after the completion of the pilot studies." The Workgroup voted in favor of the recommendation, 6-0, with DPB absent.

Gill thanked everyone in the Workgroup and all stakeholders who presented on HB 1524.

V. Public Comment on HB 1404

Gill announced the Workgroup would move into public comment for HB 1404.

Local businesswoman Melissa Ball thanked the Workgroup for their efforts on HB 1404. She urged the Workgroup to consider using the federal small business standard in Virginia. She explained that the federal size standards are based on number of employees or revenue based on the category. She said in Virginia, her business is not able to participate under the Virginia categories. She thinks the federal standards will provide more economic development and inclusivity of the minority and women-owned businesses that have been excluded.

VI. Finalize Recommendations for HB 1404

Gill prefaced the finalization of recommendations of HB 1404 by saying that the Workgroup developed draft recommendations over the past two weeks via email exchange. She invited discussion of the recommendations.

Josh Heslinga pointed out a superfluous comment in the fourth line from the bottom of the first recommendation. Staff struck out this comma.

Lisa Pride asked if the Workgroup needed to provide clarity to the General Assembly on the benefits mentioned in Recommendation 2 of HB 1404. Gill explained that Verniece Love will provide additional information on the Maryland study and that information will be incorporated in.

Wells read Recommendation 1 aloud: "The Workgroup recommends that the General Assembly consider not reenacting Chapter 834 enacting Clause 1 in the upcoming session and consider a section 1 bill to require the Virginia Department of Small Business and Supplier Diversity to report on December 1, 2026, on the outcome of the disparity study currently being performed as required by 2024 Acts of Assembly Chapter 834 enacting Clause 4. This disparity study differs from previous studies in that it expanded to study the availability and utilization of small and micro-owned businesses in addition to previously studied women-owned and minority-owned businesses. It also specifically looks at the utilization and differences between categories of state procurement, such as by the types of goods and services needed or procured by state agencies." The Workgroup voted in support of the recommendation, 6-0 with DBP absent.

Well read Recommendation 2 aloud: "The Workgroup recommends that the General Assembly consider directing a study of the small business definition before codifying any enhancement plan. The Workgroup further suggests that the General Assembly direct the study to be based explicitly on Virginia business with the intent of benefiting Virginia businesses, similar to the policy the state of Maryland implemented. Additionally, the General Assembly, as part of the study, could consider directing Virginia Department of Small Business and Supplier Diversity, in collaboration with the Department of General Services, Virginia Information Technologies Agency and Virginia Department of Transportation, to review the DSBSD certification processes, including outreach practices. Finally, the Workgroup recommends that the General Assembly consider incorporating this recommendation into the disparity study report." The Workgroup voted in support of the recommendation, 6-0 with DPB absent.

Wells read Recommendation 3 aloud: "The Workgroup recommends that the General Assembly consider not codifying a goal for the utilization rate of small SWaM businesses. An accurate goal for utilization cannot be set until the current disparity study is complete. The study being performed should provide data by commodity, detailing availability, participation and utilization. This will enable the Commonwealth of Virginia to establish a more appropriate goal. Additionally, if the General Assembly studies and changes the definition of a small business, the goal will need to be reevaluated once it is implemented." The Workgroup voted in support of the recommendation, 6-0 with DPB absent.

Wells read Recommendation 4 aloud: "The Workgroup recommends that if the General Assembly intends to reenact Clause 1, then the General Assembly may consider technical amendments to address the concerns mentioned in the Workgroup meetings. Items discussed included confusion over terminology and conflicts with existing definitions found in the Virginia Public Procurement Act." The Workgroup voted in support of the recommendation, 6-0 with DPB absent.

VII. Discussion

Gwendolyn Davis spoke to the Workgroup's approved recommendations for HB 1404. She said these recommendations are asking women and minority-owned businesses to wait again. She explained that the state has already commissioned multiple disparity studies, and they all say the same thing. Davis said they don't think the recommendations are fair. She said that the 42% number was based on what agencies recommended and the disparity studies. She furthered that the definition of small business has nothing to do with the bill. She continued that women and minority-businesses should have the same opportunities as other businesses and these recommendations do not help them. She finished with saying she hoped the recommendations will be reconsidered.

VIII. Adjournment

Gill adjourned the meeting at 1:20 p.m. She thanked the Workgroup members and staff for their time and resources.

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