Report to the General Assembly:

Stakeholder Review of
Current and Alternative
Liability Coverage Programs for
Constitutional Officers and Regional Jails

Compensation Board

102 Governor Street, Richmond, Virginia 23219
www.scb.virginia.gov

January 24, 2018

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Introduction

The Compensation Board is pleased to present this report summarizing the review by a Stakeholder Group of Liability Coverage Programs for Constitutional Officers and Regional Jails, pursuant to Chapters 780 and 836 of the 2016 and 2017 Virginia Acts of Assembly, respectively. This report presents the findings of the stakeholder group's review of current and alternative liability and related policy coverages available to constitutional officers and regional jails in Virginia, in addition to providing information regarding such coverage currently paid for by localities through a cost-recovery mechanism by the Compensation Board, and provided under the VARisk Program administered by the Division of Risk Management (DRM), Department of Treasury.

Stakeholders in this review included representatives of the Virginia Sheriffs' Association, Virginia Association of Commonwealth's Attorneys, Virginia Circuit Court Clerks' Association, Treasurers' Association of Virginia, Commissioners of the Revenue Association of Virginia, Virginia Association of Regional Jails, Virginia Association of Counties, and Virginia Municipal League. Other participants in the group included staff of the Division of Risk Management, Department of Treasury, representatives of the Virginia Municipal League Insurance Programs and the Virginia Association of Counties Risk Pool, other state agency representatives, and staff of the Compensation Board.

A great deal of the focus of the stakeholder group's review was ensuring an equal comparison across the coverage and service options by clarifying the various policy limits, exclusions, and terms and conditions, and developing an understanding of the operation of the VARisk program, its funding mechanism and its current financial position. The stakeholder group members were presented with historical data, current program information, and alternative coverages and services available to other local government entities, and were then given opportunities to question the providers and voice their opinions on the concepts of competition among providers and potential preference for alternatives beyond the current VARisk plan.

The stakeholder group convened in three meetings in 2016; while significant information was shared during these meetings and much discussion ensued, constitutional officer stakeholder representatives expressed their desire for an extension of the study period to enable further discussions and to obtain more information from the alternative coverage providers. The study was extended during the 2017 legislative session, and the group convened two further meetings in the fall of 2017.

The Compensation Board would like to thank the stakeholder group members for their time, attention and willingness to participate in the study, to the Division of Risk Management for their participation and technical assistance provided to the group, and to the participating alternative coverage providers for being forthcoming and informative in their presentations of their program options. Questions or comments regarding this report should be directed to Robyn M. de Socio, Executive Secretary for the Compensation Board, at (804) 225-3439 or via e-mail at robyn.desocio@scb.virginia.gov.

Executive Summary

- Virginia's VARisk General Liability program for Constitutional Officers and Regional jails incurred expenditures over the 10-year period of FY07 to FY16 of $57,684,477, with premium amounts charged of $42.6 million. Not included in this amount is the actuarially determined reserve for future costs of $28,938,000 as of the end of FY16, and projected to be $32,566,000 in FY18.

- The VARisk liability program is not a traditional insurance program, but is a self-funded "pay-as-you-go" type plan that operates on a cash basis and does not maintain traditional reserves. Not using state funds for reserves historically kept costs lower than a traditional reserve based plan, however this approach can produce more volatility in year over year premium rates based on recent losses.

- From the introduction of VARisk in 1987 through FY2008, the Commonwealth of Virginia funded 100% of the cost of the VARisk program. Due to declining appropriations, from FY2009 the Commonwealth and localities each funded 50% of the cost; beginning in FY2010, localities funded 100% of the cost of coverage. Up through FY2013, the total for liability program premiums had not exceeded $3.1 million annually. Premiums were raised from $3.1 million to $6.0 million to $10.6 million in the most recent four-year period.

- The shifting of premium costs to localities and the significant increase in annual premium amounts caused localities to seek to understand the program's financial position and to question whether alternatives to the VARISK program in its present form might better fulfill the need to provide liability coverage in a manner where localities could better control costs they now incur.

- After assembling a stakeholder group of individuals representing constitutional officer, regional jail, and local government associations, extensive study of the issues, presentations by many interested parties, and significant discussion, stakeholder group representatives discussed whether current and available alternative liability and related policy coverages would be better suited to the needs of each group of constitutional officers and regional jails and better address local government fiscal concerns. Also, to determine if the financial benefits of using the Commonwealth VARisk's program in its current form, remained advantageous to the stakeholders, as well as the Commonwealth.

Stakeholder Conclusions Summarized

- While the potential for reducing premiums and providing earlier premium information for budgeting purposes would be attractive to localities, there may not be a clear path forward to changing this coverage from the Division of Risk Management's VARisk program to an alternative provider or to a competitive environment given the negative financial position of the program and the potential fiscal impact of up to $35 million to the Commonwealth in unfunded liabilities.

- While many stakeholder representatives recognized general similarities in most coverage areas between the VARisk program and alternative coverages, the areas of guaranteed coverage and direct relationship between the constitutional officer and the provider are not a given with alternative providers; Constitutional officers and regional jails are mostly satisfied with the VARisk program in its current form and are very unlikely to recommend action resulting in the termination of the program; sheriffs' offices representatives do not feel alternative coverage to VARisk is in the best interest to them, the Commonwealth, and the citizens of Virginia.

- Constitutional officers and localities believe that under the current funding mechanism, where localities are responsible for premium costs but do not have a role in determining coverage and managing costs, it is unfair to ask each locality to blindly accept the annual premiums charged to them; the Commonwealth should pay all or part of the funding of premiums for constitutional officers.

- As an alternative to the Commonwealth accepting responsibility for the costs of coverage for constitutional officers and regional jails, or fully funding the unfunded liabilities, localities believe that a competitive environment would be preferable, that an independent analysis should confirm the accuracy of the unfunded liabilities, and that the VARisk plan should be considered for consolidation with the VARisk2 liability self-insurance plan that presently serves other agencies within local governments.

Context and History of Liability Coverage Costs for Constitutional Officers and the VARisk Plan

Since 1987, constitutional officers and regional jail superintendents and their employees have been covered under the VARisk program as provided and administered by the Division of Risk Management (DRM), pursuant to §2.2-1839, Code of Virginia. [Also included in the plan under the umbrella of "constitutional officers" are six locality directors of finance and their employees, where these localities have an appointed director of finance funded by the Compensation Board and performing all of the statutory duties prescribed for an elected treasurer and commissioner, which no longer exist in those localities.] The plan was created to provide liability coverage to constitutional officers and regional jails as a group in response to the erosion of sovereign immunity and a lack of availability of liability coverage for public entities in the commercial insurance marketplace.

The VARisk program is a risk management plan providing protection against liability imposed by law for damages resulting from claims made against Virginia's constitutional officers and regional jail superintendents and their employees, providing protection in the areas of general liability, law enforcement liability, medical malpractice, employee malfeasance, and errors and omissions liability coverage for over 16,000 individuals. Coverage is also provided against EEO claims and Virginia Bar complaints.

Up through FY08, the Commonwealth of Virginia funded the cost of annual program premium amounts for the VARisk program coverage through a General Fund appropriation to the Compensation Board. This appropriation covered 100% of the cost for sheriffs' offices, regional jails, Commonwealth's attorneys' offices, circuit court clerks' offices, and covered 50% of the cost for treasurers' offices, commissioners of the revenue's offices, and Compensation Board funded Directors of Finance's offices (localities historically share in the cost of operating these offices based upon the nature of the state and local duties performed).

Due to declining state revenues and reductions in general fund appropriation support of constitutional officers and regional jails, in FY09 the Commonwealth and localities each funded 50% of the cost of coverage for all constitutional officers, regional jails, and their employees. Beginning in FY10, the Commonwealth required that localities become responsible for 100% of the cost of coverage through a modification of language in the Appropriation Act:

"The Compensation Board is hereby authorized to deduct, from reimbursements made each year to localities out of the amounts in [items relating to financial assistance for constitutional officers], an amount equal to 100 percent of each locality's share of the insurance premium paid by the Compensation Board on behalf of the constitutional officers, directors of finance, and regional jails".

On an annual basis, DRM provides billing to the Compensation Board for the determined cost of the program for the year, and since FY10, the Compensation Board has recovered 100% of each office's apportioned cost from salary and expense reimbursements to localities for the first month of the fiscal year.

Throughout these historical periods of revenue hardships and the shifting of costs back to localities, and up through FY13, the total for liability program premiums had not exceeded $3.1 million annually. However, in FY14, premiums doubled to $6.0 million due to increasing losses and legal fees, and a statutory raise in the liability limit for sheriffs from $1 million to $1.5 million. In FY17, total premiums increased again to $10.6 million. In FY17, the prorated distribution of the total premium across all offices also changed, as new budget language was approved beginning in FY17 to direct DRM, through their actuary, to provide premium amounts for each individual constitutional office and regional jail based upon risk factors such as claims history, numbers of employees covered and numbers of inmates housed in jails. A breakdown of the VARisk premiums by officer group from FY09 to FY18 is shown in Table 1 on page 11.

With the combined effect of the reduction in state support to fund program costs to cover constitutional officers and regional jails, shifting those costs to local governments, and the recent increases in annual program costs since FY14, local governments have sought legislative efforts to obtain more control over the costs they incur to provide liability coverage to these offices.

During the 2016 session of the General Assembly, the Compensation Board was directed to convene a stakeholder group to review and compare the current VARisk program and alternative coverage options. However, in order to provide a proper basis for comparison, it is important to understand the nature of the VARisk plan, which is a self-funded plan, and how it differs from a traditional insurance plan, or even a self-insurance pool.

The VARisk program is set up as a 'Pay As You Go' (PAYG) system. Each year, the premiums for the VARisk program are calculated to meet the cost of claims and services for that year only, including an amount for the payment of expenses and loss payments incurred by active claims, or claims that are expected to be reported during the fiscal year. Unlike a traditional insurance program, or a self-insurance pool, there is no contingency or reserve fund - if the loss payments and expenses for the year exceed the amounts raised from premiums charged for the year, DRM must seek a no-interest loan from the State Treasury, which must be then repaid in full during the following fiscal year.

Historically, program premium cost growth was slow, growing from approximately $1.7 million in the 1990's to $3 million by FY 2000, and not increasing again until FY14. Since the inception of the VARisk plan, and using this PAYG methodology, the premiums charged annually maintained a positive year-end Fund Balance through FY10, with balances sufficient to cover an estimate of reserves needed, even though no reserves are maintained. Although the year-end Fund Balance remained positive through FY13, signs of its decline began at the end of FY11. The use of the Treasury Loan became necessary to cover expenses and loss payments in FY14. Although annual premium costs increased at this time to $6 million, this annual amount was still insufficient to bring the Fund Balance positive, and the annual premium cost was increased again to $10.6 million beginning in FY17.

During the 2013 Session of the General Assembly, Senate Bill (SB) 1091 was introduced and would have granted localities the authority to decide if constitutional officers would participate in the VARisk program. Currently, and pursuant to Code of Virginia §2.2-1839, the Compensation Board is responsible for including constitutional officers and their employees in the VARisk program; each year this coverage is provided for constitutional officers and regional jails through billing by DRM and payment of the annual cost for the program by the Compensation Board, with the cost recovered from local government reimbursements since FY10.

Under the provisions of SB 1091, if the locality chose not to participate in VARisk, they would not be subject to payment of any VARisk premium or administrative cost. For further review of the fiscal issues related to this proposed change, the bill was passed by in committee and referred to the Joint Legislative Audit and Review Commission (JLARC) for further analysis and development of a more comprehensive fiscal impact statement (See Appendix E).

According to the JLARC fiscal impact analysis of SB 1091 in 2013, the estimated Fund Position for VARisk, including tail claims (active claims, claims to be reported by the end of the fiscal year, and claims that had been incurred but not yet reported), was a deficit between $15 million and $23 million. This represents the amount that under a traditional insurance plan would be covered by a required reserve, but because the VARisk plan does not incorporate a reserve into its annual premium structure, it remains an unfunded liability. It was not clear at that time under the proposal which localities would elect not to participate in VARisk, therefore it could not be determined how much funding for the deficit amount would be required.

An additional matter highlighted was that SB 1091 did not require localities that chose not to participate in VARisk to secure comparable coverage to VARisk for constitutional officers. Without a requirement that these officers be guaranteed some form of coverage, the Compensation Board could face risk of incurring significant unbudgeted and unfunded costs.

The Code of Virginia §15.2-1606 requires the Compensation Board to reimburse localities for expenses incurred when a court assigns defense counsel in a civil matter where the matter is not covered by VARisk or other insurance. Therefore the absence of coverage comparable to VARisk would increase the risk that the Compensation Board could incur additional, unbudgeted expenditures. The fiscal impact studies conducted for SB 1091 indicated that the defense counsel costs under VARisk averaged $2.46 million a year. It was acknowledged that these costs were continuing to escalate, and that by 2013 the average annual cost had risen to $3.1 million per year.

JLARC's analysis for SB 1091 continued into FY14, during which time VARisk premiums doubled from $3.1 million to $6.0 million, due to increasing losses and legal fees, as well as a statutory increase in the liability limit for sheriffs from $1 million to $1.5 million.

JLARC's fiscal impact statement concluded that if localities were to decide whether constitutional officers would participate in the VARisk program, there would be three types of costs: transition costs; ongoing costs; and indirect costs.

Transition costs include the $15 million to $23 million required reserve for the payment of active and tail claims (unfunded liabilities). The potential cost for those leaving the VARisk plan would vary by the type of constitutional officer, and if not paid, individuals remaining in VARisk would face higher premiums.

Ongoing costs include the potential $3.1 million or more in legal costs payable by the Compensation Board if comparable coverage to VARisk was not sought for constitutional officers. Indirect costs include higher premiums as a result of the changing types of members within the VARisk pool. For example, if a higher risk group of sheriffs' offices and regional jails remain in VARisk and all lower risk groups leave, premiums could rise to the extent that VARisk may no longer be affordable.

Ultimately, SB 1091 was not enacted during the 2013 General Assembly Session. VARisk premiums remained at $6.0 million until FY17, when total premiums increased again to $10.5 million. Additionally, the issues and cost implications highlighted in JLARC's analysis have not changed, although there have been changes since 2013 to the current fund position of the program, notably an increase in "transition costs" (or negative Fund Position) to $35 million by FY20 (see Table 2, page 12, for historical financial information regarding the VARisk plan). These issues and cost implications continue to be factors to be addressed if consideration were given to moving forward with any alternative plans to provide liability coverage.

Table 1: VARisk Liability Program and Surety Bond Premiums FY09 to FY18

Liability and Bond Combined	Sheriffs and Regional Jails	Common-wealth's Attorneys	Clerks	Commiss-ioners of the Revenue	Treasurers	Finance Directors	TOTAL	Liability Billed	Bond Billed	Notes
FY09	$1,082,180	$349,180	$660,400	$306,680	$659,980	$293,580	$3,352,000	$3,102,000	$250,000	Begin 50% of Premiums Recovered from Localities, Budget Reduction*
FY10	$1,082,180	$349,180	$660,400	$306,680	$659,980	$293,580	$3,352,000	$3,102,000	$250,000	Begin 100% of Premiums Recovered from Localities, Budget Reduction*
FY11	$982,034	$316,867	$599,285	$278,299	$598,904	$266,412	$3,041,801	$2,791,800	$250,000	10% Liability Program Discount
FY12	$982,034	$316,867	$599,285	$278,299	$598,904	$266,412	$3,041,801	$2,791,800	$250,000	10% Liability Program Discount
FY13	$982,034	$316,867	$599,285	$278,299	$598,904	$266,412	$3,041,801	$2,791,800	$250,000	10% Liability Program Discount
FY14	$5,312,660	$359,607	$497,572	$58,924	$202,415	$90,460	$6,521,638	$6,006,638	$515,000	95% Increase in Premium over FY10 Base – Redistributed Across Officer Group based upon Actuarial allocation – including $1.5M limit increase for sheriffs
FY15	$5,312,660	$359,607	$497,572	$58,924	$202,415	$90,460	$6,521,638	$6,006,638	$515,000	
FY16	$5,360,312	$359,607	$497,572	$58,924	$202,905	$89,970	$6,569,290	$6,054,290	$515,000	Incorporated Medical Malpractice for Regional Jails (previously billed separately)
FY17	$9,601,169	$502,820	$585,270	$89,623	$238,857	$51,551	$11,069,290	$10,554,290	$515,000	74% Increase in total Liability Premium over FY16 Base – New Methodology for Actuarial Allocation of Premium by Office with 40% rate change cap**
FY18* **	$9,664,040	$316,007	$520,742	$38,265	$231,948	$40,783	$10,811,785	$10,296,785	$515,000	74% Increase in total Liability Premium over FY16 Base – New Methodology for Actuarial Allocation of Premium by Office with no rate change cap**

* Item 76. N. The Compensation Board is hereby authorized to deduct, from reimbursements made each year to localities out of the amounts in Items 69, 71, 72, 73, 74, and 75 of this act, an amount equal to 100 percent of each locality's share of the insurance premium paid by the Compensation Board on behalf of the constitutional officers, directors of finance, and regional jails.

** Item 278. G. The Department of the Treasury shall provide to the State Compensation Board the premiums, by local constitutional office and individual regional jail, required to fund the Constitutional Officer and Regional Jail Fund of the State Insurance Reserve Trust Fund. The premiums provided to the Department of the Treasury by the actuary shall be calculated using factors such as claims experience by local constitutional office and individual regional jail, each local constitutional office and individual regional jail's total number of positions, and local and regional jail average daily populations.

*** Note that total Liability Premium reduced slightly from FY17 based upon the FY18 departure from VARisk Plan by three regional jails with $0 projected unfunded liabilities (unfunded reserves)

Table 2: VARisk Liability and Bond Program Financial Information FY07 to (Projected) FY20

Year	Fund Balance (Beginning of Year)	Premium (Liability & Bond)	Loss Payments	Program Expenses	Administrative Expenses	Net Investment Income	Fund Balance (End of Year)	Required Reserve - Discounted, Including Tail	Fund Position - Discounted, Including Tail
FY07	$9,964,460	$3,395,502	($1,092,697)	($174,521)	($397,805)	$603,049	$12,297,988		
FY08	$12,296,250	$3,393,777	($2,017,924)	($429,790)	($512,769)	$739,194	$13,468,738		
FY09	$13,315,904	$3,393,310	($2,497,636)	($516,862)	($443,272)	$435,624	$13,687,068		
FY10	$13,687,068	$3,393,453	($3,634,299)	($423,641)	($550,273)	$112,116	$12,584,424		
FY11	$12,584,424	$3,086,463	($3,682,237)	($430,561)	($545,527)	$0	$11,012,562	$15,002,000	($3,989,438)
FY12	$11,012,562	$3,087,171	($6,733,081)	($435,869)	($596,621)	$0	$6,334,162	$18,667,000	($12,332,838)
FY13	$6,334,162	$3,085,780	($8,142,006)	($431,242)	($520,405)	$0	$326,289	$21,890,000	($21,563,711)
FY14	$326,289	$6,592,733	($6,372,466)	($444,332)	($615,207)	$0	($512,983)	$27,179,000	($27,691,983)
FY15	($512,983)	$6,566,278	($8,768,018)	($423,881)	($570,380)	$0	($3,708,984)	$27,227,000	($30,935,984)
FY16	($3,708,984)	$6,569,290	($5,234,750)	($471,593)	($574,812)	$4,614	($3,416,235)	$28,938,000	($32,354,235)
FY17 Projected	($3,416,235)	$11,069,290	($7,914,000)	($467,000)	($605,000)	$4,706	($1,328,239)	$30,610,000	($31,938,239)
FY18 Projected	($1,328,239)	$11,069,290	($8,291,000)	($491,000)	($623,000)	$4,800	$340,852	$32,566,000	($32,225,148)
FY19 Projected	$340,852	$11,069,290	($8,687,000)	($515,000)	($642,000)	$4,896	$1,571,038	$34,839,000	($33,267,962)
FY20 Projected	$1,571,038	$11,069,290	($9,302,000)	($541,000)	($661,000)	$4,994	$2,141,322	$37,263,000	($35,121,678)

Review of Current and Alternative Liability Coverage for Constitutional Officers and Regional Jails

The Compensation Board was directed by Item 76, paragraph T. of the Appropriation Act to convene a stakeholder group to review the current VARisk program, and to examine costs of and alternatives to the primary liability, medical malpractice, and employee malfeasance policy coverage offered by the VARisk program and alternative coverage options.

Stakeholder members include representatives of each constitutional officer and regional jail association and the Virginia Association of Counties and the Virginia Municipal League. The Division of Risk Management also participated with the group to represent details of the VARisk program, and to provide technical assistance in the stakeholder group process. The Virginia Association of Counties Risk Pool (VACORP) and Virginia Municipal League Insurance Programs (VMLIP) expressed interest in taking part in the study as alternative coverage providers. A full listing of participants in the stakeholder group meetings can be found in Appendix B at the end of the report.

VACORP

VACORP was established in 1993 at the request of Virginia localities, who at the time were seeking alternative liability and risk coverage for local government entities and school divisions. VACORP currently provides coverage to more school divisions and county agencies than any other provider. In 2013, VACORP merged with the Virginia School Boards Association (VSBA) Insurance Pools, expanding their insurance program. VACORP operates with a member-ownership model, giving participating members a stake in the organization, and the opportunity to provide input in decision-making relating to the coverage program.

VMLIP

VMLIP was established in 1980, and is the largest group self-insurance pool in the Commonwealth. VMLIP has provided auto, property, liability, and workers' compensation coverage to more than 470 local political subdivisions across Virginia. VMLIP is governed by a Members' Supervisory Board comprised of eight elected or appointed officials from member jurisdictions and the executive director of the Virginia Municipal League.

During its review, the stakeholder group considered the following areas:

- Premium and Fund History of the VARisk Program;
- Educational and training services currently and historically provided to constitutional officers in coordination with the VARisk Program;
- Comparison of Current and Potential Alternative Coverages, including policy limits, exclusions, terms and conditions and premiums that would be charged;
- Comparability with and/or Preference for Alternative Coverages;
- Potential Financial Benefits or Liabilities to Stakeholders or the Commonwealth of Alternative Coverages;
- Locality Budget Concerns including timelines for budgeting, notification regarding potential premium increases,

and potential hardships caused by unanticipated premium increases;
- Recommendations by Stakeholder Group Members & and their represented Associations.

Premium and Fund History of VARisk

Although significant information regarding the history of the VARisk program and its funding structure and position has been presented thus far, some additional details regarding the fund history can explain the current financial status of the program. The VARisk Liability and Bond Program Financial Information and Projections for 2007-2020 (Table 2) documents that Loss Payments doubled between 2007 and 2008 from $1 million to $2 million, and increased significantly again, growing to $3.7 million in FY11 and $6.7 million in FY12. Loss payments have fluctuated to some degree, averaging approximately $7.2 million per year since FY12. These increases were a result primarily of increased claims in regional and local jails. The Pay-As-You-Go (PAYG) structure of the VARisk program meant that premiums had to increase significantly to cover the cost of the increased Loss Payments.

While a representative from DRM explained that some of the increased costs result from an increasing number of cases being heard in federal courts instead of state courts, the more significant factor in cost growth is an increase in the number of regional jails in Virginia, and an overall increase in jail inmate populations. During the period of FY98 to FY14, jail inmate populations grew from approximately 16,000 inmates per day to almost 30,000 when peaking in FY14, and currently range just above 27,000 inmates per day. Additionally, the number of regional jails has grown over this same period from approximately 12 facilities to 23, holding in FY98 less than one quarter of the statewide jail inmate population, and currently housing almost 60% of the statewide jail inmate population.

Liability has grown in general due to increases in jail populations, and the proportion of liability attributed to sheriffs' offices and regional jails has grown significantly in comparison with liability in other constitutional offices. With a shift in the methodology for the distribution of premium amounts under new budget language in FY17 to attribute costs based upon factors such as claims history and inmate populations, almost 90% of premium costs are now attributed to sheriffs' offices and regional jails, with the largest losses attributed to cases of a failure to protect and inadequate medical care.

As noted previously, the VARisk program does not operate a reserve fund to cushion against rapid growth or unanticipated claims incurring administrative costs and loss payments. Additionally, the VARisk program does not have optional add-ons or opt-outs, nor can DRM reject any constitutional officer from coverage under the program. Consequently, relatively recent large losses have resulted in rapid growth in premium costs, whereas the program operated for almost 25 years with significantly lower premium costs, as reserve funding was never built into annual premiums.

Educational and Training Services for Constitutional Officers and Regional Jails

The stakeholder group was also directed to consider educational and training services that have been and are currently being provided to constitutional officers in coordination with the VARisk program.

In conjunction with the coverage provided under the VARisk program, the Division of Risk Management (DRM) provides annual instruction for all newly elected constitutional officers and newly appointed regional jail superintendents regarding the program and its provisions, and also participates in annual training programs conducted by the Virginia Sheriffs' Institute. The Division also financially supports the Compensation Board's annual program for new officers in topic areas such as lawful employment matters, responsibilities under the Freedom of Information Act and each officer group's operational responsibilities.

DRM staff provides loss control services including individual training and assistance, mentoring, human resource consultation and pre-litigation legal advice and claims resolution. DRM representatives and trainers meet upon request with individual groups and constitutional officer and regional jail association representatives to discuss issues and program and claims costs as needed.

DRM also provides free on-going enrollment in the Virginia Risk Control Institute, a partnership between DRM, the Division of Human Resource Management, and Virginia Commonwealth University's School of Business, offering 30 hours of college credit hours in risk management subjects.

Comparison of Current and Potential Alternative Coverages

The stakeholder group was directed to compare VARisk to potential alternative coverage options. The importance of complete liability coverage from any potential coverage provider was conveyed to the group. Constitutional officers and regional jails would clearly not want to lose any present coverage, and the Compensation Board would face risk of unbudgeted costs in the event sufficient coverage was not provided (§15.2.1606, if liability coverage does not provide legal defense for a constitutional officer [or deputy/assistant] in any civil action arising out of the performance of his official duties, the cost of any court assigned counsel shall be reimbursed by the Compensation Board).

At the first meeting of the stakeholder group, a policy survey (see Appendix C) was provided to the Division of Risk Management for response regarding the VARisk program, and to the interested coverage providers – the Virginia Association of Counties Risk Pool (VACORP) and the Virginia Municipal League Insurance Program (VMLIP), for responses regarding their present programs provided for local government entities and that could potentially be provided for covering constitutional officers and regional jails.

At the second meeting the stakeholder group was provided a presentation with program information from each provider including a review of their provided survey responses. After each presentation, the stakeholder group posed questions for further discussion regarding each program.

The survey responses from each provider were shared with the stakeholder group, and are presented below.

THE LIABILITY POLICY OR PLAN

Question 1: Is there a formal application?

- DRM RESPONSE: *No*
- VACORP RESPONSE: *Yes (VACORP has a one page application)*
- VMLIP RESPONSE: *Yes*

Q2: Do applications receive underwriting review?

- DRM: *No*
- VACORP: *Yes (All applications are processed by our underwriting/member services department)*
- VMLIP: *Yes*

Q3: Is there a separate application for each line of coverage?

- DRM: *No*
- VACORP: *No (There is only a single one page application)*
- VMLIP: *No*

Q4: Is there separate underwriting for each line of coverage?

- DRM: *No*
- VACORP: *No (There is not underwriting for each line of coverage)*
- VMLIP: *Yes*

Q5: Do individual loss ratios of an insured affect rates or premiums?

- DRM: *Yes*
- VACORP: *Average three-year loss ratio exceeding 60% requires additional review*
- VMLIP: *Yes*

Q6: Can applicants be rejected?

- DRM: *No*
- VACORP: *Applicants can be rejected. VACORP has rejected 2 applicants in 23 years*
- VMLIP: *Yes*

Q7: Is the policy or plan commercial insurance or self-insurance?

- DRM: *Self-insurance*
- VACORP: *The plan is a group self-insurance risk pool created under § 15.2-2700 of the Code of Virginia and is regulated by the State Corporation Commission, Bureau of Insurance*
- VMLIP: *Group self-insurance pool*

Q8: Is the policy statutorily mandated?

- DRM: *Yes*
- VACORP: *No (The plan is not statutorily mandated)*
- VMLIP: *No*

Q9: Who approves and signs the policy?

- DRM: *Governor*
- VACORP: *The Pool Administrator, appointed by the Supervisory Board of the Pool, signs the policies*
- VMLIP: *Underwriting*

Q10: Who decides what is covered and to what limits?

- DRM: *Governor*
- VACORP: *The Supervisory Board of the Pool determines the coverages and limits*
- VMLIP: *Coverage is provided based on policy language. VMLIP's primary public officials' policy has a $1,000,000 limit. Excess limits are available up to $20,000,000 subject to underwriting approval*

Q11: Who has the authority to cancel the policy?

- DRM: *Governor*
- VACORP: *The Supervisory Board of the Pool has the authority to cancel the policy*
- VMLIP: *Either party may non-renew coverage at June 30 with 30 days written notice*

Q12: Is the policy covered under the Virginia Property and Casualty Guaranty Association?

- DRM: *No*
- VACORP: *The Pool is not subject to the Guarantee Fund*
- VMLIP: *No*

Q13: How many political subdivision or entities can be covered by one policy?

- DRM: *Unlimited*
- VACORP: *The Pool issues a separate policy to each political subdivision/entity*
- VMLIP: *One*

Q14: Do liability policies have deductibles?

- DRM: *No*
- VACORP: *Liability policy deductibles are selected by each member and can be $0*
- VMLIP: *Optional*

Q15: Is coverage worldwide?

- DRM: *Yes*
- VACORP: *Yes (Coverage is worldwide)*
- VMLIP: *Yes, if suit is brought in the United State of America (including its territories and possessions), Puerto Rico or Canada*

Q16: Is the policy occurrence based or claims-made?

- DRM: *Occurrence*
- VACORP: *Occurrence (The Policy is occurrence based)*
- VMLIP: *Occurrence*

Q17: Is the policy, plan or program regulated by the Virginia Bureau of Insurance?

- DRM: *No*
- VACORP: *Yes (The program is regulated by the Bureau of Insurance)*
- VMLIP: *Yes*

Q18a: Can the policy be cancelled for - failure to pay premiums?

- DRM: *No*
- VACORP: *Yes (The policy can be canceled for failure to pay).*
- VMLIP: *Yes*

Q18b: Can the policy be cancelled for - an increase in hazard within your control that would produce a rate increase?

- DRM: *No*
- VACORP: *No (The policy cannot be canceled for an added exposure)*

- VMLIP: *No (except if there is misrepresentation on the application)*

Q19: Are heirs, estates, legal representatives, committees, guardians or assigns of deceased or incapacitated constitutional officers or regional jails covered or eligible for coverage?

- DRM: *Yes*
- VACORP: *The covered person definition matches the current plan*
- VMLIP: *Liability coverage does not extend to third parties that are not named insureds under the policy*

Q20: Does the policy cover automobiles temporarily loaned for an insured's use in a law enforcement setting?

- DRM: *Yes*
- VACORP: *The plan does cover automobiles temporarily loaned for an insured's use in a law enforcement setting*
- VMLIP: *Hired and non-owned exposure is covered under the VMLIP auto policy*

Q21: Does the policy cover liability for an employee using a personal vehicle on official business?

- DRM: *Yes*
- VACORP: *Personal vehicles are covered while being used for official business*
- VMLIP: *Yes, VMLIP's automobile policy provides coverage on an excess basis*

Q22: Does the policy cover liability for property used by or in the care, custody and control of the insured?

- DRM: *Yes*
- VACORP: *Yes (Care, custody and control is covered)*
- VMLIP: *Yes (This exposure is covered under the VMLIP property policy)*

Q23: Does the policy cover the liability of all officials, employees, agents and volunteers for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization?

- DRM: *Yes*
- VACORP: *The plan does cover performance of duties in an official capacity*
- VMLIP: *The VMLIP liability policy covers wrongful acts not otherwise excluded*

Q24: Does the policy cover punitive damages?

- DRM: *Yes*
- VACORP: *Punitive damage coverage matches the current plan*
- VMLIP: *Yes*

Q25: Does the policy cover liability arising out of pollution, hazardous waste, or toxic chemicals of any kind?

- DRM: *No*
- VACORP: *Pollution coverage matches the current plan*
- VMLIP: *No. This exposure is addressed under a pollution policy*

Q26: Does the policy cover liability for the use of chemicals in a law enforcement context?

- DRM: *Yes*

- VACORP: Yes (*Coverage for use of chemicals in law enforcement matches the current plan)*
- VMLIP: *Yes*

Q27: Does the policy cover liability for employment-related practices?

- DRM: *Yes*
- VACORP: *Yes (Employment-related practices are covered)*
- VMLIP: *Yes*

Q28: Does the policy provide coverage for off-duty employment?

- DRM: *Yes*
- VACORP: *Yes (Off-duty employment, "moonlighting", is covered)*
- VMLIP: *Yes. In order to meet the definition of an employee (particularly under workers' compensation), the locality must maintain control of the employee. Therefore, VMLIP suggests that the organization contract with the locality (as opposed to the individual) to maintain security. We have guidelines to assure the contracts are written in a way to maintain control/coverage through the locality*

Q29: Does the policy cover contractual liability?

- DRM: *No*
- VACORP: *Yes (Contractual liability is covered)*
- VMLIP: *Yes*

Q30: Does the policy cover cyber liability?

- DRM: *Yes*
- VACORP: *Yes (Cyber liability is included)*
- VMLIP: *Yes*

Q31: Does the policy cover liability arising from a memorandum of understanding between public entities?

- DRM: *Yes*
- VACORP: *Mutual Aid agreements are covered*
- VMLIP: *A VMLIP member is covered for its own liability*

Q32: Does the policy cover inverse condemnation, adverse possession, dedication by adverse use or zoning matters?

- DRM: *No*
- VACORP: *Land use/Eminent Domain is covered for defense costs*
- VMLIP: *Yes*

Q33: Does the policy cover Liquor Liability?

- DRM: *Yes*
- VACORP: *Liquor Liability is covered*
- VMLIP: *Yes*

Q34: Does the policy include an "Other Insurance" clause?

- DRM: *Yes*
- VACORP: *The Policy does include an "other insurance" clause. Please review policy for details*
- VMLIP: *Yes*

Q35: Is the "Other Insurance" clause an escape, excess or shared clause?

- DRM: *Escape*
- VACORP: *The "other insurance" clause is not an escape clause. It is a contribution by equal shares clause*
- VMLIP: *Shared*

Q36a: Does the policy pay - All expenses incurred by policy, including legal defense costs?

- DRM: *Yes*
- VACORP: *Yes*
- VMLIP: *Yes*

Q36b: Does the policy pay - Reasonable expenses incurred except salaries?

- DRM: *Yes*
- VACORP: *Yes*
- VMLIP: *Yes*

Q36c: Does the policy pay - Defense court costs?

- DRM: *Yes*
- VACORP: *Yes*
- VMLIP: *Yes*

Q36d: Does the policy pay - Post-judgment interest?

- DRM: *Yes*
- VACORP: *Yes*
- VMLIP: *Yes*

Q36e: Does the policy pay - Premiums on Appeal bonds?

- DRM: *Yes*
- VACORP: *Yes*
- VMLIP: *Yes*

Q36f: Does the policy pay - Plaintiff's attorney fees awarded?

- DRM: *Yes*
- VACORP: *Yes*
- VMLIP: *Yes*

Q37: Does the general liability coverage provided meet or exceed the coverage, terms and conditions found in ISO Commercial General Liability Form CG 00 01 12 04 or its equivalent?

- DRM: *Yes*
- VACORP: *The policy exceeds the coverage provided by the ISO form outlined*
- VMLIP: *Yes*

Q38: Does the general liability policy provide Personal and Advertising injury liability to include libel, slander, false arrest, detention, malicious prosecution, imprisonment, wrongful entry or eviction, copyright infringement, and piracy?

- DRM: *Yes*
- VACORP: *The policy does include coverage for Personal and Advertising Liability as outlined*
- VMLIP: *Yes*

Q39: Does the liability policy cover insureds in both their individual and their official capacity?

- DRM: *Yes*
- VACORP: *The policy covers liability for official capacity*
- VMLIP: *Yes, if acting within the course and scope of their employment*

Q40: Does the policy include Products and Completed Operations coverage?

- DRM: *Yes*
- VACORP: *Yes (Products and Completed Operations coverage is included)*
- VMLIP: *Yes*

Q41: Does the policy include fiduciary liability coverage?

- DRM: *Yes*
- VACORP: *The fiduciary liability coverage matches the current plan*
- VMLIP: *This exposure is covered under the VMLIP crime/bond form*

Q42: Does the policy provide Medical Malpractice insurance meeting the limits, terms and conditions found in § 8.01-581.1 et seq. of the Code of Virginia?

- DRM: *Yes*
- VACORP: *Medical Malpractice coverage is provided Pursuant to § 8.01-581.1*
- VMLIP: *Yes, with the exception of licensed physicians. VMLIP will procure outside placement for these physicians where applicable*

Q43: Does the liability policy cover actions against an insured before the Equal Opportunity Commission?

- DRM: *Yes*
- VACORP: *EEOC complaints are covered*
- VMLIP: *Yes*

Q44: Does the liability policy cover actions against an insured before the Virginia State Bar?

- DRM: *Yes*
- VACORP: *Complaints to the Virginia State Bar are covered*
- VMLIP: *Currently no. This will be added if we write constitutional officers*

Q45: Does the policy provide law enforcement legal liability coverage?

- DRM: *Yes*
- VACORP: *Yes (Law Enforcement Liability coverage is included)*
- VMLIP: *Yes*

Q46: Does the policy provide architect's and engineer's liability coverage?

- DRM: *Yes*
- VACORP: *Yes (Professional Liability for Architects and Engineers is included)*
- VMLIP: *Yes*

Q47: Does the policy provide educator's legal liability coverage?

- DRM: *Yes*
- VACORP: *Yes (Educator's Legal Liability is included)*
- VMLIP: *Yes*

Q48: Does the policy cover the liability of all licensed and certified professionals?

- DRM: *Yes*
- VACORP: *Yes (All licensed and certified professionals are covered)*
- VMLIP: *Yes, except licensed physicians. Coverage can be placed outside of policy, if needed*

Q49: Does the policy cover all full-time and part-time employees, volunteers and agents?

- DRM: *Yes*
- VACORP: *Yes (All fulltime, part-time employees, volunteers, and agents are covered)*
- VMLIP: *Yes*

Q50: Are professional liability policies occurrence-based or claims-made?

- DRM: *Occurrence-based*

- VACORP: *Occurrence (Professional Liability coverage is occurrence based)*
- VMLIP: *Occurrence. Pollution liability is on a claims-made policy*

Q51: Do claims-made policies include "tail" coverage?

- DRM: *N/A*
- VACORP: *Claims-made is not applicable.*
- VMLIP: *N/A*

Q52: Do claims-made policies include options for an extended reporting period?

- DRM: *N/A*
- VACORP: *Claims-made is not applicable*
- VMLIP: *N/A*

Q53: Does the policy cover uninsured/underinsured motorists?

- DRM: *No*
- VACORP: *Un/Underinsured Motorists is covered under the automobile coverage*
- VMLIP: *This exposure is covered under the VMLIP automobile policy*

Q54: Does the policy provide Medical Payments coverage?

- DRM: *No*
- VACORP: *Yes (Medical Payments coverage is included with a $5,000 limit)*
- VMLIP: *Yes*

Q55: Is excess or umbrella insurance provided or offered?

- DRM: *No*
- VACORP: *Excess coverage up to $10,000,000 can be offered*
- VMLIP: *Yes*

Q56: What is the policy limit per occurrence and in the aggregate?

- DRM: *Tort: $1 million/No Aggregate ($1.5 million/No Aggregate for Sheriffs); Medical Malpractice: Limits in §8.01-581.15, currently $2.25 million/No Aggregate)*
- VACORP: *VACORP's base limits are typically $2,000,000 with no annual aggregate. This can be customized*
- VMLIP: *The VMLIP primary policy limit is $1,000,000 per occurrence. No aggregate. Excess limits up to $20M available*

Q57: List any specific sub limits or caps on the policy.

- DRM: *Property damaged when used or in care, custody and control - $100,000*
- VACORP: *There are no sub-limits or caps on the policy*
- VMLIP: *There is a $10,000 medical payments coverage sublimit; $100,000 sublimit on land use/zoning claims*

Q58: Does the policy have a blanket or a scheduled additional insured endorsement?

- DRM: *Scheduled*
- VACORP: *The policy will allow for additional insureds*
- VMLIP: *Scheduled*

Q59: What is the deductible or self-insured retention?

- DRM: *None*
- VACORP: *There is no deductible in the base program. Members can request deductible options*
- VMLIP: *Deductibles are optional*

Q60: Is the deductible a per occurrence deductible or a per claim deductible?

- DRM: *N/A*
- VACORP: *Any deductibles selected are per occurrence.*
- VMLIP: *Per occurrence*

Q61: Are all claims reserved?

- DRM: *No. The Division of Risk Management establishes an exposure estimate for actuarial and internal claims management purposes. No money is reserved.*
- VACORP: *Yes (All claims are reserved).*
- VMLIP: *Yes*

Q62: Is the primary policy covered by excess or umbrella insurance or other financial instruments?

- DRM: *Yes. The Department of the Treasury has access to a $25 million Line of Credit for Division of Risk Management programs where the cost of claims and operating expenses exceed available cash balances*
- VACORP: *The base program does have reinsurance backing in place*
- VMLIP: *The first $1,000,000 (primary policy) is covered by VMLIP. Additional limits are through reinsurer*

Q63: How are defense attorneys selected and appointed?

- DRM: *The Office of the Attorney General appoints the attorneys. The Division of Risk Management selects and assigns attorneys and manages litigation*
- VACORP: *Defense attorneys are selected in concert with the insured*
- VMLIP: *VMLIP has a select panel of defense attorneys that have a proven track record defending local governments throughout the Commonwealth*

Q64: Is there a limit on legal defense costs?

- DRM: *No*
- VACORP: *No (There is no limit on legal defense costs)*
- VMLIP: *No*

Q65: Does the cost of legal defense buy down the limits of the policy?

- DRM: *No*
- VACORP: *Legal defense costs are outside the coverage limit. Legal defense costs do not touch the liability limit*
- VMLIP: *No*

Q66: Does the cost of claims, judgments or settlements buy down the limits of the policy?

- DRM: *No*
- VACORP: *The policy limit is available for each and every claim*
- VMLIP: *No*

Q67: Are claims self-administered, administered by a TPA, or managed by an insurance company?

- DRM: *Self-administered*
- VACORP: *Claims are handled by the appointed service provider to the Pool*
- VMLIP: *Self-administered by VMLIP*

Q67.5: Who has the final approval regarding settlement?

- DRM: *VARisk has the discretion to settle any claim when it deems settlement to be in the best interests of the plan. VARisk makes every effort not to make an offer or settle a claim without first contacting the Constitutional Officer or the Regional Jail Authority to advise of the reason and intent in making such an offer or settlement*
- VACORP:
- VMLIP: *VMLIP has final approval. However, claims adjusters communicate with member contacts throughout the claim and do not approach settlement prior to discussion with the member*

Q68: Is there a Faithful Performance of Duty bond?

- DRM: *Yes*
- VACORP: *Yes*
- VMLIP: *Yes*

Q69: Is there a Fidelity bond?

- DRM: *Yes*
- VACORP: *Yes*
- VMLIP: *Yes*

Q70: Does the bond cover all officials, employees, volunteers and agents?

- DRM: *Yes*
- VACORP: *Yes*
- VMLIP: *Yes*

Q71: Is your policy issued and administered by a public entity, a nonprofit corporation or a private company?

- DRM: *Public entity*
- VACORP: *Policy is issued and administered by the Pool*
- VMLIP: *Nonprofit Corporation, governed by a nine member board comprised of eight governing and/or chief appointed officials from the membership and the executive director of the Virginia Municipal League*

Q72: Provide a list of all public entities covered by your program.

- DRM: *(respondent provided a separate attachment identifying covered entities)*
- VACORP: *We cover 413 public entities including; 155 Authorities, 21 CSBs, 105 Localities, 17 Regional Jails, 115 Schools*
- VMLIP: *(respondent provided a separate attachment identifying covered entities)*

Q73: Provide a copy of the member agreement.

- DRM: *(respondent provided a copy of the plan)*
- VACORP: *(respondent provided a copy of a proposed member agreement)*
- VMLIP: *(respondent provided a copy of a sample member agreement)*

Q74: List any coverage offered by your program that is not already mentioned.

- DRM: *N/A*
- VACORP: *Information about additional coverages is attached*
- VMLIP: *Workers' compensation; Line of Duty Act Coverage; No Fault Property Damage Coverage; Kidnap & Ransom Coverage; Crisis Intervention/Violent Acts Coverage; Suspension/Expulsion Coverage; Canine Mortality Coverage; Aviation; Property including Extra Expense, Business Interruption, Flood & Earthquake; Boiler & Machinery Coverage; Student Accident; Volunteer Accident & Disability*

Q75: List any other specific exclusion not already mentioned.

- DRM: *N/A*
- VACORP: *No additional exclusions*
- VMLIP: *Several exclusions in the VMLIP liability form exist because those exposures are covered by other policies. In addition there are exclusions for: a. fines, penalties assessment or surcharges imposed by law; b. punitive damages for those acting in bad faith; c. injunctive or other equitable relief; d. payment repayment, assessment or collection of tax, fee or charge (will be removed if VMLIP writes constitutional officers.); e. amounts paid or payable for the purchase or permanent acquisition of property or property rights or for the right to permanently enforce an ordinance, regulation or restriction on the use of property; f. lead inhalation or ingestion; g. profit, advantage or remuneration to which the named member is not entitled; h. dishonest, fraudulent or criminal acts; i. violation of any federal, state or local statute or ordinance, committed with knowledge and consent of member; j. failure to maintain insurance; k. collective bargaining agreements; l. nuclear reaction or contamination; m. war; n. medical services by licensed physicians; o. tortious interference in contractual agreements/relationships; p. suits brought against the first named member by board, commission or entity of the named member; q. asbestos; r. statements or communications in support of, or against any candidate running for elected office*

Q76: Describe the various types of training and/or educational programs offered, to include what is provided, how often it is provided and what is the audience.

- DRM: *Provide annual support and/or instructors to the New Constitutional Officer School, the Sheriff's Institute, individual training and assistance, mentoring and pre-litigation counsel. Free on-going enrollment in the Virginia Risk Institute, a partnership between Division of Risk Management and Virginia Commonwealth University School of Business offering 30 hours college credit in risk management subjects*
- VACORP: *Information about training programs is attached*
- VMLIP: *VMLIP's safety, human resources and law enforcement specialists offer members up to date information on the latest trends, news and best practices in their specialties. These specialists offer consultative services to help members develop, implement and maintain effective risk management programs. VMLIP offers a variety of training opportunities on-site and online. Through the VMLIP Online University, the multimedia library, seasonal workshops and monthly webinars, members have access to a variety of topics and resources through multiple channels. There is also a risk management grant available each year which provides grant funds to members for the purchase of vital equipment and training to strengthen risk management programs. VMLIP also provides assistance with business continuity planning and communications/public relations*

Q77: Is the policy/plan/program actuarially sound? How often are actuarial valuations performed?

- DRM: *No. Annually, by Oliver Wyman, a Marsh and McLennan Company*
- VACORP: *Yes. Annually*
- VMLIP: *Yes, the pool is actuarially sound. Reserve and rate adequacy studies conducted annually by an outside actuary*

Q78: For the period FY 2012 to 2016 provide (a) total premiums collected for liability policies or self-insured liability programs, (b) loss payments, (c) cost of administration and (4) claim reserves.

- DRM: *(respondent provided fiscal information found in table 2 on page 12)*
- VACORP: *(respondent provided a financial summary document)*
- VMLIP: *(respondent provided a financial summary document)*

Comparability with and/or Preference for Alternative Coverages

After considering the responses to the survey and multiple discussions regarding program options, it was clear that many of the provisions of coverage across programs would be similar. However, the stakeholder group questions and comments can be summarized into a handful of issues that highlight some of the potential differences in the alternate plans from the VARisk plan. These areas are:

- Determination of Program Coverage and Conflict between Constitutional Officers and Localities

- Assignment of Counsel and the Settlement of Claims

- Membership and Cancellation

Full Program Coverage

The VARisk program has provided liability coverage for constitutional officers for over 25 years, and officers understand the majority of the provisions of their coverage. By and large, any changes to that coverage are made through the legislative process by the approval of statutory changes, and then following through the plan approval process for approval by the Governor. Constitutional officers have the opportunity to be involved in the legislative process that may result in changes to their coverage.

However, the officers expressed concern with their inclusion in an alternative program, where their local county administrator or city manager would ultimately make the decision regarding coverage to be provided. There was concern within the stakeholder group that non-VARisk coverage would not be as full-featured as sheriffs may require, if the details of their liability coverage are managed by the locality. Additionally, as certain provisions of coverage may be optional, or may be reduced in an attempt to reduce premium costs, constitutional officers had some concern that they not have a voice in these considerations.

Specifically, the alternate providers were asked whether the areas of coverage where their alternative plans may differ from the VARISK plan could be reconciled and included in the alternative plans (e.g. settlement management, non-cancellation, etc.). The providers indicated that it would depend on the nature of the difference, but that some differences could be reconciled.

A VACORP representative also advised that excess coverage beyond present policy limits ($1.5 million for sheriffs and $1.0 million for regional jails and all other constitutional officers) could be provided in their plan, and that regional jails are provided excess coverage automatically as part of the VACORP policy; however most other customers do not elect to purchase the excess coverage.

A stakeholder group representative proposed that any recommendation in this area should include that, in the event an alternative coverage is provided, mandatory components of coverage should be defined, including but not limited to policy limits, required minimum coverage and settlement management.

Conflict of interest

A constitutional officer representative asked about the potential for a conflict of interest where coverage is provided under the same insurer to both the constitutional officer and an officer or employee of local government in the same case (claim).

The question posed to the providers was "What mechanisms are in place to prevent conflict of interest, should a locality and a constitutional officer be represented by the same coverage provider in a case in which each is a party, and also where the locality is responsible for premium cost and may have some influence over terms of coverage provided to the constitutional officer?"

The VMLIP responded that "We routinely appoint separate legal counsel should conflicts arise between defendants."

A VACORP representative advised that the VACORP response to this question would be that it is not uncommon to have claims from (i) a locality, (ii) a constitutional officer and (iii) and employer with potential conflicts of interest. It is possible in these circumstances to arrange a separate attorney for each of these entities.

Settlement of claims

An additional area of concern expressed by a constitutional officer representative questioned whether the VACORP [or VMLIP] plan would offer a choice to the covered constitutional officer in whether to settle a case or challenge further.

The question posed by constitutional officers for follow-up by the alternative coverage providers was how a decision would be made regarding settlement of a claim involving a constitutional officer if the locality wants to settle a claim and the constitutional officer does not want to settle or wants to challenge?

The VMLIP responded that "Only the first named insured (usually the locality's governing board) has the right to block a settlement under VMLIP's local government liability policy; however, if it does so VMLIP is not responsible for any amount beyond what would have been the settlement amount. Other named insureds have no right to block a settlement."

A VACORP representative explained that VACORP does not settle cases without discussing the resolution with affected parties first, however, he also advised that VACORP's response would be similar to VMLIP. The constitutional officer can elect to block a settlement, but VACORP will not be responsible for any amount beyond the original settlement amount. The VACORP representative indicated his program would work directly with the constitutional officer to assign acceptable counsel, as opposed to working with the locality in the assignment of counsel.

It should be noted that the provisions of the VARisk plan contain the same limitations regarding blocking of a settlement and that DRM also reserves the right to make final settlement decisions in the best interest of the plan.

However, at the heart of these concerns by constitutional officers is the relationship and direct communication between the coverage provider and the constitutional officer. Under the VARisk program, the constitutional officer is autonomous in his or her relationship and communications with the VARisk program and its provision of coverage. The Compensation Board is an administrative agency and has no role in decisions made between the officer and DRM regarding the settlement of a claim. Under an alternative plan provided through the locality, the governing body and/or chief executive of the locality would ultimately have the authority to negotiate a settlement through the provider even if in conflict with the wishes of the constitutional officer.

Membership and Cancellation

A constitutional officer association representative noted from the survey responses that there is no guarantee that a constitutional officer would not lose coverage under the plans of either alternative provider.

The VARisk program provides that all constitutional officers (and regional jails) are automatically enrolled without underwriting, and the coverage cannot be cancelled based upon loss experience. Given the complicated factors faced in a jail environment with the management of incarcerated individuals, this is a matter of great importance especially for sheriffs operating local jails and for a number of regional jails that have experienced significant claims.

The question posed for response by the alternative providers was: "What guarantees could be offered for coverage for all offices, and against the plan being cancelled? The officers have expressed concerns regarding cancelation and the potential that in the long term, high-risk offices may have coverage cancelled, or be priced-out by escalating premiums, and be required to return to VARISK, which could be problematic if this program only held high-risk offices. Would coverage for all offices, regardless of present risk/history, be available? Is a no-cancellation clause an option, and if so, how would premiums be affected?"

The VMLIP responded that "We cannot offer a guarantee against cancellation; however, we have neither cancelled nor non-renewed a member in our 37 year history (except for non-payment of premium). We underwrite each risk each year and allocate premium on a fair and equitable basis. We have a question into the Virginia Bureau of Insurance to ask if constitutional officers would be eligible as a separate pool member. If not, we would be restricted to accepting only those constitutional officers affiliated with a local political subdivision currently a member of VMLIP. If allowed, we would underwrite and price each risk separately. We cannot commit to accepting all constitutional officers in all jurisdictions without having underwritten the accounts. That would not be fair to our current members."

A VACORP representative advised that VACORP, similar to VMLIP, has not cancelled nor non-renewed a member in their history, except for in the case of non-payment of premiums. The VACORP representative offered that an alternative to the VACORP proposal could be to create a competitive environment, where constitutional officers can participate in the VACORP pool or choose the DRM or VMLIP pools. VACORP suggested that this could also include a no cancellation clause, but the VACORP representative pointed out again that like VMLIP, they have not cancelled any policy unless it was for non-payment of premiums.

Claims Handling

One of the benefits that many constitutional officer representatives in the meetings discussed is the claims handling service provided by staff of the Division of Risk Management. All constitutional officer representatives commented positively and were complimentary of their experiences with the claims management process and the staff handling the claims under the VARisk program, and questioned the other providers regarding their services.

A VACORP representative advised that VACORP does not have employees, and that all claims are handled by a third party. He also indicated, however, that the list of attorneys includes the same attorneys as those utilized by the VARisk program, plus some additional attorneys. The VMLIP has its own staff managing liability claims, consulting, and handling underwriting.

Potential Financial Benefits or Liabilities of Alternative Coverages

There are two primary issues that arose during coincidental time periods: the matter of the shifting of responsibility for payment of liability premiums from the Commonwealth to local governments; and the dramatic increase in liability program premiums resulting from increases in claims and loss payments with the lack of a reserve fund to smooth out the impact of significant claim events.

The PAYG structure of the VARisk program allowed premiums to remain relatively lower for an extended period of time (almost 25 years) than they might have otherwise, had a traditional insurance-based model charging actuarially sound premiums been constructed at the time of implementation of the plan; however, increasing claims costs have driven up current costs under this structure, as the current premiums are required to pay for past incidents.

The largest single potential financial liability of localities choosing to cover their constitutional offices under an alternative provider of coverage, would be the handling of the current $35 million unfunded reserve/liability. In the absence of a plan to address the unfunded liability, it would continue to grow.

DRM noted that in the current form of the VARisk program, if a member were to leave the program in the middle of an active claim, the future costs of resolving the claim may not be met by the leaving member, and as such those costs may be distributed to the members remaining in the program. This was evidenced in 2015, when a regional jail left the VARisk program. The cost of the unfunded reserve for the active claims of the departing regional jail was not addressed and instead was incorporated into the premiums of the remaining members of the VARisk program. [Note that while §2.2-1839 provides that the Compensation Board is responsible for including constitutional officers and their employees in the VARisk program, the Code does not speak to regional jails, which have been included in the plan since its inception; this distinction gained attention by regional jails in recent years, and as premium costs have increased, some regional jails have expressed an interest in leaving the program.]

If constitutional officers or more regional jails were to leave the program, their portion of the unfunded reserve (negative fund position) would stay with the VARisk program, and would have to be funded to meet loss payments and expenses when claims are resolved. Those remaining in the program would face prohibitive increasing costs, putting the entire program at risk.

In order to prevent erosion of the program in the event of departure from the program of high-liability regional jails, it was determined that a VARisk exit strategy would be required to determine deadlines for any member deciding to leave the program, and to define how to proceed with any ongoing claims costs of those members.

DRM implemented a policy in December, 2016 entitled **VaRISK TERMINATION OF MEMBERSHIP POLICY FOR REGIONAL JAILS** (found in Appendix D), identifying requirements for members (regional jails) that choose to terminate their membership in the VARisk program in order to help defray the cost of active claims and litigation and protect the financial integrity of the program.

As actuarial analysis of DRM programs occurs in the fall in advance of the Executive budget development process, regional jails must notify DRM and the Compensation Board of their intent to leave the program at that time, with an effective date of the beginning of the following fiscal year. DRM provides the jails with an estimate of their cost to leave the program based upon outstanding costs of active claims to ensure other program members are not left to absorb these cost through higher premium costs. Once the jail leaves the plan at the beginning of the following fiscal year, the jail is responsible for those estimated costs plus any added costs that have become known through claims filed between the time the jail notified DRM of their intent to leave the program and their effective departure date.

Upon implementation of the exit policy, 3 of the remaining 21 regional jails elected to terminate their membership in VARisk effective July 1, 2017 (FY18).

The distinct difference between traditional insurance and the PAYG system of DRM's VARisk plan means that its costs can not directly be compared against VACORP and VMLIP costs for their self-insurance plans.

Annual premiums for VARisk are available to the Compensation Board in the spring and are communicated to localities and constitutional officers on an estimated basis in the month of March, and in final on May 1 for the subsequent fiscal year. VACORP indicated at first it would not be able to produce estimated premiums without detailed loss information for the members of the VARisk program. VMLIP provided an average rate which could be used to estimate premiums, however without detailed loss information on the members of the VARisk program, they too could not guarantee accurate premiums. A Compensation Board estimate based on the VMLIP estimate indicated that the total cost for constitutional officers could range between $3m-$9m, but again these calculations were made using average figures and did not take into account the loss information relating to the potential members.

A VMLIP representative also noted that they did not necessarily advise they could provide a less expensive option, but did commit that their program option would provide stable premiums associated with a traditional insurance program, versus the recent fluctuating premiums associated with the PAYG system.

Likewise, representatives from VACORP were asked how premiums could be provided less expensively than under the VARisk program if the service provides coverage and also operates a reserve fund. VACORP explained that while the VARisk premiums covered any Loss Payments for new claims of historic incidents, under a more traditional insurance model, these Loss Payments would be covered by the reserve fund. Ultimately, it is not necessarily less expensive premiums that would be obtained through the alternate provider, but more stable premiums with less volatile fluctuations from year to year. A VACORP representative pointed out that the current VARisk PAYG system led to total premium costs of $11m in FY17, whereas he estimates that with traditional insurance (and reserves) the total premiums for the period likely would not have exceeded $7 million.

VMLIP and VACORP had initially presented traditional insurance based structures, but the VARisk's negative $35M fund position had not been addressed in these proposals.

However, in December 2016, subsequent to the 2016 stakeholder group meetings, a detailed proposal on constitutional officer liability coverage was submitted to the Compensation Board by VACORP. The proposal was made available to the stakeholder group during subsequent meetings in 2017, and included details of a five year liability coverage program, proposing to accept a like premium level as that currently charged annually for the VARisk program for each of 5 years to cover all constitutional officers and regional jails, and during this time to absorb the VARisk program's $35 million unfunded liability position by including a condition to inherit the tail claims and open, non-concluded claims from the VARisk program, and with an option to be reviewed after the five year period. While the VACORP representative had initially suggested an annual premium could be estimated around $7 million per year, he suggested that if all constitutional officers were covered under the VACORP proposal, it should create efficiencies that would allow for a higher premium of approximately $10.4 million per year to cover both program expenses and to absorb the current program's unfunded liabilities over the five year period.

A member agreement was included in the proposal that would suggest the Compensation Board contract with VACORP to provide their coverage to all constitutional officers and regional jails.

However, the Board's authority under §2.2-1839, Code of Virginia provides that the Compensation Board is responsible for determining whether to include constitutional officers and their employees in the VARisk program, established by the Division of Risk Management, but does not authorize the Board to contract for an alternate program on behalf of constitutional officers. Additionally, any decision by the Compensation Board to move all VARisk program members, even if the Board perceived it had such authority under the statute, would have a significant impact on the programs operated by DRM by law, and such an action on the part of the Board to significantly impact another agency's financial position, would not be appropriate. Finally, procurement laws and regulations would likely require a competitive bid or request-for-proposal process in the event consideration were given to providing coverage for all constitutional officers and regional jails under an alternative single plan.

While the Compensation Board does not have the authority to act upon the VACORP proposal, the proposal was presented before the stakeholder group for discussion of this alternative. Additionally, the VACORP representative to the group advised that he believes VACORP has offered a pathway to competition, where after five years, the unfunded liability would be resolved, and the constitutional officer liability coverage market could be opened up to competition.

Locality Budget Concerns

The stakeholder group was directed to consider matters of budgetary concern to local governments under the current liability program, which primarily consisted of two matters: the timeline for local budget development; and a locality's ability to manage costs incurred for liability coverage.

Locality budget planning begins each year in the fall (October) for the subsequent fiscal year beginning July 1. Localities begin this budget development period without necessarily knowing what the upcoming fiscal year's liability premiums through the VARisk program will be (although premium amounts for FY18 were provided to localities at the beginning of FY17 for planning purposes, as a shift in cost among localities and constitutional offices was already planned).

At the same time, the Division of Risk Management (DRM) works with its actuary in the fall to determine the upcoming fiscal year's program premium requirements. If DRM and the Department of Treasury determine that additional premium amounts will be needed for the upcoming fiscal year, such a request to increase program premiums is made through the Administrative budget development process, also in the fall for the subsequent fiscal year. Typically, proposed premium amounts for the following fiscal year are agreed upon in conjunction with budgetary items introduced in the Budget Bill in December, however, ultimate approval of rates does not occur until the budget is signed by the Governor in the spring. Also, rates are typically established for the two-year biennial budget during the biennial budget development and approval process, but significant impacts could result in mid-biennium changes being considered.

Under its Termination of Membership policy for Regional Jails, beginning in the fall of 2017, DRM makes available to each regional jail a non-binding estimate of financial responsibility in mid-October – representing their estimated cost to terminate membership for the following fiscal year - should the regional jail elect to leave the program. A regional jail electing to leave the program must notify DRM and the Compensation Board by December 15 of its intention to terminate membership effective the beginning of the following fiscal year, and then DRM must work with its actuary to incorporate such membership changes into premium plans for the subsequent fiscal year.

Typically, annual premiums for VARisk have been made available to the Compensation Board by DRM in the spring, and the Board has communicated anticipated premium amounts to localities and constitutional officers on an estimated basis in the month of March, and in final on May 1 for the subsequent fiscal year.

If the VARisk premium amounts are provided in estimated format in March, significant changes provided at this time leave little time for localities to make adjustments to their budget plans for the coming fiscal year. While the Compensation Board is working with DRM and the Department of Treasury to establish an earlier time period to receive information with which to notify localities, it is important to note that legislative proposals may also impact program costs for the coming fiscal year, and may not be approved until later in the spring. For example, a legislative change to sheriffs' liability limits approved during the 2013 legislative session resulted in increased premium amounts for FY14 that were not actuarially determined until the end of March, 2013, prior to the July 1, 2013 effective date. Statutory deadlines for the Compensation Board's notifications regarding revenue/cost estimates and approved budgets to constitutional officers, regional jails and localities are all established based upon timelines for the Commonwealth's legislative and administrative budget approval processes.

Localities have multiple lines of insurance coverage for their departments, and it appears that some of these programs provide alternative timelines for underwriting, determination of premiums, and program implementation (for example, some program coverage begins January 1 instead of July 1). Due to the more traditional insurance structure of these other local coverages, volatility of rates is lessened with reinsurance options, the availability of reserves established through premiums paid, and greater control over costs through modifying terms of coverage if necessary, etc. In the stakeholder group meetings, localities voiced that their single largest concern is that 100% of the cost of providing liability coverage is placed with them, however they are offered no choice in liability coverage, and consequently no opportunity to reduce costs. They consider current premiums paid to the VARisk program to be unpredictable, and such instability makes preparation of local budgets difficult.

Recommendations on Current and Alternative Coverages

Given concerns by local governments that they are presently responsible for paying the cost of premiums to provide liability coverage for constitutional officers, but have no control over the coverage provided or the cost to provide that coverage, it is not surprising that their number one priority is having the ability to control their own costs by determining coverage and the entity that provides it.

While most of the constitutional officer association representatives recognized the difficulty of this position presently faced by localities, they also recognize that this is a symptom of a larger problem that has arisen over the last two decades, and that is the erosion of state funding support and responsibility for constitutional officers. Constitutional officers derive from the Virginia Constitution that are elected at the local government level and are intended to be supported by state funding as a means of preserving their autonomy and their ability to be independently accountable to the citizens that elect them. However, these officers face the reality that Commonwealth funding has deteriorated with the expectation that localities will make up these differences, while a number of localities still point the officers back to the Commonwealth for their funding needs. In this particular case, the Commonwealth has established a coverage program to support these officers and protect them from liability in the performance of their statutory duties, but has given up providing funding support for the established program. Constitutional officers continue to have concerns that if program control is returned to localities, they would lose their autonomy in decision making that could ultimately impair the manner in which they manage their statutory responsibilities and open the door to settlements that could diminish their authority in office.

Despite the concerns the officers recognize regarding the fiscal difficulty faced by their localities with recent premium increases, suggestions by constitutional officer association representatives are based around continuing the VARisk program and either finding a mechanism to control volatility of annual premium costs in the program or having the Commonwealth re-fund the program on behalf of constitutional officers instead of pushing this cost to localities. Local government representatives would also support the Commonwealth picking up the cost to again fund the program if they are not to be given options to control the costs they now incur.

Some constitutional officer representatives were not opposed to the idea of competition, although they would want coverage requirements (terms and conditions) well-specified to ensure consistency in coverage to current provisions, and no constitutional officer representative considered favorably the elimination of the VARisk program. All representatives spoke favorably regarding the services provided through the VARisk program.

A representative of the Virginia Court Clerks' Association spoke of the benefit of having all constitutional officers under the umbrella of the VARisk program in a recent lawsuit that involved all circuit court clerks, and all were represented together with a successful outcome.

A Virginia Association of Commonwealth's Attorneys representative indicated that Commonwealth's attorneys were mostly satisfied with the VARisk program in its current form and were very unlikely to recommend action resulting in the termination of the program.

A Virginia Association of Regional Jails representative advised that while some regional jails chose to leave the VARisk program and others are interested in identifying other options that may be available, many others want to stay with the VARisk program.

Stakeholders recognized that the current VARisk negative position of $35 million is a significant factor that must be considered before any change to the current VARisk program could occur, and it is unclear how moving to competition amongst providers could occur with this matter outstanding. VACORP recognized this concern when proposing to take over the entire program and pay off the negative fund position of VARisk, however constitutional officer association representatives are reticent to move away from the VARisk program and its established guaranteed coverage and the direct nature of its service relationship with their offices.

Stakeholders were additionally asked to provide written recommendations representing their respective associations, and the Division of Risk Management was asked to respond to questions of the group regarding reducing volatility of the costs for the VARisk program. Stakeholder written recommendations are included in Appendix F.

In consideration of the concerns regarding program cost volatility in the VARisk program, the Division of Risk Management noted that the volatility of premium costs is directly linked to the volatility and number of claims and that actions to reduce claims would be needed. The Division also advised that the quickest way to reduce volatility in premiums would be to permit DRM to fully fund its "unfunded liabilities", that is case reserves, and to honor that funding.

Consideration could also be given to returning the constitutional officer and regional jail program to being a true self-insured pool with all members equally sharing the outstanding cost, however, attempting to act as an insurer cannot be as effective over time without the capability of controlling membership, refusing or terminating coverage, and without the ability to truly reserve claims.

The DRM believes that the provision of improved medical service to inmates would also have a significant effect, as many claims in jails have medical issues that go to federal court where costs increase significantly. Additionally, enhanced training focused on medical and mental health issues for jail staff would be helpful to target the areas of the most significant claims.

The DRM added that additional staff resources for the agency would also assist. Funding for additional experienced claim personnel dedicated to the constitutional officer and regional jail program, as well as competitive wages, would help reduce case load and permit greater attention to active claims and suits.

Joint comments from local government representative stakeholders and the VACORP recommended that the Commonwealth either assume 100% of the funding of VARisk, or allow local governments to have a choice of providers.

The locality representatives group and VACORP indicated that there was no disagreement among stakeholders that having a choice of providers offering the coverage would be preferable. The group believe this can be accomplished by clearly defining the authority of the Compensation Board to promulgate rules associated with participation by other providers. The group also recommended an independent analysis of the unfunded liability and creating participation rules and an exit strategy for all members of VARisk. Finally, the local government representative group (including representatives of VACORP) recommended several other steps for consideration in the future, such as evaluating if it is reasonable to merge VARisk and VARisk2 (a voluntary, comprehensive, liability self-insurance plan providing coverage for tort liability, law enforcement liability, public officials liability, and medical malpractice, as needed, for local governments by the Division of Risk Management) into a single plan, and investigating how other states' counterparts to constitutional officers are insured.

The Treasurers' Association of Virginia’s written recommendation concluded that their association does not feel it prudent to change the current liability coverage available with VARisk.

The Commissioners of the Revenue Association's written recommendation concluded that while the possibility of reducing premiums and providing timelier premium information for budgeting purposes would be attractive to localities, it does not seem that there is a clear path forward to moving this coverage out of the Division of Risk Management. The Commissioners of the Revenue Association also suggested that if a future study is to be undertaken, a sample of localities based on different size, structure and location could be evaluated by alternative underwriters for estimated premiums over several years based on historical data. The resulting information may provide a foundation for future proposals on liability coverage.

The Virginia Sheriff's Association's written recommendation concluded that there was concern that the provisions of VARisk would not be covered, or covered to a lesser extent by an alternative coverage option. There would be no guarantee that the services would remain in force under an alternative, as the alternative providers indicated some critical services may not be available. The group also expressed concern relating to VARisk’s $35 million unfunded liability; at the present time, no upfront cost is required to continue with VARisk. In conclusion, the group did not feel alternative coverage to VARisk was in the best interest of the sheriffs, the Commonwealth, and the citizens of Virginia.

Appendix A – Authority for Report

Chapter 836, Item 76, paragraph T. (2017 Virginia Acts of Assembly), shown amending original language in Chapter 780, Item 76, paragraph T. (2016 Virginia Acts of Assembly)

1. The State Compensation Board is hereby directed to ~~convene a~~ *continue convening the same* group of stakeholders *that met three times during 2016 and which is* comprised of, and representing the interests of, constitutional officers, regional jail authorities, and local governments. *The stakeholder group shall continue* to jointly review current and alternative primary liability, medical malpractice, and employee malfeasance policy coverages and contracts, and alternatives for liability reinsurance, for such coverage currently paid for by localities under VARisk.

2. In ~~its~~ *this continuing* review, the group shall consider the premiums which have been and are currently being charged to local governments by VARisk for primary liability, medical malpractice, and employee malfeasance policy coverages for the current and prior ~~five (5)~~ *six (6)* years, and the educational and training services that have been and are currently being provided to constitutional officers in coordination with the VARisk coverage over the same time period. *The stakeholder group shall consider the current statutory requirements specifying when localities must prepare budgets, the impact on local governments of the currently utilized system that allows large unanticipated VARisk premium increases, and the resulting hardships on localities caused by an inability to budget for these increases.* These findings shall be compared by the State Compensation Board and stakeholders to potential alternative coverage and contracts which could be provided by public and private providers of primary liability, medical malpractice, and employee malfeasance policy coverage, and reinsurance coverage to insure constitutional officers, regional jails authorities, and local governments, and the premiums that would be charged for such coverage. In its review, the group shall also identify and compare any and all policy limits, exclusions, and terms and conditions of VARisk and comparable coverages available from public or private insurance providers.

3. The State Compensation Board and stakeholders shall *continue to explore whether proper and current full funding of these liability programs would be desirable and* determine whether the available alternative coverage and service options are competitive with or preferable to the coverage and service options provided under VARisk, and the potential financial benefits or liabilities to the stakeholders or the Commonwealth resulting from the provision of primary liability, medical malpractice, employee malfeasance, and reinsurance coverage by alternative providers, and shall report their *final* findings *and recommendations* by December 1, ~~2016~~ *2017*, to the Chairmen of the House Appropriations Committee and the Senate Finance Committee.

4. The Director, Division of Risk Management, shall provide technical assistance to the stakeholder group upon request of the Executive Secretary of the Compensation Board.

Appendix B – Stakeholder Group Members

Virginia Sheriffs' Association:

- Sheriff B.J. Roberts, City of Hampton
- Sheriff Joseph Baron, City of Norfolk
- Sheriff Ken Stolle, City of Virginia Beach
- Sheriff Thomas Jones, Charlotte County

Other Attendees:

- John Jones, Executive Director, Virginia Sheriffs' Association
- Jennifer Worden, Attorney, Norfolk City Sheriff's Office

Virginia Association of Commonwealth's Attorneys (VACA):

- Eric Olsen, Commonwealth's Attorney, Stafford County; President, VACA
- David Ledbetter, Commonwealth's Attorney, City of Waynesboro

Virginia Circuit Court Clerks' Association (VCCCA):

- Randy Carter, Circuit Court Clerk, City of Suffolk
- Heidi Barshinger, Circuit Court Clerk, Henrico County

Treasurers' Association of Virginia (TAV):

- Laura Rudy, Treasurer, Stafford County
- Lee Pfeiffer, Treasurer, Cumberland County
- Larry Pritchett, Treasurer, Spotsylvania County
- Bill Orndoff, Treasurer, Frederick County
- Evelyn Powers, Treasurer, City of Roanoke

Commissioners of the Revenue Association of Virginia:

- Maggie Ragon, Commissioner, City of Staunton
- Lori Stevens, Commissioner, Dinwiddie County
- Franklin Edmondson, Commissioner, City of Portsmouth

Virginia Association of Regional Jails (VARJ):

- Jeff Newton, Superintendent, Riverside Regional Jail
- James Whitley, Superintendent, Northwestern Virginia Regional Jail
- William Smith, Superintendent, Western Tidewater Regional Jail
- Donald Hunter, Superintendent, Piedmont Regional Jail
- Tim Trent, Superintendent, Blue Ridge Regional Jail

Other Attendees:

- Mike Edwards, Kemper Consulting

Virginia Association of Counties (VACO):

- R. Bryan David, County Administrator, Orange County
- Cynthia B. Smith, Director of Risk Management, Chesterfield County

Other Attendees:

- Dean Lynch, Executive Director, Virginia Association of Counties
- Katie Boyle, Director of Governmental Affairs, Virginia Association of Counties

Stakeholder Group Members (continued)

Virginia Municipal League (VML):

- Brian Thrower, City Manager, City of Emporia
- Dan Hurley, CSP, ARM-P, Risk Manager, City of Chesapeake

Other Attendees:

- Sandra Harrington, Government Relations Associate, Virginia Municipal League
- Mary Jo Fields, Director of Research (former), Virginia Municipal League

Current Program Provider Participants

Division of Risk Management (DRM), Department of Treasury:

- Don LeMond, Director, Division of Risk Management
- Linda Lilly, Division of Risk Management
- David Swynford, Department of Treasury
- Brandy Mikell, Department of Treasury (former)

Alternative Provider Participants

Virginia Association of Counties Risk Pool (VACORP):

- Chris J Carey, Administrator, Virginia Association of Counties Risk Pool
- John Heard, John T. Heard & Associates, Inc.

VML Insurance Programs (VMLIP):

- Jeff Cole, Director of Member Services
- Cathie Moreland-Hasty, Director of Underwriting

Other Agency Participants

Office of the Secretary of Finance:

- Gina Burgin, Deputy Secretary (former), Office of the Secretary of Finance

Senate Finance Committee Staff:

- Adam Rosatelli, Legislative Fiscal Analyst, Senate Finance Committee Staff

House Appropriations Committee Staff:

- Michael Jay, Legislative Fiscal Analyst, House Appropriations Committee Staff

Department of Planning and Budget:

- Reginald Thompson, Budget and Policy Analyst, Department of Planning and Budget

Compensation Board Staff:

- Robyn de Socio, Executive Secretary, Compensation Board
- Charlotte Lee, Budget Manager, Compensation Board
- Oliver Bradshaw, External Audit Supervisor, Compensation Board
- Mark Pellett, Management & Financial Analyst, Compensation Board

Appendix C – Policy Questions for Coverage Providers

LIABILITY POLICY OR PLAN REVIEW AND COMPARISON

INSURER OR ADMINISTRATOR: ____

POLICY OR PLAN NAME/ NUMBER: ____

NOTE: The term “policy” as used here includes commercial insurance policies, manuscript policies used by self-insured organizations, self-insurance plans, or any other instrument that contractually provides liability coverage for public entities.

THE LIABILITY POLICY OR PLAN

1. Is there a formal application?
2. Do applications receive underwriting review?
3. Is there a separate application for each line of coverage?
4. Is there separate underwriting for each line of coverage?
5. Do individual loss ratios of an insured affect rates or premiums?
6. Can applicants be rejected?
7. Is the policy or plan commercial insurance or self-insurance?
8. Is the policy statutorily mandated?
9. Who approves and signs the policy?
10. Who decides what is covered and to what limits?
11. Who has the authority to cancel the policy?
12. Is the policy covered under the Virginia Property and Casualty Guaranty Association?
13. How many political subdivision or entities can be covered by one policy?
14. Do liability policies have deductibles?
15. Is coverage worldwide?
16. Is the policy occurrence based or claims-made?
17. Is the policy, plan or program regulated by the Virginia Bureau of Insurance?
18. Can the policy be cancelled for:
    - Failure to pay premiums?
    - An increase in hazard within your control that would produce a rate increase?

COVERAGE PROVIDED

19. Are heirs, estates, legal representatives, committees, guardians or assigns of deceased or incapacitated constitutional officers or regional jails covered or eligible for coverage?
20. Does the policy cover automobiles temporarily loaned for an insured’s use in a law enforcement setting?
21. Does the policy cover liability for an employee using a personal vehicle on official business?
22. Does the policy cover liability for property used by or in the care, custody and control of the insured?
23. Does the policy cover the liability of all officials, employees, agents and volunteers for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization?

24. Does the policy cover punitive damages?
25. Does the policy cover liability arising out of pollution, hazardous waste, or toxic chemicals of any kind?
26. Does the policy cover liability for the use of chemicals in a law enforcement context?
27. Does the policy cover liability for employment-related practices?
28. Does the policy provide coverage for off-duty employment?
29. Does the policy cover contractual liability"
30. Does the policy cover cyber liability?
31. Does the policy cover liability arising from a memorandum of understanding between public entities?
32. Does the policy cover inverse condemnation, adverse possession, dedication by adverse use or zoning matters?
33. Does the policy cover Liquor Liability?
34. Does the policy include an "Other Insurance" clause?
35. Is the "Other Insurance" clause an escape, excess or shared clause?
36. Does the policy pay:
    - All expenses incurred by policy, including legal defense costs?
    - Post-judgment interest?
    - Reasonable expenses incurred except salaries?
    - Premiums on Appeal bonds?
    - Defense court costs
    - Plaintiff's attorney fees awarded?
37. Does the general liability coverage provided meet or exceed the coverage, terms and conditions found in ISO Commercial General Liability Form CG 00 01 12 04 or its equivalent?
38. Does the general liability policy provide Personal and Advertising injury liability to include libel, slander, false arrest, detention, malicious prosecution, imprisonment, wrongful entry or eviction, copyright infringement, and piracy?
39. Does the liability policy cover insureds in both their individual and their official capacity?
40. Does the policy include Products and Completed Operations coverage?
41. Does the policy include fiduciary liability coverage?
42. Does the policy provide Medical Malpractice insurance meeting the limits, terms and conditions found in § 8.01-581.1 et seq. of the Code of Virginia?
43. Does the liability policy cover actions against an insured before the Equal Opportunity Commission?
44. Does the liability policy cover actions against an insured before the Virginia State Bar?
45. Does the policy provide law enforcement legal liability coverage?
46. Does the policy provide architect's and engineer's liability coverage?
47. Does the policy provide educator's legal liability coverage?
48. Does the policy cover the liability of all licensed and certified professionals?
49. Does the policy cover all full-time and part-time employees, volunteers and agents?
50. Are professional liability policies occurrence-based or claims-made?
51. Do claims-made policies include "tail" coverage?
52. Do claims-made policies include options for an extended reporting period?

53. Does the policy cover uninsured/underinsured motorists?
54. Does the policy provide Medical Payments coverage?
55. Is excess or umbrella insurance provided or offered?

PREMIUMS, POLICY LIMITS, DEDUCTIBLES, CLAIMS, RETENTIONS, EXPENSES

56. What is the policy limit per occurrence and in the aggregate?
57. List any specific sub limits or caps on the policy.
58. Does the policy have a blanket or a scheduled additional insured endorsement?
59. What is the deductible or self-insured retention?
60. Is the deductible a per occurrence deductible or a per claim deductible?
61. Are all claims reserved?
62. Is the primary policy covered by excess or umbrella insurance or other financial instruments?
63. How are defense attorneys selected and appointed?
64. Is there a limit on legal defense costs?
65. Does the cost of legal defense buy down the limits of the policy?
66. Does the cost of claims, judgments or settlements buy down the limits of the policy?
67. Are claims self-administered, administered by a TPA, or managed by an insurance company?

67.1 Who has the final approval regarding settlement?

BOND

68. Is there a Faithful Performance of Duty bond?
69. Is there a Fidelity bond?
70. Does the bond cover all officials, employees, volunteers and agents?

ORGANIZATION

71. Is your policy issued and administered by a public entity, a nonprofit corporation or a private company?
72. Provide a list of all public entities covered by your program.
73. Provide a copy of the member agreement.
74. List any coverage offered by your program that is not already mentioned.
75. List any other specific exclusion not already mentioned.
76. Describe the various types of training and/or educational programs offered, to include what is provided, how often it is provided and what is the audience.
77. Is the policy/plan/program actuarially sound? How often are actuarial valuations performed?
78. For the period FY 2012 to 2016 provide (a) total premiums collected for liability policies or self-insured liability programs, (b) loss payments, (c) cost of administration and (4) claim reserves.

Please submit responses and supporting documents to the Compensation Board no later than Friday, September 16, 2016, via email to mark.pellett@scb.virginia.gov or via express mail to Compensation Board, Attn: Mark Pellett, 102 Governor Street, Room 120, Richmond, VA 23219.

Appendix D – VARISK Policy - Termination of Membership

Virginia Department of the Treasury
Division of Risk Management
VaRISK TERMINATION OF MEMBERSHIP POLICY FOR REGIONAL JAILS
December 22, 2016

VaRISK is a risk pool created by the General Assembly and approved by the Governor to provide broad liability coverage for the Commonwealth's Constitutional Officers and Regional Jails. A vital component of VaRISK or any risk pool is the concept of shared risk, which is essential to the financial stability of the program. Circumstances can cause the smallest member to have the most negative experience, while the largest member may have the least negative experience. What protects VaRISK is the unity of its members, the strength of their individual programs, the expertise of the legal defense, and the willingness to share risk. This protection is obvious to members experiencing claims and litigation. Not so obvious is the risk a member leaving the program exerts on the rest of the pool if that member has outstanding claims and suits. These claims and suits will remain with VaRISK and its members until they are finally resolved. The ongoing expense of these claims and suits will affect the program cost including premiums of the remaining members.

To protect the financial integrity of VaRISK and to help defray the cost of active claims and litigation, VaRISK has established the following requirements for members electing to leave the program.

TERMINATION OF MEMBERSHIP IN VaRISK

1. A regional jail electing to terminate membership must do so on July 1 of any year. This shall be the date of separation.

2. A regional jail electing to terminate membership in VaRISK shall notify the Department of the Treasury, Division of Risk Management and the Compensation Board of its intent in writing signed by the chair of the regional jail's governing body.

   For FY 2017 Only: The Division of Risk Management shall provide a non-binding estimate of financial responsibility by December 31, 2016. A regional jail electing to terminate membership, shall provide the required written notification no later than February 15, 2017.

   For FY 2018 Forward: If requested, the Division of Risk Management shall provide a non-binding estimate of financial responsibility by October 15, prior to the date of separation. A regional jail electing to terminate membership must provide the required written notification no later than December 15, prior to the date of separation.

3. A regional jail electing to terminate membership shall be financially obligated to pay the VaRISK program for its allocated portion of the unfunded required reserves needed to satisfy actuarially-estimated future payments for reported claims. **In addition, a regional jail will be financially and administratively responsible for any claims presented after the date of separation. This includes all claims incurred but not reported before the July 1 date of separation. These claims will not be covered by the VaRISK program and will be the obligation of the regional jail. Any claims received after the date of separation will be returned to the superintendent of the named regional jail and/or plaintiff's counsel.**

4. Calculation of the final financial responsibility will be provided by the Division of Risk Management by October 15 following the date of separation.

5. Once the final amount is communicated to the regional jail, the financial responsibility must be paid in full to the Division of Risk Management by December 1 following the date of separation.

6. A regional jail electing to terminate membership shall not be eligible to re-enroll in the VaRISK program for five years after the date of separation.

7. A notification of intent to re-enroll must be submitted in writing signed by the chair of the jail's governing body to the Department of the Treasury, Division of Risk Management and the Compensation Board no later than August 1 prior to the date of re-entry, which shall be July 1 of the following year.

Appendix E – JLARC Fiscal Impact Review of SB1091 – 2013 Session

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION
Fiscal Impact Review
2013 Session

Bill Number: SB 1091
Review Requested By: Senator Stosch

JLARC Staff Fiscal Estimates

SB 1091 would grant local governing bodies in Virginia the authority to opt out of the State's liability insurance program for constitutional officers, their employees, and regional jail staff. The Department of Treasury's Division of Risk Management administers the liability insurance program called "VaRisk," that covers over 16,500 individuals. The bill specifies that localities that leave VaRisk would not be required to pay premiums or to contribute to administrative costs. However, SB 1091 does not mandate that localities that leave purchase comparable coverage, and it is assumed that every locality would still insure their constitutional officers and staff through other means. Failure to insure such personnel would expose the locality to potentially significant and variable costs.

The fiscal impact of SB 1091 could total $3.1 million per year or more for the state, depending on the number of localities that elect to leave, the level of comparable coverage they purchase (if they purchase alternative coverage at all), and whether such coverage includes the costs of legal defense. Currently, the Division of Risk Management spends on average $3.1 million per year for defense counsel costs, and per §15.2-1606 of the Code of Virginia, the State Compensation Board would be required to reimburse localities for these legal expenses. Localities would assume losses associated with claims, which could be significant, depending on the comprehensiveness of their private coverage. The state could also be responsible for $23.6 million—the estimated cost of active and future claims as of July 2013—unless localities pay these costs prior to exiting. Indirect costs would impact officers who remain in the state's insurance pool, but these costs are difficult to estimate without an actuarial analysis of various cost scenarios.

Because of the unknowns that remain, JLARC staff concur with the Fiscal Impact Statement's estimated cost to the state of $2.46 million per year in potential defense counsel costs. However, costs have continued to escalate since that estimate was made, and the average legal cost has risen to $3.1 million. There could be an additional $23.6 million in active and future claims costs.

An explanation of the JLARC staff review is included on the following pages.

Authorized for Release:

Hal E. Greer

Hal E. Greer
Director

JLARC offers Fiscal Impact Reviews in accordance with Item 31D of Chapter 806 (2013 Acts of Assembly). JLARC Fiscal Impact Reviews do not comment on the merits of the bill under review.

Bill Summary: SB 1091 would grant local governing bodies in Virginia the authority to opt out of the state's liability insurance program for constitutional officers, their employees, and regional jail staff. Under current statutes, the State Compensation Board decides whether these individuals participate in the program administered by the Treasury's Division of Risk Management (DRM) and has chosen such coverage. The bill specifies that localities leaving the state's insurance program would not be responsible for paying premiums or for contributing to administrative costs related to the program. The bill does not mandate that localities purchase alternative insurance policies if they exit. It is unknown how many localities would choose to leave the state's insurance plan if provided the option.

Discussion of Fiscal Implications: Since 1987, constitutional officers have been covered by DRM's insurance program, VaRisk, which includes general liability, law enforcement liability, and errors and omissions liability. Today, 16,522 individuals are covered by VaRisk, including approximately 650 constitutional officers, their staff, and regional jail staff. Because the Compensation Board decides participation, all officers and staff are currently covered by public insurance, although the Code of Virginia does not prohibit localities from purchasing supplemental private coverage (it is unknown how many have elected to do so). According to DRM, the quality and extensiveness of coverage has changed little since VaRisk began in the late 1980's. Compensation Board staff also report no major concerns from localities regarding the quality of coverage. Over the last three years, the Compensation Board estimates spending $30,000 per year on defense counsel for occurrences not covered by VaRisk.

Total Premiums More Than Doubled Beginning FY 2014

Insurance premiums have totaled $3.1 million annually for most of the last decade but dropped to $2.8 million in FY 2011 through FY 2013. Traditionally, the Compensation Board allocated general funds to fully cover premiums, but due to declines in appropriations, the Compensation Board paid only 50% of premiums from FY 2009 to FY 2011, and beginning in FY 2012, localities assumed the full cost of coverage. A significant change in premium rates took effect for FY 2014, in which total premiums more than doubled to $6.6 million, increasing the average rate per individual 137%, from $169 to $401 per year. Because premiums vary by the category of officer, the table below shows the average premium rate per category before and after the FY 2014 rate increase. In particular, sheriffs and regional jail staff saw their premiums rise 547%, and they pay more than other officers due to the number of individuals covered. Commonwealth attorneys' rates also increased; however, rates for all remaining officers declined.

Category of Officer*	Number of individuals	Contribution Percentage	Average Annual Premium Rate Per Person FY 13	Average Annual Premium Rate Per Person FY 14	Percent Change from FY 13 to FY 14
Clerks	1,237	7%	$445	$193	(57)%
Commissioners of the Revenue	846	5	302	75	(75)
Commonwealth Attorneys	1,264	8	230	315	37
Regional Jails & Sheriffs	11,935	72	76	489	547
Treasurers & Finance Directors	1,240	8	640	65	(90)
Average	----	----	**$169**	**$401**	**137%**
Total	**16,522**	**100%**	**$2,791,800**	**$6,616,688**	**$3,824,888**

*Includes staff.
Note: Numbers may not add due to rounding.

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DRM suggests that the doubling of premiums is the result of greater losses and legal fees. To a lesser extent, the passage of HB 1554 during the 2013 General Assembly also affected the rate increase. This legislation raised the liability limit for sheriffs from $1 million to $1.5 million.

Managing an Inconsistent Insurance Pool Would Be a Challenge
The wording of SB 1091 does not fully convey the complexities and potential costs of permitting an unknown number of individuals to exit DRM's insurance pool. For instance, the bill does not address whether localities could exit and later reenter the state's insurance program, and if so, under what conditions. With over 150 local governing bodies in Virginia (i.e., city councils, county boards of supervisors, and regional jail authorities), DRM's ability to manage frequent changes in participation (and subsequently, the risk pool) is questionable. If restrictions were placed on exit and reentry, it might be possible for DRM to manage the pool; however, administrative and program costs would likely increase. Currently, DRM has 13 full-time employees and allocates $1.5 million toward program and administrative expenses for the Constitutional Officer program.

Three Costs Associated with SB 1091
JLARC staff identified three types of costs related to SB 1091: transition costs, ongoing costs, and indirect costs. Some of these costs affect the state while others affect localities.

<u>(1) Transition Costs Must Be Distributed Prior to Exit</u>

A problem in estimating costs to the state is how to distribute future costs among those exiting the pool. According to DRM's 2013 actuarial analysis, $23.6 million (updated from the Fiscal Impact Statement's total of $15 million) must be on reserve for the payment of active claims, claims that will be reported by the end of the fiscal year, and claims that have been incurred but not yet reported (this figure includes indemnification costs as well as defense counsel expenses). Because claims can take years resolve, DRM would need to distribute a portion of these future expenses among localities that elect to leave the pool. If DRM does not distribute these costs among those leaving the state's insurance plan, then either individuals remaining in the pool would face higher rates, or DRM would require additional funds.

<u>(2) Ongoing Costs Could Impact the Compensation Board's Budget and Localities' Budgets</u>

Beyond one-time costs related to transitioning from public to private insurance, it is important to address SB 1091's potential fiscal impact to the State Compensation Board and localities. Although it is likely that many localities choosing to leave VaRisk would seek alternative insurance coverage, it cannot be assumed that every locality would do so. Compensation Board staff suggest that in some areas of the state, officers might go uninsured or underinsured due to the cost of policies. As a result, constitutional officers may have varying degrees of coverage across the state.

In accordance with the Code of Virginia (§15.2-1606), the Compensation Board is required to reimburse localities for "any expenses incurred in the defense of such a charge," with "charge" referring to claims not covered by DRM's plan. Currently, the Compensation Board pays 100% of defense costs, with the exception that it pays only 50% of costs for treasurers and commissioners of the revenue. If localities do not insure their officers or if they provide inadequate coverage which does not include defense counsel, the Compensation Board could pay an estimated $3.1 million per year or more in legal costs. This figure represents the amount DRM paid on average over the last five years to defend claims. If additional general funds are not allocated to account for these costs, the budgets of constitutional officers could be impacted.

Localities electing to leave the VaRisk program would be responsible for paying full indemnification costs. Without comparable coverage (or potentially no coverage), indemnification costs could be significant. In terms of the availability of comparable coverage, JLARC staff were not able to obtain information pertaining to private insurance policies. To the knowledge of Treasury and the Compensation Board, there have been no prior cost comparisons. This presents a major limitation in estimating potential costs.

To provide a snapshot of potential indemnification costs to localities as well as defense counsel costs to the State Compensation Board, the table below indicates the average cost of all claims since the inception of the program in 1987 (columns 2 and 3), the most expensive claim categories (column 4), and the total costs of those claims (column 5). Regional jails and sheriffs are subject to the most risk and therefore have the highest average costs compared to other categories of officers.

Category of Officer*	**Average Defense Counsel Costs Per Claim**	**Average Indemnity Costs Per Claim**	**Most Expensive Claims Categories (includes defense costs and indemnification)**	**Total Cost of Claims Categories**
Clerks	$6,145	$12,525	(i) Defamation (ii) Record keeping (iii) Services not provided	(i) $412,161 (ii) $337,577 (iii) $270,710
Commissioners of the Revenue	$7,518	$27,333	(i) Employment (ii) Property rights (iii) Record keeping	(i) $361,751 (ii) $176,402 (iii) $44,930
Commonwealth Attorneys	$5,573	$15,000	(i) Malicious prosecution (ii) Defamation (iii) Employment	(i) $350,848 (ii) $295,697 (iii) $253,752
Regional Jails	$15,602	$81,269	(i) Assault-guard v. inmate (ii) Use of force (iii) Medical	(i) $2,663,608 (ii) $2,393,578 (iii) $2,225,943
Sheriffs	$8,112	$33,856	(i) Use of force (ii) Employment (iii) Failure to protect	(i) $7,273,311 (ii) $6,726,128 (iii) $5,918,594
Treasurers	$6,204	$32,205	(i) Employment (ii) Services not provided (iii) Record keeping	(i) $293,810 (ii) $140,922 (iii) $110,867
Overall Average	**$9,112**	**$39,700**	----	----

*Includes staff.
Note: All averages and totals are over a 27-year period. Not adjusted for inflation.

<u>(3) Indirect Costs Are Indeterminate</u>

Indirect costs would fall on the remaining participants in the insurance pool if local governing boards elect to leave the VaRisk program. These costs could be in the form of higher premiums or less coverage. Not only does the number of localities exiting matter, but also the type of officer exiting. Because law enforcement policy holders are responsible for a majority of premium revenue, if higher risk sheriffs and regional jail staff remain with the state program and lower risk individuals exit, then premiums could rise to the extent that public insurance many no longer be affordable.

Total Cost to the State Could Exceed $3.1 Million per Year
At this time, the fiscal impact of SB 1091 to the state is largely speculative but could be improved with an actuarial analysis of cost scenarios. Several unknowns remain, such as the number of localities that would elect to leave, the resulting changes in risk levels for the state's insurance pool, and the cost and quality of private coverage. JLARC estimates that the Compensation Board could pay $3.1 million per year in defense counsel costs, assuming all localities purchase

comparable coverage (excluding defense counsel) and agree to cover transition costs. If localities do not pay for transition costs, the state would need to cover $23.6 million in active and future claims. Localities would be required to pay full indemnification costs, which cannot be estimated at this time.

Budget Amendment Necessary: Yes.

Agencies Affected. State Compensation Board, Department of the Treasury, Division of Risk Management, local governing boards.

Date Released, Prepared By: 11-1-2013. Liana Kleeman.

JLARC offers Fiscal Impact Reviews in accordance with Item 31D of Chapter 806 (2013 Acts of Assembly). JLARC Fiscal Impact Reviews do not comment on the merits of the bill under review.

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SENATE BILL NO. 1091

Offered January 9, 2013

Prefiled January 9, 2013

A BILL to amend and reenact § 2.2-1839 of the Code of Virginia, relating to local participation in risk management plan.

Patron—Hanger

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-1839 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-1839. Risk management plans administered by the Department of the Treasury's Risk Management Division for political subdivisions, constitutional officers, etc.

A. The Division shall establish one or more risk management plans specifying the terms and conditions for coverage, subject to the approval of the Governor, and which plans may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide protection against liability imposed by law for damages and against incidental medical payments resulting from any claim made against any county, city or town; authority, board, or commission; sanitation, soil and water, planning or other district; public service corporation owned, operated or controlled by a locality or local government authority; constitutional officer; state court-appointed attorney; any attorney for any claim arising out of the provision of pro bono legal services for custody and visitation to an eligible indigent person under a program approved by the Supreme Court of Virginia or the Virginia State Bar; any receiver for an attorney's practice appointed under § 54.1-3900.01 or 54.1-3936; affiliate or foundation of a state department, agency or institution; any clinic that is organized in whole or primarily for the delivery of health care services without charge; volunteer drivers for any nonprofit organization providing transportation for persons who are elderly, disabled, or indigent to medical treatment and services, provided the volunteer driver has successfully completed training approved by the Division; any local chapter or program of the Meals on Wheels Association of America or any area agency on aging, providing meal and nutritional services to persons who are elderly, homebound, or disabled, and volunteer drivers for such entities who have successfully completed training approved by the Division; any individual serving as a guardian or limited guardian as defined in § 37.2-1000 for any individual receiving services from a community services board or behavioral health authority or from a state facility operated by the Department of Behavioral Health and Developmental Services; for nontransportation-related state construction contracts less than $500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317; or the officers, agents or employees of any of the foregoing for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

For the purposes of this section, "delivery of health care services without charge" shall be deemed to include the delivery of dental, medical or other health services when a reasonable minimum fee is charged to cover administrative costs.

For purposes of this section, a sheriff or deputy sheriff shall be considered to be acting in the scope of employment or authorization when performing any law-enforcement-related services authorized by the sheriff, and coverage for such service by the Division shall not be subject to any prior notification to or authorization by the Division.

B. Participation in the risk management plan shall be voluntary and shall be approved by the participant's respective governing body or ~~by the State Compensation Board~~ *by the governing body of the locality in which they serve* in the case of constitutional officers, by the office of the Executive Secretary of the Virginia Supreme Court in the case of state court-appointed attorneys, including attorneys appointed to serve as receivers under § 54.1-3900.01 or 54.1-3936, or attorneys under Virginia Supreme Court or Virginia State Bar approved programs, by the Commissioner of the Department of Behavioral Health and Developmental Services for any individual serving as a guardian or limited guardian for any individual receiving services from a state facility operated by the Department, or by the executive director of a community services board or behavioral health authority for any individual serving as a guardian or limited guardian for any individual receiving services from the board or authority, and by the Division. Upon such approval, the Division shall assume sole responsibility for plan management, compliance, or removal. The Virginia Supreme Court shall pay the cost for coverage of eligible persons performing services in approved programs of the Virginia Supreme Court or the

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Virginia State Bar. The Department of Behavioral Health and Developmental Services shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for any individual receiving services from a state facility operated by the Department. The applicable community services board or behavioral health authority shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for individuals receiving services from the board or authority.

C. The Division shall provide for the legal defense of participating entities and shall reserve the right to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in advance by the Division.

D. The risk management plan established pursuant to this section shall provide for the establishment of a trust fund for the payment of claims covered under such plan. The funds shall be invested in the manner provided in § 2.2-1806 and interest shall be added to the fund as earned.

The trust fund shall also provide for payment of legal defense costs, actuarial costs, administrative costs, contractual costs and all other expenses related to the administration of such plan.

E. The Division shall, in its sole discretion, set the premium and administrative cost to be paid to it for providing a risk management plan established pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts at the time and in the manner that the Division in its sole discretion shall require. The premiums and administrative costs need not be uniform among participants, but shall be set so as to best ensure the financial stability of the plan. *Local governments and constitutional officers who choose not to participate in the risk management plan shall not be required to pay any premium or administrative cost pursuant to this section.*

F. Notwithstanding any provision to the contrary, a sheriff's department of any city or county, or a regional jail shall not be precluded from securing excess liability insurance coverage beyond the coverage provided by the Division pursuant to this section.

Appendix F – Stakeholder Written Recommendations on behalf of Associations

From: John Heard <john@heardlobbyingva.com>
Sent: Tuesday, November 14, 2017 2:49 PM
To: deSocio, Robyn (SCB)
Cc: Chris Carey; Cindy Smith; Thrower, Brian (VDEM)
Subject: Comments for the Constitutional Officer, Regional Jail, Local Government Stakeholder Liability Coverage Study Report

Importance: High

Robyn:

Please accept the following as the joint comments of VACORP and the local government representative stakeholders that participated in the liability coverage stakeholder meetings and that are cc'd on this e-mail.

Local Governments recommend that the State either:

A. Take back the responsibility for funding the costs of the Constitutional officer liability coverage program; or

B. If local governments must fund the coverage, allow local governments to have a choice of providers. There was no disagreement among stakeholders that having a choice of providers offering the coverage is preferable. This can be accomplished by:

1. More clearly defining the authority of the Compensation Board to promulgate rules associated with participation by other providers;

2. Having an independent analysis of the unfunded liability. It appears unreasonable that the amount is $35 million;

3. Creating participation and exit rules for VARisk;

4. Evaluating whether it is reasonable to merge VARisk and VARisk2 into a single plan; and

5. Investigating how these officers are insured in other states with similar elected officials.

We appreciated the opportunity to participate in the stakeholder discussions of this issue and look forward to seeing our recommendations included in the final report.

Sincerely,

John Heard
John T. Heard & Associates, Inc.
2924 Emerywood Parkway, Suite 202
Richmond, VA 23294
Office Phone: (804) 249-2235
Fax: (804) 747-5022
Mobile: (804) 564-1060
John@HeardLobbyingVA.com

TREASURERS' ASSOCIATION OF VIRGINIA

"Elected to Serve"

November 16, 2017

Ms. Robyn DeSocio
Execute Secretary, Compensation Board
Commonwealth of Virginia
P.O. Box 710
Richmond, VA 23218-0710

Dear Ms. DeSocio:

At the final meeting of the Liability Coverage Workgroup, you requested a response from each Constitutional Officer Association regarding any comments or recommendations from this study. After almost two years of study and careful consideration of the measures proposed, the Treasurers Association of Virginia is opposed to any changes from the current liability coverage that we maintain currently have through the Department of Risk Management (VARisk).

Some of our concerns are:

- Fragmenting the current insured pool
- Losing the professional expertise of VARisk
- Questions concerning the expected savings from a change in coverage
- Questions on whether individual localities could opt in or out and whether each Constitutional Officer would retain the right to opt in to new coverage or remain with VARisk.
- Addressing the coverage for Constitutional Officers when engaged in a suit with the locality.

In my many years of service as a Constitutional Officer, I have never heard a complaint from a fellow Constitutional Officer about the legal representation that VARisk has provided to their office when the need arose. I have only heard compliments regarding their staff, service, and dedication to helping us in resolving any suits brought against us or our offices in a timely and expeditious manner.

On behalf of TAV, I thank you and your staff for the work you done on this study, both this year and last year. We remain committed to achieving efficiencies and savings of taxpayer money, but do not feel it prudent to change the current liability coverage that we have with VARisk.

Sincerely,

L.O. Pfeiffer, Jr.
President
Treasurers' Association of Virginia

November 16, 2017

Ms. Robyn DeSocio
Execute Secretary, Compensation Board
Commonwealth of Virginia
P.O. Box 710
Richmond, VA 23218-0710

Robyn,

The intent of this letter is to represent the position of the Commissioners of Revenue Association in reference to the continuation of participation in the VARisk program. Several factors have led me to submit the following response:

- Stability of coverage currently offered.
- No possibility of being excluded from VARisk as opposed to a limited possibility of such being reported by VACorp and VMLIP.
- VMLIP is not able to cover all localities in the commonwealth.
- More specific information on what effective savings could be achieved is needed.
- Officers may have concerns about being covered under the same plan as the localities they serve.

While I agree that a possibility of reducing premiums and providing timelier premium information for budgeting purposes would be attractive to localities, it does not seem that there is a clear path forward to moving this coverage out of the Division of Risk Management. It appears that any participation on the part of VMLIP would require separating cities out of current pool and into a separate pool from counties. VACorp is prepared to extend coverage to all localities by contracting with the compensation board as opposed to contracting directly with the localities. I am unclear as to how the localities would be assessed premiums if the policy is contracted with a third party.

If future study is to be undertaken, and the task would not be too onerous, perhaps a sample of localities based on different size, structure and location could be evaluated by the alternative underwriters for estimated premiums over several years based on historical data. This may provide a foundation for future discussion of any proposed changes.

Thank you for the opportunity to study this issue. I remain available should any further convention of this or other groups arise.

Regards,

Maggie Ragon
President, Commissioners of Revenue Association
P.O. Box 4
Staunton, VA 24402-0004

Virginia Sheriffs' Association

901 EAST BYRD STREET, SUITE 1301, RICHMOND, VIRGINIA 23219
PHONE (804) 225-7152 • FAX (804) 225-7162 • WWW.VASHERIFF.ORG

President
Vanessa R. Crawford

Immediate Past President
Gabe A. Morgan

Past President
Beth Arthur

Past President
B.J. Roberts

Past President
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Region VI
Stacey A. Kincaid

Region VII
Stanley S. Clarke

Region VIII
James L. Agnew

Region IX
Fred S. Clark

Region X
Kenneth W. Stolle

Executive Director
John W. Jones

December 6, 2017

Robyn M. de Socio
Executive Secretary
Virginia Compensation Board
102 Governor Street, Suite 120, 1st Floor
Richmond, VA 23219

Dear Robyn,

This letter represents the position of the Virginia Sheriffs' Association (VSA) on the issue of free market for sheriffs' liability insurance. The Compensation Board should be commended for attempting to pull together stakeholders that use this important service and those that provide the service through VA Risk, and those that wish to sell the Commonwealth liability insurance to sheriffs.

The current arrangement provides service to sheriffs that is second to none. The current service provided to sheriffs is not insurance, but a service that is provided through the Department of Treasury, Division of Risk management (DRM), as approved by the Governor.

The services provide (in part):

- Liability coverage up to $1.5 million for sheriffs and deputy sheriffs
- Sheriffs cannot be cancelled
- Policy can be cancelled only by the Governor
- The current program is statutory
- Governor approves the plan
- Sheriffs cannot be rejected from the plan
- There is no deductible
- Covers performance of duties by all officials acting within the scope of authorization
- Covers for general liability for false arrest
- Offers loss control and litigation diversion
- Offers human resource consultation
- Provides Pre-litigation claim resolution
- Provides the bond protection as required by the Code of VA to protect the Commonwealth and the public

The sheriffs are concerned that many of these services are not covered, or if they are covered, covered to a lesser extinct by a free market plan. There would be no guarantee that these services would remain in force if a free market plan were purchased. The questionnaire filled in by the private providers indicated that some of these critical services would not be provided.

Another major concern is the cost to implement a free market plan. During the stakeholders' meetings, it was revealed that some $35 million would be needed to implement a free market plan because of the cost of expected outstanding claims. This one time, up front cost is not necessary to continue with the DRM coverage.

In conclusion, the VSA is not convinced that the reversion to a free market plan would be in the best interest of the sheriffs, the Commonwealth and the public.

Sincerely,

John W. Jones
Executive Director
Virginia Sheriffs' Association