



2009 Session:
General Assembly Issues

This Issue Brief contains descriptions of some of the issues that appear likely to capture the attention of legislators at the 2009 Session of the General Assembly. It is not intended to be a comprehensive listing of every issue that will be considered. Unanticipated issues will undoubtedly surface, and some of the issues discussed in these pages may not be considered during the 2009 Session. Finally, and most importantly, these descriptions are not predictions of how the General Assembly will respond to any issue.

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Budget Outlook

U. S. Economic Slowdown Also Hits Virginia

Virginia, like most other states, has been affected by a major slowdown in economic activity that started nationally in the latter part of 2007. Virginia ended its last fiscal year on June 30, 2008, with general fund revenue growth of only 1.3% and a general fund revenue surplus of less than \$16 million out of total general fund revenues of almost \$16 billion. This would be a "surplus" of less than one-tenth of one percent. Of course, when the last fiscal year began, projected revenue growth was expected to be 5.3%. The

spending reductions that Virginia had to make last year were difficult, but the next round will be more difficult.

Although the economy was already slowing, 2008 has brought an unprecedented collapse in the housing industry both in terms of the number of sales and in the burst of the housing price bubble, spiraling in the price of oil, turmoil in the financial markets, and freezing of credit markets. Clearly, state revenue has been and will continue to be affected. Virginia has already re-forecasted the general fund revenue outlook for the 2008-2010 biennium that began on July 1, 2008. Governor Kaine announced on October 9, 2008, an official re-forecast of slightly over a \$2.5 billion shortfall for the two-year period. The shortfall consists of

\$973.6 million in the current 2008-2009 fiscal year and \$1.54 billion in the 2009-2010 fiscal year. The new forecast calls for a decline in general fund revenues of 4.0% in the first fiscal year and growth of 3.6% in the second fiscal year as the economy is predicted to recover in mid calendar year 2009. It should be noted that, considering how quickly and dramatically recent economic events have unfolded, it is certainly possible that the forecast will need to be adjusted again.

In terms of how Virginia will deal with the revenue reductions, Governor Kaine plans to deal with the \$973.6 million shortfall in the first fiscal year as follows:

- Replace \$250 million of capital outlays paid for with cash by bonding these projects.
- Delay the 2% cost of living raise for state employees until next fiscal year, saving \$53 million.
- Continue the current hiring freeze of state employees.
- Halt all but critical travel expenses of state employees.
- Layoff 570 state employees and eliminate more than 800 positions that are currently unfilled.
- Transfer \$400 million from the Rainy Day Fund, which currently has a balance in excess of \$1 billion.
- Recover \$40 million in cash balances from the previous year.
- Reduce state agency funding through efficiencies by approximately \$275 million.

The bond proposal as well as the withdrawal from the Rainy Day Fund requires approval by the General Assembly. In addition, the 2009 Session will need to address the \$1.54 billion shortfall for next fiscal year and be ready to address further deterioration in the economy.

John Garka

Finance/Taxation

Single Sales Factor Formula for Corporate Income Tax

Virginia's apportionment formula for corporate income taxation likely will be an issue during the 2009 Session. Currently, a multistate corporation doing business in the Commonwealth calculates its Virginia tax liability by applying the double-weighted sales factor formula that consists of three factors—payroll, property, and double-weighted sales.

If the formula is changed to a single sales factor formula, the only factor used would be sales. Manufacturers and other businesses support a single sales factor and suggest that it would provide an incentive for new businesses to come to Virginia and for those that are already in the state to expand, especially those having the majority of their sales occur out-of-state. Proponents of the single sales factor argue that this would result in more jobs and higher paying jobs that would create additional individual income tax revenue. A joint subcommittee of the General Assembly pursuant to HJR 177/SJR 101 studied the adoption of a single sales factor during the 2008 interim.

Joan Putney & Mark Vucci



Be sure to read the special insert of
Did You Know?
 by Paul A. Levenood, Ph.D., President and
 CEO of the Virginia Historical Society,
 that appears in this issue.

The Virginia Legislative Issue Brief:
 2009 General Assembly Issues

and other DLS publications
 may be found online at:

<http://dls.virginia.gov/publications.htm>

Commerce/Labor

Health Insurance

The Small Business Commission has been considering several options for making it easier for small businesses to provide health insurance for their employees. The Commission will likely recommend legislation addressing this issue. The Commission has focused on two approaches. The first is authorizing the sale of "mandate-lite" health insurance policies, which are policies that are not required to provide coverage for some or all of the mandated health insurance benefits contained in the Virginia Code. The second approach involves Section 125 plans, which are authorized by Section 125 of the Internal Revenue Code and enable employees to purchase health insurance policies with pre-tax dollars.

Licensing of Mortgage Originators

In an attempt to address concerns with the increasing number of mortgage foreclosures, Congress enacted the Housing and Economic Recovery Act in July 2008. Included in this Act was the Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act, which provides for nationwide registration of loan originators.

Under this federal law, every state is required to provide for the licensing of loan originators. If states do not comply within one year (or two if they are proceeding in good faith), the federal Department of Housing and Urban Development is directed to adopt regulations for federal licensure of loan originators.

A loan originator is defined under the federal Act as an individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain. The definition does not include clerical or administrative staff. The federal Act provides for criminal history backgrounds checks, credit history checks, pre-licensing education, written testing, and requirements for bonding or its equivalent.

In order to fulfill the requirements of the federal Act, states are required to participate in the Nationwide Mortgage Licensing System (NMLS).

Loan originators will be required to be licensed in their states and registered with the NMLS in order to originate mortgages.

The Virginia Housing Commission has appointed a working group, chaired by Delegate Danny Marshall, to examine issues pertaining to the development of legislation for Virginia's implementation of the requirements of the S.A.F.E. Mortgage Licensing Act.

Unemployment Benefits for Seasonal Workers

HJR 51 (2008), introduced by Delegate Harvey Morgan, directed the Commission on Unemployment Compensation to study the need for limitations on the eligibility of seasonal or temporary employees for unemployment compensation benefits. Currently, a claimant's last 30-day employer is chargeable for the claimant's unemployment compensation benefits. Allowing employees who lose seasonal jobs upon the end of the season to receive unemployment benefits arguably penalizes the employers who hired them by raising the employer's state unemployment tax rate.

For seasonal jobs other than those involving educational institutions and professional athletics, an employee is not ineligible for unemployment compensation benefits when the term of the job ends, even if the employee is informed and understands at the commencement of employment that the job will end on a fixed date.

The seasonal employment issue has been addressed previously by the General Assembly. In 1948, the General Assembly enacted legislation establishing a process for the VEC to designate an employer as a seasonal employer. Virginia's seasonal worker provisions were repealed in 1978. The Commission is examining the issue and plans to meet to address options prior to the 2009 Session. Pursuant to HJR 51, the Commission is looking at the impact on employers, employees, and the solvency of the unemployment trust fund of reinstating a seasonality provision, and whether a seasonality provision should be limited to specific categories of employment.

Public Education

Science, Math, and Technology Education

HJR 90 (2008) continued the work of HJR 25 (2006) that established the Joint Subcommittee to Study Science, Math, and Technology Education in the Commonwealth at the elementary, secondary, and undergraduate levels and is poised to make its final recommendations during the 2009 Regular Session. In light of the budget difficulty facing the Commonwealth, any recommendations will likely have no fiscal impact, but rather focus on highlighting successful programming in the areas of math, science, and technology education, and endorse such programming as a model for all school divisions and encourage school divisions and institutions of higher education to find creative ways to innovate.

Programs for Special Education and Children with Disabilities

The Board of Education regulations governing special education programs for children with disabilities are in the final stages of revision and should be final prior to the 2009 General Assembly Session. Throughout the process, the Board received thousands of public comments and there was concern regarding several revised regulations. Depending on the final outcome of the regulations, it is likely that there may be some legislation targeting a few of the provisions that were not amended prior to final adoption by the Board of Education.

Homeless Students

The collateral damage from the nation's financial turbulence, record setting unemployment rates, lost wages, and countless home foreclosures is resulting in an increase in the number of homeless students. The 2009 General Assembly may consider legislation to assess and ameliorate the impact of the financial crisis on schools, students, families, and the Commonwealth, in light of growing economic problems.

School Dropouts and Graduation Rates

The problem of school dropout is a continuous problem. During the interim, the Virginia Youth Commission and numerous national entities studied the issue, and other state legislative and executive agencies and school divisions have monitored the problem over the past several years. Legislation may be considered by the 2009 Session on a myriad of issues to help increase the number of high school graduates in Virginia.

Higher Education

Illegal Immigrants

The 2009 General Assembly may once again consider legislation related to illegal immigrants in institutions of higher education. Legislation introduced and carried over to the 2009 Session would allow students to be eligible for in-state tuition if the person:

- Resided with his parent while attending high school in Virginia.
- Graduated from a public or private high school or received a GED in Virginia.
- Resided in Virginia for at least three years.
- Registered as an entering student in an institution of higher education.
- Is not currently in removal proceedings and has petitioned to become a permanent resident.
- Filed, or has a parent who has filed, Virginia tax returns for at least three years.

Although the General Assembly has considered measures to restrict illegal immigrants access to in-state tuition in the past, it has struggled with the definition of an illegal immigrant and its relationship to the definition of a Virginia domicile. The legislation was designed to carve out a narrow exception to allow certain individuals meeting specific criteria the opportunity to take advantage of in-state tuition rates.

Nikki Cheuk and Brenda Edwards

Health

Mental Health

The Supreme Court's Commission on Mental Health Law Reform continued to meet throughout the 2008 interim. The Commission has expressed interest in introducing several proposals, including one to reform Virginia's Health Care Decisions Act. The purpose behind the revision is to make it easier for patients with serious mental health issues to make advanced directives to ensure that their wishes are followed as their mental status deteriorates.

Smoking Ban

Every year, there are several bills introduced to regulate smoking in the Commonwealth and it may be assumed that the 2009 Session will be no different. Legislation usually is proposed in various forms. Sometimes bills offer a complete ban on smoking in public places, sometimes just in restaurants, and sometimes the option is given to localities to decide where smoking is or is not appropriate.

Childhood Obesity

For the last several years, there has been legislation proposed addressing the growing obesity problem in the Commonwealth. In 2008, measures were passed creating a database of best practices for school divisions to use as a resource in devising programs to combat obesity in the public schools and requiring school divisions to provide a physical fitness program with a goal of 150 minutes per week. It is possible that the 2009 General

Assembly will again consider legislation aimed at tackling this problem in the public schools.

Jessica Eades

Welfare/Social Services

Substance Abuse Prevention and Treatment

During the 2008 interim, the Joint Subcommittee to Study Strategies and Models for Substance Abuse Prevention and Treatment pursuant to SJR 77 (2008) studied the impact and costs of substance abuse on state and local governments and worked to identify strategies and models for reducing these costs. The General Assembly will most likely consider recommendations resulting from this study during the 2009 Session.

Comprehensive Services Act

Administration of the Comprehensive Services for At-Risk Youth and Families, pursuant to the Comprehensive Services Act, continued to be an area of focus during the 2008 interim. The Joint Subcommittee Studying the Comprehensive Services for At-Risk Youth and Families program continued to study administration of the program and to track the impacts of changes enacted during the 2008 Session of the General Assembly. Moving forward, it is likely that the Joint Subcommittee will have additional recommendations for further revisions to the program during the 2009 Session.

Sarah Stanton

Did You Know ?

Last Monday at the West Richmond Rotary Club meeting, the new president and CEO of the Virginia Historical Society delivered a brief historical overview of economic downturns in the U.S. economy since 1607.

Hearing **Paul A. Levengood Ph.D.** speak gave me some comfort and raised my optimism for the future. I asked Paul to put his comments in writing, and he offers them in the enclosed yellow insert that I encourage you to read. Have a wonderful Holiday Season!

-E. M. Miller, Director, DLS

Courts

Termination of Parental Rights

During the 2008 Session, the General Assembly took up the issue of the conduct of termination of parental rights cases. Under current law, termination of parental rights cases are initially heard in the juvenile and domestic relations district courts with a right to a de novo appeal to the circuit courts. Under the provisions of the 2008 legislation, the juvenile and domestic relations district court would function as a court of record in termination of parental rights cases. Such cases would then be appealed directly to the Court of Appeals of Virginia. The legislation was designed to expedite the process and reduce the amount of time that children remain in foster care during the course of the termination litigation as, historically, the circuit court reaches the same outcome as the juvenile and domestic relations district court over 90% of the time. The primary objections to the 2008 legislation were raised by juvenile and domestic relations district court clerks who were concerned about the burdens placed upon them by making the court a court of record. As the legislation was an initiative of the First Lady Anne Holton, it is likely that it will be revisited in the 2009 Session.

David Cotter

Local Government

Urban Development

The 2007 Session of the Virginia General Assembly mandated "that most new development in the Commonwealth occur in Urban Development Areas so that growth can occur in a more orderly fashion in areas where the necessary infrastructure has either been built or can be built in a more efficient manner." Moreover, "in 2007 Virginia required its localities to include Urban Development Areas within their comprehensive plan updates by 2011." In 2008, the Virginia

General Assembly passed both HJR 178 and SJR 70, which establish a two-year joint subcommittee to "examine and monitor the transition to channeling development into Urban Development Areas." However, these joint resolutions also direct the joint subcommittee to "determine if additional legislation is needed to help localities as they transition to Urban Development Areas." With the aforementioned 2011 deadline approaching and with the joint subcommittee likely considering legislation for recommendation at its next meeting, the 2009 Session of the Virginia General Assembly can expect the introduction of bills that:

- Address the enforceability of the statute mandating Urban Development Areas.
- Clarify terms within the statute mandating Urban Development Areas whose terms lack general consensus.
- Promote cooperation between a locality establishing an Urban Development Area and those public and private entities necessary to the establishment of a successful Urban Development Area, such as state agencies, utility companies serving that locality, redevelopment and housing authorities, and incorporated towns within or neighboring the locality.

Cash proffers and impact fees

During the 2008 Session, the local government committees of the General Assembly considered SB 768, which would have replaced Virginia's current cash proffer system with a system of development impact fees. The bill passed the Senate and was carried over in the House Committee on Counties, Cities and Towns. In the interim, at the request of the General Assembly, interested parties have continued discussion of this issue. It is anticipated that the 2009 Session will again see one or more legislative proposals related to cash proffers and impact fees.

Jeff Sharp and Kevin Stokes

Campaigns & Elections

Absentee Voting

The 2008 election in "battleground" Virginia generated increased registrations, voter turnout, and calls for voters to use absentee ballots. The 2009 General Assembly will be looking at proposals for early voting opportunities, no-excuse absentee voting, and no-excuse in-person absentee voting.

If the legislature does not want to undertake any major change in the absentee voting arena, it may add to the list of reasons for voting absentee—for example being age 65 or 70 or older.

The turnout of young voters and college students generated much press coverage and discussion. Questions arose about the rules for applying the definition of residence to students and whether the rules were being applied uniformly throughout the Commonwealth. Multiple bills on this issue are likely.

Voter Registration and Political Party

The General Assembly may respond to litigation challenging the present law that allows incumbent legislators to insist on an open primary. The United States Fourth Circuit Court in *Miller v. Brown* (462 F.3d 312, 2007) ruled that it was unconstitutional to provide that an incumbent could insist on an open primary and thus take away the party's right to decide who can participate in its nomination process.

A related issue is whether Virginia should provide for voters to list their political party affiliation when they register to vote.

The Election Process

Some issues may surface as election officials and voters recover from the 2008 election. Possible areas for consideration include questions about the voter registration process and registration drives, witness signatures on absentee ballot papers, and campaigning in the polling place. These are all issues likely to capture attention in the 2009 Session.

Constitutional Issues

For the first time in 20 years, voters did not have a constitutional amendment on the ballot in an even-numbered year. Since the present Constitution was approved in 1970, there have been one or more proposed constitutional changes on the ballot in each even-numbered year except 1988 and 2008. Given the 2008 voter turnout, election officials were undoubtedly grateful that ballots were short and not burdened by complex constitutional amendment questions.

The 2009 General Assembly will propose new constitutional amendments that may be referred to the 2010 General Assembly and then to the voters at the November 2010 election for final approval.

Amendments proposed in 2009 will most certainly include some perennial suggestions:

- Allow the governor to serve two terms—either in succession or not in succession.
- Authorize the General Assembly to provide by law for the restoration of civil rights to persons convicted of felonies or nonviolent felonies who have served their sentences.
- Create an independent commission to redraw congressional and state legislative district lines—a job now in the hands of the General Assembly.
- Add limits on the use of eminent domain powers.
- Provide protections for transportation funds.
- Authorize localities to provide some type of homestead tax relief.

Mary Spain

Transportation

Transportation Board

The past several General Assembly sessions have seen several efforts to change the composition of the Commonwealth Transportation Board either to include members of the General Assembly in the Board's membership or to give the legislature a more direct voice in choosing at least some of the Board's members. The 2009 Session may see renewed efforts regarding these issues.

Board for Towing and Recovery Operators

The Board for Towing and Recovery Operators has been a subject of controversy ever since it was established in 2006. Several bills were offered in 2008 that would have impacted the Board in one way or another. SB 707 that passed in 2008 provided for alternation of the Board's chair between Class A operators and Class B operators and extended the effective date for public safety (police-requested) towing regulations to July 1, 2010, and for other regulations to January 1, 2009. The 2009 Session may see renewed efforts by the legislature to change the composition or duties of the Board or to even return to a system of local regulation.

Revenue-Sharing Funds

In an effort to have more money to spend on highway maintenance and construction in an economic downturn, the 2009 Session may see legislation proposing changes to the Revenue-Sharing Funds program used to match local contributions that are spent on various highway projects. The 2009 General Assembly will most likely again consider changes to the section of the Code of Virginia that governs this program.

Alan Wambold & Caroline Stalker

Natural Resources

Hunting with Hounds

Hunting with hounds has long been a tradition in Virginia. The Acts of Assembly of 1930 prohibited any person from going into the "private lands, waters, ponds, boats or blinds of another to hunt, trap or fish without the consent of the owner..." Such a person would be guilty of trespass. However, this prohibition did not apply to "bona fide fox hunters and deer hunters when the chase begins on other lands..." While this section essentially remained intact over the years, in 1964, an amendment was adopted, that introduced an additional exemption, which allowed certain hunters to go upon the lands of another to retrieve their dogs while carrying a weapon. Under what is now § 18.2-136, fox and coon hunters may carry a weapon while retrieving their dogs. Recently, an increasing number of property owners have expressed their dissatisfaction with what they consider an infringement of their property rights by allowing hunters to come upon their lands, even if it is posted property, to retrieve their hunting dogs.

Recognizing that there was a need to provide a variety of opportunities for hunting with hounds in Virginia, while at the same time protecting the rights of property owners, the Department of Game and Inland Fisheries convened a panel of stakeholders to recommend a policy that achieves a balance between the various interested groups. The advisory panel recommended strategies for addressing issues and concerns related to hunting with hounds in Virginia. Among its recommendations are:

- Improve law enforcement.
- Improve recordkeeping.
- Increase funding for law enforcement.
- Increase penalties and fines.
- Provide training seasons.
- Curtail hunting from or near roads.
- Modify Virginia's right-to-retrieve law.
- Provide identification of hunting dogs with owners.
- Establish codes of ethics.

A number of these recommendations can be handled administratively by the Board of Game and Inland Fisheries, while others may lend themselves to action by the General Assembly. For instance, among its recommendations the stakeholder's panel suggests a modification in the right-to-retrieve law such that:

- Hunters be required to make reasonable attempt to contact landowners prior to retrieving their hounds from posted property.
- Landowners be required to thoroughly post their property with contact information.
- Private property that is not properly posted would be presumed open to retrieval.

Ellen Porter & Marty Farber

Housing

Common Interest Communities

The 2009 General Assembly will likely consider several proposals related to the common interest communities, which includes condominiums, property owners' associations, and real estate cooperatives. Legislation passed last year established a Common Interest Community Board and several issues have been raised relative to the Board's authority. In addition, there is ongoing controversy regarding the level of authority that the governing bodies of the common interest communities have over the individual lot or unit owners.

Locksmiths

Legislation creating a regulatory program for locksmiths within the Department of Criminal Justice Services has caused some degree of concern regarding the regulatory entity and the cost of the license. There will likely be some legislation to address these concerns.

Amigo Wade

JCOTS

Open Education Resources

Building on a national movement that is working to expand the use of free resources in public schools, JCOTS has developed two proposals for recommendation to the 2009 Session of the General Assembly. The two proposals focus on clarifying intellectual property policies of the Commonwealth and authorizing the establishment of Open Education Resource (OER) Centers at community colleges in Virginia.

Cell Phones and Driving

A hot topic likely to resurface in the 2009 Session of the General Assembly is the issue of cell phone use while driving. Several states have moved the discussion beyond traditional cell phone use and now have legislation pending that will restrict the use of text messaging and email features of wireless devices while driving. Legislation may have exemptions allowing full use of wireless devices by emergency personnel and exempting the use of global positioning systems (GPS) for all drivers.



Patrick Cushing

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DLS Bulletin Board

Joint subcommittees on studies should submit an executive summary including findings and recommendations to DLAS by the first day of the General Assembly's Regular Session.

All requests for drafts of legislation for prefilng to be submitted to DLS by 5:00 p.m. on December 8, 2008.

All drafts of legislation to be prefiled returned by DLS for requester's review by midnight January 2, 2009.

All requests for drafts, redrafts, and corrections of legislation creating or continuing a study to DLS by 5:00 p.m. on January 9, 2009.

All requests for redrafts and corrections for legislation to be prefiled to DLS by 5:00 p.m. on January 9, 2009.

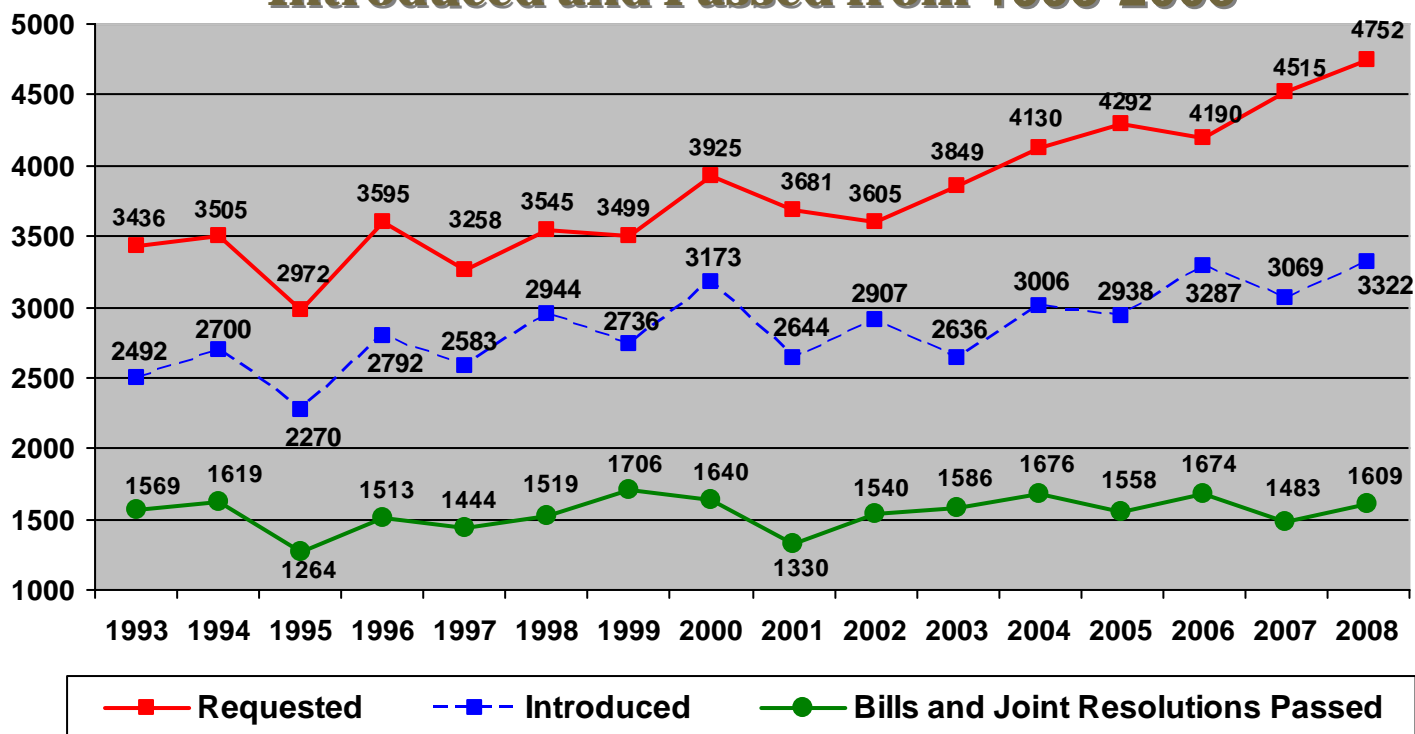
Covered drafts of legislation to be prefiled available at DLS by noon on January 13, 2009.

All requests for drafts, redrafts, and corrections for first-day introduction bills to be submitted to DLS by 5:00 p.m. on January 13, 2009.

Prefiling for the 2009 Session ends at 10:00 a.m. on January 14, 2009.

The 2009 General Assembly convenes on January 14, 2009, at noon.

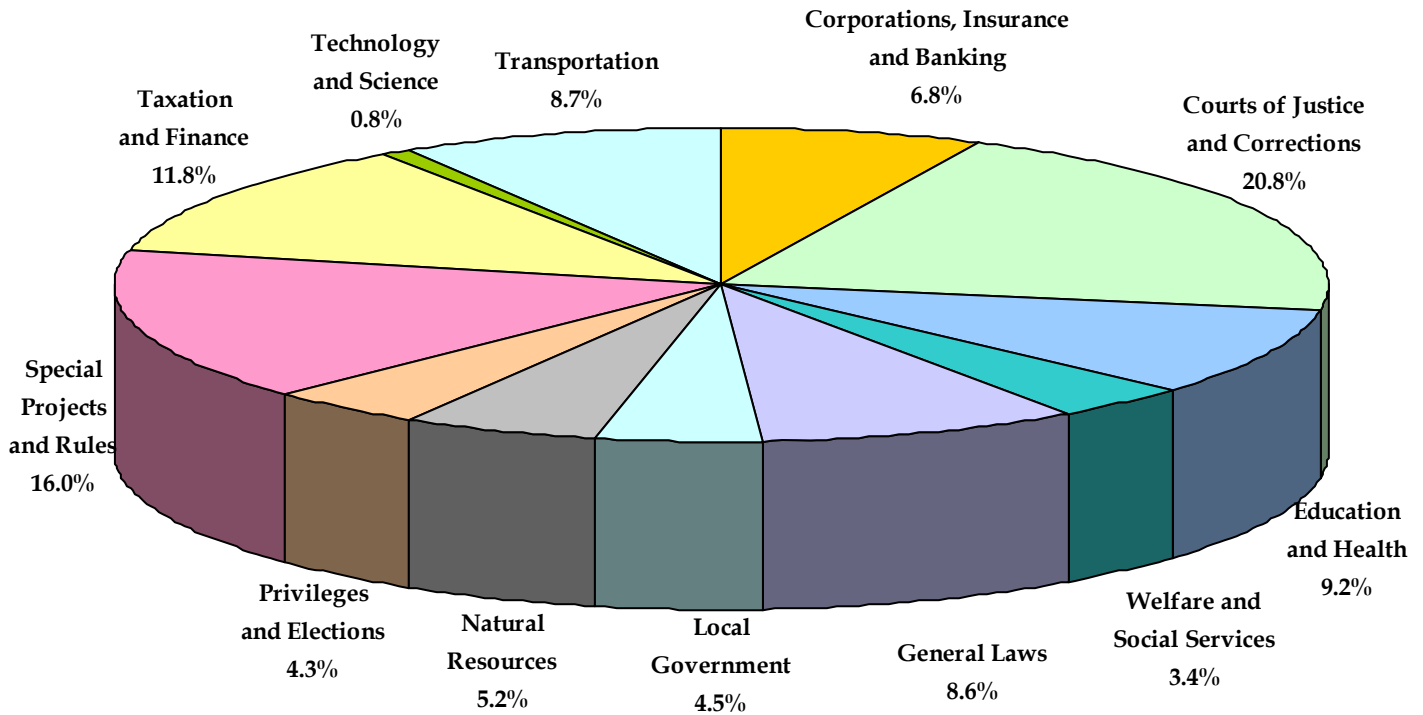
Legislation Requested* before the deadline, Introduced and Passed from 1993-2008



* Bill drafts prepared by DLS

2008 Requests for Draft Legislation *

Total Bills - 6896



* Bill drafts prepared by DLS for the 2008 Session (includes resolutions and substitutions).

2008 Regular Session *

| Bill Type | Introduced | Passed House | Passed Senate | Passed Both | Continued | Failed | Approved | Vetoed |
|---------------|-------------|--------------|---------------|-------------|------------|-------------|------------|----------|
| H.B. | 1578 | 619 | 559 | 553 | 154 | 871 | 551 | 2 |
| H.J.R. | 619 | 506 | 502 | 502 | 21 | 96 | 0 | 0 |
| H.R. | 37 | 32 | 0 | 32 | 0 | 5 | 0 | 0 |
| S.B. | 800 | 339 | 443 | 336 | 131 | 333 | 333 | 3 |
| S.J.R. | 271 | 218 | 242 | 218 | 11 | 42 | 0 | 0 |
| S.R. | 18 | 0 | 13 | 13 | 0 | 5 | 0 | 0 |
| TOTALS | 3323 | 1714 | 1759 | 1654 | 317 | 1352 | 884 | 5 |

* Approximately 37% of introduced bills (excluding resolutions) became law and less than 73% of all bills and resolutions drafted by DLS were introduced.

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2009 Session: General Assembly Issues

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