

# 2011 Session: General Assembly Issues

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***This Issue Brief contains descriptions of some of the issues that appear likely to capture the attention of legislators at the 2011 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 2011 Session. Finally, and most importantly, these descriptions are not predictions of how the General Assembly will respond to any issues.***

## **Budget Outlook**

For the first time in a few years there is finally some good news regarding Virginia's state budget. First, there is a budget in place for the current fiscal year and the next fiscal year and this past August the Governor announced that Virginia ended the year with a surplus of \$403.2 million, some of which will be available for use by the

2011 Session. The second piece of good news is that finally state tax revenues are beginning to grow - slowly, but they are growing. As you will recall, in the last two fiscal years General Fund revenue actually declined by 9.2 percent in Fiscal Year 2009 and 0.7 percent in Fiscal Year 2010. Thus, General Fund revenue growth is a welcome change from the last state budgetary period.

The existing Appropriations Act is based on General Fund revenue growth of 2.6 percent in the current fiscal year and 4.9 percent in the next fiscal year ending June 30, 2012. After three months of collections in the current fiscal year, revenues are growing in line or above the official estimates.

The big question before the 2011 General Assembly Session will be, assuming the current gradual U.S. economic recovery continues to slowly gain momentum, how will the Commonwealth spend the additional revenue? The Commonwealth has cut billions of dollars of spending



from previous years. For example, General Fund revenue in the current fiscal year is projected to be less than the amount collected in fiscal year 2006 - a full five years ago. Will some of the new revenue be used to restore previous cuts?

Virginia has been forced to utilize budget-balancing techniques, which not many people wanted to adopt but which were adopted because of the severity of the Great Recession. Some of these budgetary techniques were, for example, the acceleration of sales tax collections for larger retailers, which caused Virginia to collect an additional \$224 million of revenue in the last fiscal year, and the deferral of the required state contribution to the Virginia Retirement System, which saved \$650 million in the current biennium but which will need to be repaid with interest. There have been pledges by various members that these budget-balancing techniques must be eliminated. This, of course, would require substantial amounts of money.

Finally, the Governor has announced that his top three priorities for the near term are transportation, economic development, and higher education while the General Assembly may have additional priorities. It is clear there will be no shortage of areas where additional revenues could be used when the 2011 General Assembly convenes in January.

*John Garka*

## **Behavioral Health**

### **Behavioral Health Services**

The Department of Behavioral Health and Developmental Services is engaged in developing a systemwide “creating opportunities” plan. This may lead to legislative ac-

tivity. Potential legislation topics include integration of behavioral health services and enhancement of behavioral health services, including substance abuse services and services for persons with developmental disabilities.

### **Substance Abuse Prevention and Treatment**

General Assembly members will likely consider substance abuse prevention and treatment legislation, including legislation on drug courts and prescription drug prevention and treatment services.

*Sarah Stanton*

## **Campaigns & Elections**

### **Absentee Voting**

Every recent General Assembly Session has considered proposals to allow “no-excuse” in-person absentee voting, a broader revision to allow early voting, or “no-excuse” absentee voting across the board for voting in person and by mail.

### **Redistricting**

The General Assembly will consider the primary timetable for the 2011 elections and whether to postpone the June primary to allow time to complete redistricting plans and obtain Department of Justice preclearance under Section 5 of the Voting Rights Act.

*Mary Spain*

## **Commerce & Labor**

### **Electric Utility Deregulation**

During the 2010 Session, over half a dozen bills were introduced by members seeking to undo portions of the legislation

enacted in 2007 that established new rate-making procedures for investor-owned electric utilities. These bills were introduced by members from the western portion of the state to address concerns over multiple electric rate increases granted to Appalachian Power, which has requested 13 rate increases since January 1, 2006.

Last Session the General Assembly did pass emergency legislation that eliminated the ability of electric utilities to put proposed rates in effect 150 days after filing a rate case, subject to refund. The measure also specifically required Appalachian Power to suspend an interim rate charge that went into effect in December 2009, pending issuance of the SCC's final order in Appalachian Power's rate case.

That step was not enough for all members. This summer Delegate Ward Armstrong formed a work group to examine Virginia's electric utility laws. The work group, composed of current and former legislators, two former State Corporation Commission members, consumer advocates and businessmen, has held several meetings to discuss perceived flaws in the 2007 law. In summary, the issue of electric rate regulation may be revisited in the 2011 Session.

## **Healthcare Reform**

In March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act into law. Virginia and many other states are pursuing a strategy of both bringing legal action to have all or parts of the health care reform legislation declared unconstitutional while simultaneously setting up the infrastructure needed to implement this new federal law. Though full implementation may seem far off in the future, states

are being put in a position where they may need to act sooner rather than later.

On May 14, 2010, Virginia Secretary of Health and Human Resources Dr. William A. Hazel announced the establishment of the Virginia Health Care Reform Initiative within the Office of the Secretary of Health and Human Resources. The Initiative's primary purpose is to prepare Virginia for the implementation of federal health reform. It will serve as the liaison between the Governor's office, agencies, and entities affected by health care reform; lead development of the required Exchange; and identify and coordinate grants to fund health care reform.

Many of the provisions of health reform, such as the requirement that each state set up a health insurance exchange, will not take effect until January 1, 2014. However, states cannot wait until then to act. For example, the health care reform legislation provides that if the Secretary of Health and Human Resources determines by January 1, 2013, that a state has elected not to operate an Exchange or that necessary actions to implement market reforms have not been taken, the Secretary is required to operate an Exchange directly or through agreement with a nonprofit organization.

California's governor has signed legislation implementing certain components of the Affordable Care Act, including the California Health Benefit Exchange. While some states may follow California's example of being an "early adopter," others may wait to see what fate awaits the health care reform initiative in federal court or in the next Session of Congress.

## **Unemployment Compensation**

Prior to 2005, Virginia's unemployment compensation law required that the benefits

payable to a claimant would be reduced, on a dollar-for-dollar basis, for any money the claimant was receiving through a governmental or other pension or retirement program.

In the 2005 Session, the General Assembly amended this provision to eliminate the offset for Social Security or Railroad Retirement Act benefits during periods when the unemployment trust fund has a solvency level of 50 percent or more. This measure also provided that if the trust fund's solvency level falls below 50 percent, the "Social Security offset" would be partially reinstated; weekly unemployment benefits would be reduced by 50 percent of the amount of the claimant's Social Security or Railroad Retirement Act payments.

For the years that followed the enactment of this measure, the solvency level of Virginia's unemployment trust fund exceeded 50 percent. As a result, persons receiving unemployment benefits did not face a reduction in benefits if they also were receiving Social Security. However, that has changed.

The increase in payments of unemployment benefits and the decrease in employment (which means fewer collections of state unemployment tax from employers) combined to drop the solvency level of the unemployment trust fund to 24.4 percent for 2009 and to negative 12.8 percent for 2010. As a result, the Social Security offset has been reinstated effective January 2010, though the reduction now is for 50 percent of the amount of the claimant's Social Security payments rather than 100 percent as under the pre-2005 law.

The U.S. Department of Labor has provided that state law provisions addressing eligibility for benefits will apply to payments

of extended unemployment benefits, even though these benefits are paid entirely from federal funds and do not effect the solvency of the state's trust fund.

Since 2002, 17 states have repealed offset laws. According to the AARP, the number of states whose unemployment programs provide for a Social Security offset has dwindled to five. The AARP believes the policy is age discrimination and has said it will ask the General Assembly to eliminate the provision in the next Session.

*Franklin Munyan*

## **Constitutional Issues**

### **Federalism**

A number of efforts seem to be afoot to put a check on what appears to some to be an unchecked federal authority. The General Assembly may consider efforts to support calls for constitutional conventions that would result in:

- An increased role of states via the power to overturn unpopular federal laws.
- Balanced budget mandates.
- A tangible and legal expression of state sovereignty.

### **Restoration of Voting Rights for Felons**

Restoration of voting rights for felons has been a persistent issue in recent years and only gained more attention since Governor McDonnell has taken office and indicated his support for a speedier restoration of rights for nonviolent felons.

*Ellen Porter*

## Courts

General Assembly members may, for a second year straight, introduce bills that change the civil jurisdiction of general district courts. During the 2010 Regular Session, Senate Bill 329, which originally increased certain court fees, was amended by the Senate Committee for Courts of Justice to increase the ceiling of civil jurisdiction of general district courts from \$15,000 to \$25,000. Also during the 2010 Session, Senate Bill 651 was introduced, which would have increased from \$5,000 to \$10,000 the ceiling of the jurisdictional amount of a small claims court. Senate Bill 719 provided that the minimum amount in controversy in a civil case for which there shall be an appeal of right to a court of record shall be annually adjusted by a percentage equal to the annual rate of inflation. Furthermore, this year, a subcommittee of the Boyd-Graves Conference made findings and legislative recommendations with respect to the expansion of the jurisdiction of general district courts; a bill encompassing those recommendations will likely be introduced this upcoming session if the subcommittee's recommendations are adopted by the Conference.

Moreover, the General Assembly may once again wrestle with the jurisdiction of courts when the termination of parental rights is at issue. Last session, the House of Delegates carried over two bills that altered the current jurisdiction. First, House Bill 748 provided that final orders involving the termination of parental rights and the approval of permanency plans with the goal of adoption entered by the juvenile and domestic relations district court are appealed directly to the Court of Appeals. The bill further established that the juvenile court functions as a court of record in such cases. By sharp con-

trast, House Bill 292 provided that the circuit courts shall have original and general jurisdiction over all cases involving the termination of residual parental rights and eliminates the juvenile and domestic relations district courts' concurrent jurisdiction over such cases. Furthermore, a Boyd-Graves Conference "committee studying legislation to promote timely conclusion of judicial proceedings terminating residual parental rights" made legislative recommendations this year; a bill reflecting those recommendations will likely be introduced this upcoming session if the committee's recommendations are adopted by the Conference.

*Kevin Stokes*

## Criminal Procedures

Legislation outlawing "synthetic marijuana," also known as Spice and K2, is likely.

*Robie Ingram*

## Education

### **Higher Education**

The Governor's Higher Education Commission has announced that it intends to submit major legislation this session to increase both accessibility and affordability of higher education in Virginia. The Governor mentioned his pledge to award 100,000 more degrees over the next 15 years and keep tuition rates low as two areas to be addressed. He has also stated that he would like to make Virginia's higher education system more accessible to the business community, so this could signal a major reform of the system.

The presence of illegal aliens in higher education is an often seen issue; with the recent Arizona legislation this could lead to legislative proposals.

The *Richmond Times-Dispatch* recently published an article highlighting the high salaries of certain college and university staff. At a time when many colleges and universities are raising tuition, this could lead to reform to keep these salaries in check.

*Jessica Eades*

## **Public Education**

The 2010 General Assembly considered a record number of legislative proposals related to the opening of the school year. Although all but one measure (technical in nature) ultimately failed, the issue is still alive all over the state. The law currently states that school divisions may not require students to attend school before Labor Day unless it meets one of three exceptions. The tourism industry in Virginia is always a strong opponent to this type of legislation and generates heated debate. However, at this point in time, of the 132 school divisions in the Commonwealth, roughly 74 school divisions annually qualify for one of the exceptions. Thus, the other school divisions argue that flexibility is becoming the norm, rather than the exception, and will most likely continue to lobby for an amendment or repeal of this statutory requirement.

The 2010 General Assembly enacted several of the proposals included in the Governor's Education Reform Package, including the creation of a Virtual Schools program and a College Laboratory Schools program, as well as amendments to the charter school program. As all three changes took place July 1 and have begun implementation, it is likely that tweaks to all three reforms will be necessary. Charter schools remain a significant focus of the Governor and ongoing efforts to increase the state's number of charter schools beyond the four it currently has is expected.

Arizona's recent immigration reforms have inspired controversy and discussions all over the United States. It therefore seems likely that attempts will be made during the 2010 Regular Session to revisit legislation from a couple of years ago that would have limited public benefits for undocumented aliens, including public education. Alternatively, proposals could focus on obtaining statistical information about those students enrolled in the public schools that have no birth certificate or other documentation of legal presence.

*Nicole Cheuk*

## **Energy & Environment**

### **Chesapeake Bay Total Maximum Daily Load**

The General Assembly may likely consider legislation during the 2011 Session to implement or mitigate the Chesapeake Bay Total Maximum Daily Load (TMDL). The TMDL represents the maximum amount of nitrogen, phosphorous, and sediment that the Bay can tolerate and still meet its water quality standard. The TMDL is comprised of wasteload allocations for "point sources" like sewage treatment plants, urban storm-water systems, and large animal feeding operations, and load allocations for non-point sources such as polluted rainfall runoff from agricultural lands and impervious surfaces, and a margin of safety.

The TMDL will be implemented through a series of two-year commitments and accountability provisions to assure progress. Virginia, other states in the watershed, and the District of Columbia have committed to have pollution control measures in place no later than 2025 that will lead to the restoration of the Chesapeake Bay.

Legislation may concern the development of stormwater regulations, best management practices for the agricultural sector, restrictions on the use of fertilizer in urban and suburban areas, and an expanded nutrient trading program.

### **Coalbed Methane Gas**

Last year a study on the production of coalbed methane gas was introduced. That study was referred to the Coal & Energy Commission and is being reviewed during the interim. Legislation might be introduced to further resolve questions of ownership and administrative procedure that have arisen over the past few years and resulted in the deposit of over \$28 million in an escrow account administered by the Gas and Oil Board.

*Ellen Porter*

### **General Laws**

The 2011 legislature will likely see more legislation aimed at providing more support and assistance to veterans, especially disabled veterans and businesses owned by disabled veterans.

*Amigo Wade*

### **Governor's Efficiency Commission**

General Assembly members will likely see legislation regarding the Governor's Efficiency Commission. The more substantive recommendations of the Commission include:

- Privatization of ABC. Legislative proposals could address the logistics of transitioning to a private system, whether all

areas of the state would be provided service, and whether privatization would be at least revenue neutral in the long run.

- Consolidation of the administration of most taxes into one agency - likely the Department of Taxation.
- Creation of a statewide Inspector General position to pursue fraud, waste, and abuse in state government.
- Increased transparency regarding state government spending by providing online access to individual state agency spending.
- Changing the budget cycle so that the incoming Governor would adopt his budget in the first year and the second budget in the third year. Currently the incoming Governor is dealing with a budget submitted by his predecessor and does not get to submit a budget until his second year.

*Amigo Wade and Maria Everett*

### **Health**

The federal health care reform leaves the question of implementation largely up to the states. Changes might be seen as early as this session, although it is likely many changes will be made closer to the main effective date of 2014. However, this reform also contains many opportunities for the states to receive funding, some of which require legislation at the state level. Legislation may be proposed that changes the scopes of practice of medical professions, grants non-physicians more authority, and gives incentives to train more medical professionals, in anticipation of more patients coming into the system in coming years.

The Attorney General recently opined that the Board of Health could choose to

regulate abortion clinics as hospitals because of the lack of a definition in the law. This could spur legislation to clarify this issue.

*Jessica Eades*

## **Housing**

### **Affordable Housing**

The Virginia Housing Commission has endorsed a proposal that will likely be introduced to clarify the current accessor law to allow owners of affordable housing to obtain assessments based on the income approach. Under the current law, assessors lack the ability to require owners of four or fewer units to provide proof of income. There was a governor's amendment which was aimed at fixing this problem; however, the language now conflicts with § 58.1-3294 of the Code of Virginia. Possible legislation would correct the issue and specify that all owners of affordable housing units must comply with all provisions of § 58.1-3294.

### **Chinese Drywall**

The Virginia Housing Commission has endorsed a proposal that will likely be introduced regarding Chinese drywall disclosure, including instances where an owner is renting a property infected from Chinese drywall. A proposal could include changes to the Virginia Tenant Landlord Act (VTLA), to allow that if the landlord has actual knowledge of the drywall he must disclose that information. Other possible legislation could involve disclosure of any sales by a party to a third party, including how to adjust the current assessment of the property in order to assure fairness for all parties.

### **Civil Penalty for Landlords**

The Virginia Housing Commission has endorsed a proposal that will likely be introduced to afford localities the ability to hold landlords responsible for tenants who continually violate sections of the Code dealing with drinking, urinating in public and profanity. Legislation could involve prompt notice to the landlord when the tenant has been convicted, if this occurs three times within a six-month time frame, and allow the landlord to cure the situation.

### **Fair Housing Law**

The Virginia Housing Commission has endorsed a proposal that will likely be introduced to disallow localities from refusing to zone property or approve a development solely on the basis that it is affordable housing. A violation of the Fair Housing Act exists when the denial of the application for local land use ordinances or guidelines is based on the fact that the proposed development shall be operated in full or in part as affordable housing.

### **Landlord/Tenant Assertions; Rent Escrow**

The Virginia Housing Commission has endorsed a proposal that will likely be introduced to incorporate sections of the Virginia Residential Landlord Tenant Act (VRLTA) into the Virginia Landlord Tenant Act (VLTA). This proposal would direct a tenant renting and living in a free-standing residential home on what to do with rent in the event of a landlord dispute about the condition of the property or other property concerns.

### **Mortgage Loan Originator**

The Virginia Housing Commission has endorsed a proposal that will likely be intro-

duced to clarify the Mortgage Loan Originator Bill. The proposal would likely add to the definition of Mortgage Loan originator to carve out a small exception for any individual who is employed by a housing counseling organization certified or approved by the U.S. Department of Housing and Urban Development and who assists borrowers who are currently in default or are in foreseeable likelihood of defaulting on their residential mortgage loans. Legislation would likely allow that the counselor may offer to negotiate the terms of such loan but the counselor is still not allowed to otherwise engage in any other activities for which a state mortgage loan originator license is required

*Elizabeth Palen*

### **Immigration**

Recent immigration reforms in Arizona will likely lead to a plethora of bills, ranging from tweaking the current law to more major changes.

*Robie Ingram*

### **Natural Resources**

The 2011 General Assembly may propose legislation on whether the Commonwealth should continue to manage the menhaden fishery through a statutory cap (§ 28.2-1000.1 of the Code of Virginia) placed on the amount that can be taken or whether the management of this fishery should be turned over to the professional fishery managers at the Virginia Marine Resources Commission.

*Marty Farber*

## **Transportation**

### **Special License Plates**

Legislation creating new special license plates to increase State revenues is likely in the 2011 Session. Since there are already so many special license plates available in Virginia, it has become increasingly difficult for a new special license plate candidate to have a realistic chance of achieving the required 350 prepaid applications filed with the Department of Motor Vehicles within 30 days of the legislation's effective date. The number of new special license plate proposals has fallen dramatically in the past several Sessions.

### **Use of Cell Phones While Driving**

The 2011 General Assembly may consider more legislation about using a cell phone while driving.

### **VDOT**

The most recent Virginia Department of Transportation audit could lead to finance-related bills relating to construction and maintenance funds.

*Alan Wambold & Caroline Stalker*

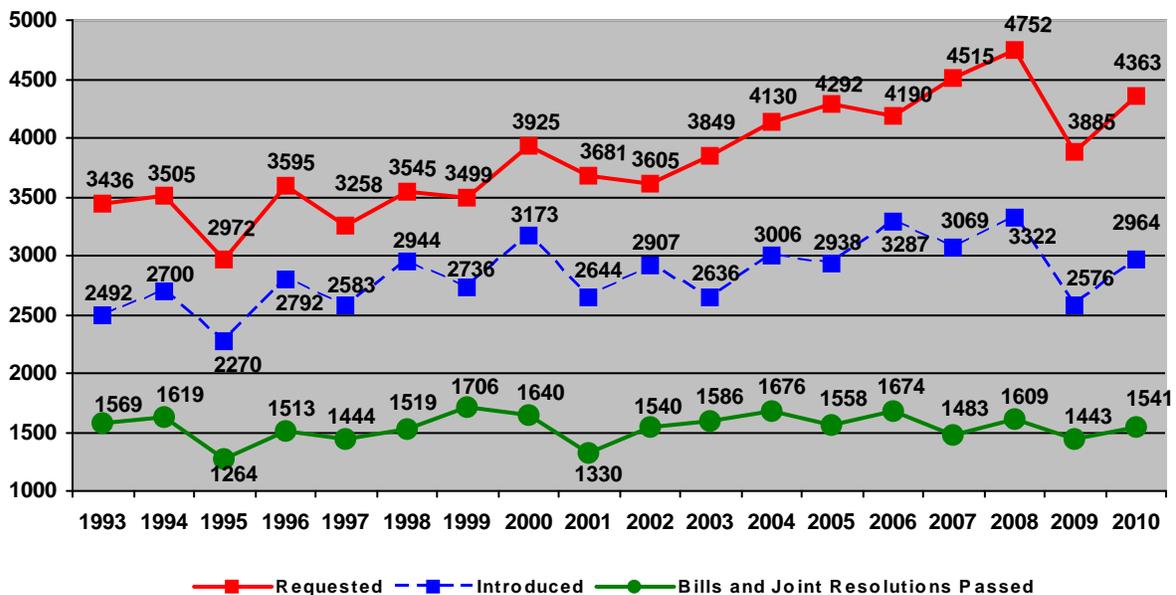
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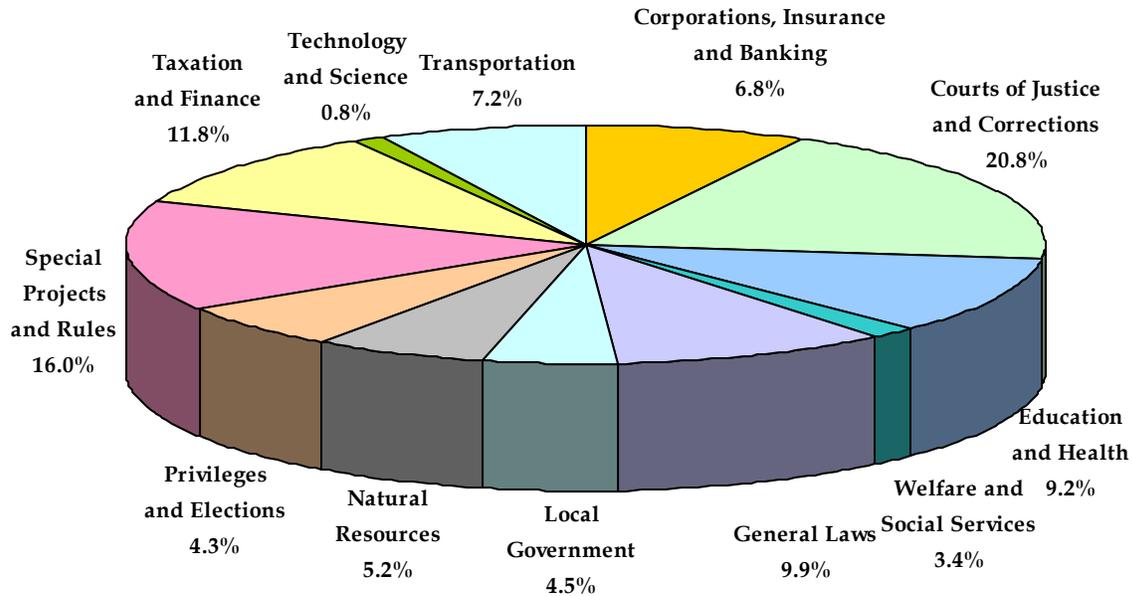
## DLS Bulletin Board

- 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 prefiling to be submitted to DLS by 5:00 p.m. on December 6, 2010.
- All drafts of legislation to be prefiled returned by DLS for requester's review by midnight December 31, 2010.
- All requests for drafts, redrafts, and corrections of legislation creating or continuing a study to DLS by 5:00 p.m. on January 7, 2011.
- All requests for redrafts and corrections for legislation to be prefiled to DLS by 5:00 p.m. on January 7, 2011.
- Covered drafts of legislation to be prefiled available at DLS by noon on January 11, 2011.
- All requests for drafts, redrafts, and corrections for first-day introduction bills to be submitted to DLS by 5:00 p.m. on January 11, 2011.
- Prefiling for the 2011 Session ends at 10:00 a.m. on January 12, 2011.
- The 2011 General Assembly convenes on January 12, 2011, at noon.

Legislation Requested\*, Introduced and Passed  
\*before Deadline (1993-2010)



## DRAFT\* LEGISLATION – 2010 SESSION



\* Bill drafts prepared by Division of Legislative Services

Total Number = 5892

### **2010 Regular Session** \*

Bill Type	Introduced	Passed House	Passed Senate	Passed Both	Continued	Failed	Approved	Vetoed
H.B.	1396	637	548	543	165	688	543	0
H.J.R.	495	436	428	428	2	65	3	0
H.R.	40	37	0	37	0	3	0	0
S.B.	739	332	437	328	92	319	328	0
S.J.R.	274	242	250	242	14	18	3	0
S.R.	20	0	20	20	0	0	0	0
<b>TOTALS</b>	<b>2964</b>	<b>1684</b>	<b>1683</b>	<b>1598</b>	<b>273</b>	<b>1093</b>	<b>877</b>	<b>0</b>

\* In 2010, less than half (41%) of introduced bills, excluding resolutions, became law. However, only half (50%) of all bills and resolutions drafted by DLS were introduced. This figure has grown substantially since the advent of pre-filing.

*Virginia Legislative Issue  
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