

2012 Session: General Assembly Issues

Number 53

November 2011

Budget Outlook	1
Constitutional Issues	2
Courts	3
Criminal Procedures	4
Elections	4
Federal Health Care Reform	5
Governor's Efficiency Commission	6
Housing	7
Technology and Science	7
Transportation	8
Uranium Mining	8
VRS	8
2011 Statistics	10

This Issue Brief contains descriptions of some of the issues that appear likely to capture the attention of legislators at the 2012 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 2012 Session. Finally, and most importantly, these descriptions are not predictions of how the General Assembly will respond to any issues.

revenues increasing by 5.8 percent over the previous fiscal year. However, General Fund revenues have still not recovered from the effects of the Great Recession since General Fund revenues for the current fiscal year are still expected to be below revenues collected in fiscal year 2007-08.

After the two difficult fiscal years of 2008-09 and 2009-10 when General Fund revenues declined by 9.2 percent and 0.7 percent respectively, the Commonwealth is finally experiencing revenue growth. The Commonwealth ended the last fiscal year with General Fund revenues of \$311 million in excess of the official estimate and an additional \$234 million of state agency savings and agency balances. Although economists are scaling back the size of the economic recovery, they are still forecasting a slow recovery that will yield revenue growth.

The more important question in dealing with the 2012-14 budget will be even though the Commonwealth

Budget Outlook

As Governor McDonnell prepares to submit his first full two-year budget to the 2012 Session, the Commonwealth has ended the past two fiscal years with relatively large General Fund revenue surpluses as well as the highest annual growth in General Fund revenues in five years. The last fiscal year, which ended June 30, 2011, finished with reve-



will have more revenue to meet its needs, will there be enough revenue to meet its top priority needs? This will be an especially difficult question in 2012 because legislators will be facing priority needs of the upcoming biennium as well as needing to pay back for the budget balancing strategies that were adopted during the recent recessionary period.

Two of the largest budget balancing strategies that will require funding in the upcoming biennium are the accelerated sales tax payments and the deferral of the \$620 million of Virginia Retirement System (VRS) contributions in the current Appropriations Act. Although the current Appropriations Act has already reduced the accelerated sales tax collections, \$190 million is still needed to eliminate the accelerated collections. The \$620 million in VRS contribution deferrals needs to be repaid over a 10-year period, with interest.

In addition to the above, the 2012 Session will face a number of new funding issues.

- **Standards of Quality (SOQ) Rebenchmarking** - In every new two-year budget the SOQ costs are updated based on the actual cost incurred by school divisions over the last two years.
- **Medicaid Utilization and Inflation** - The Department of Medical Assistance Services and Department of Planning and Budget will reforecast Virginia's specific medical inflation costs, utilization of services and enrollment of individuals who meet current eligibility requirements, as well as changes required by the new federal health care reform law.
- **VRS Retirement Contribution Rate Increase** - In large part because of the decline in asset values, the retirement system for state employees was funded at only 75.2 percent of obligations (as of June 30, 2010). Virginia's actuary will

provide updated state contribution rates this fall and they are expected to increase significantly. Moreover, the actuary will also update the contribution rates for the state's share of the retirement cost for teachers, which are expected to increase significantly as well.

- **Impact of reduced federal spending** - Clearly the focus of the federal government in Washington is to bring the federal budget into balance over some long-term horizon. Certainly reduced federal spending, including military spending, will be a very large part of the deficit reduction package and will negatively affect Virginians as well as the Virginia economy. The only question is when this process will begin and how significant the impact will be.
- There will also be a host of other claims on available revenue including required deposits to the Rainy Day Fund, additional funding for higher education enrollment growth to prevent tuitions from increasing as they have over the past decade, and restoring previously approved high priority programs or new initiatives.

It appears the 2012 Virginia General Assembly will again be forced to make a number of difficult spending decisions when it convenes in January.

John Garka

Constitutional Issues

Constitutional Amendments

The 2011 General Assembly passed two proposed constitutional amendments. If the 2012 General Assembly passes the identical amendments, they will be placed on the 2012 November general election ballot for the approval or rejection by a vote of the public.

Eminent domain; taking or damaging private property for public use. The existing provision authorizing the General Assembly to define what constitutes a public use is removed. The proposed amendment provides that private property can be taken or damaged only for a public use, only with just compensation to the owner, and only so much taken as is necessary for the public use. Just compensation must equal or exceed the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking. With exceptions for public service companies, railroads, and the elimination of a public nuisance, any taking or damaging of private property is not for public use if the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development. The condemnor bears the burden of proving that the use is public, without any presumption that it is.

Veto session. The Constitution now provides that the veto or reconvened session will always be held on the sixth Wednesday after adjournment of a regular or special session. The proposed amendment would allow the General Assembly to postpone the reconvened session for up to seven days, for example, to avoid convening on a religious holiday.

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.

Successive Terms for the Governor

A perennial favorite, legislation regarding successive terms for the Governor may surface again.

Mary Spain

Courts

Mortgage Foreclosure Practices

In the wake of the subprime mortgage crisis, several bills were introduced during the 2011 Session to address various issues involving foreclosure practices, including House Bill 1506 (providing that the trustee under a deed of trust could not proceed with any sale of the property subject to the deed of trust unless all assignments of the deed of trust have been recorded; requiring at least 45 days' notice to the property owner prior to any proposed sale of the intent to foreclose; creating a civil penalty and a civil cause of action for using fraudulent documents or swearing falsely in support of any foreclosure), House Bill 1665 (requiring lenders to give certain notices to persons in default and providing that persons in default may cure such default up until the date the property is sold), House Bill 1920 (requiring the recordation of any assignment of a deed of trust), and House Bill 1921 (providing that the trustee under a deed of trust could not proceed with any sale of the property subject to the deed of trust unless all assignments of the deed of trust have been recorded). Ultimately, these bills were referred by the General Assembly to the Virginia Foreclosure Task Force established by Governor McDonnell. The Virginia Task Force has held several meetings during the interim and at least one more is scheduled before the 2012 Session.

Rules of Evidence

The General Assembly is likely to have the opportunity to decide whether Virginia will adopt Rules of Evidence. While a majority of jurisdictions, and the federal level, have rules of evidence, evidence is governed in Virginia primarily by case law as well as some statutory provisions.

The push for Rules of Evidence has been a long-standing goal of many bar groups, including the Boyd-Graves Conference of the Virginia Bar Association. The Virginia Supreme Court adopted Rules of Evidence on September 12, 2011. These rules must be submitted to the Virginia Code Commission for approval and then introduced in the General Assembly. The Rules of Evidence were presented to the Code Commission at its October 2011 meeting and are under consideration.

If the General Assembly chooses to adopt the proposed Rules of Evidence, numerous *Code* provisions will be repealed and replaced with a corresponding rule.

David Cotter

Criminal Procedures

Caylee's Law

The General Assembly may consider measures to create a "Caylee's Law," which would criminalize the failure to report within a certain time frame the death of one's child or the fact that one's child is missing.

DUI

The General Assembly annually considers many pieces of significant legislation regarding driving under the influence.

Methamphetamine

The General Assembly may consider legislation to create a methodology to better track drugstore purchases of pseudoephedrine, a primary precursor of methamphetamine, and to punish new methods of manufacturing methamphetamine.

Synthetic Marijuana

Legislation may be introduced that would expand the list of components on the list of chemicals called "synthetic marijuana" or "synthetic cannabinoids." Enterprising criminals have compounded new substances that, because they are not on the current list, are legal. Possible legislation may also devise a way to identify and punish the use of new chemicals without having to add the chemicals to the list as they are compounded.

Robie Ingram

Elections

Absentee Voting

Efforts to provide for no-excuse absentee voting, no-excuse in-person absentee voting, or early voting reforms can be expected.

Electoral College

The National Popular Vote movement continues with bills passed in nine states and the District of Columbia and it may surface again in Virginia.

Redistricting

If not resolved during the special session, congressional redistricting could be taken up in the 2012 Session by the General

Assembly on its own initiative or at the suggestion of a court.

Voter ID

Efforts to enact more stringent voter identification requirements can be anticipated.

Mary Spain

Federal Health Care Reform

The federal Patient Protection and Affordable Care Act provides for the establishment of Health Benefit Exchanges (Exchanges). Exchanges are envisioned to be portals or markets where qualified individuals and qualified small employers may shop for health plans. Exchanges are seen as a way of encouraging competition, thereby providing lower costs and more choices for purchasers of health insurance. Exchanges will also provide other functions, including determining eligibility for subsidies (including tax credits and free choice vouchers) and enrolling eligible individuals in Medicaid and other government programs.

Exchanges are required to be operational by January 1, 2014. However, the deadline for demonstrating that the state will meet that requirement is a year earlier. If the federal government determines by January 1, 2013, that a state has elected not to operate an Exchange or that necessary actions to implement an Exchange have not been taken, the Secretary of Health and Human Services will set up an Exchange for the state. Moreover, the deadline for applying for a federal Level Two Establishment grant to fund the establishment and initial operation of an Exchange is June 29, 2012. To receive such a grant, the state must, among other things, have the necessary legal authority to establish and operate an Exchange that complies with federal requirements and

provides its governance structure. Given this timeframe, the 2012 Session will be the only regular session at which legislation needed to establish a Virginia-operated Exchange can be considered.

In the 2011 Session, the General Assembly passed House Bill 2434, which states that it is the intent of the General Assembly that the Commonwealth create and operate its own Exchange or Exchanges that meet the requirements of the federal law. The legislation also directed the Governor and the Bureau of Insurance to provide recommendations for consideration by the 2012 Session of the General Assembly regarding the structure and governance of the Virginia Exchange.

The Virginia Health Reform Initiative (VHRI) was created by Governor McDonnell following enactment of the federal Affordable Care Act. The VHRI Advisory Council, chaired by the Secretary of Health and Human Resources, Bill Hazel, is charged with providing recommendations to the Governor towards a comprehensive strategy for implementing health reform in Virginia.

The VHRI Advisory Council's efforts this year have focused on planning for an Exchange. Cindi Jones of the Department of Medical Assistance Services and Dr. Len Nichols of George Mason University have led the Advisory Council as it has grappled throughout the year with complex and controversial issues, such as:

- Who should administer the Exchange -- an existing state agency? an independent public entity? or a private non-profit group?
- Should Virginia require that health plans sold through the Exchange provide the same benefits that are required to be offered in plans sold outside of the Exchange?

- How can the rules applicable to the Exchange be designed in a manner that limits adverse selection?
- What role should agents and brokers play in the Exchange?
- Should the Exchange serve only as a market facilitator, or should it take a more active role in determining which health benefit plans are offered through the Exchange?
- How should the operations of the Exchange be funded?

The VHRI Advisory Council's recommendations were presented to the Governor and General Assembly in October. The General Assembly is expected to consider legislation in the 2012 Session to deal with the issue. When it does, interest groups can be expected to continue efforts to try to shape the rules for the Exchange. And as if setting up an Exchange did not generate enough controversy, the ongoing judicial skirmishing over the constitutionality of the Affordable Care Act is likely to further complicate the debate.

Franklin Munyan

Governor's Efficiency Commission

Governor Robert McDonnell established the Commission on Government Reform and Restructuring to perform a comprehensive examination of state government. The Commission made several proposals for legislation during the 2011 legislative session. General Assembly members will likely see another wide range of proposals for the 2012 legislative session from the Governor's Efficiency Commission aimed at moving forward additional operational efficiencies, cost savings, and the streamlining of administrative processes across state government.

These proposals may include the following:

- Privatization of alcoholic beverage control. Proposals could address (i) the logistics of transitioning to a private system, (ii) whether all areas of the state would be provided service, and (iii) whether privatization would be at least revenue neutral in the long run.
- Simplification of the state employee leave program.
- Revisions to the state employee grievance procedure to shorten the amount of time the process takes.
- Amending the Freedom of Information Act to allow public bodies to have web-based and telephone conference meetings.
- Consolidation of the state's investment activities currently administered across six agencies.
- Allowing regulatory boards to more easily adjust licensing fees to adequately cover the costs of administering the licensing, registration, or certification program.
- Consolidation of agencies and boards that have similar missions or serve similar constituencies.
- Controlling the increase in the number of new state boards or commissions by requiring any new entity to have a limited duration of existence.

Additional proposals are anticipated to emanate from subject matter areas coinciding with the secretariats of the Governor's cabinet.

Amigo Wade and Maria Everett

Housing

Possible endorsed legislation from the Virginia Housing Commission includes:

Derelict Structures

Legislation may be introduced to provide a solution for derelict structures and crumbling homes in the midst of the Commonwealth's city neighborhoods. Fire concerns of existing neighbors prompted this study, which is continuing to create a solution through the localities' limited use of receivership to restore neglected residential structures.

Fair Housing

The fundamental concept that was endorsed last year by the Governor's Housing Initiative is that localities should not discriminate against building affordable housing. Currently a bill is being constructed that will not compromise a locality's ability to legitimately do community planning and approve areas for affordable housing.

Landlord Tenant Act

Legislation may be introduced that addresses rental receipts and an accounting of how owed rent will be applied to a delinquent tenant's lease.

Time Shares

The General Assembly may see legislation that updates the Virginia Time Share Act. A proposed draft mimics some of the Condominium Act with consumer friendly notifications to potential buyers that simplifies and clarifies terms. It was recently discussed in the Common Interest Communities Work Group and will also be voted on by the full commission later this fall.

Water Billing

The Virginia Housing Commission is currently studying legislation that addresses the billing of water, specifically whether water and sewer authorities have the power to put a lien on property owners' property for failure of a tenant to pay a water bill. Municipal bond ratings and other pertinent considerations are under discussion as stakeholders meet under the Virginia Housing Commission umbrella to solve this issue. This too will be brought shortly to the full commission of legislators and Governor appointees.

Elizabeth Palen

Technology and Science

The JCOTS Privacy Advisory Committee studied House Bill 2032 after it had been passed by indefinitely by the Senate's Courts of Justice committee during the 2011 General Session. The substance of that bill focused on the prevention of the unauthorized installation of "electronic tracking devices" on another's vehicle. Such devices include GPS tracking devices. In order to address the concerns raised by members of the General Assembly, the Advisory Committee met to study further the precise language of the bill and make any changes as necessary. The bill in its new form will likely be introduced for the 2012 Regular Session.

Wenzel Cummings

Transportation

Various methods to help solve the Commonwealth's transportation problems likely will be proposed in the 2012 Session. A growing number of members in both chambers, and both parties, agree that this issue needs to be addressed, but differ on the methods that should be adopted. Recently, the Secretary of Transportation stated that, without changes, maintenance costs alone will cause Virginia to run out of state money to build new roads in about five years. Proposals may include new tolls on Interstate 95, shifting responsibility for local roads to counties, finding more efficiencies in the current transportation program, issuing debt, increasing the motor fuels tax rate or providing other means of generating new revenue, and re-prioritizing state spending to provide more funds for transportation.

David Rosenberg

Uranium Mining

Legislative proposals concerning mining exploration in Southside Virginia first arose in 1981. A mining moratorium was issued until July 1, 1984, pending study by the Coal and Energy Commission, its Uranium Subcommittee, and outside consultants. The issue faded for a time as the 1985 Assembly did not act on legislation setting performance standards and a regulatory framework and a major partner (Union Carbide) in the mining venture dropped its option to buy properties targeted for site. In 2007, the issue was reopened when Virginia Uranium formed and was issued an exploration permit. The Coal and Energy Commission created the Uranium Mining Subcommittee to supervise and/or undertake studies of various impacts. Those study reports are due December 1, 2011. The

National Research Council (under the National Academy of Sciences) reviews environmental impacts, public health and safety impacts, regulatory framework, and technical options and best practices. Chmura Economics and Analytics analyzes economic, fiscal, and social benefits and impacts. The Division of Legislative Services has prepared a historical perspective on uranium mining in Virginia that can be viewed on the Division's website at http://dls.virginia.gov/pubs/uranium_mining.pdf.

Martin Farber

VRS

It is almost certain that there will be proposals to further modify the Virginia Retirement System (VRS). Largely as a result of the Great Recession, the funding levels of each of the plans is less than optimal. A major issue during the 2012 session will be the VRS employer contribution rates for the state and teacher plans for the 2012-2014 biennial budget. In addition, the repayment of the shortfall in employer contributions for the state and teacher plans, amounting to approximately \$620 million plus interest may be under consideration. The current Appropriations Act calls for these funds to be repaid over a 10-year period beginning in FY 2013.

The General Assembly will also likely see legislation that will call for additional pension reforms. Legislation may be introduced that would require state employees to contribute an additional percentage of salary for their retirement making the total state employee contribution, if enacted, increase beyond the current five percent.

In addition, it is likely that legislation to establish a defined contribution plan as a primary retirement plan will be proposed. Legislation might also be introduced to

establish a hybrid plan that contains both a defined benefit and defined contribution component.

In the 2011 session, JLARC was asked to study the VRS and recommend additional reforms to the existing defined benefit plan as well as provide a recommendation as to alternative plan designs, such as a defined contribution plan or a hybrid plan. The report will be released in December 2011. Legislation reflecting recommendations contained in this report are also likely to be introduced.

For **multiple copies** of the *Virginia Legislative Issue Brief* or other DLS publications, please contact the Division of Legislative Services.

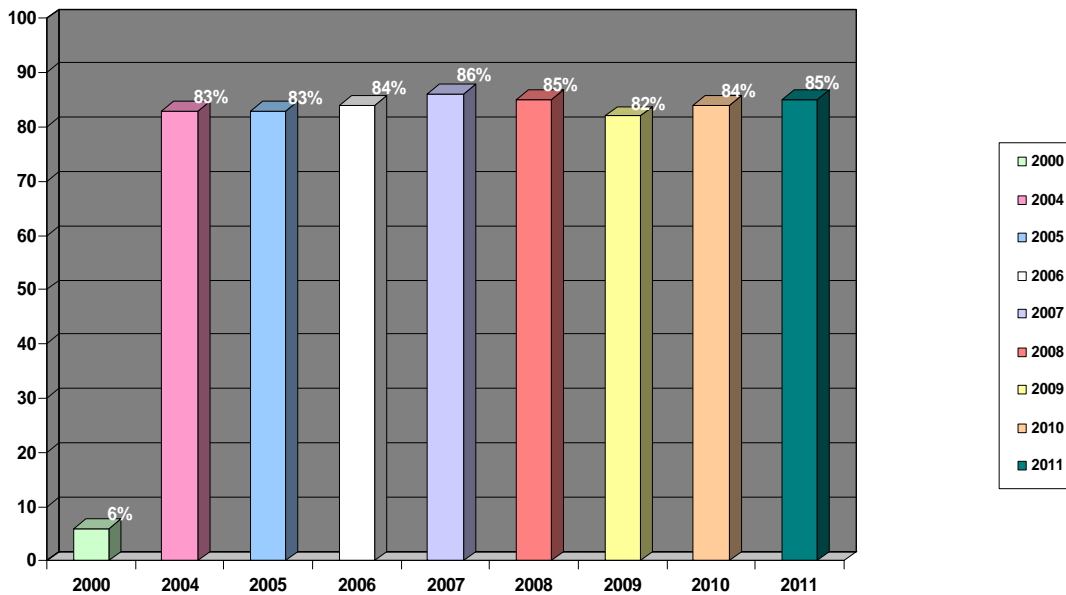
David Rosenberg

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 5, 2011.
- All drafts of legislation to be prefiled returned by DLS for requester's review by midnight December 30, 2011.
- All requests for drafts, redrafts, and corrections of legislation creating or continuing a study to DLS by 5:00 p.m. on January 6, 2012.
- All requests for redrafts and corrections for legislation to be prefiled to DLS by 5:00 p.m. on January 6, 2012.
- Covered drafts of legislation to be prefiled available at DLS by noon on January 10, 2012.
- Prefiling for the 2012 Session ends at 10:00 a.m. on January 11, 2012.
- The 2012 General Assembly convenes on January 11, 2012, at noon.

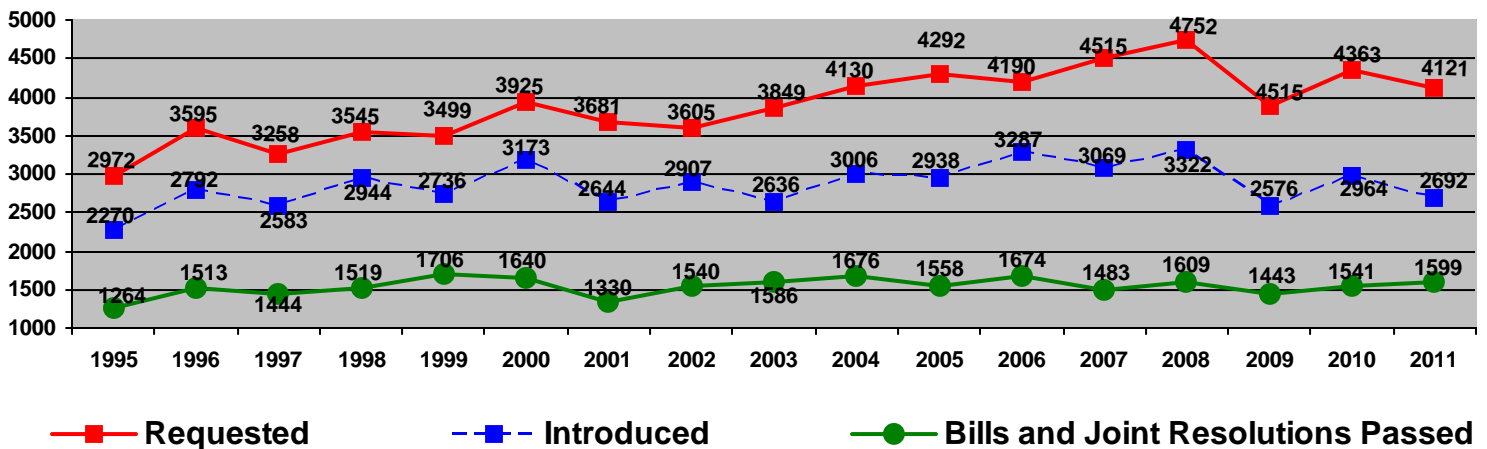
PERCENT OF LEGISLATION PREFILED (BILLS ONLY)

Most legislation is now available when the session begins and committees can start work right away.

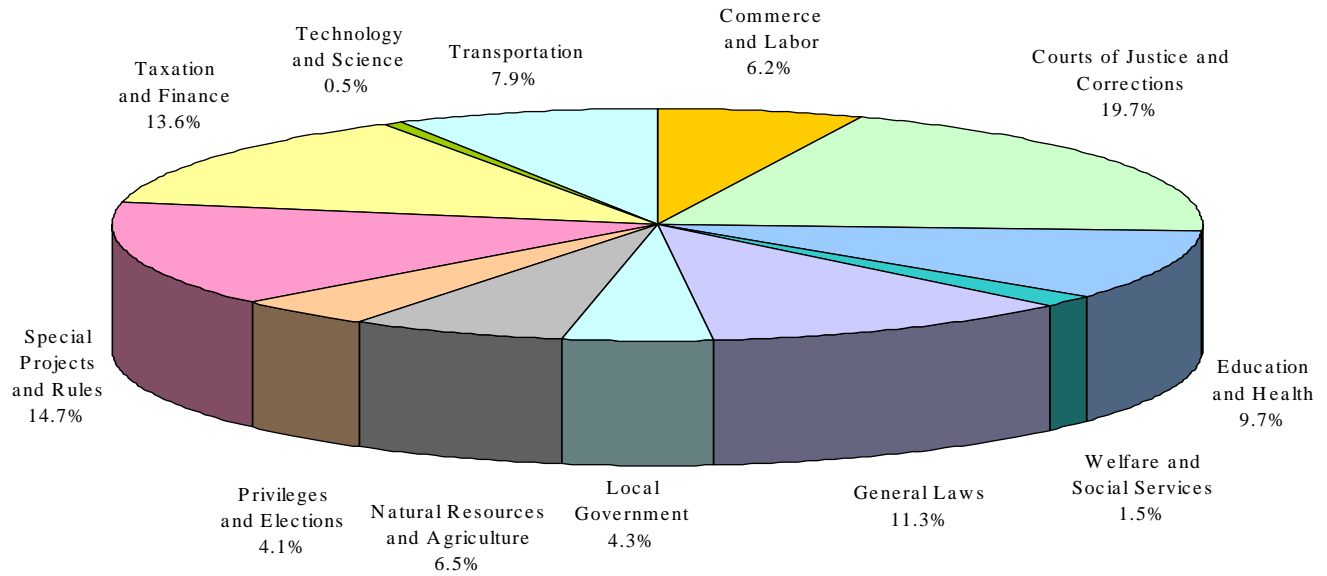


LEGISLATION REQUESTED*, INTRODUCED AND PASSED

*BEFORE DEADLINE (1995-2011)



DRAFT* LEGISLATION – 2011 SESSION



*Legislative drafts prepared by Division of Legislative Services Total Number = 5,530

2011 REGULAR SESSION

Bill Type	Introduced	Passed House	Passed Senate	Passed Both	Continued	Failed	Approved	Vetoed
H.B.	1,135	597	507	505	165	795	503	2
H.J.R.	493	442	426	425	2	70	2	0
H.R.	50	48	0	48	0	2	0	0
S.B.	747	389	492	387	92	452	385	2
S.J.R.	251	221	237	220	14	45	0	0
S.R.	16	0	14	14	0	2	0	0
TOTALS	2,692	1,697	1,676	1,599	273	1,366	890	4

* In 2011, less than half, (47 percent), of introduced bills, excluding resolutions, became law. However, only 49 percent of all bills and resolutions drafted by DLS were introduced. This figure has grown substantially since the advent of pre-filing.

Virginia Legislative Issue Brief

2012 Session: General Assembly Issues

is a publication of the **Division of Legislative Services,**
an agency of the **General Assembly of Virginia.**

Robert Tavenner, Director
R. J. Austin, Manager, Special Projects
Mindy Tanner, Editor and Publisher

For information contact:
Special Projects
Division of Legislative Services
910 Capitol Street, 2nd Floor
Richmond, VA 23219
(804) 786-3591

<http://dls.virginia.gov>

Division of Legislative Services
910 Capitol Street
GAB, 2nd Floor
Richmond, Virginia 23219

