

# 2013 Session: General Assembly Issues

Number 56

November 2012

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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 2013 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 2013 Session. Finally, and most importantly, these descriptions are not predictions of how the General Assembly will respond to any issue.***

## ***Budget Outlook***

Although the 2013 General Assembly Session will not be adopting a new two-year budget, the slow growth in the U.S. economy as well as the prospect of reducing or eliminating the federal budget deficit will be felt by Virginia’s policymakers. The U.S. economy continues to slowly recover from the Great Recession and, in the most

recent two fiscal years, Virginia has seen General Fund revenue growth of 5.8 percent and 5.4 percent. Although this represents moderate growth, it is a dramatic improvement from the previous two fiscal years when General Fund revenues declined by more than 10 percent for the two-year period. Although many had hoped for a more normal, more robust recovery, the slow recovery will continue with GDP growth of approximately 2.0 percent in both calendar year 2012 and 2013, according to the Commonwealth’s forecasting service, Global Insight.

One important budget issue that will directly impact Virginia is how the U.S. Congress and the President deal with the “fiscal cliff,” which will occur on January 1. On that date a wave of automatic spending cuts and the expiration of the George W. Bush tax cuts will occur unless Congress alters current law. The automatic spending cuts, agreed to in 2011’s budget deal, would slice 9.4 percent off defense spending, 2.0 percent off Medicare, and 8.2 percent off other domestic spending programs. The expiration of the



Bush tax cuts would mean long-term capital gains tax rates would go from 15 percent to 20 percent, the top tax rate on dividends would revert from 15 percent to 39.6 percent, and the highest income tax bracket would move back up to 39.6 percent from its current 35 percent. The nonpartisan Congressional Budget Office has warned that if nothing is done the result would be a recession. Even if the “fiscal cliff” is avoided, with increased emphasis on significantly reducing or eliminating the federal deficit, federal spending will clearly be targeted. The big questions are by how much and in what areas? Virginia will be particularly impacted because of its proximity to Washington as well as its dependence on military spending, and the General Assembly will need to address those impacts.

## ***Constitutional Amendments***

In 2012, the General Assembly acted for a second time on two proposed amendments and submitted them to the voters—one making eminent domain takings more difficult and one providing more flexibility in scheduling the veto sessions. Both were approved November 6.

The 2013 General Assembly will take first action on possible constitutional amendments that could be acted upon again by the General Assembly and submitted to the voters for approval in 2014. Many of these proposals have been offered before: successive terms for the Governor, ways to restore civil rights for felons who have completed their sentences, transportation fund protections or lock boxes, right-to-work protections, and limits on taxes or revenues with refunds of surplus funds to taxpayers.

## ***Courts/Criminal Justice***

### **Actual Innocence**

The General Assembly may see legislation related to actual innocence, when a convicted felon claims innocence based on evidence, unknown or unavailable at the time of conviction, that proves innocence. In 2004, the General Assembly expanded the law to allow a felon to submit non-DNA evidence, such as fingerprints, ballistics, witnesses, and recanted testimony. In the 2012 Session, several bills to ease the standards related to actual innocence narrowly failed in committee. The Virginia Bar Association and the Office of the Attorney General support removing the current limit that allows filing only one writ per conviction and “creating a reasonable doubt” vs. “proving beyond a reasonable doubt.”

### **Drones**

Legislation may be introduced that relates to privacy concerns with the use of drones.

### **DUI**

The General Assembly annually considers legislation relating to driving under the influence.

### **Immigration**

Arizona v. U.S. (2012) overturned the Ninth U.S. Circuit Court of Appeals ruling in part by upholding the piece of Arizona Senate Bill 1070 that allows detention of suspected aliens by law-enforcement officers. The General Assembly annually considers bills related to immigration.

## **Interest on Lawyers' Trust Accounts Funding for Legal Aid**

The Virginia Bar Association is backing a proposal to require banks to pay interest on lawyers' trust accounts into a fund to support legal aid offices. A bill last year to repeal a state law provision prohibiting the Supreme Court of Virginia from requiring lawyers to do so was narrowly defeated in committee. General Assembly members may see the same proposal during the upcoming session.

## *Education*

### **Higher Education Boards of Visitors**

In the wake of the June 2012 removal and reinstatement of University of Virginia President Theresa Sullivan, Virginia state lawmakers could introduce legislation to improve boards of visitors governance.

### **Nonpublic School Students' Participation in Interscholastic Programs**

During the 2012 General Assembly Session, bills were introduced that prohibited public schools from joining interscholastic activities organizations that did not allow participation by certain home-schooled students. The General Assembly may consider the issue again in 2013.

### **School Calendar**

Currently, public primary and secondary schools cannot start prior to Labor Day unless they qualify for a waiver based on one of the "good cause" requirements. The General Assembly may consider legislation that would give local school boards the authority to set the school calendar.

## **Teacher and Administrator Contracts and Evaluations**

The General Assembly may consider legislation that would modify the current requirements that govern how often principals, assistant principals, supervisors, and teachers are evaluated.

## *Elections*

### **Absentee Voting**

Renewed efforts to provide for no-excuse absentee voting, no-excuse in-person absentee voting, or early voting reforms may be expected.

### **Ballot Access and Petition Requirements**

After the failure of several candidates for the Republican presidential primary, questions surfaced about whether Virginia's ballot access requirements are overly strict. Legislation on this topic can be expected.

### **Electoral College**

The just concluded presidential election could invigorate efforts on behalf of the National Popular Vote movement, which has seen bills passed in nine states and the District of Columbia.

### **Voter Registration**

There could be legislation following up on the Arizona litigation concerning requirements to prove citizenship when registering to vote.

## *General Laws*

### **ABC**

In recent years, the issue of privatization of alcoholic beverage control has been discussed. The General Assembly may consider legislation related to privatization of alcoholic beverage control during the 2013 Session.

### **Administrative Process Act**

The General Assembly will likely see legislation to streamline the process used by state agencies to develop regulations. Recent articles appear to indicate that the reason the Governor has held up signing off on regulations (in some cases for over a year) has been because review is underway to streamline and possibly overhaul the process.

### **Casino Gaming**

Several bills have already been introduced to authorize casino gaming in the state. These measures have in common that a portion of the proceeds will be set aside for transportation construction and maintenance. Many of the measures have been fueled by tolls that have been proposed for the Downtown and Midtown Tunnels in the Hampton Roads area. These efforts will likely be combined with the ongoing effort to allow historical horse racing through Colonial Downs and satellite facilities with a portion of the proceeds going to support transportation construction and maintenance.

### **Procurement**

There will likely be a cluster of actions in this area aimed at using the government's purchasing power to better support Virginia-based businesses and workers, including (i) efforts to require public contracts for the construction or maintenance of a public

building or public works to use iron, steel, and goods manufactured in the United States; (ii) preferences in state contracting for Virginia-based businesses and businesses that employ state residents; and (iii) authorizing localities to establish contracting preferences for local businesses and businesses that employ residents of the locality.

## *Governor's Efficiency Commission*

Governor Robert McDonnell established the Commission on Government Reform and Restructuring to perform a comprehensive examination of state government. General Assembly members may see proposals to streamline administrative processes, achieve cost savings, and implement operational efficiencies.

## *Health*

### **Federal Health Care Reform**

The Supreme Court's decision this summer upholding all but one of the provisions of the Patient Protection and Affordable Care Act (Affordable Care Act) did not resolve the question of whether the Affordable Care Act will be implemented as its advocates intended. The General Assembly is likely to address several issues in the 2013 Session that involve the Act.

#### Conforming to the Affordable Care Act

The General Assembly may consider conforming Virginia's health insurance laws to provisions of the Affordable Care Act that are scheduled to take effect in 2014. Areas where such conforming changes may be considered include:

- Prohibiting health plans from imposing annual dollar limits on the amount of coverage an individual may receive.
- Requiring guaranteed issue and renewability of health insurance regardless of health status, including pre-existing conditions.
- Allowing rating variations in the individual and the small group market and the exchanges to be based only on age, geographic area, family composition, and tobacco use.

### Medicaid Expansion

The Affordable Care Act sought to extend Medicaid coverage to people between 19 and 64 with modified adjusted gross incomes at or below 133 percent of the federal poverty level (which is 138 percent of the poverty level when a 5.0 percentage point deduction from the poverty level is factored in). This group includes childless adults, who previously have not qualified for Medicaid in Virginia.

The Supreme Court of the United States held that the federal government could not condition continued funding for Medicaid on states' agreement to expand their eligibility requirements and that states must have the option of whether to expand the eligibility threshold. In light of the Supreme Court's ruling, Virginia will need to decide whether to expand Medicaid eligibility as authorized by the Affordable Care Act.

If Medicaid expansion occurs, an estimated 420,000 Virginians would gain Medicaid coverage. The federal government is required to pay 100 percent of the added cost of the expanded coverage provisions for the newly eligible for three years (2014, 2015, and 2016), with the federal payment decreasing in ensuing years.

Governor McDonnell, as chair of the Republican Governors Association, sent a letter to the Obama administration seeking clarification on several questions related to the Medicaid expansion aspects of the Affordable Care Act. The Governor has described the expansion as an "unfunded mandate" that will

cost the Commonwealth \$2.2 billion over 10 years starting around 2014.

## Housing

### Affordable Housing

Changes in language having to do with long-term hotel/motel stays of residence and whether or not residents should be afforded the protections and burdens of the Virginia Residential Landlord Tenant Act (§ 55-248.2 et seq. of the *Code of Virginia*) may be considered during the 2013 Session.

### Continuing Care Communities

Continuing care communities may be required to provide more specific information on a yearly financial audit to the State Corporation Commission and the community's residents, including requiring each location to have a page in the audit outlining the financial specifics for that community.

### Mortgages

The Virginia Mortgage Loan Originator Act is likely to be updated to reflect changes to federal law, including who is exempt from licensure.

### On-Site Sewers

Legislation may be introduced that changes some of the requirements for alternative on-site sewers: localities having to have owners enter into maintenance agreements with private companies and possibly changing the inspection date to every two years from the current yearly inspection date.

### Proffers

The Virginia General Assembly may consider legislation requiring localities to

spend by a certain date the proffers they have collected on proffered conditions and outline more succinctly what is a proffered condition.

## **Time-Share Act**

The Virginia Real Estate Time-Share Act will continue to be updated with probable 2013 legislation focused on developer control periods.

## **Ports**

The operations of Virginia's public ports may be a topic of debate for the General Assembly. Virginia International Terminals, Inc., currently operates the marine terminals and inland port of the Virginia Port Authority. Virginia International Terminals, Inc., is a nonprofit affiliate of the Virginia Port Authority. On April 4, APM Terminals, Inc., made an unsolicited proposal to the Commonwealth under the Public-Private Transportation Act of 1995 (§ 56-556 et seq. of the *Code of Virginia*) to operate the Virginia Port Authority's terminals. APM has proposed to operate the terminals over several decades, and it is anticipated the Commonwealth would receive between \$3 and \$4 billion in total compensation. Since the APM proposal, RREEF America LLC has submitted a competing multibillion-dollar proposal to operate some of the Virginia Port Authority's terminals. Also, Virginia International Terminals, Inc., has submitted a proposal of its own to continue operating the Virginia Port Authority's terminals. The current deadline for submission of detailed proposals is November 1, 2012, with a preferred operator to be decided upon sometime in 2013. If one of the private operator proposals is accepted, Virginia International Terminals, Inc., will be replaced as the operator of some, if not all, of Virginia's public ports.

Along with the specific case of the operations of Virginia's public ports, the

General Assembly might consider modifications to the Public-Private Transportation Act of 1995 to allow for more involvement by the legislature in the sale or lease of large assets of the Commonwealth.

## **Social Services**

### **Disabilities**

The General Assembly will likely consider legislation related to the Commonwealth's response to the settlement with the U.S. Department of Justice, which will require the Commonwealth to implement a broad array of changes in how services are delivered to individuals with intellectual and developmental disabilities, with a focus on transitioning individuals from care in state training centers to community-based settings. This began last year and will continue. The transition includes a huge range of actions, many of which will impact the state budget and some of which will likely require legislative changes.

### **Temporary Assistance for Needy Families**

The General Assembly may consider legislation related to various changes to Temporary Assistance for Needy Families program requirements, including drug testing and restrictions on how/where benefits can be spent, in response to federal law.

## **Taxation**

The issue of tax preferences, such as tax credits and sales tax exemptions, has been a major issue of discussion over the past several years. The discussion concerning the creation of new preferences and the extension of existing preferences will likely continue to be

an issue for discussion during the 2013 Session of the General Assembly. The 2012 Session of the General Assembly created a Joint Subcommittee to Evaluate Tax Preferences (Joint Subcommittee), a new permanent legislative committee. In the coming years, the Joint Subcommittee will evaluate the effectiveness of existing tax preferences and make recommendations concerning the creation, modification, or extension of such preferences. It is probable that some tax preference legislation introduced during the 2013 Session will be referred to the Joint Subcommittee for further review. A related issue that may be the subject of introduced legislation is that of the tax base generally. This concept involves the possible elimination of tax preferences, which might then allow for the tax base to be broadened and tax rates lowered generally. All of these issues are part of a bigger possible discussion about tax reform and existing tax structures.

The corporate income tax, currently set at six percent, will also certainly be a topic of discussion during the 2013 Session. It is likely that bills will be introduced that would propose to phase-out or eliminate the tax.

## *Technology and Science*

### **Electronic Meetings**

Legislation should be expected concerning electronic meetings held by public bodies pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the *Code of Virginia*). The issue has been the subject of study by both the Joint Commission on Technology and Science and the Freedom of Information Advisory Council. The requirements of the law have not been substantively studied since 2004, and the quality and capability of available technologies for audio and audio/visual meetings has greatly evolved during that time.

### **Online Identity Management**

As more and more business and commerce is conducted online, the need grows for a secure means for online identification and authorization that can be relied upon by multiple parties. The private sector has been hesitant to jump into this potential market because of the unknown liability for an entity that issues an online identity credential and a third party who relies on that credential. The Joint Commission on Technology and Science Electronic Identity Management Committee has been reviewing this complex issue and is working towards developing legislation.

## *Transportation*

Various methods to help solve the Commonwealth's transportation problems will likely be proposed in the 2013 Session. Notwithstanding the actions taken during the 2012 Session and prior sessions, most members agree that more needs to be done, but disagree as to whether new revenue from an increase in taxes is appropriate. Regarding those that favor new revenue, almost certainly there will be bills introduced to increase and/or index the motor fuels tax, as well as bills raising revenue in other ways. Also there likely will be discussions regarding tolls on I-95, as well as tolls on the Downtown Tunnel/Midtown Tunnel/Martin Luther King Connector in Hampton Roads. Other transportation-related legislation may include attempts to change the composition of the Commonwealth Transportation Board, prohibitions on the use of cell phones when driving, stronger penalties for texting while driving, and prohibitions on Virginia Department of Transportation monthly charges for transponders used in connection with E-ZPass and certain other toll facilities.

## *Unemployment Compensation*

### **Unemployment Compensation System**

The unemployment compensation system is a unique federal-state partnership established through the Social Security Act of 1935. While states have some flexibility with regard to certain aspects of the program, state programs are required to conform to certain federal standards. The price for states that fail to conform to the federal standards is steep. First, a state with a nonconforming program risks losing funding for administering unemployment insurance and job service programs. Second, its employers risk losing the 90 percent credit against Federal Unemployment Tax liability. A loss of the credit would increase the annual FUTA tax from \$41 to \$410 per employee.

Two recent federal laws, the Trade Adjustment Assistance Extension Act of 2011 and the Middle Class Tax Relief and Job Creation Act of 2012, have raised conformity issues that are being examined by the Commission on Unemployment Compensation. If Virginia's unemployment act is to remain in conformity with federal law, legislative changes will need to be considered by the 2013 Session of the General Assembly.

### **Work Sharing**

The Middle Class Tax Relief and Job Creation Act also gives states the option of establishing new types of unemployment benefit programs, including shared work programs and self-employment assistance programs. The federal act makes states that enact work sharing laws eligible for reimbursement of benefit costs for three years, plus planning and implementation grants. Work sharing is a program designed to ensure that

small businesses and their employees can weather economic downturns. The program permits employers to reduce the hours of employees rather than eliminating a full-time position. These employees are then eligible to claim prorated unemployment benefits for the time they are not working. Two bills that would create a work sharing program in Virginia were introduced during the 2012 General Assembly and were carried over to 2013 for further consideration. The Commission on Unemployment Compensation is examining the work sharing concept.

## *Uranium Mining*

In lieu of any action being taken during the 2012 General Assembly Session, the Governor created the Uranium Working Group (UWG), composed of officials from the Department of Environmental Quality, the Department of Health, and the Department of Mines, Minerals and Energy. In his directive establishing the UWG, the Governor directed the three agencies to provide the necessary information to assess whether the moratorium on uranium mining should be lifted and, if so, the proper way to regulate and monitor the mining and milling activity. The directive identified questions related to the health and safety of workers, the public and the environment, and the impact on the socioeconomic vitality of the areas near potential uranium sites that need to be addressed before any determination on whether mining and milling should be conducted. Eighteen specific tasks were identified, which included establishing a draft statutory and conceptual regulatory framework that could be used to regulate such activities. In March of this year, the UWG presented its work plan to the Uranium Mining Subcommittee of the Coal and Energy Commission. The plan contained specific assessments that each of the three agencies were to complete. Over the summer, the UWG held public meetings



and received comments from the public on June 18 and August 2 in Chatham, August 28 in Virginia Beach, and September 17 in Chatham, with further meetings scheduled on October 17 and in November. It is expected that the UWG will report its findings to the Coal and Energy Commission; however, its findings will not include a recommendation as to whether the moratorium on mining and milling of uranium should be lifted.

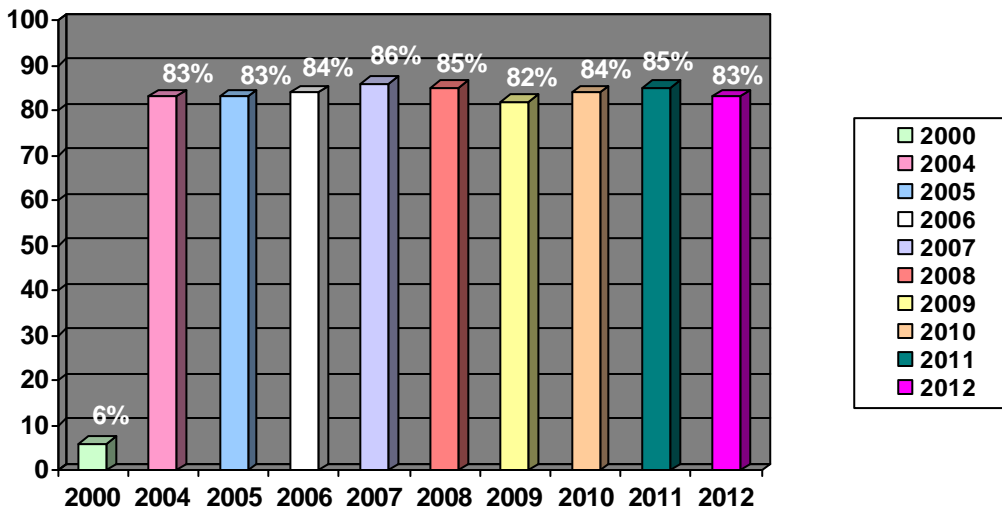
General Assembly members that need **multiple copies** of the *Virginia Legislative Issue Brief* or other DLS publications, please email [mtanner@dls.virginia.gov](mailto:mtanner@dls.virginia.gov).

### 2013 Session Prefiling Calendar

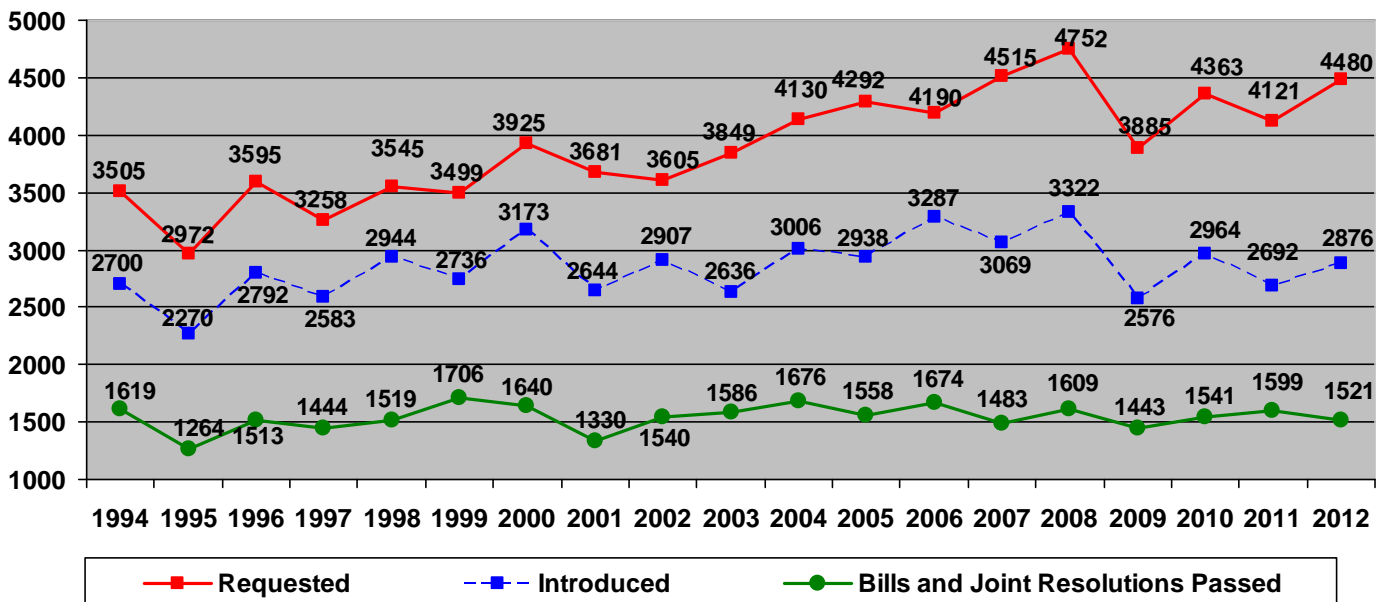
- Joint subcommittees on studies should submit an executive summary including findings and recommendations to DLAS by the first day of the General Assembly's Regular Session.
- All requests for drafts of legislation for prefiling to be submitted to DLS by 5:00 p.m. on December 3, 2012.
- All drafts of legislation to be prefiled returned by DLS for requester's review by midnight December 28, 2012.
- All requests for drafts, redrafts, and corrections of legislation creating or continuing a study to DLS by 5:00 p.m. on January 4, 2013.
- All requests for redrafts and corrections for legislation to be prefiled to DLS by 5:00 p.m. on January 4, 2013.
- Covered drafts of legislation to be prefiled available at DLS by noon on January 8, 2013.
- Prefiling for the 2013 Session ends at 10:00 a.m. on January 9, 2013.
- The 2013 General Assembly convenes on January 9, 2013, at noon.

## PERCENT OF LEGISLATION PREFILED (BILLS ONLY)

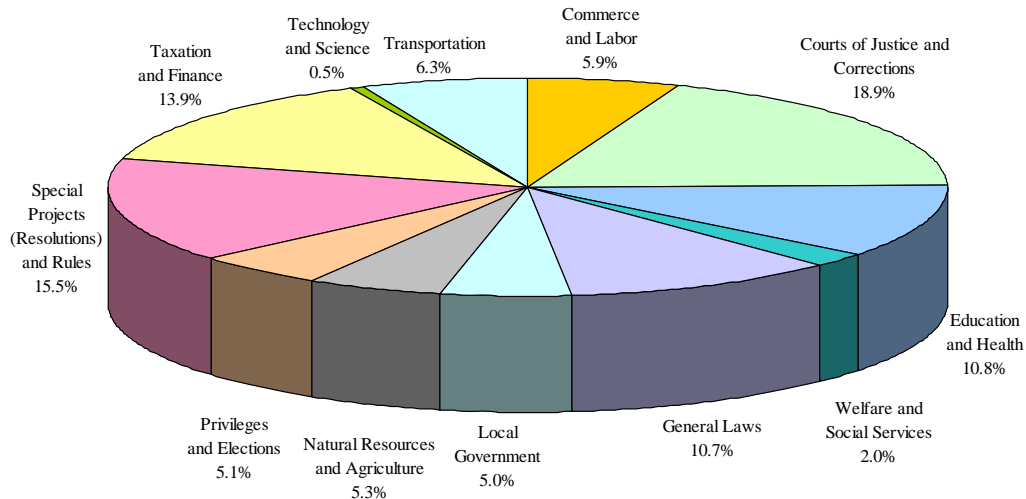
Most legislation is now available when the session begins and committees can start work right away.



## LEGISLATION REQUESTED\*, INTRODUCED, AND PASSED \*BEFORE DEADLINE (1994–2012)



## DRAFT\* LEGISLATION – 2012 SESSION



\*Legislative drafts prepared by Division of Legislative Services Total Number = 6,121

## 2012 REGULAR SESSION

Bill Type	Introduced	Passed House	Passed Senate	Passed Both	Continued	Failed	Approved	Vetoed
H.B.	1301	608	550	545	168	588	540	5
H.J.R.	534	467	454	454	10	70	2	0
H.R.	82	80	0	80	0	2	0	0
S.B.	686	315	407	310	126	250	306	4
S.J.R.	253	212	218	212	21	20	1	0
S.R.	20	0	15	15	1	4	0	0
<b>TOTALS</b>	<b>2,876</b>	<b>1,682</b>	<b>1,644</b>	<b>1,616</b>	<b>326</b>	<b>934</b>	<b>849</b>	<b>9</b>

\* In 2012, less than half, (43 percent), of introduced bills, excluding resolutions, became law. However, only 47 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*

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