

2014 Session: General Assembly Issues

Number 57

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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 2014 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 2014 Session. Finally, and most importantly, these descriptions are not predictions of how the General Assembly will respond to any issue.

Budget Outlook

New Administration: New Budget

The 2014 General Assembly Session, which convenes on January 8, will require the General Assembly to adopt a new two-year state budget that starts on July 1, 2014, and runs through June 30, 2016. Although Governor McDonnell will submit his proposed budget in December, a

new Governor and the 2014 General Assembly will craft the final spending plan for the 2014-2016 biennium.

The Commonwealth has made slow but steady progress in recovering from the “Great Recession” and its general fund revenues have grown steadily, with annual general fund revenue growth of between 5.3 percent and 5.8 percent over the past three fiscal years. The Commonwealth’s economic forecasting service, IHS Global Insight, is forecasting an annual increase in U.S. GDP growth in the low three percent range for the entire 2014-2016 budget period. Although the U.S. economy is slowly recovering, the uncertainty of the actions, or inactions, in Washington have significantly affected and will continue to impact Virginia directly. The impact of the “fiscal cliff” negotiations at the beginning of this calendar year, which increased taxes and implemented sequestration, have slowed economic growth. More recently, the 16-day federal government shutdown and the temporary extension of the federal debt ceiling with no real federal budget in place is causing great uncertainty,



especially for Virginia with its many federal workers and contractors and its military installations.

If the economy grows as slowly as forecast, the Commonwealth will experience a continuation of the modest general fund revenue growth of the last three fiscal years. However, there will also be pressing claims for the Commonwealth's increased general fund revenue.

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 how significant the impact will be and how long the process will last.

Standards of Quality Rebenchmarking

In every new two-year budget, the Standards of Quality costs are updated based on the actual cost incurred by school divisions over the last two years. In addition, increasing school enrollments will increase state expenditures.

VRS Retirement Contribution Rate Increases

Virginia's state budget has consistently funded the Virginia Retirement System (VRS) at amounts less than the VRS Board has requested. In addition, with the "Great Recession" causing asset values to plummet, the latest actuarial analysis found that the state employee plan was funded at only 65.1 percent of pension obligations. In 2012, the General Assembly addressed this situation by enacting legislation that requires a gradual increase in the employer

contribution rate so that by the 2018-2020 biennium the state's contribution to VRS must equal 100 percent of the VRS Board's recommendation. For the upcoming biennium this funding level must be at 80 percent. VRS estimates this will require an additional \$320 million.

There will also be a host of other claims on available revenue, including constitutionally required deposits to the Rainy Day Fund, Medicaid/Medicare utilization and inflation and possible expansion, new initiatives of a newly elected Governor, and additional funding for higher education enrollment growth to prevent excessive tuition increases.

The 2014 Session of the Virginia General Assembly will be forced to make difficult spending decisions to ensure Virginia's highest priorities are met while maintaining a balanced budget.

Conflicts of Interest

One anticipated area of interest for the upcoming legislative session involves the state's conflicts of interest laws. This will include possible changes to disclosure and reporting requirements for state and local government officers and employees, as well as for lobbyists regarding lobbying activities. Of particular interest will likely be the level of disclosure, including who will be required to provide the disclosure, how detailed the disclosure must be, and how frequently the disclosure must occur. Additional areas of interest regarding conflict of interest include (i) electronic filing, (ii) public access to disclosure filings, (iii) compliance and enforcement authority, and (iv) penalties.

Constitutional Amendments

The 2013 General Assembly proposed only one constitutional amendment for the 2014 Session to consider and possibly advance to the voters for their up or down vote in

November 2014. The proposed amendment will allow the General Assembly to provide a real property tax exemption for the primary residence of surviving spouses of members of the military who are killed in action. The tax exemption may not be claimed by a surviving spouse who has remarried.

The recent practice has been to carry over or decline to act on constitutional amendments in the even-numbered-year session. However, a good number of amendments may be introduced, including such familiar proposals as successive terms for the Governor, repeal of the marriage amendment, restoration of voting rights, transportation fund protections, and limits on taxes or revenues.

Courts/Criminal Justice

Human Trafficking

Human trafficking has received a lot of attention lately and even though Virginia has a number of laws that address human trafficking, there may be bills to strengthen Virginia's existing human trafficking laws.

Sodomy

As a result of the United States Supreme Court's decision to not hear the Commonwealth's appeal of *MacDonald v. Moose*, Virginia's law prohibiting sodomy, § 18.2-361, has been determined to be unconstitutional under *Lawrence v. Texas*, in which the Supreme Court of the United States held that laws criminalizing consensual sodomy between adults were unconstitutional. Prior to the decision in *MacDonald*, previous decisions of the Virginia Supreme Court and Virginia Court of Appeals rendered after *Lawrence* had held that § 18.2-361 could still be used to prosecute conduct not protected by *Lawrence* (i.e., sodomy with minors, sodomy in public, commercial sodomy). It is likely that the General Assembly will take action related to the invalidation of § 18.2-361.

Education

Deferred Action for Childhood Arrivals: In-State Tuition

During the 2013 Session, the General Assembly considered a bill to deem a student eligible for the in-state tuition rate at a public institution of higher education if he was approved for Deferred Action for Childhood Arrivals by the U.S. Department of Homeland Security and meets certain other criteria. The General Assembly may consider the issue again in 2014.

Nonpublic School Students' Participation in Interscholastic Programs

During the 2013 Session, the General Assembly considered bills to prohibit public schools from joining interscholastic activities organizations that do not allow participation by certain home-schooled students. The General Assembly may consider the issue again in 2014.

School Calendar

Currently, public primary and secondary schools cannot start prior to Labor Day unless the school division qualifies 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.

Standards of Learning Assessments

There has been increased discussion among education reformers throughout the Commonwealth about reducing the number of Standards of Learning assessments administered to elementary and secondary school students and amending the assessments to focus more on problem solving, critical thinking, and analytical skills. The issue may arise during the 2014 General Assembly Session.

Elections

Absentee Voting

Every recent session has dealt with measures to provide for no-excuse in-person absentee voting, no-excuse absentee voting, or early voting. Such proposals and others to expedite the process can be expected.

Campaign Finance

Members may examine possible limits on the permissible uses of campaign funds in response to recent events and charges that Virginia's campaign finance laws are weak in this area.

Ethics

Individuals, members, candidates, and editorial writers have called for ethics reforms in light of the past year's deluge of news stories focusing on ethics problems in the Commonwealth. Myriad items, such as independent ethics commissions for state and local officials and for legislators, gift limits and reforms, strengthened disclosure laws, and mandatory ethics training, are likely to be debated.

Flooding

The General Assembly may consider issues related to recurrent coastal flooding in the Commonwealth, including flood management strategies, response plans, and mitigation efforts.

Social Services

Medicaid Expansion

Medicaid is a medical assistance program established by the federal government, administered by the states, and funded by a mix of state dollars and federal matching funds. The Patient Protection and Affordable Care Act sought to extend Medicaid coverage to people between 19 and 64 years of age with modified adjusted gross

incomes at or below 133 percent of the federal poverty level. States that failed or refused to expand their Medicaid programs faced a loss of all federal Medicaid dollars. The Supreme Court of the United States, however, held that the federal government could not condition continued funding for Medicaid on the states' agreement to expand their Medicaid programs to include newly eligible populations. Instead, the Supreme Court held that states must be given the option of whether or not to expand their Medicaid programs to cover newly eligible populations.

Currently, Virginia's Medicaid program does not cover all individuals between the ages of 19 and 24 who meet Medicaid financial eligibility criteria. Expanding the Commonwealth's Medicaid program to cover the newly eligible population, which includes childless adults, would make an additional 420,000 Virginians eligible for Medicaid. While the federal government is required to pay 100 percent of the added cost of the expanded coverage provisions for the newly eligible group for three years, through 2016, federal payment would decrease thereafter.

During the 2013 Session, the General Assembly established the Medicaid Innovation and Reform Commission to review, recommend, and approve innovation and reform proposals affecting the Virginia Medicaid program, including eligibility and financing for proposals set out in Item 307 of the Appropriation Act. Specifically, the Commission shall review (i) the development of reform proposals; (ii) progress in obtaining federal approval for reforms such as benefit design, service delivery, payment reform, and quality and cost containment outcomes; and (iii) implementation of reform measures. The Commission has met four times during the 2013 interim. It is likely that legislation will be introduced on this topic during the 2014 Session.

Social Services - Auxiliary Grants

Auxiliary grants are state- and local-funded grants that provide supplemental financial assistance to individuals who receive Supplemental Security Income benefits and who reside in licensed assisted living facilities or adult foster care homes. In the summer of 2013, Quality Trust for Individuals with Disabilities and the National Alliance on Mental Illness of Virginia filed a Civil Rights Complaint against the Commonwealth of Virginia with the Office of Civil Rights of the U.S. Department of Health and Human Services alleging that the Commonwealth is violating the Americans with Disabilities Act by requiring people with disabilities to live in segregated, institutional settings in order to participate in and benefit from the Auxiliary Grant Program. During the 2014 Session, the General Assembly will likely receive information about and may see legislation related to the Commonwealth's Auxiliary Grant Program.

Tax Reform

The General Assembly will likely consider tax reform in one form or another. Both candidates for Governor spoke of various possible tax initiatives. Combined they included: (i) eliminating outdated exemptions and loopholes; (ii) examining the elimination or substantial reduction (by the state or by local option) in three local taxes: the Business and Professional Occupation License Tax (BPOL), the machinery and tools tax, and the merchants' capital tax; and (iii) reducing individual and corporate income tax rates. Any reduction or elimination of local taxes almost certainly also has to address alternative revenue sources from which localities could fill the void.

Although not always the case, "tax reform's" chief goal is not to increase or decrease total revenues. Rather, the goals are such things as making taxes fairer, making taxes more reflective of the modern world, and

adjusting the degree of the state's dependency among sources of revenue.

One sign that the General Assembly's interest in tax reform is not a passing fancy is the creation of a *permanent* Joint Subcommittee to Evaluate Tax Preferences during the 2012 Session. The Joint Subcommittee is tasked with evaluating the effectiveness and efficiency of all tax credits, deductions, exclusions, and exemptions.

Based on bills introduced during recent sessions, there may also be bills to phase out or eliminate the corporate income tax altogether.

In developing or considering tax measures, the General Assembly may look to recent developments in North Carolina. In 2013, the North Carolina General Assembly enacted legislation lowering corporate and individual income tax rates, eliminating many income tax preferences, extending the state's retail sales tax to selected services, and repealing the state's estate tax.

The North Carolina General Assembly reduced the corporate income tax rate from its present rate of 6.9 percent to six percent for the 2014 taxable year and five percent for the 2015 taxable year. Another two percent in rate reductions will be phased in over the following two years if certain revenue levels are met. The totality of these changes means that North Carolina's corporate income tax rate beginning with taxable year 2017 will be a maximum of five percent and a minimum of three percent, depending upon whether the rate reduction triggers are satisfied.

Many corporate income tax credits were eliminated or allowed to sunset. These included tax credits for producing biodiesel fuel, constructing renewable fuel facilities, producing interactive digital media, rehabilitating historic buildings, producing low-income housing, and undertaking conservation tillage.

The individual income tax rates of six percent, seven percent, and 7.75 percent were changed to a flat rate of 5.8 percent for taxable

year 2014 and 5.75 percent beginning with taxable year 2015.

Many individual income tax preferences were eliminated or allowed to sunset. For instance, North Carolina eliminated its personal exemption amount as well as the deduction for contributions made to a 529 savings plan for higher education. Along with a standard deduction or modified federal itemized deductions that may be claimed, a deduction for Social Security income is for the most part the only other deduction that may be claimed in computing individual income tax.

With regard to sales taxes, the tax restructuring extended North Carolina's retail sales tax to live performances, movies, amusements for which an admission is charged, and service contracts to maintain or repair property, but not including labor. The restructuring repealed existing sales tax exemptions for newspapers and college meal plans as well as back-to-school and Energy Star sales tax holidays.

Transportation

Commonwealth Transportation Board

For several years, efforts have been made in the General Assembly to change the size and composition of the Commonwealth Transportation Board (CTB) in order to adjust the balance in the number of members representing more populous urban and suburban areas and those representing more rural areas. Members elected from Northern Virginia and Tidewater have felt that more weight should be given to their urgent needs to reduce traffic congestion to reduce travel times and air pollution and improve vehicle fuel efficiency. Members from more rural areas maintained that allocation of resources for maintaining highways serving their communities, businesses, and industries and for rehabilitating or replacing deteriorated bridges is no less urgent than addressing traffic gridlock in the Urban Crescent. Concern for the proportionality of CTB

membership was heightened by a serious inadequacy of funds available for highway construction and maintenance throughout the Commonwealth. The passage of HB 2313 (2013) may have reduced some of the impetus for redistributing the rural/urban balance in the CTB. On the other hand, the availability of more resources for allocation by the Board might occasion still other discussions as to how resources (even those no longer quite so scarce) are allocated.

DMV Sharing of Data

The Department of Motor Vehicles (DMV) has begun sharing personal information it collects about its customers with a new state program, the Commonwealth Authentication Service, with the goal of making citizen interactions with state agencies easier, more reliable, more secure, and more cost efficient. CAS uses DMV's database to confirm an individual's identity when he/she attempts to complete a transaction with a state agency. The use of DMV information will allow state agencies to more easily confirm the identities of their clients by giving them a "virtual representation" of Virginians' driver's licenses and other DMV documents. An agency attempting to process a transaction will ping the CAS system with information provided by the user, and the CAS system will return a yes/no response that verifies the person's identity. Once identity is verified, the agency continues the transaction with its own data. However, some objections, or at least questions, have been raised about the creation of another program that will leave more personal information in the hands of the Commonwealth and erode the privacy of individuals. These concerns are being added to similar unease about such issues as law enforcement photographing and storing vehicle license plate information and using GPS and cell phone tracking information for surveillance. Supporters of the new program and its operations stress the benefits to persons

interacting with state agencies, such as preventing fraud and allowing single passwords for transactions with multiple state agencies. It remains to be seen whether the security and convenience of the new system will balance out the reservations about erosion of privacy.

Hybrid Electric Motor Vehicles

One issue that is likely to appear before the 2014 General Assembly is the annual \$64 tax on hybrid electric motor vehicles. The revenues from this tax were proposed to recoup the lost gasoline tax from more fuel-efficient vehicles and are allocated to the Highway Maintenance and Operating Fund. This tax has been debated since the passage of HB 2313 (2013), which increased the \$50 tax on electric motor vehicles and expanded it to hybrids, and will certainly be an issue during the upcoming session.

PPTA

The General Assembly will likely consider legislation regarding the Public Private Transportation Act of 1995 (§ 56-556 et seq.). Efforts may be made to allow free passage for certain groups on the Downtown and Midtown Tunnel projects similar to the exceptions that exist for other toll projects in the Commonwealth. Topics may also include an increase in transparency, the allotted timing for proposals, and increased public comment. The potential for review of projects by the General Assembly in light of the increasing value of projects is also likely.

Title 33.1 Revision

This year the Code Commission (Commission) will recommend its biennial revision of a title of the Code of Virginia. The Commission undertook the revision of Title 33.1, Highways, Bridges and Ferries. The title has not been revised since 1970 and the current revision presents an opportunity to (i) organize the laws in a more logical manner; (ii) remove obsolete and duplicative provisions; and (iii)

improve the structure and clarity of the laws pertaining to highways, bridges, ferries, rail and public transportation, transportation funding, and local and regional transportation. As a part of this opportunity, laws dealing with the closely related subject matters of transportation funding and local and regional transportation located in other parts of the Code have been included in the current revision. Thus, the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), the Washington Metropolitan Area Transit Regulation Compact (§ 56-529 et seq.), the Washington Metropolitan Area Transit Authority (§ 56-529 et seq.), the Northern Virginia Transportation Authority (§ 15.2-4829 et seq.), the Charlottesville-Albemarle Regional Transit Authority (§ 15.2-7022 et seq.), and the Richmond Metropolitan Authority (§ 15.2-7000 et seq.) have been relocated and included in the revision of Title 33.1. Proposed Title 33.2 has been a two-year project and will appear before both Transportation Committees this year.

Water Quality Programs

During the 2013 Session of the General Assembly, legislation was introduced (HB 2048 and SB 1279) that would have consolidated water quality programs under the Department of Environmental Quality (DEQ). The duplicate bills transferred the water quality programs currently administered by the Department of Conservation and Recreation (DCR) to DEQ. The State Water Control Board, the policy board under which DEQ operates, would have been given oversight of water quality planning, point and nonpoint pollution prevention and nutrient management programs, and specifically laws dealing with stormwater management, erosion and sediment control, and the Chesapeake Bay Preservation Areas, which are currently administered by DCR. The Virginia Soil and Water Conservation Board and its soil and water conservation districts also would have been transferred to DEQ. The Board of

Conservation and Recreation would continue to be responsible for administration of the flood prevention and dam safety laws.

As the bills were considered by the House and Senate, there was disagreement on a number of provisions. As a result, the two pieces of legislation went to a Committee of Conference where agreement was reached that nutrient management planning, along with the Virginia Soil and Conservation Board (Board) and the soil and water conservation districts would remain under the authority of DCR and not be transferred to DEQ. As part of the compromise, a provision was included in both bills that called for the Directors of the Departments of Environmental Quality and Conservation and Recreation, the Commissioner of Agriculture, and members of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources to hold public meetings throughout the Commonwealth to evaluate the role that soil and water conservation districts should play in providing the effective delivery of water quality services and technical assistance.

Seven regional meetings have been scheduled that will involve discussions among interested parties, including district staff and elected and appointed board members. In the meetings that have been held, the discussions have focused on what institutional structure allows for most effective and efficient delivery of the services and technical expertise offered by the soil and water conservation districts. So far, three options have been offered by those participating in the meetings:

- Continue as is, with the soil and water districts and Board remaining within DCR.
- Transfer the districts and Board to DEQ.
- Transfer the districts and Board to the Virginia Department of Agriculture and Consumer Services (VDACS).

Some participants in the meetings believe the current situation of having the districts and the Board within DCR provides a certain

consistency in policy, and since delivery of services currently works, there is no need to provide a new fix.

A second option of moving the districts and Board to DEQ would result in centralizing all the water quality functions in one agency, thereby delivering the services in a more integrated, cost-effective manner. Supporters of this option say that DEQ will provide a “protective barrier” to any EPA actions that may affect the nonpoint pollution programs. Those opposed to this option suggest that DEQ is a regulatory agency and are concerned that this could lead to more restrictions on nonpoint pollution activities, especially with respect to the nutrient control and best management practice programs.

The third option of moving the districts and Board to VDACS is supported by some in the agricultural community. They support the current organizational structure of the districts and Board under DCR, but if a change were to occur, they would rather see soil and water conservation districts and their Board moved under VDACS as opposed to DEQ. They note the historical relationship and trust between farmers and VDACS and point out that VDACS currently enjoys good working relationships with district staff, citing cooperation in administering the Agricultural Stewardship Act. One of the criticisms of this option is that the movement of soil and water district programs to VDACS would result in the water quality program then being administered under two different secretariats.

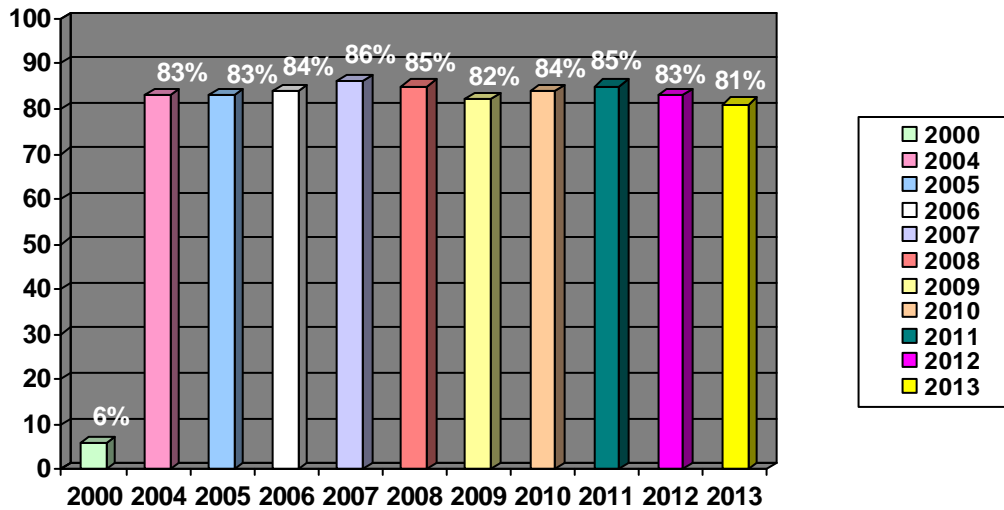
General Assembly members that need **multiple copies** of the *Virginia Legislative Issue Brief* or other DLS publications, please email mtanner@dls.virginia.gov.

2014 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 6, 2013.
- All drafts of legislation to be prefiled returned by DLS for requester's review by midnight December 27, 2013.
- All requests for drafts, redrafts, and corrections of legislation creating or continuing a study to DLS by 5:00 p.m. on January 3, 2014.
- All requests for redrafts and corrections for legislation to be prefiled to DLS by 5:00 p.m. on January 3, 2014.
- Legislation to be prefiled available by noon on January 7, 2014.
- Prefiling for the 2014 Session ends at 10:00 a.m. on January 8, 2014.
- The 2014 General Assembly convenes on January 8, 2014, at noon.

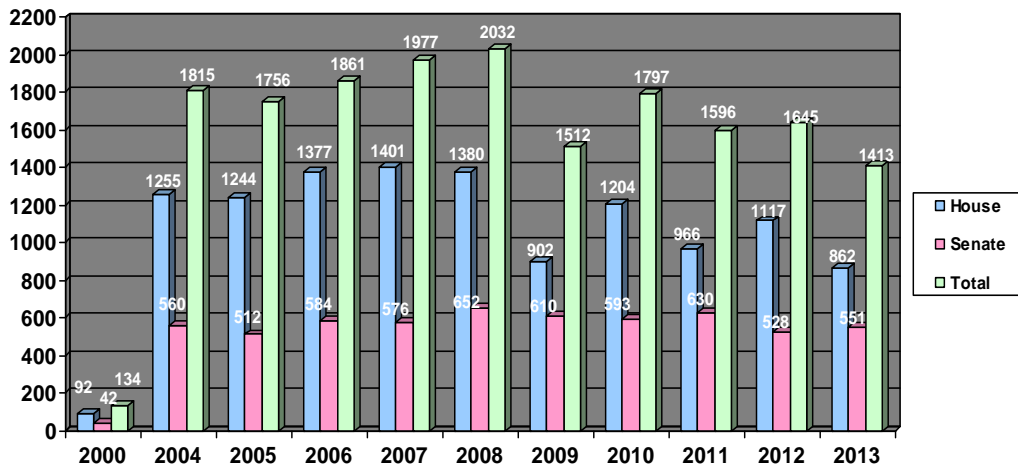
PERCENT OF LEGISLATION PREFILED (BILLS ONLY)

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

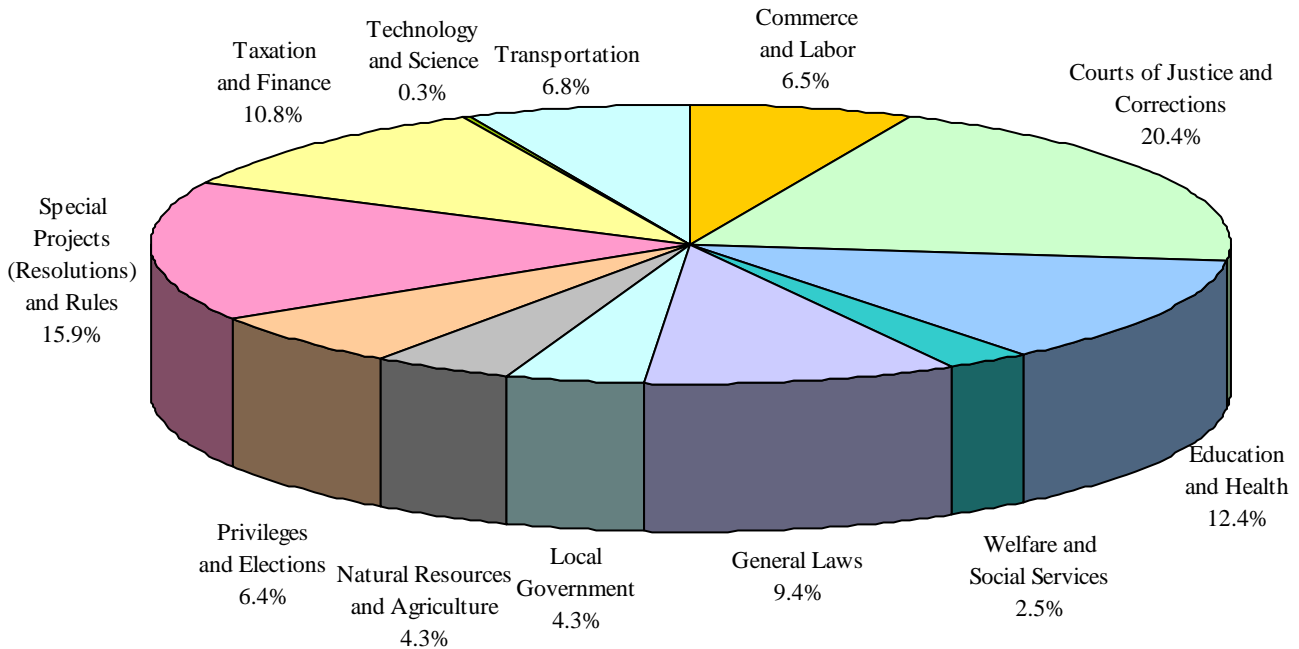


IMPACT OF PREFILING REQUIREMENT (BILLS ONLY)

Prefiling incentives dramatically affected the flow of work, especially in the first week or two of the session.



DRAFT* LEGISLATION – 2013 SESSION



*Legislative drafts prepared by Division of Legislative Services Total Number = 4,937

2013 REGULAR SESSION

Bill Type	Introduced	Passed House	Passed Senate	Passed Both	Continued	Failed	Approved	Vetoed
H.B.	1,047	552	496	489	166	723	487	2
H.J.R.	444	395	368	368	10	86	1	0
H.R.	156	153	0	153	0	3	0	0
S.B.	692	326	438	323	126	495	318	5
S.J.R.	205	164	168	164	21	61	0	0
S.R.	31	0	30	30	1	2	0	0
TOTALS	2,575	1,590	1,500	1,527	324	1,370	806	7

In 2013, less than half (46 percent) of introduced bills, excluding resolutions, became law.

Virginia Legislative Issue Brief

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For information contact:
Division of Legislative Services
201 North 9th Street,
GAB, 2nd Floor
Richmond, VA 23219
(804) 786-3591

<http://dls.virginia.gov>

Division of Legislative Services
201 North 9th Street
GAB, 2nd Floor
Richmond, Virginia 23219

