



*Annual summary of issues likely
to be discussed at the 2015 Session
of the Virginia General Assembly*



Virginia Division of Legislative Services

Virginia Legislative Issue Brief 58

2015 Session: General Assembly Issues

This *Virginia Legislative Issue Brief* contains descriptions of some of the issues that are likely to be at the forefront of the 2015 Session of the General Assembly. The brief is not a comprehensive listing of issues that legislators will consider. The following descriptions, provided by the staff of the Division of Legislative Services, are not predictions of how the General Assembly will respond to any particular issue.

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Budget Outlook

The Commonwealth's total budget shortfall for fiscal years 2014, 2015, and 2016 is approximately \$2.4 billion. This shortfall was addressed in the 2014 Special Session by withdrawing funds from the Rainy Day Fund, making cuts, and instructing the Governor to identify additional cuts.

Reductions in federal spending (sequestration), particularly in defense spending, are one of the main causes of this shortfall and are likely to continue for the foreseeable future. Virginia is disproportionately affected by defense cuts because it ranks number one among the states in federal spending for contracts and procurement and is home to 44 major military installations and the Pentagon. As a result, Virginia's economy now lags national averages rather than consistently outperforming them. In fact, Virginia and Maryland currently rank last among all states in personal income growth.

Budgetary constraints should be expected; however, new legislation and programs may help to spur economic development and diversify the Commonwealth's economy so that it is less dependent on the federal government.



Virginia Division of Legislative Services

Child-Care Providers

Child-care providers are required to be licensed by the Department of Social Services if they provide care to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or any of the children in care or (ii) six or more children under the age of 13, exclusive of the provider's own children or any children that reside in the home, in any setting. Recent events in the Commonwealth involving injuries to or the death of children in child-care settings have raised concerns about licensure requirements for child-care providers. It is likely that the General Assembly will consider legislation addressing licensure of child-care providers and thresholds for such licensure during the upcoming session.

Courts/Criminal Justice

Drones; moratorium

The 2013 Session of the General Assembly placed a moratorium on the use of unmanned aircraft systems by state and local law enforcement and regulatory entities that will expire on July 1, 2015. The 2013 bill provided exceptions for defined emergency situations and training exercises related to such situations, and the moratorium does not apply to certain Virginia National Guard functions or to research and development conducted by institutions of higher education or other research organizations.

Human trafficking

Human trafficking has received a lot of recent attention; even though Virginia has a number of laws that address human trafficking, bills may be introduced to strengthen those laws.

DOC Staffing Levels and Conditions

The General Assembly will likely consider legislation regarding staffing levels and employment conditions at the Department of Corrections. During the 2014 interim, a joint committee of the Senate Committee on Rehabilitation and Social Services and the Senate Committee on Rules visited two Virginia prisons and held several meetings to study the issue. The testimony, information, and recommendations collected may lead to legislation regarding improvements to staffing levels, employee health and safety, and compensation.

Education

Deferred Action for Childhood Arrivals; in-state tuition

During the 2014 Session, the General Assembly considered bills to deem a student eligible for the in-state tuition rate at a public institution of higher education if he has been approved for Deferred Action for Childhood Arrivals by the U.S. Department of Homeland Security and meets certain other criteria. In April 2014, Attorney General Mark Herring issued a guidance letter to all public institutions of higher education in which he interprets current law to allow such students to establish the domiciliary intent necessary to become eligible for in-state tuition rates. The General Assembly may consider the issue again in 2015 in light of the Attorney General's guidance.

Nonpublic school students' participation in interscholastic programs

During the 2014 Session, the General Assembly considered a bill to prohibit public schools from membership in interscholastic activities organizations that do not allow participation by certain home-schooled students. The General Assembly may consider the issue again in 2015.

School calendar

Currently, public primary and secondary schools cannot schedule the first day of student attendance 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 in 2015 that would give local school boards the authority to set the school calendar.

Schools that persistently fail to achieve full accreditation

In the 2013 Session, the General Assembly passed legislation (i) establishing a statewide school division and board called the Opportunity Educational Institution and Board and (ii) requiring any school that had been denied accreditation and permitting any school that had been accredited with warning for three consecutive years to be transferred to the Institution and remain in the Institution for five years or until the school achieved full accreditation. The City of Norfolk School Board and the Virginia School Boards Association sued the Institution and Board for injunctive relief, alleging state constitutional infirmities. In June 2014, Norfolk Circuit Court judge Charles E. Poston issued a letter of opinion granting the injunction and declaring the Institution and Board unconstitutional under Article VIII, Sections 5 and 7 of the Constitution of Virginia. In 2015, the General Assembly may consider alternative measures for intervening in schools that persistently fail to achieve full accreditation.

Elections**Absentee voting**

As in previous sessions, expect to see efforts to expand the current statutory list of persons eligible to vote absentee in addition to bills providing for no-excuse absentee voting and no-excuse in-person absentee voting.

Voting technology

Problems with direct recording electronic (DRE) voting machines during the November 2014 general election will likely draw the attention of the General Assembly to the current and future use of DREs in the Commonwealth.

Ethics

It is likely that the General Assembly will continue the work it began last session on Virginia's ethics laws. The 2014 Session set limits on the types of gifts given to and received by state and local officers and employees and members of the General Assembly, made changes to the Statement of Economic Interests forms, and created the Virginia Conflict of Interest and Ethics Advisory Council. This year, expect debate on further gift limitations and adding prohibitions to certain types of travel.

Ground Water Management and Conservation

Expansion of ground water management area; analysis of current practices

Amid reports of extensive withdrawals of ground water that had resulted in numerous incidents of saltwater intrusion, collapsing aquifer, and land subsidence in Eastern Virginia, the State Water Commission began to examine the status and long-term viability of the ground water resources in Eastern Virginia. To regulate the level of withdrawals in potentially threatened regions of the state, the State Water Control Board (SWCB) is authorized to designate certain areas as ground water management areas. When an area is so designated, a permit is required for withdrawals greater than 300,000 gallons per month or 10,000 gallons per day. Withdrawals of less than 300,000 gallons per month, although representing a significant percentage of the ground water withdrawn, are not regulated. On June 17, 2013, recognizing the threat, the SWCB adopted regulations expanding the current ground water management area north from the Middle Peninsula/Northern Neck region to certain localities in Northern Virginia.

Located east of I-95 along the fall line, the newly expanded management area is composed of a series of aquifers separated by consolidated nonpermeable layers. Many of the layers are formed from fluvial and marine sediments. Over the last several years, the Department of Environmental Quality (DEQ), in conjunction with the U.S. Geological Survey, has examined how the different layers interact and affect ground water flow. The recent discovery of the impact of a meteor that formed the Chesapeake Bay has caused the agencies to rethink the way computer models are being developed for analysis of the ground water system and how the system reacts to the installation of new wells. Thus, it has become a complex technical task to determine the impact of withdrawals on the affected aquifer.

According to DEQ, several management issues need to be addressed, including the continued decline in the primary aquifers, land subsidence, saltwater intrusion, and the pumping of primary aquifers in a manner that is not sustainable over the long term. Under a newly implemented ground water withdrawal model that more accurately reflects reality, there will be less water available for withdrawal.

Potential remedies adopted by other southern coastal states

Virginia is not alone in experiencing ground water problems. Other southern coastal states have implemented strategies to preserve their ground water resources. Maryland does not permit withdrawals for the purpose of irrigation. North Carolina has reduced all existing withdrawals from the Potomac Aquifer by 30 to 75 percent over 15 years, prohibited new withdrawals, and provided some financial assistance to withdrawers so that they may convert to other sources of water supply. Georgia and South Carolina have designated certain areas where no new withdrawals will be allowed and other areas where only incremental withdrawals are permitted. These states have also mandated the implementation of conservation measures to reduce the existing maximum withdrawals. Florida has instituted regional caps on the amount of ground water that is allowed to be withdrawn and mandated conservation and efficiency measures and the metering of all withdrawals, including agriculture-related withdrawals.

Recommendations of Department of Environmental Quality panel

David Paylor, Director, DEQ, notes that although the region's aquifers "are not on the precipice of collapse," strategies to stabilize the situation, as well as various options that may be available to preserve the resource, must be evaluated. He indicated that solutions will depend on not one but rather on a combination of options. DEQ established a panel to examine the options for addressing the ground water situation. It presented several regulatory options, including:

- Reducing pumping;
- Spreading out pumping and finding different locations for the wells, thereby reducing pressure on the system without reducing the yield;
- Modifying management goals;
- Instituting zoning of withdrawals by ensuring permits in regional or aquifer groupings; and
- Implementing water conservation measures.

From a programmatic perspective, the panel recommended (i) the collection of more data on water levels, water quality, and land subsidence and (ii) an increase in program resources.

DEQ is reviewing the program to ensure that adequate resources exist to carry out an effective management program and fully implement these actions. The review includes consideration of various options, including:

- Examining ways to spread out withdrawals, thereby reducing stress on the aquifers while maintaining significant yield;
- Evaluating drawdown criteria that protect against subsidence and saltwater intrusion;
- Promoting the greater use of alternatives such as water reuse, conjunctive use of surface and ground water, and water recycling;
- Considering additional regulatory change; and
- Developing plans over the next five to 10 years that will ensure the preservation of the water resource for the long term.

Next steps

It is expected that on December 15, 2014, DEQ will present to the State Water Commission a long-term strategy for addressing the ground water situation, which may include both statutory initiatives and regulatory actions.

Horse Racing

With Colonial Downs relinquishing its owner's license for the racetrack in New Kent, the General Assembly will likely consider legislation to adapt the current horse racing statute to address this new situation and the future of horse racing in Virginia.

Industrial Hemp

The most recent federal Farm Bill, signed into law in February 2014, allows any state in which the cultivation of industrial hemp is legal to set up an industrial hemp research program. Industrial hemp, as defined by the Farm Bill, is a variety of the *Cannabis* plant that, unlike its cousin marijuana, has a concentration of tetrahydrocannabinol (THC) that is "not more than 0.3 percent on a dry weight basis." Any research program established by a state under the new law is required to be administered by that state's department of agriculture or an institution of higher education. The legislatures of 19 states, including those of South Carolina and West Virginia, have enacted laws to provide for such research programs, and the General Assembly may consider whether to do the same.

Recurrent Flooding

The Joint Subcommittee to Formulate Recommendations to Address Recurrent Flooding is tasked with formulating recommendations for the development of a comprehensive and coordinated planning effort to address recurrent flooding, including short-term and long-term strategies for minimizing the effects of such flooding. Final recommendations will be presented to the 2016 Session of the General Assembly, but several interim recommendations may be pursued at the 2015 Session. The Governor's Secure Commonwealth Panel may also put forward recommendations related to recurrent flooding.

Issues that may be addressed during the 2015 Session include real estate disclosure requirements. If added to the Residential Property Disclosure Statement, which advises a potential purchaser to exercise due diligence (including obtaining a flood certification or a determination of whether the property is located in a flood zone), these disclosure requirements would allow potential buyers to identify issues and obtain information related to flooding earlier in a real estate transaction.

Another issue receiving attention is the Virginia Floodplain Management Plan, which has not been updated since 2005. There is currently no statutory requirement to update the plan at regular intervals, but the current statutory authority could be amended to require routine updates as well as make the plan more accessible to the public.

Additionally, there has been widespread agreement that the Commonwealth should consider designating a State Resiliency Officer to give direction to, and ensure accountability for, state efforts to address issues related to recurrent flooding and to help coordinate the efforts of the various parties seeking to assist with this issue.

Taxation

Electronic cigarettes and other so-called vapor products are relatively new products that have many of the characteristics and attributes of conventional cigarettes but do not contain tobacco. Conventional cigarettes are subject to Virginia's retail sales tax as well as the Commonwealth's cigarette tax. However, because electronic cigarettes and other vapor products do not contain tobacco, their sale is subject only to the retail sales tax.

State revenues from cigarette taxes are deposited into the Virginia Health Care Fund, which is a special fund used for health care services including Medicaid payments, disease diagnosis, disease prevention and control, and community health services. There are different views as to whether the use of vapor products will increase, decrease, or have little effect on the use of tobacco products. Depending on their views on electronic cigarettes and other vapor products, some legislators may pursue legislation to establish an excise tax on such products that is analogous to the state cigarette tax, while others may prefer the taxes already in effect.

Transportation

Passing with a double yellow line

Based on 2014 Session legislation requiring three feet of clearance when passing a bicycle, concerns have been raised about motorists being unable to pass when there is a double yellow line and they are stuck behind slow-moving vehicles for an extended period of time. Discussion of this traffic pattern will likely be heard during the 2015 Session.

Regulation of transportation network companies

Transportation network companies (i.e., ride-sharing enterprises such as Uber and Lyft) began operating in Virginia in the past year and have worked out a temporary arrangement whereby their operations are overseen and monitored by the Department of Motor Vehicles. These new enterprises are challenging locally regulated taxicab businesses, particularly in urban areas. The 2015 Session will likely see the introduction of legislation aimed at working out a long-term arrangement for regulation of transportation network companies by the Commonwealth and limiting the institutional and commercial conflicts between these companies and locally regulated taxicab businesses.

2015 Session Prefiling Calendar

- Executive summary, including findings and recommendations, for studies by joint subcommittees to be submitted to DLAS by the first day of the General Assembly's Regular Session.
- All requests for drafts of legislation for prefilng to be submitted to DLS by 5:00 p.m. on December 8, 2014.
- All drafts of legislation to be prefiled returned by DLS for requester's review by midnight on January 2, 2015.
- All requests for drafts, redrafts, and corrections of legislation creating or continuing a study to DLS by 5:00 p.m. on January 9, 2015.
- All requests for redrafts and corrections of legislation to be prefiled to DLS by 5:00 p.m. on January 9, 2015.
- Legislation to be prefiled available by noon on January 13, 2015.
- Prefiling for the 2015 Session ends at 10:00 a.m. on January 14, 2015.
- The 2015 Session of the General Assembly convenes at noon on January 14, 2015.

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