

# 1997 SESSION HIGHLIGHTS



*Session Highlights is designed to provide legislators with a list of significant legislation considered by the 1997 General Assembly, as selected by the staff of the Division of Legislative Services. This brief overview of the Session covers Assembly and Governor's actions through May 15, 1997.*

## Abortion

### ☞ Passed

■ **Parental Notification.** Establishes a procedure for notification of a parent of an unemancipated pregnant minor prior to the performance of an abortion.

### ☞ Failed

■ **Partial Birth Abortion.** Makes the performance of a partial birth abortion punishable as a Class 1 misdemeanor if a woman's life or health is not at risk.

■ **Informed Consent.** Requires providing a woman with information concerning her pregnancy, birth and child care generally; alternatives to abortion; support laws; and available assistance.

## Campaigns/Elections

### ☞ Passed

■ **Lobbyist's Disclosure Statement and Reporting.** Requires more detailed information on entertainment event expenses (Schedule A) and other gifts (Schedule B). Lobbyists must send each official named on Schedule A or B a copy of the schedule or summary of the reported information twice each year.

■ **Conflict of Interest and Disclosure.** Requires disclosure of gifts with a value greater than \$50, rather than \$200. The bill also requires more detailed information concerning compensation in certain cases.

■ **Electronic Filing of Lobbyist and Campaign Reports.** Provides for an electronic database for information filed by lobbyists and by campaign committees for candidates for the General Assembly, Governor, Lieutenant Governor, and Attorney General. The bill provides for approval of standards for electronic filings by January 1, 1998. Electronic filing is an option and not mandated. Beginning in 1999, the Secretary and State Board would create disclosure databases available to the public.

■ **Campaign Fundraising Activities.** Prohibits the solicitation or acceptance of campaign contributions by members of the General Assembly, for their own campaigns or any political committee, and the Governor, Lieutenant Governor, and Attorney General, during the annual regular session, with certain exceptions.

### ☞ Failed

■ **Virginia Clean Election Act and Fund.** Establishes an alternative, publicly financed, campaign financing option for candidates for Governor, Lieutenant Governor, Attorney General and the General Assembly. A candidate may volunteer to participate and be certified for public funds after a qualifying process. A participating candidate may not accept or spend private contributions and must abide by the campaign contribution and spending restrictions set out in the act. The bill is based on the Maine Clean Election Act.

■ **Voter Identification at the Polls.** Requires all voters to show identification at the polls. A voter may sign a statement that he is who he claims to be in lieu of presenting any identification and he will be allowed to vote.

■ **Registration by Political Party.** Adds party affiliation to the information that an applicant is asked to provide when registering to vote. Party primaries would be open to party registrants or to registrants and independents.

■ **Political Party Names on Ballots.** Provides for identification on the ballot of candidates by the name of their political party. Present law prohibits party identification on the ballot except in presidential elections.

## Constitutional Amendments

### ☞ Passed

*Several measures passed and must be approved by the 1998 General Assembly and by the voters before they become part of the Constitution. They concern the Judicial Inquiry and Review Commission, overseas voters, and tax and finance matters.*

### ☞ Failed

- **Parental Rights.**
- **Modifications to the Literary Fund.**
- **General Assembly Term Limits.**
- **Initiative and Referendum Powers.**
- **Governor Allowed to Succeed Himself.**
- **Election of Judges.**
- **Prohibition on New Forms of Gambling.**

## Courts

### ☞ Passed

■ **Proceedings of the Judicial Inquiry and Review Commission.** Requires the commission to annually publish a report detailing its activities for the prior year.

■ **Legislative Immunity from Arrest.** Clarifies the several code provisions stating the privilege from arrest for legislators and others. Restates the law in modern terms to prevent any misunderstanding on the limits of the privilege that allows the arrest of any such person for any crime at any time.

■ **Guardians and Conservators.** Revises provisions governing appointment of guardians for the person and managers of the property of persons found by the court to be incapable of providing for their own essential needs or supporting themselves or their dependents.

## Crime and Punishment

### ☞ Passed

■ **Regional Criminal Justice Training Academy.** Increases the funding of the regional criminal justice training academies. A fee of one dollar is added to costs on each felony and misdemeanor conviction and to the processing costs of each misdemeanor and traffic case to support the increase.

■ **Sex Offender Registry.** Expands access to the registry to allow those individuals seeking child-minding or day-care services to perform an employment or volunteer check on a specific person with that person's permission. Unauthorized dissemination of the information is a Class 1 misdemeanor.

■ **Assisted Suicide.** Authorizes the Attorney General to bring an action to recover a civil penalty against any person who intentionally or knowingly assists another to commit or attempt to commit suicide. Other bills provided varying criminal penalties.

■ **Murder of a Pregnant Woman.** Adds the willful, deliberate, and premeditated killing of a pregnant woman by one who knows she is pregnant to the list of capital murder offenses.

■ **Tobacco to Minors; ABC Enforcement.** Clarifies that ABC special agents are authorized to enforce the prohibition against the sale of tobacco to minors and increases the civil penalty to \$100 for first, \$200 for second, and \$500 for a third or subsequent violation.

■ **Church Burning.** Adds occupied church or church property to the list of dwellings, buildings or facilities that if maliciously burned falls within the crime of arson of dwelling, punishable by 5 years to life.

■ **"Date Rape Drug."** Increases the penalties for violation of the Drug Control Act involving flunitrazepam, known as the "date rape drug."

### Failed

■ **Arson.** Creates a new Class 5 felony for committing arson which causes bodily injury to any occupant, fire fighter or law-enforcement officer, even if there was no specific intent to cause bodily injury.

## Economic Development

### Passed

■ **Virginia Export Loan Guaranty Fund.** Creates the fund, to be administered and managed by the Virginia Small Business Financing Authority (VSBFA), which will permit VSBFA to guarantee up to 90 percent of the principal of commercial loans (maximum of \$1 million) made by a lender for the purpose of facilitating the sale of goods, products or services outside the U.S. by persons, firms or corporations which use a Virginia air, land or sea port for shipping.

■ **Semiconductor Performance Grants.** Provides incentive grants to Motorola-Siemens plant in Henrico County. The grants can be awarded beginning five years after the commencement of wafer manufacture.

## Education

### Passed

■ **Civil Immunity for Teachers.** Codifies a Virginia Supreme Court decision by granting immunity from civil damages to public school teachers when acting in good faith within their scope of employment while supervising, caring for, or maintaining discipline of students, unless the acts or omissions were the result of gross negligence or willful misconduct.

■ **Attending Public Schools Free of Charge.** Adds school-age persons living with a parent, guardian, or person in charge of the child in a temporary shelter to the list of persons for whom attendance in the public schools is free.

■ **Remediation Programs.** Requires students who do not pass the literacy tests to participate in summer school or other remediation, including a procedure for early identification of students who are at risk of failure.

■ **Disciplinary Actions by Teachers.** Provides that teachers have the initial authority to remove disruptive students from their classes under certain circumstances.

■ **Information Regarding Prosecution.** Requires school boards to provide information, developed by the Attorney General, to students regarding the prosecution of juveniles as adults for the commission of certain crimes.

■ **Remedial Summer School Programs.** Requires the Board of Education to establish standards for remedial summer school, including an assessment component to evaluate program effectiveness, and, by July 1, 1998, standards for full funding of those programs that meet board standards.

■ **Nonemergency Health Services in Schools.** Prohibits disciplinary actions, placing on probation or dismissal if a licensed instructional employee refuses to perform nonemergency health services for students.

■ **School Safety Audits.** Requires annual school safety audits of each public school. School boards may establish committees representing parents, teachers, administrators, law-enforcement, judicial and public safety officials, and the community at large.

■ **Average Daily Membership.** Students who are either (i) enrolled in a nonpublic school or (ii) receiving home instruction and who are enrolled in public school on a less than full-time basis in any mathematics, science, English, history, social science, vocational education, or fine art course required by the Standards of Learning, shall be counted in the average daily membership (ADM) in the school division on a pro rata basis as provided in the appropriation act.

■ **Sprinklers in College Dormitories.** Requires all buildings, regardless of when constructed, which are more than 75 feet or more than six stories high and are used as dormitories by any public or private institution of higher education to install sprinkler systems by September 1, 1999.

### Failed

■ **Charter Schools.** Authorizes the establishment of charter schools in Virginia. After a local school board adopts a resolution stating its intention to receive applications for the establishment of charter schools, individuals or organizations may initiate the charter application process by submitting a charter agreement to the local school board.

■ **Standards of Accreditation.** Places the requirements of the presently effective standards of accreditation (SOAs) for public schools in Virginia into law. The SOAs are, at this time, Board of Education regulations.

■ **SCHEV.** Reconstitutes the membership and appointment authority for the State Council of Higher Education for Virginia. The current 11-member Council is dissolved and is replaced by a council consisting of six gubernatorial and five legislative appointees.

■ **Application for Funds and Grants.** Designates the Board of Education as the "state educational agency" for purposes of applying for and accepting federal education funds and grants, except as may be otherwise provided by law, and grants the board the power to apply for and accept such federal funds. Consistent with federal law, the board is authorized to

approve applications for federal funds by local school boards without gubernatorial approval.

### Vetoed

■ **Revisions to SOA.** Provides that no revisions to the Standards of Accreditation for public schools shall be implemented prior to July 1, 1998.

## Gambling

### Passed

■ **Colonial Downs Licenses.** Extends from July 1, 1997, to September 1, 1997, the date by which live horse racing at Colonial Downs must occur before the right to operate the two existing satellite facilities is cut off.

■ **Charitable Gaming.** Includes the use of Charitable Gaming Commission-approved electronic bingo devices in bingo games and makes other changes and clarifications in commission operations and regulations.

## Guns

### Passed

■ **Concealed Weapons; Fingerprinting.** Requires a complete set of fingerprints to be included with the application for a concealed weapons permit and clarifies that the background check conducted by the State Police is to include a national criminal records check.

■ **Concealed Handgun Permit.** Increases the period of license validity from two years to five years and codifies the prescribed form for a concealed handgun permit application.

## Health

### Passed

■ **Commonwealth Neurotrauma Initiative.** Establishes the Commonwealth Neurotrauma Initiative to support research, education, and treatment relating to traumatic spinal cord or brain injuries resulting in loss of physical and cognitive functions.

■ **Continued Competence Requirements.** Authorizes the Board of Medicine to prescribe by regulation such requirements to ensure continued practitioner competence.

■ **Anatomical Gifts.** Permits a declarant, in his Advance Medical Directive, to (i) make an anatomical gift of all or any part of his body and (ii) appoint an agent who, before or after the declarant's death, may make an anatomical gift of all or any part of the declarant's body.

■ **Bone Marrow Transplants.** Requires the Virginia Medicaid program to pay for high-dose chemotherapy and bone marrow transplants for individuals over the age of 21 who have been diagnosed with lymphoma or breast cancer and have a performance status sufficient to proceed with treatments.

■ **Voluntary Formulary.** Prohibits the substitution or interchange of any narrow therapeutic index drug (pharmaceuticals that exhibit narrow ranges between benefit and risk) without the documented consent of the patient's prescriber, as required by Board of Pharmacy regulations.

■ **Health Care Records.** Establishes comprehensive provisions regarding the disclosure of patient records by health care providers.

■ **Virginia Children's Medical Security Insurance Plan.** Requires the Department of Medical Assistance Services to develop a proposal to expand eligibility for individuals, up to age 18, when such individuals are in families with incomes at 200 percent of poverty or less and are uninsured and underinsured.

■ **Commonwealth Health Research Fund.** Establishes a special nonreverting fund, managed by the VRS, to be used to provide financial assistance for research efforts to maximize human health benefits for the citizens of Virginia. The fund consists of the proceeds of the Commonwealth's policyholder shares issued pursuant to the conversion of Trigon Blue Cross Blue Shield from a mutual insurer to a stock corporation.

■ **Disposition of Assets by Nonprofit Health Care Entities.** Requires any nonprofit entity (tax-exempt hospitals, HMOs, or health service plans) to provide the Attorney General with written notice of its intent to dispose of assets at least 60 days before such action so that the AG may exercise his common law and statutory authority over the transaction.

### Failed

■ **Marijuana as Medicine.** Eliminates the ability of medical professionals to prescribe marijuana for medicinal purposes.

■ **Anti-Drug Switching.** Creates the Virginia Anti-Drug Switching Patient Protection Act, which prohibits the practice of soliciting or encouraging, after a physician with a bona fide physician/patient relationship issues a prescription for a drug, the substitution of that drug by a chemically dissimilar drug for the purpose of rebate, kick-back, or other such remuneration.

## Insurance

### Passed

■ **Health Insurance Portability and Accountability Act.** Amends provisions of the Commonwealth's health insurance laws to comply with federal requirements contained in the 1996 Health Insurance Portability and Accountability Act, known as the Kennedy-Kassebaum bill.

■ **Prescription Contraceptives.** Requires insurers providing prescription drug benefits to provide coverage for any drug approved by the United States Food and Drug Administration for use as a contraceptive.

### Failed

■ **Insurance Fraud.** Creates the crime of insurance fraud, punishable as larceny, for acts involving property and casualty insurance transactions. The Department of State Police will develop and maintain an Insurance Fraud Investigation Unit within the Bureau of Criminal Investigation to investigate fraud involving insurance transactions.

## Local Government

### Passed

■ **Recodification of Title 15.1: Counties, Cities and Towns.** Recodifies Title 15.1 as Title 15.2 pursuant to SJR 2 (1994), which directs the Virginia Code Commission to study Title 15.1 of the Code of Virginia and to report its findings to the General Assembly in the form

of a recodification. The primary purpose of the Title 15.1 recodification is to reorganize and simplify the existing statutes.

■ **City Council Salaries.** Provides that no increase in the salary of a city council member shall take effect until July 1 after the next regularly scheduled general election of council members.

■ **Zoning Violations.** Provides that if a zoning violation is uncorrected at the time of conviction, the court shall order the abatement of the violation within a specified time. Failure to do so will constitute a separate offense for each succeeding 30-day period.

## Natural Resources

### Passed

■ **Virginia Water Quality Improvement Act of 1997.** Creates a statewide program to address point and nonpoint sources of water pollution through cooperative technical and financial assistance programs. A special fund is established to be administered by the Directors of the Departments of Conservation and Recreation (nonpoint source) and Environmental Quality (point source) and funded, unless otherwise provided for in the general appropriation act, by ten percent of any general fund annual surplus and ten percent of any unreserved general fund balance not required to be reappropriated.

■ **Water Quality Monitoring, Information and Restoration Act.** Establishes monitoring and information requirements (including reports required by the federal Clean Water Act) to be implemented by the State Water Control Board to provide a basis for (i) an accurate and comprehensive assessment of state water quality; (ii) identification of water quality trends; (iii) developing initiatives and programs to address water quality concerns; and (iv) other water quality enhancement and information activities.

■ **Environmental Restoration Sites.** Declares that environmental restoration sites shall have a separate classification for local property tax purposes so that the locality may exempt or partially exempt such property. An environmental restoration site is defined as real estate which contains or did contain environmental contamination from the releases of hazardous substances, hazardous wastes, solid wastes or petroleum and is the subject of a voluntary remediation program or a certificate of satisfactory completion.

■ **Supplemental Environmental Projects.** Clarifies the authority of the state's air, water and waste boards, the director of DEQ and courts to provide for the undertaking of supplemental environmental projects through orders. A supplemental environmental project is an environmentally beneficial project undertaken as partial settlement of a civil enforcement action that is not otherwise required by law.

■ **Toxics Reduction.** Requires the DEQ to continue to publish its toxic release inventory report and disseminate it to the media. The Water Control Board is directed to conduct an assessment of the amounts of toxics in Virginia's waters, develop and implement a plan to reduce them, and report its progress.

■ **Small Business Environmental Compliance Assistance Fund.** Establishes the fund

used to lend money to small businesses to purchase and install environmental pollution control and prevention equipment.

■ **Open-space Lands Preservation Trust Fund.** Creates the fund, to be used by the Virginia Outdoors Foundation for grants to persons conveying conservation easements for costs associated with such conveyances, such as legal and appraisal costs or all or part of the value of the easements.

■ **Water Quality Laboratory Certification.** Requires the Division of Consolidated Laboratories to develop a certification program for laboratories conducting tests used to support Virginia's air, water and waste laws.

■ **Sanitary Landfill Applications.** Requires that before an application for a new solid waste sanitary landfill or transfer station permit is complete, the applicant must supply certain information regarding the solicitation of public comment.

■ **Water Permit Fees.** Requires the DEQ, by January 1, 1998, to include in its biennial report to the committees of jurisdiction, an analysis of the direct and indirect costs of Virginia's water program and an estimate of the costs to the regulated community if it were to assume 50, 75, and 100 percent of the costs of the water program.

### Failed

■ **Interbasin Transfer of Sewage.** Prohibits the State Water Control Board from issuing any permit for the discharge of sewage to the Rappahannock River if the source is outside the Rappahannock Basin unless certain standards are met.

■ **Abandoned Waste Site Remediation Foundation.** Establishes the foundation to administer the remediation of abandoned waste sites.

## Public Utilities

### Passed

■ **Rights-of-Way.** Stipulates that franchise, permit, and inspection fees charged telecommunications companies by localities and the Commonwealth Transportation Board for the use of public rights-of-way or easements may not exceed those in effect on February 1, 1997. The bill is subject to an emergency clause and a July 1, 1998, sunset clause.

## Real Estate

### Passed

■ **Consumer Real Estate Settlement Protection Act.** Requires persons engaged in conducting real estate settlements as settlement agents to be licensed as attorneys, title insurance companies, title insurance agents, or real estate brokers. Also requires settlement agents to register with the Virginia State Bar and to comply with Bar guidelines concerning the unauthorized practice of law.

■ **Real Estate Board.** Provides that persons licensed by the Board may prepare written contracts for the sale, purchase, option, exchange, or rental of real estate, notwithstanding any rule of court to the contrary, provided preparation of the contract is incidental to a transaction involving the licensee and licensee does not charge a separate fee.

## State Government

### Passed

■ **Contraceptives for State Employees.** Requires the state employees' health benefit plan to include coverage for prescription drugs and devices approved by the U.S. Food and Drug Administration for use as contraceptives.

■ **Family and Medical Leave Act (FMLA).** Permits a state employee, at his option, to substitute (i) up to 33 percent of his accrued paid sick leave (with written approval of agency head), (ii) up to 100 percent of any other paid leave, or (iii) any combination of (i) and (ii) for leave taken pursuant to the FMLA, which permits employees to take up to 12 work weeks of unpaid leave in a 12-month period for family or medical reasons.

■ **State Employee Payroll System.** Repeals the provisions of the 1996-98 Budget Bill that established the "lag pay" plan in the state employee payroll system. The bill contains an emergency clause and is effective retroactive to January 1, 1997.

■ **Joint Commission on Technology and Science.** Creates the joint commission as a permanent legislative agency, comprised of members of the General Assembly, to study all aspects of technology and science and endeavor to stimulate, encourage, promote, and assist in the development of technology and science in the Commonwealth.

## Taxation

### Passed

■ **Motorboat Tax.** Reduces the tax rate paid on the sale of a motorboat by including motorboats under the definition of watercraft. Currently, sales of motorboats fall under the state sales tax rate of 4.5 percent. This bill proposes that motorboats be taxed under the watercraft sales and use tax rate of two percent. The revenue generated will be deposited in the game protection fund to be used for specific boating-related purposes.

■ **Personal Property Tax.** Moves business tangible personal property and business computer equipment from the general classifications for tangible personal property to other classifications for valuation purposes. This change allows the localities to establish a lower rate, if desired, for these classes of property.

■ **Baseball Stadiums.** Expands tax revenue entitlements to include personal income, franchise, business, professional and occupational licensing, and corporate taxes collected on transactions, salaries and wages of stadium and team operations. The localities may levy an admissions surcharge to be used to reimburse the localities for the expenses they incur in connection with such stadiums.

■ **Hampton Roads Sports Facility Authority.** Makes numerous changes to facilitate the attraction and operation of a National Hockey League franchise, including expanding tax revenue entitlements to include personal income, franchise, business, professional and occupational licensing, and corporate taxes collected on transactions, salaries and wages of stadium and team operations.

■ **Worker Retraining Tax Credit.** Provides a tax credit against the corporate income tax in an amount equal to 30 percent of the expenditures made by the taxpayer for noncredit courses that promote economic development and worker retraining at Virginia's community colleges.

## Transportation

### Passed

■ **Motor Carriers.** Provides for permanent trailer and tractor truck registrations; exempts all vehicles with manufacturer's gross vehicle weight ratings of 26,001 pounds or more from the motor vehicle sales and use tax; clarifies requirements on safety inspections of motor carrier vehicles; increases certain fees associated with motor carriers and motor carrier vehicles; revises taxation of rental vehicles.

■ **Seat Belts for Children.** Allows the primary enforcement of the law requiring drivers to ensure that children at least 4 but less than 16 years of age are provided and properly secured with seat belts. A violation shall not constitute negligence per se in any civil action.

■ **Handicapped Parking.** Revises statutes relating to disabled parking in conformance with the recommendations made by the joint subcommittee studying the enforcement and abuse of handicapped parking laws.

### Failed

■ **Tent Sales.** Repeals the Motor Vehicle Dealer Board's authority to issue temporary supplemental sales licenses to dealers selling new or used motor vehicles.

## Unemployment Compensation

### Passed

■ **Qualifying Wages and Weekly Benefit Amount.** Reduces, by \$250 a year over a three-year period, the current base period earnings of \$3,250 required to qualify for unemployment compensation benefits. Additionally, the bill increases the maximum weekly benefits, currently \$224, by \$2 each year over the next four years. The bill also modifies the unemployment compensation trust fund adequacy formula for the purpose of reducing employer tax rates over a six-year period.

## Welfare/Social Services

### Passed

■ **Virginia Temporary Assistance to Needy Families (TANF).** Creates a TANF program funded by a federal block grant to provide time-limited cash assistance for needy families. The bill ends Virginia's participation in the open-ended federal Aid to Families with Dependent Children program and meets the requirements of federal welfare reform legislation.

■ **Child Support Enforcement.** Authorizes administrative paternity establishment; allows DSS greater access to financial and other information on putative fathers and support obligations; allows recreational license suspension

for failure to pay support; and facilitates interstate and intrastate procedures for wage withholding. These changes were mandated by the federal welfare reform legislation.

■ **Child Care.** Provides that licensed child day centers shall employ staff personnel according to specific ratios of staff members to children.

■ **Community Services Boards.** Requires all community services boards to have representation by consumers and family members of consumers of at least two members or fifteen percent of the total membership of such board, whichever is greater.

■ **Neighborhood Assistance Act.** Reduces the tax credit from 50 percent to 45 percent of the value of donations made by business firms to neighborhood organizations for approved programs. The minimum tax credit is increased from \$50 to \$400.

### Failed

■ **Public Assistance.** Provides that anyone who is (i) enrolled full-time in, and is expected to complete within 12 months and (ii) making satisfactory progress toward completion of, a job training, secondary or post-secondary educational program designed to result in self-sufficiency is exempt from the work requirement and two-year time limit on the receipt of aid to families with dependent children.

### Vetoed

■ **Child Care.** Codifies current state regulations on the qualifications of child day care administrators, directors, and supervisors.

## Workers' Compensation

### Passed

■ **Hearing Loss and Carpal Tunnel Syndrome.** Defines hearing loss and the condition of carpal tunnel syndrome as ordinary diseases of life for the purpose of determining their compensability under the workers' compensation act. Ordinary diseases of life are compensable if a claimant establishes by clear and convincing evidence that the disease arose out of and in the course of employment and did not result from causes outside the employment.

## Other

### Passed

■ **Virginia Human Rights Act.** Adds pregnancy, childbirth or related medical conditions as classes protected from unlawful discrimination. The bill also provides that it is declarative of existing law and is based on a recent Virginia Supreme Court case (*Bailey v. Lee-Gallagher*).

■ **Gender.** Defines terminology used throughout the Code relating to sex discrimination to include discrimination based upon pregnancy, childbirth or related medical conditions. The bill codifies the Virginia Supreme Court's decision in *Bailey v. Lee-Gallagher*.

■ **Same-Sex Marriages.** Declares that Virginia (which already prohibits same sex marriages) also does not recognize same sex marriages entered into in other states or jurisdictions.