

1998 SESSION HIGHLIGHTS



Session Highlights is designed to provide legislators with a list of significant legislation considered by the 1998 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 26, 1998, including the 1998 Special Session.

Abortion

☝ Passed

■ **Partial Birth Abortions.** Prohibits partial birth abortions, defined as an abortion in which the person performing the abortion deliberately and intentionally delivers a living fetus or a substantial portion thereof into the vagina for the purpose of performing a procedure the person knows will kill the fetus, performs the procedure, kills the fetus and completes the delivery. Also provides for review by a physicians committee of the doctor's actions, results to be available as evidence at trial. The offense is punishable as a Class 1 misdemeanor.

☞ Failed

■ **Informed Consent.** Requires that certain information regarding the particular pregnancy and abortion procedure be provided at least 24 hours in advance, to comply with the informed written consent mandate. Physicians are not required to obtain informed written consent if there is a medical emergency. Penalty for failure to follow requirements is a \$2,500 civil penalty.

Agriculture

☝ Passed

■ **Southern Dairy Compact.** Establishes the compact and creates the Southern Dairy Compact Commission, to which the Governor will appoint five members. The commission is authorized, so long as federal milk marketing orders remain in effect in the region, to establish a compact over-order price. If such orders are terminated, one or more commission marketing orders may be established.

☞ Carried Over

■ **Right to Farm Act.** Provides that the purpose of the Right to Farm Act is to reduce the loss of Virginia's agricultural resources by limiting the circumstances under which agricultural operations may be

deemed a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations.

Commerce

☝ Passed

■ **Shipbuilding Industry Grant Program.** Establishes a \$98 million grant program for a qualified shipbuilder. The grants may be paid to a company, such as Newport News Shipbuilding, which builds a certified carrier platform integration center.

■ **Virginia Assistive Technology Device Warranties Act.** Creates a "lemon law" for assistive technology devices—mechanical devices and instruments used by disabled individuals to communicate, see, hear, or maneuver.

■ **Electric Utilities; Wholesale and Retail Competition.** Establishes a schedule for Virginia's transition to retail competition in the electric utility industry.

■ **Public Rights-of-Way.** Establishes the Public Rights-of-Way Use Fee, to be collected from users of local exchange telecommunications service to reimburse localities and VDOT for companies' use of public rights-of-way.

Constitutional Amendments

☝ Passed

Five measures passed for the second time and will be placed on the November 1998 ballot for voter approval. They concern the confidentiality of Judicial Inquiry and Review Commission proceedings, overseas voters, and local taxation and finance matters.

☞ Carried Over

■ **Car Tax Repeal.** Authorizes the General Assembly to define passenger vehicles, pickup trucks, motorcycles, and recreational vehicles as a separate subject of taxation and to directly exempt such property from taxation.

■ **Governor's Term of Office.** Permits the Governor to succeed himself in office.

■ **Literary Fund.** Revises the name of the Literary Fund consistent with its purposes (the Virginia Public School Construction and Capital Projects Fund) and requires an affirmative vote of two-thirds of all the members of each house of the General Assembly to set aside any moneys for any public school purpose other than public school construction or public school capital projects.

Courts

☝ Passed

■ **Megan's Law (Community Notification).** Adds to the offenses for which registration is required: marital sexual assault; aggravated sexual battery where the victim is 13 or 14 years old, serious bodily or mental injury results or a dangerous weapon is used or threatened to be used; and breaking and entering of a dwelling if done with intent to commit rape.

■ **Newborn Infant Neglect.** Expands the definition of "abused or neglected child" to include newborn infants testing positive for a controlled substance not prescribed by a physician, born dependent on such drugs, or diagnosed by a physician with (i) a condition attributable to in utero exposure to illegal drugs or (ii) fetal alcohol syndrome.

■ **Drug Assessment of Certain Offenders.** Requires all felons and those persons convicted of Class 1 or 2 misdemeanor drug and alcohol offenses to undergo drug assessment to be provided by VASAP.

■ **Assisted Suicide.** Creates a new offense of intentionally assisting another to commit or attempt to commit suicide by providing the physical means or otherwise participating in a facilitating physical act.

■ **Spousal Support (Rehabilitative Alimony).** Grants authority to the courts to award spousal support to be paid periodically for a specified duration and to reserve to a party the right to receive support in the future.

■ **Concealed Handguns.** Perfects concealed-carry reciprocity provisions, establishes criteria for completion of concealed-carry permit application, and clarifies that a sworn law-enforcement officer may carry a concealed handgun in a restaurant or club.

Education

Passed

■ **School Construction Fund.** Establishes a two-year formula for distributing funds in the Virginia Public School Construction Grants Program.

■ **Charter Schools.** Establishes a mechanism for developing and operating charter schools, defined as public schools dedicated to providing elementary or secondary education and authorized by the local school board to operate with flexibility and a waiver of regulations from the Board of Education.

■ **School Maintenance.** Establishes, in statute, the maintenance supplement program, the only direct appropriation Virginia provides for school construction needs.

■ **Pupil/Teacher Ratios.** Requires school boards to report to the public the actual pupil/teacher ratios in elementary schools in the current school year.

■ **Opening of School Year.** Provides 3 "good cause" scenarios for obtaining a waiver from the after-Labor-Day opening requirement.

■ **Teaching Gifted Students.** Adds the study of gifted education, particularly the use of multiple criteria to identify gifted students, to the requirements for licensure for classroom teachers.

■ **Gifted Education Programs.** Requires the Board of Education to require local school boards to submit the annual report, "Programs for Gifted Education," to the Department of Education.

■ **Literacy Passport Tests.** Phases out the current Literacy Passport testing requirement set forth in the Standards of Quality.

■ **Virginia Gifted Education Pilot Program.** Establishes the program to provide a model for school divisions, facilitate the identification of gifted students, enhance existing gifted education programs, and increase the representation of gifted low-income students.

■ **Economic and Employment Program for Disadvantaged Persons.** Creates a grant program to improve the employability of and provide assistance to disadvantaged persons through education and skill training.

Failed

■ **Codes of Student Conduct.** Prohibits disciplinary actions by public schools for mere possession of a nonprescription drug by a student.

Carried Over

■ **Criminal Records Check for Public School Volunteers.** Authorizes local school boards to require a criminal records check of part-time and full-time volunteers in the public schools who will have direct and unsupervised contact with a student.

Vetoed

■ **Family Life Education.** Restores required family life education in all Virginia schools; requires abstinence instruction.

■ **School Guidance Counselors.** Restores the requirement for elementary school guidance counselors.

■ **Staffing Ratios.** Sets out the staffing ratios, currently only established in regulations, in the Standards of Quality.

Elections

Passed

■ **Congressional Districts.** Revises the boundaries of the First, Second, Third, Fourth, and Seventh Congressional Districts in response to the three-judge federal district court order in *Moon v. Meadows*. The plan was approved by the U.S. Justice Department on March 11, so the usual June 9 primary schedule will be used.

■ **Freeze on Precincts.** Prohibits any changes in precinct boundaries from September 1, 1998, to June 1, 2001, with specified exceptions.

Failed

■ **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.

Carried Over

■ **Registration by Political Party.** Adds party affiliation to the information that an applicant is asked to provide when registering to vote.

■ **Voter Identification at the Polls.** Adds a requirement that the voter present a form of identification when he offers to vote at the polls.

■ **Tax Credit for Political Contributions.** Grants a tax credit to individuals who make contributions to candidates for state or local political office of 50% of the amount of the contribution, subject to a \$25 limit for individuals and a \$50 limit for married taxpayers.

Health

Passed

■ **Certificate of Public Need.** Establishes conditions for certificates of public need for nursing home beds in continuing care retirement communities that are exceptions to the requirements for other nursing facilities.

■ **Hearing Impairment Reports.** Requires testing of newborns for hearing impairment and reports to parents, physicians, school divisions, and Part H agencies.

■ **Do Not Resuscitate Orders.** Revises the EMS Do Not Resuscitate Order law to provide a comprehensive statute applying to all settings (pre-hospital, hospital, nursing home).

■ **Drug-Abusing Postpartum Women.** Requires hospitals to notify the community services board of the jurisdiction in which the woman resides to appoint a discharge plan manager for any identified substance-abusing postpartum woman.

Carried Over

■ **Ethics in Prescription Drug Choice Act.** Prohibits the soliciting or encouraging of the substitution of a prescription drug with a chemically dissimilar drug for the purposes of rebate, kick-back, or other remuneration.

Vetoed

■ **Children's Health Insurance.** Conforms Virginia's children's insurance plan to the new Title XXI of the federal Social Security Act by expanding Virginia Medicaid to provide coverage of children up to the age of 19 who have family incomes at or below 200 percent of the federal poverty guidelines and are otherwise eligible for this program in accordance with the federal law. The appropriation act will establish the specific level of eligibility.

Higher Education

Passed

■ **Scholarship Program.** Establishes the Virginia Undergraduate and Vocational Incentive Scholarship Program, available to eligible full-time students attending certain four-year institutions of higher education in Virginia. Students must also have completed at least one year of study, have a B average or better, and be enrolled in designated programs that address Virginia's workforce training needs.

■ **Alcohol Use in Colleges.** Requires programs to promote compliance, by college students, with the Commonwealth's alcoholic beverage laws.

Failed

■ **Bond Issue.** Authorizes the issuance of Commonwealth of Virginia Higher Education and Related Educational Facilities Bonds pursuant to Article X, Section 9 (b) of the Virginia Constitution in an amount not exceeding \$236,700,000.

Insurance

Passed

■ **Insurance Coverage for Diabetes.** Requires the health care plan for state employees, health insurers, health care subscription plans and health maintenance organizations to provide coverage for diabetes.

■ **Managed Care Plans.** Provides a new framework for statutory and regulatory oversight of managed care health insurance plans, requiring the Department of Health to oversee quality of care and complaint resolution involving such plans.

■ **HMOs; Point-of-Service Plans.** Requires HMOs to include a point of service benefit (permitting enrollees to use "out-of-network" providers) to be offered in conjunction with the HMO's health care plan as an additional, optional benefit for enrollees.

■ **Minimum Hospital Stays.** Requires health insurers to provide coverage for at least a 48-hour hospital stay following a radical or

modified radical mastectomy and not less than 24 hours of inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for the treatment of breast cancer.

■ **Prostate Cancer Testing.** Requires health care coverage companies (including health insurers and HMOs), the health care coverage plan for state employees, and the state plan for Medicaid, to provide coverage for laboratory tests and other examinations conducted for the purpose of detecting and treating prostate cancer.

☞ Carried Over

■ **HMO Liability.** Establishes a civil cause of action for persons who suffer damages as a result of an HMO's failure to exercise ordinary care in making a health care treatment decision affecting such person.

Local Government

☝ Passed

■ **Vested Rights.** Provides that a landowner's rights shall be deemed vested in his zoning and not affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act allowing development of a specific project, (ii) relies in good faith on the affirmative governmental act, and (iii) incurs extensive obligations or expenses in diligent pursuit of the specific project which is the subject of the affirmative governmental act.

Mental Health

☝ Passed

■ **Involuntary Temporary Detention (Jef's Law).** Clarifies that any responsible person may seek an involuntary temporary detention order of a person believed to be mentally ill and in need of hospitalization and that the recommendation of the treating physician must be considered in making the decision on the temporary detention order.

■ **Involuntary Detention; Certification Program.** Provides that any individual who is skilled in the assessment and treatment of mental illness and who provides a prescreening evaluation for persons believed to be mentally ill and in need of hospitalization must also complete a certification program approved by the DMHMRSAS.

■ **Community Services Boards (CSBs).** Clarifies and redefines the role of CSBs and behavioral health authorities who are the local agencies responsible for the delivery of publicly funded mental health, mental retardation and substance abuse services.

Natural Resources

☝ Passed

■ **State Park Planning.** Requires the Department and the Board of Conservation and Recreation to undertake a master planning

process for state parks to ensure public participation in the creation of plans for the development, utilization and management of state parks.

■ **Rappahannock River Basin Commission.** Provides a mechanism for the local governments of the Rappahannock River Basin to form a commission composed of representatives of local government, Soil and Water Conservation Districts and members of the General Assembly.

■ **Oil Release Report and Notification.** Requires the DEQ to compile a list of the locations of oil releases serious enough to have a site characterization analysis performed. This list is to be sent monthly to the State Department of Health for dissemination to all of its local offices.

■ **Reckless Boating (Jet Skis).** Makes it a Class 1 misdemeanor to operate a personal watercraft in a reckless manner, such as weaving at high speed through congested vessels and crossing between the tow boat and a person on water skis. If a person is convicted a second or subsequent time for this offense, the court shall suspend the person's privilege to operate a motorboat for one year.

■ **Water Transport of Wastes.** Requires the Waste Management Board to develop regulations governing the transport, loading and unloading of certain types of solid and medical wastes by ship, barge or other vessel upon navigable waters of Virginia and issuance of permits to facilities receiving such wastes.

■ **No Wake Zone.** Makes it unlawful to operate a motorboat above "no wake" speed when within 50 feet of various structures and people in the water.

■ **Confined Animal Feeding Operations.** Modifies permitting requirements for confined animal feeding operations, which are currently covered by a general permit issued by the State Water Control Board.

☞ Carried Over

■ **Poultry Waste Runoff.** Requires the State Water Control Board to establish a regulatory program for poultry waste management in the Chesapeake Bay watershed.

Professions and Occupations

☝ Passed

■ **Physician Assistants.** Defines physician assistant and provides licensure separate from dependent supervision and employment.

■ **Practitioner Information.** Requires the collection, compilation and disclosure or availability of various information on licensed practicing physicians and health maintenance organizations in Virginia.

■ **Cemetery Board.** Creates the board at the Department of Professional and Occupational Regulation for the regulation of cemeteries, pre-need burial contracts, and perpetual care trust accounts. The bill transfers control of pre-need burial contract and the administration of perpetual care trusts from the Department of Agriculture and Consumer Services to this newly created board.

☞ Failed

■ **Dental Hygienists.** Authorizes dental hygienists to administer local anesthesia with the approval and under the direction of a dentist.

☞ Carried Over

■ **Regulation of Peddlers.** Defines peddler and itinerant merchant, sets out their record-keeping requirements, and authorizes federal, state, and local law-enforcement officers to examine the records of the peddlers and itinerant merchants. The bill is an attempt to reduce larceny by eliminating the point of sale for stolen merchandise.

State Government

☝ Passed

■ **Federal Retirees.** Requires the final payment of federal retiree settlement payments to be made on September 30, 1998, if the 1997-1998 general fund revenue surplus is at least \$62.5 million. If the 1997-1998 general fund revenue surplus is less than \$62.5 million, a special installment payment based on the 1997-1998 general fund revenue surplus divided by \$62.5 million shall be made on September 30, 1998, and the final payment on March 31, 1999. Under the existing *Harper* settlement legislation, the payments are to be made in annual installments through March 31, 1999.

■ **Sickness and Disability Program for State Employees.** Establishes a program for sick leave, family and personal leave, and short-term and long-term disability insurance for state classified employees, appointed and elected officials, and college and university faculty.

■ **Cultural Diversity Training.** Requires the Department of Criminal Justice Services to establish a cultural diversity training program for law-enforcement officers.

■ **Retirement Benefits for Members of the General Assembly.** Prohibits active General Assembly members from receiving VRS retirement benefits based solely on service in the General Assembly.

■ **Community Policing Programs.** Requires the Department of Criminal Justice to review and evaluate community policing programs in the Commonwealth.

■ **VRS.** Changes the current formula for computing the annual retirement allowances for regular and disabled retirees and beneficiaries of the Virginia, State Police Officers' and Judicial Retirement Systems.

☞ Failed

■ **Retirement Benefits for Members of the General Assembly.** Provides that members of the General Assembly serving their first term beginning on or after January 1, 2000, who accumulate credit for years of service in other branches of government will not receive credit for term as members of the General Assembly. Permits members of the General Assembly who do not receive credit to elect to withdraw their member contributions, including interest, at any time.

☞ Carried Over

■ **Public Historical Records.** Creates the Commission on Virginia's Public Historical Records Collection as an advisory board to provide direction and advice to the Library Board and to state agencies with significant historical collections.

■ **Deferred Retirement Option Plan.** Establishes a deferred retirement option plan for state employees, state police officers, local government employees, and teachers.

Taxation

☞ Passed

■ **Property Tax Exemptions for Elderly and Disabled Persons.** Allows the governing bodies of localities to raise the maximum income and net financial worth limitations for eligibility under local real property tax exemption or deferral programs and personal property tax rate reduction programs.

■ **Tax on Outdoor Equipment.** Dedicates, beginning July 1, 2000, two percent of the proceeds from the state sales and use tax on hunting, fishing and wildlife-watching equipment to DGIF's Game Protection Fund, up to an annual amount of \$13 million.

■ **Tax Deduction for Contributions to the Virginia Higher Education Tuition Trust Fund.** Establishes an individual income tax deduction for the amount paid for a prepaid tuition contract entered into with the Tuition Trust Fund, not to exceed \$2,000 per contract in any taxable year.

■ **Richmond Centre.** Allows Chesterfield, Hanover and Henrico to impose an additional two percent transient occupancy tax with the revenues to be spent on expanding the Richmond Centre, a convention and exhibition facility located in Richmond.

■ **Earned-Income Tax Credit.** Allows a nonrefundable tax credit for individuals whose annual income falls below federal poverty guideline limits. The amount of the credit is equal to a percentage of federal earned-income credit or \$300 per child, whichever is greater. The credit is contingent upon a determination that it qualifies as maintenance of state effort under the TANF program.

■ **Wetlands Tax Exemption.** Authorizes local governments to partially or totally exempt from real property taxation wetlands and riparian buffers that are subject to a perpetual easement permitting inundation by water.

■ **Personal Property Tax Relief Act of 1998.** Requires the Commonwealth to pay, directly to taxpayers for tax year 1998 and to localities for tax years 1999 and thereafter, a portion of the tangible personal property tax levied on any passenger car, motorcycle, and pickup or panel truck that is owned or leased by a natural person and used for nonbusiness purposes.

☞ Failed

■ **Transient Occupancy and Food and Beverage Taxes.** Authorizes all localities to impose a transient occupancy tax of up to 5.5 percent and a food and beverage tax of up to 5.5 percent. The requirement that counties approve a food and beverage tax at referendum is repealed.

☞ Carried Over

■ **Sales Tax on Food.** Reduces the rate of the state sales tax on food from 3.5 percent to (i) 2.5 percent on July 1, 1998; (ii) 1.5 percent on July 1, 2000; and (iii) 0.5 percent on July 1, 2002. The tax is repealed on July 1, 2004. The local one percent sales tax is not affected.

■ **Taxation of Electric Utilities.** Replaces electric utilities' state gross receipts tax, the SCC special assessment tax, and the local gross receipts tax with (i) a declining block consumption tax to be paid by residential, commercial, and industrial users of electric power and (ii) a net corporate income tax (part of another bill) paid by certain electric utilities. These changes are in anticipation of deregulation of the electric utility industry.

■ **Tax Deduction for Military Pay.** For taxable years beginning on or after January 1, 1999, allows a subtraction of \$15,000 from income tax for military basic pay with such amount being reduced dollar-for-dollar when the taxpayer's military basic pay exceeds \$15,000 and no deduction allowed if such basic pay equals or exceeds \$30,000.

Transportation

☞ Passed

■ **Restricted Driver's Licenses.** Places special restrictions on the driver's licenses of persons less than 18 years old if those persons are convicted of certain traffic offenses.

■ **Pruning Trees in Front of Billboards.** Establishes a system for permitting trimming of vegetation growing within highway rights-of-way when that vegetation obscures motorists' view of certain lawful advertising.

■ **State Aid to Mass Transit.** Allows all localities to use their local share of highway funds to support mass transit operating costs and increases the Commonwealth Mass Transit Fund's share of the Transportation Trust Fund from 8.4 percent to 14.5 percent in FY 1999 and 14.7 percent thereafter.

■ **Driver's Licenses, Learner's Permits, and the Motor Vehicle Sales and Use Tax.** Provides for a motorcycle learner's permit and fees for such permits; revises limitations applicable to operation of motorcycles by holders of motorcycle learner's permits; and clarifies that certain vehicles not designed or used to carry property are subject to the motor vehicle sales and use tax.

■ **Northern Virginia Transportation Bonds.** Authorizes an additional \$95.9 million in Commonwealth of Virginia Transportation Revenue Bonds to finance the cost of the projects included in the Northern Virginia Transportation District Program.

■ **Photo-Enforcement of Tolls.** Authorizes use of photo-monitoring equipment for enforcement of toll payments for use of toll facilities.

■ **Subdivision Street Maintenance.** Where local street pavement widths standards for certain streets are different from VDOT standards and cause VDOT increased maintenance costs, the amount of the increase will be paid to VDOT by the locality.

■ **Parking Fines.** Authorizes the prepayment of disabled parking fines.

■ **Motor Vehicle Dealers.** Allows the Motor Vehicle Dealer Board to license certain charities as dealers without their having to comply with the statutory requirements for minimum office space and vehicle display space.

☞ Failed

■ **Passing Stopped School Buses.** Provides for filing of affidavits as to markings and warning devices on school buses illegally passed while loading or discharging passengers. This bill does not change the law prescribing a civil penalty for passing a stopped school bus (§ 46.2-844).

■ **Motorcycle Helmets.** Limits the motorcycle helmet law to persons less than 21 years old.

☞ Vetoed

■ **Vehicle Registration Fees.** Increases to \$4 (from present \$2) the surcharge on vehicle registrations used for emergency medical services (the so-called "two for life" fee). One-half of the increased revenues goes to the Rescue Squad Assistance Fund and the remainder to localities for emergency medical services and rescue purposes.

Welfare/Social Services

☞ Vetoed

■ **Comprehensive Services Act.** Streamlines the management of the Comprehensive Services Act by eliminating the state management team; the responsibilities are to be assumed by the Office of Comprehensive Services for At-Risk Youth and Families.

Other

☞ Carried Over

■ **Religious Freedom.** Provides that no government entity shall substantially burden a person's free exercise of religion except if (i) the government entity proves that application of the restriction to the person is essential to further a compelling governmental interest and (ii) the proposed action is the least restrictive means of furthering that interest. The bill provides that a person whose exercise of religious freedom has been burdened may assert a claim of violation in a judicial proceeding and the court may grant appropriate relief, including attorney's fees.