

# Session Highlights 2003

Virginia Division of Legislative Services

## Agriculture

### Passed

**Avian influenza.** Authorizes the State Veterinarian to require that any chicken, turkey, waterfowl, game bird, or other avian that is susceptible be tested for avian influenza before importation into Virginia from another state if (i) avian influenza has been found in that state, (ii) conditions in that state render the importation of any specific type of avian a menace to the health of any animal in Virginia, or (iii) the protection of any animal in Virginia from avian influenza so requires.

## Commerce

### Passed

**Electric utility restructuring.** Delays the date by which incumbent electric utilities with transmission capacity must join a regional transmission entity (RTE). The Electric Utility Restructuring Act originally required utilities to join an RTE by January 1, 2001. This measure provides that utilities shall not join an RTE prior to July 1, 2004. Utilities are required to file an application to join an RTE by July 1, 2003, and to transfer management and control of transmission assets to the RTE by January 1, 2005, subject to SCC approval. Prior to approving a request to join an RTE, the SCC must determine that the action will (i) ensure that consumers' needs for economic and reliable transmission are met and (ii) meet the transmission needs of electric generation suppliers that do not own, operate, control or have an entitlement to transmission capacity. In addition, requests for approval shall include a study of comparative costs and benefits, including an analysis

of the economic effects of the transfer on consumers and the effects of transmission congestion costs.

**Direct shipments of beer and wine to consumers.** Provides for the licensure by the ABC Board of wineries, wine importers, wine retailers or wine wholesalers licensed in their state to sell, deliver or ship wine by common carrier in closed containers to persons to whom alcoholic beverages may be lawfully sold in the Commonwealth for their personal use only and not for resale.

## Constitutional Amendments

### Passed

**Effective dates of redistricting.** The proposed amendment provides explicitly that the members in office when a decennial reapportionment law is enacted shall complete their terms of office and continue to represent the districts from which they were elected. Also specifies that any vacancy occurring during such terms will be filled from the same district that elected the member whose vacancy is being filled.

**Restoration of civil rights for felons.** Authorizes the General Assembly to provide by law for the restoration of civil rights for persons convicted of nonviolent felonies who meet the conditions prescribed by law.

### Failed

**Governor's term of office.** Permits a Governor, elected in 2005 and thereafter, to succeed himself in office. The amendment allows two terms (either in succession or not in succession) but prohibits election to a third term.

**Virginia Redistricting Commission.** Establishes the Virginia Redistricting Commission to redraw congressional and General Assembly district boundaries after each decennial census.

**Length of regular sessions of the General Assembly.** Provides that beginning with the 2005 regular session of the General Assembly, sessions beginning in odd-numbered years shall be long sessions and sessions beginning in even-numbered years shall be short sessions.

**Election of Lieutenant Governor.** Provides that the Governor and Lieutenant Governor shall run for election on the same ticket and that the candidate for Lieutenant Governor on the ticket with the winning candidate for Governor will also be elected.

**Budget bill.** Requires the Governor to submit an annual Budget Bill that (i) appropriates at least 2 percent of the general fund revenues for capital improvements in any fiscal year where the general fund revenues are projected to increase by more than 8 percent over the immediately preceding fiscal year, and (ii) appropriates any surplus income tax and sales tax revenues in a fiscal year, less certain required expenditures, for nonrecurring expenditures in the next fiscal year.

**Standards of Quality.** Requires the Board of Education to determine and prescribe the Standards of Quality every 2 years and to design the SOQ to ensure an effective educational system of high quality throughout Virginia. In addition, the Commonwealth and the local units of government shall be obligated to fully fund their portion of such cost by taxes or from other available funds. The current provision requires the Board to revise the SOQ "from time to time" and provides that "each unit of local government shall provide its por-

**Session Highlights summarizes significant legislation considered by the 2003 General Assembly, excluding the Appropriations Act, as selected by the staff of the Division of Legislative Services. This brief overview of the Session covers actions of the Assembly and the Governor through April 30, 2003.**

tion of such cost by local taxes or from other available funds.”

#### **Highway and Transportation Trust Funds.**

Provides that the Highway Maintenance and Operating Fund and the Transportation Trust Fund established in 1986 will be permanent and separate funds and be funded annually by the General Assembly by appropriations equivalent to the revenues generated by the 1986 package of tax and fee increases and other revenues dedicated to the funds. The amendment limits the use of Trust Fund moneys to transportation and related purposes. The General Assembly may borrow from the Fund for other purposes or reduce the level of required appropriations only by a vote of two-thirds plus one of the members voting in each house, and the loan or reduction must be repaid within four years.

## Courts

### **Passed**

**21-day rule.** Provides that final judgments in circuit court criminal cases remain under the control of the circuit court for 90 days rather than the current 21 days. The filing deadlines for appeals and the transfer of the trial record to the Court of Appeals are proportionately increased to maintain consistency with current practice.

**Amber Alert.** Directs the Department of State Police to develop a statewide child abduction alert plan (the Virginia Amber Alert Plan) to rapidly publicize information on a child abduction. Pursuant to procedures developed by the Department of State Police, local law enforcement will notify the Department of State Police, who will take action, including activating the emergency alert system.

**Child Pornography.** Establishes within the Computer Crimes Unit of the Office of the Attorney General, in cooperation with the Department of State Police, a Child Pornography Registry that includes images of sexually explicit visual material presented as evidence and used in any conviction for any offense enumerated in §§ 18.2-374.1 and 18.2-374.1:1. The bill increases the penalties for child pornography possession to a Class 6 felony (from a Class 1 misdemeanor) and second and subsequent offenses to a Class 5 felony (from a Class 6 felony). Finally, the bill rewrites the computer sexual predator law to specify the illegal conduct and restrict its applicability to predators over the age of 21 and victims under the age of 17.

**Civil commitment of sexually violent predators.** Authorizes the civil commit-

ment of persons convicted of two or more violent sex offenses on different occasions whose mental abnormalities render them so likely to commit sexually violent offenses that they constitute a threat to the health and safety of others. Also moves the effective date of the sexually violent predator legislation from 2004 to “effective from its passage.”

**Execution of mentally retarded.** Establishes procedures for determining whether a defendant in a capital case is mentally retarded and may not be sentenced to death. In June the U.S. Supreme Court, in *Atkins v. Virginia*, held that the execution of a mentally retarded person is cruel and unusual punishment prohibited by the Eighth Amendment. This bill defines mental retardation, sets procedures for determining whether a defendant meets the definition and provides for the appointment of expert evaluators. When mental retardation is at issue, a determination will be made by the jury (or judge in bench trials) as part of the sentencing proceeding. The defendant bears the burden of proving mental retardation by a preponderance of the evidence. The bill establishes a procedure for defendants sentenced to death prior to the effective date of the bill to raise the issue of mental retardation.

### **Failed**

**Writ of actual innocence based on previously unknown evidence.** Allows a convicted and incarcerated individual to petition the Supreme Court for a writ of actual innocence based upon any new evidence, not just DNA.

**Mandatory reporting of child abuse by clergy.** Requires any regular minister, priest, rabbi, or accredited practitioner to report suspected child abuse or neglect to a local department of social services or the Department of Social Services’ toll-free child abuse and neglect hotline. The bill exempts from the mandatory reporting requirement information required by the doctrine of the religious organization or denomination to be kept confidential.

**Concealed weapons in restaurants.** Allows individuals to carry a legally concealed handgun into restaurants whose gross receipts from the sale of alcohol are less than 30 percent of total food and beverage sales.

**Criminal records check at gun shows.** Adds a definition of “firearms show vendor” and requires that a criminal history record information check be performed on the prospective transferee before the vendor may transfer firearms at a gun show.

Under current law, only licensed dealers must obtain such a check.

## Education

### **Passed**

**Bill of Rights.** Requires the posting of the Bill of Rights of the U.S. Constitution in public schools.

### **Failed**

#### **Virginia Educational Quality Act of 2003.**

The act (i) declares that funding for public education shall be the first budget priority of the Commonwealth, (ii) increases the state sales and use tax from 3.5 percent to 4.5 percent with the revenues dedicated to public education, (iii) authorizes the Virginia Public School Authority to issue bonds to fund grants to local school divisions in the total amount of \$1 billion to pay the costs of school construction, school renovation, and other school infrastructure projects, and (iv) requires the Governor to report to the General Assembly on the status of educational funding to localities at the levels mandated by the Constitution and the laws of the Commonwealth. The portion of the bill increasing the sales and use tax is effective January 1, 2004, and only if approved at a statewide referendum on November 4, 2003.

**Annual teacher evaluations.** Requires annual evaluations for all teachers, pursuant to Board of Education guidelines, and requires the dismissal of or return to a 1-year probationary term of service for those teachers who have received two unsatisfactory annual evaluations in a 3-year period. The Board of Education is to create guidelines for a review process whereby teachers may request a review of an unsatisfactory evaluation.

**Teacher compensation; national average.** Establishes as a policy of the Commonwealth that the average salary for Virginia public school teachers equal or surpass the national average salary for public school teachers and directs the Board of Education and the General Assembly to implement this policy in prescribing and revising the Standards of Quality.

### **Vetoed**

**In-state tuition for aliens.** Provides that an alien who is unlawfully present in the United States, and therefore ineligible to establish domicile pursuant to § 23-7.4, shall not be eligible on the basis of residency within Virginia for any post-secondary educational benefit, including in-state tuition.

## Health

### Passed

**Abortion; parental consent.** Requires a physician to obtain parental consent prior to performing an abortion on an unemancipated minor. Under current law, the parents of the minor must be notified of the abortion, but do not have to give consent.

**Abortion; partial birth infanticide.** Defines "partial birth infanticide" as deliberately and intentionally vaginally delivering a living infant until, in the case of a head-first presentation, the infant's entire head is outside the body of the mother, or, in the case of breech presentation, any part of the infant's trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living infant, and then performing the overt act. The bill punishes the act as a Class 4 felony and repeals the prohibition on partial birth abortion.

**Disciplinary procedures for physicians.** Lowers the disciplinary standard for physicians from gross negligence to simple negligence and creates a confidential consent agreement that may be used by a health regulatory board, in lieu of discipline, only in instances where there is not probable cause to believe the practitioner has (i) demonstrated gross negligence or intentional misconduct in the care of patients, (ii) caused serious patient harm through negligence or (iii) conducted his practice in a manner as to be a danger to patients or the public. Also provides that before reinstatement to practice, a 3-year minimum period must elapse after the revocation of the certificate, registration or license.

**Virginia Birth-Related Neurological Injury Program.** Authorizes the Workers' Compensation Commission to award up to \$100,000 to the parents or legal guardian of an injured infant covered under the Program who dies within 180 days of birth. The Program is made subject to the Freedom of Information Act and is required to implement procedures consistent with the Public Procurement Act and the rulemaking provisions of the Administrative Process Act. The Virginia Birth-Related Neurological Injury Fund must be audited annually by a certified public accountant, and the Office of the Attorney General is required to provide legal services for the Program. Numerous other changes to the Program are specified.

**Hospital immunity for smallpox vaccine administration.** Provides that, in the absence of gross negligence or willful mis-

conduct, individuals cannot sue hospitals or their employees for injuries caused by administering the smallpox vaccine.

### Failed

**Conscience clause.** Includes any physician, pharmacist, or other medical or health care professional who is asked to dispense any birth-control pill or other medication for the purpose of performing an abortion within the provisions of the conscience clause, which states that the objection, in writing, of any facility or practitioner or other person to participating in abortion procedures on personal, ethical, moral or religious grounds will not be the basis for claims for damages or disciplinary or recriminatory actions or denial of employment.

**Abortion; regulation of clinics.** Requires all abortion clinics, defined as any facility, other than a hospital or an ambulatory surgery center, in which 25 or more first trimester abortions are performed in any 12-month period, to be licensed and to comply with the requirements currently in place for ambulatory surgery centers.

**Medical malpractice; limit on attorney fees.** Provides that beginning with medical malpractice actions accruing on or after July 1, 2003, attorney fees shall be limited in accordance with the following fee schedule: 33 1/3 percent of the first \$150,000 of the sum recovered; 25 percent of the next \$150,000; 20 percent of the next \$500,000; 15 percent of the next \$150,000; and 10 percent of any amount over \$950,000 of the sum recovered.

**Parental notification.** Requires, unless prohibited by federal law or regulation, any state or local government agency employee who provides services to a minor to notify, within 48 hours, both parents, in the case of an intact family, or the custodial parent, legal guardian or other person standing in loco parentis when the service relates to sexually transmitted diseases, the provision of emergency contraception, pregnancy, illegal drug use, and the contemplation of suicide.

**Contraception not to constitute abortion.** Provides that contraception is not subject to or governed by the abortion law set forth in Title 18.2. "Contraception" is defined, for all purposes, as the use of any process, device, or method to prevent pregnancy.

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## Insurance

### Failed

**Health insurance.** Permits an accident and sickness insurance policy to be extended to include coverage for persons (i) in whom the primary insured has an insurable interest and (ii) who reside in the same household as the insured. Current law only permits coverage for a spouse or dependent children.

## Local Government

### Failed

**Local government taxing authority.** Equalizes city and county taxing authority by granting counties the same authority available to cities and towns through the uniform charter powers.

**Residential development impact fees.** Allows localities to adopt provisions in subdivision ordinances for the assessment of impact fees when existing schools, roads, public safety, sewer or water facilities are inadequate to support a proposed residential development. Localities may only assess impact fees under this subdivision against persons constructing 5 or more residential structures per year.

**Adequate public facilities.** Allows any locality to adopt provisions in its subdivision ordinance for deferring the approval of subdivision plats or site plans when it determines that existing schools, roads, public safety, sewer or water facilities are inadequate to support the proposed development.

**Adequate public facilities.** In any high-growth locality, a subdivision ordinance may include reasonable provisions allowing the locality to determine whether public facilities are adequate to support the services that will be required by a proposed development. Approval of a site plan or preliminary subdivision plat may be made contingent upon a finding by a governing body of adequate public facilities.

**Public water supply.** Allows a locality to determine whether public facilities related to water supply are adequate to support the services that will be required by a proposed subdivision.

## Natural Resources

### Passed

**Water supply planning.** Requires the State Water Control Board, in consultation with the State Health Commissioner, local

governments, public service authorities, and other interested parties, to establish a comprehensive water supply planning process for the development of local, regional and state water supply plans.

**Waste tires.** Strengthens the DEQ's ability to clean up the 339 remaining tire piles throughout the state by granting the agency the authority to enter property and remove a tire pile if the owner refuses an order to remove the tires and the ability to obtain a lien against the property for the amount expended from the Waste Tire Fund to clean up the tire pile.

### **Failed**

**Virginia Department of Game and Marine Resources.** Combines the Department of Game and Inland Fisheries and the Virginia Marine Resources Commission to form the Virginia Department of Game and Marine Resources.

## **State Government**

### **Passed**

**Information Technologies Agency.** Establishes the Virginia Information Technologies Agency (VITA) to replace the Department of Information Technology and the Department of Technology Planning, which are abolished. VITA will oversee the planning, budgeting, acquiring, managing, and disposing of major information technology projects in the state.

**Eliminating boards and councils.** HJR 159, passed by the 2002 General Assembly, created a joint subcommittee that recommended legislation to eliminate 43 state boards and councils and one foundation. Of the 44 entities eliminated, 18 scenic river advisory boards were consolidated into a new statewide board, the Virginia Scenic River Board, and four other bodies were merged with existing bodies that share closely or overlapping purposes.

## **Taxation**

### **Passed**

**Estate tax.** Conforms the amount of Virginia estate tax due from an estate to the maximum amount of the federal estate tax credit for state estate taxes, as permitted under federal estate tax law, as such law shall be amended from time to time. Under current law the amount of Virginia estate tax cannot be less than the federal credit under federal law as such law existed on January 1, 1978. This will result in the complete elimination of the estate tax by 2006.

### **Failed**

**Sales tax on motor fuels.** Provides for a statewide 4.5 percent sales tax beginning July 1, 2004, on the sale of motor fuels in Virginia. All revenues from the tax would be deposited into the Transportation Trust Fund.

**Cigarette tax.** Increases the state tax on cigarettes from 2.5 cents per pack to 60 cents per pack. One-half of the additional revenue is to be used solely to fund the Virginia Medicaid Program; the remainder to be distributed to localities based upon the number of school aged children in each locality.

**Sales tax rate increase.** Increases the state sales and use tax from 3.5 percent to 4.5 percent. One-half of the increase will be appropriated (i) for salary increases for teachers in public schools, and (ii) to address the problems in public education identified in a recent study by JLARC. The remaining one-half percent of the increase will be distributed to localities to be used for education purposes.

## **Transportation**

### **Passed**

**Driver's licenses and identification cards.** Makes it Class 6 felony to obtain any document issued by DMV through the use of counterfeit, forged, or altered documents. DMV will not issue an original license, permit, or identification card to any applicant who has not presented with his application documentary evidence that he is either (i) a citizen of the United States, (ii) a legal permanent resident of the United States, or (iii) a conditional resident alien of the United States. An applicant may be issued a temporary license, permit, or identification card under certain circumstances. The temporary license shall be valid only during the period of time of the applicant's authorized stay in the United States. Any temporary license is required to clearly indicate that it is temporary and state the date that it expires. The bill becomes effective on January 1, 2004.

### **Failed**

**Commonwealth Private Investment Inducement Act of 2003.** Dedicates one-third of the annual insurance license tax revenue to transportation projects in highway construction districts based on the percentage of the population of the Commonwealth residing in each such district.

**Seat belts.** Removes the provision that a citation for a violation of the seat belt law

may not be issued unless the officer has another reason to stop the vehicle or arrest the driver; however, the officer is prohibited from searching or inspecting a vehicle, its contents, the driver or a passenger solely because of a violation of the seat belt law.

**Child restraints.** Exempts vans or other vehicles used for transportation by child day centers or child day programs from coverage under the "child restraint law."

**Child restraint devices.** Amends the law requiring the use of child restraint devices for children less than six years old who are being transported in motor vehicles by striking the exception that allows the transportation of unrestrained children in the rear cargo area of vehicles other than pickup trucks.

**Driving while distracted.** Prohibits engaging in any distracting activity while driving. "Distracting activity" is defined as responding to events, persons, or objects inside or outside the motor vehicle that are not related to the safe operation of the vehicle. This includes, but is not limited to: personal grooming, food or beverage consumption, use of an electronic device, reading, and interacting with passengers or pets.

**Photo-monitoring systems to enforce traffic light signals.** Expands photo-monitoring systems for traffic signal enforcement to all of Virginia instead of specified localities.

**Speed enforcement using photo-radar technology.** Allows the use of photo-radar technology to enforce speed limits.

**Motorcycle helmets.** Limits the application of the "motorcycle helmet law" to operators and passengers less than 21 years old and provides that a citation for a violation may not be issued unless the officer has another reason to stop the vehicle or arrest the driver. Another measure exempts motorcyclists operating on scenic highways and Virginia byways from the motorcycle helmet law.

## **Unemployment**

### **Passed**

**Unemployment compensation; weekly benefit amount.** Increases the maximum weekly benefit amount a person may receive as unemployment benefits. For claims filed on or after July 6, 2003, the maximum weekly benefit amount shall be \$316. For claims filed on or after July 4, 2004, the maximum weekly benefit amount shall be \$326.