

# 2004 GENERAL ASSEMBLY SESSION

## Governor's Amendments and Vetoes



*The Governor has recommended amendments to 60 bills passed by the 2004 General Assembly and has vetoed 2 others. The staff of the Division of Legislative Services prepared the following summaries to assist members of the General Assembly in their deliberations during the April 21 Reconvened Session. The summaries, arranged in numerical order by bill number, highlight the major impact of the Governor's recommendations on each bill. I hope you will find the information useful.*

— E. M. Miller, Jr., Director

### Governor's Amendments

**HB 1. Feticide.** Adds to the Code section established by this bill the following statement: "Nothing in this section is intended nor shall be construed to limit a woman's rights as recognized by the Supreme Court of the United States in *Roe v. Wade*, 410 U.S. 113 (1973)."

**HB 38. Special license plates.** The amendments replace the section of the Code authorizing the issuance of professional stock car driver special license plates with another section authorizing the issuance of special license plates for supporters of the Virginia Motor Sports Initiative. The amendments also provide for issuance of special license plates to supporters of court-appointed special advocate programs (instead of members or associates of such programs). In addition, the amendments authorize the issuance to members of the General Assembly of special license

plates whose design combines that of House of Delegates plates or Senate plates with that of FIGHT TERRORISM plates.

**HB 127. DUI; refusal.** Deletes language so that the provisions of SB 202 can be effectuated.

**HB 148. Public-Private Education Facilities and Infrastructure Act.** Removes the requirement that state agencies post notice of a private entity's request for approval of a qualifying project under the PPEA on the state's electronic procurement website.

**HB 158. Nudist camps for juveniles.** Clarifies the definition of "a nudist camp for juveniles" as any hotel, summer camp, or campground that is attended by nude juveniles whose parents, grandparents, or legal guardians are not registered and present with the juvenile in the same camp.

**HB 301. Hunting, trapping fees.** Adds a second enactment clause that the salary of the director of the Department of Game and Inland

Fisheries be listed as a Level 1 agency head in the General Appropriations Act.

**HB 390. Health Spa Act.** Amendments increase, from \$75 to \$125, the amount of an initiation fee that a health spa may collect without triggering the requirement that the health spa post a bond or letter of credit. Amendments also provide that (i) contracts with a term that exceeds 13 months, rather than one year, are counted as multiple contracts when calculating the amount of the required bond or letter of credit, and (ii) contracts with a term that exceeds 13 months will not be counted as multiple contracts if the contracts are payable on a monthly basis and the initiation fee does not exceed \$250.

**HB 408. Use of steel plates in connection with highway repairs.** The amendments: (i) require the submission of a "best practices" report by the Transportation Research Council to the Chairmen of the House and Senate

Transportation Committees (the bill had provided for submission only to the House Transportation Committee Chairman) and (ii) require that the bill be reenacted by the 2005 Session in order to become effective.

**HB 546. *Technology programs.*** Removes provisions that added the Secretary of Technology to the Virginia Workforce Council.

**HB 549. *Open-space preservation.*** Governor's amendments create a special fund for the deposit of revenues from the \$1 recordation fee imposed in jurisdictions where open-space easements are held by the Virginia Outdoors Foundation. Other amendment is technical.

**HB 637. *Career-training schools.*** Amendments provide for (i) continuation of current Board of Education (BOE) regulations addressing certain proprietary schools to be supervised by the State Council for Higher Education in Virginia (SCHEV) until SCHEV promulgates necessary regulations; (ii) transfer of any obligations, duties, or property interests in such institutions previously held by BOE to SCHEV; and (iii) SCHEV to promulgate regulations within 280 days.

**HB 639. *Landfills in Appomattox County.*** Amendment places a re-enactment clause on a bill that authorizes Appomattox County to (i) construct a landfill on a wetland or (ii) site the landfill closer to an existing public water supply than is currently allowed by law.

**HB 675. *Home schooling; qualifications of instructor.*** Amendment modifies the authority of parents with high school diplomas to conduct home schooling to require that such a parent achieve a composite score on PRAXIS I or SAT I that is equal to the composite score required for licensure of beginning teachers or a score above the 50th percentile in English and mathematics on a national standardized

test approved by the Department of Education.

**HB 751. *Civil unions.*** The Governor's amendments strike the references to a partnership contract and "other arrangement" and the references to making void any contractual rights associated with those. Including partnership contracts and other arrangements in the bill's prohibitions implicates Article 1, Section 10 of the U.S. Constitution by deeming void contractual rights associated with existing partnership contracts and other arrangements. It also implicates the Equal Protection Clause by prohibiting partnership contracts and other arrangements between two people of the same sex while permitting such contracts between men and women. Without the amendments, the bill's effect might be to preclude business partners of the same sex from being able to enter into a business partnership agreement outlining the division of property upon dissolution of the partnership, or to render void medical directives designating a friend of the same sex to make necessary medical decisions or joint bank accounts with rights of survivorship by a mother and a daughter.

**HB 754. *Limited liability companies; exercise of eminent domain.*** Eliminates the requirement that the State Corporation Commission, before it may authorize a limited liability company that obtained a certificate of public convenience and necessity prior to July 1, 2004, to exercise eminent domain powers, find that (i) the limited liability company's use of such powers is appropriate for, and will be limited to, its acquisition of or entry upon properties or interests therein that are necessary for providing certificated telecommunications service, and (ii) the public convenience and necessity require the exercise by the limited liability company of such powers. The SCC will continue to be required to find that granting such authority is in the public interest, but it shall not impose on such limited liability company any different duty or standard than is currently placed on

certificated corporations. The SCC is required to act on such a petition within 90 days of its filing, which period may be extended for 30 days. The SCC may conduct a hearing on the petition if the public interest so requires. The provision that had barred a limited liability company from condemning property on which it previously is alleged to have trespassed is proposed to be limited to property that is the subject of a court proceeding filed on or before December 31, 2004. An amendment would also eliminate the requirement that the SCC find, after notice and an opportunity for a hearing, that one of the grounds for avoiding this limitation on condemnation authority, which include the dismissal of the suit, payment of damages, or settlement, has been satisfied.

**HB 817. *Disability Commission.*** Amendment clarifies in the purpose statement of the commission that disabilities include physical and sensory disabilities.

**HB 837. *Election laws; changes related to voting equipment and technology.*** Revises the provision on taking portable voting equipment to the curbside for disabled voters (i) by allowing the chief or the assistant chief officer of election, instead of two officers, to take equipment outside the polling place and (ii) by adding requirements for documenting the procedures followed.

**HB 862. *Cigarettes; affixing stamps and reporting requirements.*** Amendments implement uniform language concerning the release of escrow funds to cigarette manufacturers that are not participating manufacturers under the Master Settlement Agreement. Amendments also include an emergency clause.

**HB 1015. *Family life education.*** Technical and clarifying amendment.

**HB 1043. *Competitive Government Act.*** Removes the requirement that the examination of commercial activities performed by state agencies be conducted consistent with the preparation of the biennial budget.

**HB 1058. *Criminal forfeiture provisions.*** Technical amendments.

**HB 1112. *Charter; City of Harrisonburg.*** Deletes the provision that would allow the city council to remove the mayor from the office of mayor by unanimous vote of the remaining council members.

**HB 1123. *RICO.*** Technical amendments.

**HB 1124. *Surplus real property.*** Requires all state departments, agencies and institutions to submit land use plans to the Division of Engineering and Buildings by September 1 of every year. The plans must be approved by the state entity's governing board, or agency head if there is no governing board, and shall be developed based on guidelines established by the division. A second enactment clause requires the division to seek the input of all state entities owning real property or having control over real property in developing the land use plan guidelines. The substitute also requires the division to (i) include in its criteria for determining whether a property under the control of state entities is surplus a provision stating the governing board or agency head must approve the designation of property under its control as surplus, and (ii) submit a report containing certain information regarding the land use plans to the Chairmen of the House Appropriations and Senate Finance Committees by October 1 of every year.

**HB 1137. *Nonpayment of certain payments.*** Technical amendments.

**HB 1143. *Trauma Center Fund.*** Amendments increase from \$25 to \$50 the criminal fine imposed upon

any person convicted of two or more DUI-related offenses within 10 years. The \$25 fine was adopted by the 2004 General Assembly for the purpose of defraying the costs of providing emergency medical care to victims of automobile accidents attributable to alcohol or drug use. The Governor's amendments also change the administration of the Trauma Center Fund from the Department of Rehabilitative Services to the Department of Health.

**HB 1231. *Collegial bodies.*** Adjusts the membership of the Advisory Board of Economists and the Advisory Council on Revenue Estimates and eliminates the requirement for these collegial bodies to elect a chairman and vice chairman. The membership of the Advisory Board of Economists is changed from a set membership of 11 members to 15 members. Under existing law, the membership has a ceiling of 15 members. The membership change to the Advisory Council on Revenue reinserts existing law that provides for an open-ended membership consisting of at least 25 members. Other amendments are technical.

**HB 1264. *Notice of sale by trustee.*** Amendment allows the notice of sale that a trustee must give to the present lienholder, any subordinate lienholder, and other interested parties to be a copy of the executed and notarized appointment of substitute trustee. The bill passed by the General Assembly required that the notice include the instrument number or deed book and page numbers of the instrument of appointment for the trustee or substitute trustee. This amendment will allow either to serve as notice.

**HB 1314. *ABC stores; Sunday sales.*** Eliminates the requirement that the Alcoholic Beverage Control Board adopt regulations to implement the Sunday sales by certain ABC stores.

**HB 1376. *Collection of tolls adjusted to encourage off-peak highway travel.*** The amendments broaden

the scope of the bill to include non-VDOT-controlled toll facilities and additional variables of vehicle speed and vehicle type. Toll-rate adjustments are to be made so as to minimize reduction in toll revenues generated.

**HB 1430. *Drug Treatment Court Act.*** Eliminates language making the Drug Treatment Court Act conditional upon funding in the budget bill.

**HB 1480. *Virginia-Asian Advisory Board.*** Technical amendments.

**SB 94. *Election laws; voting equipment at the polling place.*** Revises the provision on taking portable voting equipment to the curbside for disabled voters (i) by allowing the chief or the assistant chief officer of election, instead of two officers, to take equipment outside the polling place and (ii) by adding requirements for documenting the procedures followed.

**SB 145. *Licensure and suspension of teachers.*** Amendment allows school boards to hear a recommendation for teacher dismissal and to determine whether it will recommend license revocation to the Board of Education in a separate hearing or as part of a grievance hearing before a fact-finding panel or school board.

**SB 202. *DUI; refusal.*** Technical amendment.

**SB 208. *Child support.*** Technical amendments to ensure conformity with other Code sections the enrolled bill did not amend and to correct the date involved in the bill's changing the current triennial review of the child support guideline to a quadrennial review.

**SB 298. *Conservators of the peace; special agents of the Department of Homeland Security.*** Adds an emergency clause.

**SB 313.** *See* HB 837.

**SB 318.** *Adult Protective Services.* Adds a substantive provision to the mandated reporting section of Adult Protective Services law by stipulating that criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the agency investigating the suspected adult abuse, neglect or exploitation, nor shall they be subject to public disclosure. Other amendment is technical.

**SB 319.** *See* HB 1.

**SB 326.** *Concealed weapons.* Removes any game warden retired from the Department of Game and Inland Fisheries and any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission from the list of law enforcement officers and agents who, if they are terminated for cause, are not exempt from the requirement for a concealed handgun permit.

**SB 329.** *DUI; refusal.* Deletes language so that the provisions of SB 202 can be effectuated.

**SB 333.** *Writ of actual innocence.* Removes provision that only one writ for a single conviction may be filed by a petitioner.

**SB 337.** *Health records.* Reinstates the current fee provision for copies of hospital, nursing facility, physician's, or other health care provider records or papers requested by a patient, his attorney or an authorized insurer.

**SB 381.** *See* HB 817.

**SB 550.** *Family abuse.* Technical amendment to accommodate the provisions of SB 236 and HB 1233.

**SB 573.** *Professional licensees.* Provides an extension of the expiration of any license, permit or

certificate issued by certain state regulatory entities and held by a citizen of the state if the expiration is scheduled to occur when the citizen is on active military duty outside of the United States. In addition, the amendments provide that any requirements for the renewal or maintenance of the license permit or certificate shall not have to be met by the citizen during the period of active military duty outside of the United States. The extension of the expiration is limited to 60 days after the citizen returns to the United States but may not exceed five years from the date of the scheduled expiration of the license, permit or certificate.

**SB 591.** *Economic Development Partnership Authority.* The amendments change the five additional members of the Virginia Economic Development Partnership that were appointed by the General Assembly to be appointed by the Governor and the Chairman of the Tobacco Indemnification and Community Revitalization Commission. The Governor would appoint three citizens each who must have served as either a chief executive officer, a chief financial officer or a senior executive officer of a company employing at least 50 Virginians. The Chairman would appoint one citizen each from the Southside and Southwest regions of the state

**SB 606.** *State-owned bottomlands.* Technical amendments.

**SB 628.** *Sickness and Disability Program.* Technical amendments.

**SB 661.** *Certain restrictions on real property in Virginia Beach.* Changes the approximate acreage from 1.068 acres to 18 acres for provisions stating that any municipal or recreational purpose restriction placed on certain real property, located wholly or in part in Virginia Beach, acquired by the Commonwealth shall be satisfied if the property is used for tourism purposes that benefit the locality's tourism industry.

**SB 670.** *U.S. Route 29 bypass at Charlottesville.* Provides that the bill's

provisions expire when **both** (i) an alternative long-range plan is developed and approved that provides a level of service on U.S. Route 29 that exceeds the level of service achieved by the long-range plan that included a U.S. Route 29 bypass and (ii) the Commonwealth Transportation Board, by a unanimous vote, allocates funds, through the Six Year Improvement program, for preliminary engineering, rights-of-way, or construction of those improvements that provide a level of service on Route 29 that exceeds the level of service achieved by a Route 29 bypass.

**SB 685.** *Communicable diseases of public health threat; quarantine and isolation.* Two technical amendments.

## Vetoes

**HB 535.** *Big Sandy River watershed; provisions for removing obstructions.* The Governor vetoed the bill because of unintended consequences regarding enforcement actions that would be taken against persons who dump refuse in or obstruct any tributary of the Big Sandy River.

**HB 1201.** *Procurement from commercial vendors; regulations for outsourcing.* The Governor stated that HB 1201 is not necessary because its provisions are addressed in the more comprehensive HB 1043.

The General Assembly adopted the Governor's recommendations for the following bills during the 2004 Regular Session:

**HB 199.** *Group life and accident insurance.*

**HB 448.** *Real Estate Time-Share Act.*

**HB 577.** *Health professionals.*

**HB 635.** *Assisted living facilities.*

**HB 877.** *Health records.*

**HB 878.** *Health records.*

**HB 879.** *Health records.*