

Session Highlights

2012

Updated after the Reconvened Session



The 2012 *Session Highlights* summarizes significant legislation considered by the 2012 General Assembly as selected by the staff of the Virginia Division of Legislative Services. The brief overview of the General Assembly Session reflects legislative actions through the Reconvened Session and the Governor's 30-day review period.

ABC

Passed

Alcoholic beverage control; outdoor advertising. Requires all outdoor advertising of alcoholic beverages to be in compliance with ABC law, ABC board regulations, and VDOT law and regulations concerning outdoor advertising.

Business

Passed

Workers' Compensation. Excludes a person who suffers an injury on or after July 1, 2012, from coverage under the Virginia Workers' Compensation Act if there is jurisdiction under either the Longshore and Harbor Workers' Compensation Act or the Merchant Marine Act of 1920.

Cable television systems and telecommunications service provider attachments to poles of electric cooperatives. Authorizes the State Corporation Commission to determine just and reasonable rates, and certain terms and conditions of service, for attachments to electric cooperative poles by telecommunications service providers and cable television systems.

Renewable energy portfolio standard program; credits for investments. Allows any investor-owned electric utility that participates in the renewable energy portfolio standard program to meet up to 20 percent of an RPS Goal through certificates evidencing the utility's

expenses in conducting research and development activities in Virginia related to renewable or alternative energy sources if certain conditions are met.

Fire insurance; coverage for costs of services by volunteer fire departments. Requires fire insurance policies to provide coverage, with limits not less than \$250, for the cost charged by a volunteer fire department that is not fully funded by real estate or property taxes for service charges when the fire department is called in to save or protect property insured under the policy.

Carried Over

Electric utilities; retail competition; purchases from net metering sellers. Authorizes individual retail customers who are eligible customer-generators under Virginia's net energy metering program to purchase electricity provided 100 percent from renewable energy exclusively for their own consumption from a net metering seller.

Virginia Health Benefit Exchange. Creates the Virginia Health Benefit Exchange, which will be established and operated by a new division within the State Corporation Commission.

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Constitutional Amendments

Passed

Constitutional amendment (voter referendum); talking or damaging of private property; public use. Provides for a referendum at the November 6, 2012, election to approve or reject an amendment that revises the prohibition on the enactment by the General Assembly of eminent domain laws whereby private property may be taken or damaged and expands on the definition of just compensation.

Courts & Civil Law

Passed

Rules of Evidence; adoption. Provides that the Rules of Evidence that have been prepared and adopted by the Supreme Court of Virginia and approved by the Virginia Code Commission shall take effect on July 1, 2012. A rule derived from an evidentiary provision in the *Code of Virginia* shall note such *Code* section in the title of the rule. Subsequent amendments or additions to the Rules of Evidence must be adopted by the Supreme Court of Virginia by November 15 and shall become effective on July 1 of the following year unless the General Assembly modifies or annuls such amendments or additions by general law.

Use of affidavits in no-fault divorce cases. Allows parties to submit evidence supporting the grounds for a no-fault divorce by affidavit or deposition, without leave of court, in lieu of oral testimony in certain conditions.

Adoption procedures. Makes various changes to adoption procedures. The measure also makes changes to the process of registering with the Putative Father Registry.

Winter Sports Safety Act. Limits the liability of ski resorts and other winter sports area operators when death, personal injury, or property damage is caused by an inherent risk of participating in a winter sport.

Action for death by wrongful act; fetal death. Creates a cause of action for the death of a fetus caused by the wrongful act, neglect, or default of any person, ship, vessel, or corporation. No cause of action for the death of the fetus may be brought against the natural mother of the fetus.

Failed

Foreclosure; use of false records, documents, or statements. Provides that any person who knowingly makes, uses, or causes to be made or used a false or fraudulent record, document, or statement in support of any foreclosure shall be liable to the injured party.

Criminal Justice

Passed

DUI ignition interlock limitations. Provides that a person who is convicted of DUI may drive only with an ignition interlock after the first offense, as a condition of a restricted license, and is required to have an ignition interlock installed in each vehicle owned by or registered to him after a second offense.

Methamphetamine precursors; sale and tracking; penalties. Requires the Department of State Police to enter into a memorandum of understanding to establish the Commonwealth's participation in a real-time electronic recordkeeping and monitoring system for the nonprescription sale of ephedrine or related compounds. The measure is effective January 1, 2013.

Sex crimes; penalties. Imposes upon an adult offender a mandatory minimum life sentence for rape, forcible sodomy, and object sexual penetration of a child under the age of 13.

Penalty for subsequent offenses of drug trafficking. Adds a mandatory minimum term of confinement of three years for a second or subsequent conviction of manufacturing, selling, giving, distributing, or possessing with intent to distribute a Schedule I or II drug (existing law is five to life with no mandatory minimum) and increases the mandatory minimum term for a third or subsequent conviction from five years to 10 years.

Unlawful detention of United States citizens. Provides that no agency of the Commonwealth, political subdivision of the Commonwealth, employee of either acting in his official capacity, or member of the Virginia National Guard or Virginia Defense Force, when such member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty, shall knowingly aid an agency of the armed forces of the United States in the detention of any citizen pursuant to the National Defense Authorization Act for Fiscal Year 2012 if such aid would knowingly place any state agency, political subdivision, employee of such state agency or political subdivision, or member of the Virginia National Guard or the Virginia Defense Force in violation of the United States

Constitution, the Constitution of Virginia, any provision of the Code of Virginia, any act of the General Assembly, or any regulation of the Virginia Administrative Code. The act does not apply to participation by state or local law enforcement or Virginia National Guard or Virginia Defense Force in joint task forces, partnerships, or other similar cooperative agreements with federal law enforcement as long as they are not for the purpose of participating in such detentions.

Failed

Arresting officer to ascertain citizenship of arrestee. Requires that an arresting officer ask an arrestee whether he is in the country legally. The measure also provides that when a law-enforcement officer believes that the person is not legally present in the United States, he shall communicate to the judicial officer the facts and circumstances underlying his belief.

Sex offender registry; juvenile registration. Requires registration on the sex offender registry for juveniles who were over the age of 13 at the time of the offense who were adjudicated delinquent on or after July 1, 2012, (a House version set July 1, 2005, as the date of adjudication) of rape, forcible sodomy, or object sexual penetration.

Carried Over

Castle doctrine. Encodes a version of the “castle doctrine,” which allows a person in his dwelling to use physical force, including deadly force, against an intruder in the dwelling who has committed an overt act against him or another person who is lawfully in the dwelling.

Education

Passed

Public schools; possession and administration of epinephrine. Requires local school boards to adopt and implement policies for the possession and administration of epinephrine in every school. The Governor’s amendments adopted by the General Assembly at the Reconvened Session clarify that the timeline for local school boards to adopt and implement those policies is by the beginning of the 2012-2013 school year.

Online courses; teacher licensure. Requires the Board of Education to develop licensure criteria for teachers who teach only online courses.

Failed

School calendar. Makes local school boards responsible for setting the school calendar and determining the opening of the school year and eliminates the post-Labor Day opening requirement and “good cause” scenarios for which the Board of Education may grant waivers of this requirement.

Nonpublic school students; participation in interscholastic programs. Prohibits public schools from joining an organization governing interscholastic programs that does not allow certain students to participate.

Public schools; virtual education. Provides that any student who enrolls full time in a virtual school program served by a multidivision online provider outside his school division of residence shall have his state share of Standards of Quality per pupil funding, as well as 76 percent of his local share, transferred from the school division of residence to the enrolling school division.

Public schools; residency of children in kinship care. Allows a child receiving kinship care from an adult relative to enroll in the school division where the kinship care provider resides. The measure also allows local school divisions to require one legal parent and the kinship care provider to sign affidavits detailing the kinship care arrangement as well as a power of attorney authorizing the close relative to make educational decisions regarding the child. The General Assembly passed the measure. A rejected Governor’s amendment to the measure would have allowed local school divisions to require a court order, rather than a power of attorney, to authorize the adult relative to make educational decisions regarding the child. The Governor vetoed the bill.

Carried Over

Public schools; teacher contract and evaluation policies. Makes several changes to the processes by which teachers and certain administrators are evaluated and retained.

Elections

Passed

Voter identification requirements; provisional ballots. Eliminates the provision that allows a voter to sign a sworn statement that he is the named registered voter he claims to be in lieu of showing identification. A voter without identification will be offered a provisional ballot and be told that he may submit a copy of one of the required forms of identification to the electoral board in person or by facsimile, electronic mail, or other means.

The bill expands the list of acceptable forms of identification to include a valid student identification card issued by a Virginia institution of higher education and certain other documents that show his name and address. The General Assembly approved Governor's amendments at the Reconvened Session that (i) expanded the list of acceptable identification documents to include student IDs from two-year colleges, (ii) deleted a provision that a voter may vote at the polling place without identification if he is known and recognized by an officer of election, and (iii) specified that a voter without identification has three days after the election to submit identification to the electoral board. The General Assembly rejected recommendations that would have provided for a signature comparison of the voter's signatures on file with the registrar and on the provisional ballot envelope in lieu of submission of a voter identification document. The Governor signed the amended bill.

Failed

Absentee voting; application by electronic mail or other electronic means. Provides that the State Board of Elections shall implement a system to accept absentee ballot applications electronically.

General Laws

Passed

Virginia Personnel Act. Provides a preference in state government hiring for members of the Virginia National Guard.

Virginia Personnel Act. Provides a preference in state government hiring for the spouses and children of veterans who were killed in the line of duty.

Failed

Virginia Public Procurement Act. Allows a locality to give a procurement preference to persons, firms, or corporations having principal places of business in the locality if such bidder's bid is within five percent of the lowest bid.

Virginia Public Procurement Act. Authorizes any locality to include in its contracts a provision requiring the contractor to ensure that a specified percentage, not to exceed 20 percent, of the work under the contract be performed by residents of the locality.

Virginia Public Procurement Act. Authorizes localities to apply a preference for bidders or offerors located in the locality of up to 10 percent, provided certain conditions are met.

Pawnbrokers. Requires pawnbrokers to take a digital image of (i) the person involved in the transaction, (ii) the form of identification used by the person involved in the transaction, and

(iii) the article or thing pawned or pledged or received on account of money loaned.

Carried Over

Virginia Public Procurement Act. Provides a bid match preference for Virginia business. Under the measure, a Virginia business has an opportunity to match the lowest bid of an out-of-state bidder if the bid of a Virginia business is within five percent or \$10,000 of the lowest bid of an out-of-state bidder, whichever is less.

Health

Passed

Abortion; informed consent. Requires that, as a component of informed consent to an abortion, to determine gestational age, every pregnant female shall undergo transabdominal ultrasound imaging and be given an opportunity to view the ultrasound image of her fetus prior to the abortion. The medical professional performing the ultrasound must obtain written certification from the woman that the opportunity was offered and whether the woman availed herself of the opportunity to see the ultrasound image or hear the fetal heartbeat. A copy of the ultrasound and the written certification shall be maintained in the woman's medical records at the facility where the abortion is to be performed. The ultrasound is not required if the woman is the victim of rape or incest and the incident was reported to law enforcement.

Health insurance; parity of coverage for oral chemotherapy medications. Requires health insurers, health care subscription plans, and health maintenance organizations whose policies provide coverage for cancer chemotherapy treatment to provide the same coverage without a higher copayment, deductible, or coinsurance amount for prescribed, orally administered anticancer medication as it does intravenously administered or injected anticancer medications. The mandate will apply to the state employees' health insurance plan and to the local choice health program.

Virginia All-Payer Claims Database; creation. Establishes the Virginia All-Payer Claims Database system. The measure also creates the Advisory Board on Health Care Data Reporting to assist the Board of Health in developing regulations implementing the All-Payer Claims Database.

Practice of nurse practitioners; patient care teams. Provides that nurse practitioners will only practice as part of a patient care team and makes other amendments governing the practice of nurse practitioners.

Vital records; records becoming public. Makes changes to when birth, death, marriage, or divorce records become public information. The measure also provides for the redaction of social security numbers from publicly available records.

Carried Over

Licensure of dietitians. Requires the Board of Medicine to promulgate regulations for the licensure of dietitians in the Commonwealth.

Rights of unborn children. Provides that unborn children at every stage of development enjoy all the rights, privileges, and immunities available to other persons, citizens, and residents of the Commonwealth, subject only to the laws and Constitutions of Virginia and the United States, precedents of the United States Supreme Court, and provisions to the contrary in the statutes of the Commonwealth.

Human papillomavirus vaccination. Eliminates the requirement for vaccination against human papillomavirus for female children.

Local Government

Passed

Urban development areas. Makes designation of urban development areas optional for all localities. Currently urban development areas are mandatory for many higher growth localities.

Militia and Police

Passed

Concealed handgun permit applications; fingerprints. Removes the option for a locality to require that an applicant for a concealed handgun permit submit fingerprints as part of the application.

Purchase of handguns; eliminate limitation on handgun purchases. Eliminates the prohibition on purchasing more than one handgun in a 30-day period.

Failed

Firearms; alcohol; penalties. Provides that it is a Class 1 misdemeanor for a person who is under the influence of alcohol or illegal drugs to carry a loaded firearm in a public place and that a person found guilty is ineligible to apply for a concealed handgun permit for a period of five years.

Transfer of firearms; criminal records check. 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.

Natural Resources

Passed

Nutrient Trading Act. Directs the Virginia Soil and Water Conservation Board to adopt regulations governing the certification of certain nutrient credits. The General Assembly adopted technical Governor’s amendments at the Reconvened Session.

Integration of agencies’ programs. Integrates elements of the Erosion and Sediment Control Act, the Stormwater Management Act, and Chesapeake Bay Preservation Act so that these regulatory programs can be implemented in a consolidated and consistent manner, resulting in greater efficiencies (one-stop shopping) for those being regulated. The measure also eliminates the Chesapeake Bay Local Assistance Board and places its responsibilities with the Virginia Soil and Water Conservation Board. The General Assembly adopted technical Governor’s amendments at the Reconvened Session.

Development Fund. Creates the Governor’s Agriculture and Forestry Industries Development Fund. The measure establishes an economic development grant and loan program targeted specifically at agricultural and forestry operations.

Use of mine voids. Provides that any coal remaining and any void left by the removal of coal remain the property of the owner or lessee of the mineral estate.

Failed

Trap, Neuter, and Return Programs. Permits a pound, animal shelter, or humane society to operate a program of trapping, vaccinating, and sterilizing feral cats before returning them to the sites where they were trapped.

Hunting on Sundays. Allows the hunting of wild birds or wild animals including nuisance species on Sundays in certain instances. However, a person is prohibited from hunting on Sunday within 250 yards of a place of worship or hunting deer on Sunday with the assistance of dogs.

Carried Over

Dangerous wild animals. Makes it a Class 1 misdemeanor to privately possess, sell, transfer, or breed dangerous wild

animals. The measure would grandfather in the ownership of any existing lawful dangerous wild animals if certain conditions are met.

Bond issuance for wastewater treatment facilities and combined sewer overflow projects. Authorizes the Virginia Public Building Authority to issue an additional \$378 million in bonds to continue installing nutrient removal technology in eligible wastewater treatment facilities to comply with the Chesapeake Bay TMDL and the Watershed Improvement Plan.

Penning of fox and coyote; penalty. Makes it a Class 1 misdemeanor for any person to pen a fox or coyote with dogs. It is also a Class 1 misdemeanor to pursue, hunt, or kill or attempt to pursue, hunt, or kill a fox or coyote with dogs within a pen.

Retirement

Passed

Virginia Retirement System; hybrid defined contribution and defined benefit retirement program. Creates a new hybrid retirement program, administered by the Virginia Retirement System, that contains a defined contribution and a defined benefit component. All new state employees, local employees, and judges commencing employment on or after January 1, 2014, would be required to participate in the hybrid plan. Employees in service on December 31, 2013, would be given the opportunity to make a one-time, irrevocable election to participate in the new hybrid program. The bill also creates a disability program for local employees participating in the hybrid plan. The bill also makes adjustments to the existing defined benefit plan for nonvested employees, including lowering the retirement benefit multiplier from 1.7 to 1.65 and capping the cost-of-living adjustment at three percent. Any person with less than 20 years' service who takes early retirement would not receive a cost-of-living adjustment until one year after he reaches normal retirement age. The Governor's amendments adopted by the General Assembly at the Reconvened Session require participation in the disability plan by local government employers unless the governing body of the employer adopts a resolution opting out of the plan because it provides or will establish a disability plan with comparable benefits. The adopted Governor's amendments also make several technical changes.

Failed

Virginia Retirement System; fiscal impact analysis of employer contribution rates. Requires the Board of the Virginia Retirement System to conduct a fiscal impact analysis whenever

the appropriation for employer contribution rates included in the budget bill submitted by the Governor to the General Assembly is less than the Board-certified contribution rate, or when either house of the General Assembly adopts an amendment to the budget appropriating less than the Board-certified contribution rate.

Social Services

Passed

Suspected child abuse and neglect; mandatory reporting; penalties. Adds certain individuals to the list of those required to report suspected child abuse or neglect and reduces the time limit for reporting suspected child abuse or neglect by mandated reporters from 72 hours to 24 hours. The Governor's amendments adopted by the General Assembly at the Reconvened Session add language limiting mandated reporting of suspected child abuse or neglect by a person associated with or employed by a public or private organization responsible for the care, custody, or control of children to individuals who are 18 years of age or older. The Governor's amendments also clarify that the mandated reporting requirement for any person who has received training approved by the Department of Social Services for such purpose applies to individuals who are 18 years of age or older, rather than individuals over the age of 18 years, as the enrolled bill was written.

Child-placing agency; conscience clause. Provides that, to the extent allowed by federal law, no private child-placing agency shall be required to perform, assist, counsel, recommend, consent to, refer, or participate in any placement of a child for foster care or adoption when the proposed placement would violate the agency's written religious or moral convictions or policies.

Failed

Contracts with child-placing agencies. Prohibits the Department of Social Services from contracting with or funding child-placing agencies that discriminate in providing placement services to children or prospective parents.

Carried Over

Substance abuse screening and assessment of public assistance applicants and recipients. Requires local departments of social services to screen each VIEW program participant to determine whether probable cause exists to believe the participant is engaged in the use of illegal substances. If a screening indicates reasonable cause to believe a participant is using illegal substances, the local department of social services will require a formal substance abuse assessment of the participant, which may include drug testing.

Taxation

Passed

Transportation construction, operation and maintenance, and funding. Provides for the construction, maintenance, and funding of transportation by (i) increasing transportation's share of year-end surpluses to 67 percent and (ii) authorizing the Commonwealth Transportation Board (CTB) to name highways, bridges, interchanges, and other transportation facilities for private entities if an annual naming rights fee is paid, with the revenue dedicated to highway maintenance and operation. The bill also charges the CTB with greater responsibilities involving integration of land use and transportation planning and authorizes the CTB to withhold federal and state funds for certain local or regional capital improvement projects if those projects are inconsistent with the Statewide Transportation Plan or the Six-Year Improvement Program. Provision is made for use of "revenue-sharing" funds for secondary highway system maintenance projects carried out by local governments. The bill provides for special allocations by the CTB for bridge reconstruction, high priority highway projects, and reconstruction of highways with particularly deteriorated pavements. Finally, the bill establishes an annual \$50 license tax for electric motor vehicles registered in the Commonwealth.

Retail sales and use tax; presumption for registration for collection of the tax. Creates a legal presumption to require certain out-of-state dealers who are connected to certain activities in the Commonwealth to collect and remit sales and use tax to the Commonwealth on sales to Virginians.

Real property tax exemption for disabled veterans. Provides that the tax exemption for the primary residence of a disabled veteran, a disabled veteran and his spouse, or a surviving spouse of a disabled veteran includes real property held in certain trusts.

Tax credits; assistance to low-income families, scholarships for K through 12 students attending private schools. Establishes a credit beginning in taxable year 2013 for those donating to nonprofit organizations that provided education improvement scholarships to certain students. The measure also expands the current Neighborhood Assistance Act Tax Credit program. The General Assembly rejected a Governor's amendment at the Reconvened Session that would have provided that eligible scholarship students may attend any eligible nonpublic school and allowed a parent to transfer a scholarship to any other eligible nonpublic school of the parent's choice and adopted amendments that (i) increase from 60 to 180 the number of days in which a person who has received preauthorization for a tax credit can complete the monetary donation to a nonprofit organization prior to the preauthorization expiring, (ii) require nonprofit organizations providing education improvement scholarships to develop procedures for disbursing scholarships in

quarterly payments throughout the school year, and (iii) remove the annual \$175,000 cap on tax credits that business entities and corporations are allowed to earn under the Neighborhood Assistance Act Tax Credit program to parallel the nonexistence of an annual cap on tax credits for businesses entities and corporations under the Education Improvement Scholarship Tax Credit program. The Governor signed the amended bill.

Roll-your-own cigarette machines. Declares that any person who maintains, operates, or rents a roll-your-own cigarette machine at a retail establishment for consumer use is a manufacturer of cigarettes, and resulting products from the machine are cigarettes.

Failed

Intangible personal property tax; machinery and tools. Classifies as intangible personal property, and therefore subject solely to state taxation, machinery and tools purchased on or after July 1, 2012, that have not been in service for more than three years.

Transportation

Passed

Overweight vehicle permits and fees. Provides a uniform method of assigning cost-based fees based on the amount that a vehicle is overweight. The measure has a delayed effective date of January 1, 2013.

Emissions inspections. Privatizes services now provided by the Department of Environmental Quality related to vehicle emissions inspections. The measure also updates authorized testing equipment, and allows use of wireless systems and on-road emissions testing. The measure also has a delayed effective date. The General Assembly adopted technical Governor's amendment at the Reconvened Session.

Driving two abreast in a single lane. Allows two-wheeled motorcycles to drive two abreast in a single lane.

HOV lanes; use by vehicle with clean special fuel license plates. Requires the Commissioner of Highways to report annually to the Chairmen of the House and Senate Transportation Committees on those HOV facilities whose high traffic volume has resulted in a degraded condition as identified by federal law. The Governor's amendment adopted by the General Assembly at the Reconvened Session provides that use of HOV lanes by clean fuel vehicles is only permitted "provided such use is in compliance with federal law."

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Offenders required to register prohibited from operating certain charter buses. Provides that no person required to register on the Sex Offender and Crimes Against Minors Registry shall be permitted to operate a charter bus used to transport children to and from day care and certain children's activities.

Failed

Uninsured motor vehicles; fees. Raises the uninsured motor vehicle fee from \$500 to \$600.

Commonwealth Tolling Assistance Program. Establishes a program that would allow certain low-income students to receive an electronic tolling transponder without paying a deposit.

Carried Over

Commonwealth Transportation Board (CTB); composition. Changes the composition of the CTB so that one member will be appointed from each of Virginia's congressional districts and three more will be at-large appointees.

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