

Session Highlights

2011



The 2011 *Session Highlights* summarizes significant legislation considered by the 2011 General Assembly as selected by the staff of the Virginia Division of Legislative Services. The brief overview of the General Assembly Session covers legislative actions through sine die on Sunday, February 27, 2011.

ABC

Passed

Alcoholic beverage control; banquet licenses; exception. The measure provides that no banquet license shall be required for private meetings or private parties limited in attendance to members of a common interest community and their guests provided certain conditions are met.

Business and Employment

Passed

Unemployment compensation; Social Security offset. The measure eliminates the requirement that unemployment compensation benefits be reduced by 50 percent of the amount of the claimant's Social Security Act or Railroad Retirement Act retirement benefits in years when the solvency level of the unemployment trust fund is less than 50 percent.

Electric utility service terminations; customers with a serious medical condition. The measure directs the State Corporation Commission to establish limitations on the authority of electric utilities to terminate electric service to the residence of a customer who has a serious medical condition or resides with a family member with a serious medical condition. The Commission is further directed to adopt regulations, by October 31, 2011, to implement the limitations.

Telecommunications services; regulation. The measure eliminates certain requirements applicable to competitive telecommunications services. The requirement that competitive services be offered for sale under a filed tariff is eliminated. The State Corporation Commission shall permit, but may not mandate, the detariffing of

any or all terms, conditions, or rates for retail telephone service not found prior to January 1, 2011, to be a basic local exchange telephone service. After July 1, 2013, the Commission shall permit, but may not mandate, the detariffing of any or all terms, conditions, or rates for any or all retail telephone services. The measure makes numerous other changes to telecommunications services.

Health insurance; mandated coverage for autism spectrum disorder. The measure requires health insurers, health care subscription plans, and health maintenance organizations to provide coverage for the diagnosis of autism spectrum disorder (ASD) and treatment for ASD in individuals from age two to six, subject to an annual maximum benefit of \$35,000 of coverage for applied behavior analysis. This requirement does not apply to individual or small group policies, contracts, or plans. The mandate will also apply to the state employees' health insurance plan and to the local choice health program.

Failed

Motor vehicle title loans, payday loans, and open-end credit plans; interest rate. The measure caps the rate of interest that may be charged on motor vehicle title loans, payday loans, and open-end credit plans at 36 percent per year.

Foreclosure procedures. The measure makes various changes to procedures for foreclosure, including requiring additional documentation showing the right of the beneficiary to request foreclosure, altering the requirements for providing notice prior to a foreclosure sale, and imposing additional fiduciary duties on the trustee. The measure also provides that violating foreclosure provisions is a prohibited practice under the Virginia Consumer Protection Act.



Constitutional Amendments

Passed

Constitutional amendment (first resolution); taking or damaging of private property; eminent domain; public use. The measure provides that private property can be taken or damaged only for a public use, only with just compensation to the owner, and only so much taken as is necessary for the public use. Just compensation must equal or exceed the value of the property taken. A taking of private property is for a public use when the taking relates to the authorized provision of utility, common carrier, or railroad services. In all other cases, a taking or damaging of private property is not for public use if the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development, except for the elimination of a public nuisance existing on the property.

Failed

Constitutional amendment (first resolution); restoration of civil rights. The measure authorizes the General Assembly to provide by law for the restoration of civil rights for persons convicted of nonviolent felonies who have completed service of their sentences subject to the conditions, requirements, and definitions set forth in that law.

United States Constitution; amendment. The measure makes application to the United States Congress to call a constitutional convention for the purpose of proposing an amendment that permits the repeal of any federal law or regulation by the vote of two-thirds of the state legislatures.

Corrections

Passed

Local prisoner programs; workforces in certain cemeteries. The measure allows workforces to assist with maintaining privately owned, abandoned cemeteries.

Corrections; use of inmate labor. The measure authorizes the use of inmate labor at rest areas along the Interstate Highway System.

Failed

Rehabilitative programming; earned sentence credits. The measure allows prisoners to earn 10 additional sentence credits for each 30 days of incarceration for participation in certain programs.

Courts and Civil Law

Passed

Homestead exemptions. The measure adds one family firearm, not to exceed \$3,000 in value, to the list of items that every householder shall be entitled to hold exempt from

creditor process. The measure also increases the maximum exemption for a motor vehicle from \$2,000 to \$6,000.

Military parents; delegation of visitation rights. The measure provides that in cases involving a parent who is a member of the military and who has been deployed on active duty, a court may enter an order (i) delegating the deploying parent's visitation rights with a child to a family member of the deploying parent or (ii) awarding visitation rights to a family member of the deploying parent if the parent had physical custody of the child prior to the deployment and physical custody is awarded to the nondeploying parent or his family during the deployment.

Jurisdictional limits of courts. The measure increases from \$15,000 to \$25,000 the maximum civil jurisdictional limit of general district courts.

Equitable distribution; marital debts. The measure provides that for purposes of equitable distribution in divorce actions, the court is required to classify debts of the parties as either marital or separate. The measure defines what constitutes a marital debt and a separate debt for purposes of classification and establishes how a party may rebut such a classification.

Medical malpractice cap. The measure sets the maximum amount recoverable in a medical malpractice action arising from an act or acts of malpractice occurring on or after July 1, 2012, at \$2.05 million. Currently the limit is \$2 million. The \$2.05 million limit will increase by \$50,000 annually each July 1 thereafter until July 1, 2031, which shall be the final annual increase.

Failed

Determinations of child support. The measure provides that a court shall make a determination of child support and enter an order to that effect at the initial court date on any initial petition for support, provided that the court has sufficient evidence to make such a determination, if the petitioner demonstrates that certain conditions have been met.

Best interests of the child. The measure provides that when a court has jurisdiction to resolve a dispute between parents as to how a child shall be educated, there shall be a rebuttable presumption that it is in the child's best interests to remain in the last educational setting to which both parents agreed.

Criminal Justice

Passed

Reckless driving; failing to stop at a school bus. The measure provides that a driver is guilty of reckless driving who

fails to stop, when approaching from any direction, at any school bus that is stopped for the purpose of taking on or discharging children, etc., and to remain stopped until all the persons are clear and the bus is put in motion.

Commercial vehicles; persons required to register with the Sex Offender and Crimes Against Minors Registry. The measure prohibits persons for whom registration with the Sex Offender and Crimes Against Minors Registry is required from driving school buses and from being issued commercial driver's licenses and instruction permits to drive school buses.

Abduction of a minor; forced labor or services. The measure provides that abduction of any minor for the purpose of concubinage, prostitution, or the manufacture of child pornography is a Class 2 felony. The measure also provides that any person who receives any money or other valuable thing for or on account of causing any person to engage in forced labor or services, concubinage, prostitution, or the manufacture of any obscene material or child pornography shall be guilty of a Class 4 felony.

Torts; sexual abuse; limitations period. The measure extends the limitations period for actions for sexual abuse committed during the infancy or incapacity of the abused person from two years to 20 years from the time of the removal of the infancy or incapacity or from the time the cause of action otherwise accrues.

Protective orders; availability; penalty. The measure renames "protective orders for stalking" as "protective orders" and expands the class of persons that is eligible to obtain a protective order by enlarging the types of conduct that permit the issuance of a protective order from certain specified criminal acts to any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Such protective orders are available based on such conduct, regardless of the relationship of the parties involved. The measure also makes several amendments to make protective orders and family abuse protective orders more consistent.

Penalties for possession, sale, gift, distribution or possession with intent to sell, give or distribute synthetic cannabinoids; bath salts. The measure lists those chemicals that comprise synthetic cannabinoids and makes possession a Class 1 misdemeanor. Possession with intent to distribute and manufacturing are felonies. The first offender statute applies as it does to marijuana and controlled substances. The measure criminalizes privately compounding with the specific intent to circumvent the criminal penalties for synthetic cannabinoids. The measure also allows restitution for cleaning up sites where

the drug is made. The measure adds chemicals known as "bath salts" to Schedule 1 of the Drug Control Act.

Failed

Firearms; alcohol; penalties. The measure 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. The measure also makes it a Class 2 misdemeanor for a person to carry a loaded firearm onto the premises of any restaurant or club licensed to sell and serve alcoholic beverages for on-premises consumption and consume an alcoholic beverage while on the premises.

Decriminalization of simple possession of marijuana. The measure decriminalizes simple marijuana possession. The measure continues to require forfeiture of the driver's license and drug screening and education for any minor found to have committed the violation of possession of marijuana and maintains all existing sanctions for all criminal violations involving marijuana.

DUI ignition interlock limitations. The measure provides that a person who is convicted of DUI is required to have an ignition interlock on the first offense as a condition of a restricted license.

Education

Passed

Virginia Higher Education Opportunity Act of 2011. The measure establishes the Virginia Higher Education Opportunity Act of 2011, which provides for (i) a new higher education funding policy; (ii) the calculation of the state general fund share of an institution's basic operations and instruction funding need; (iii) per student enrollment-based funding; (iv) targeted economic and innovation incentives; (v) the creation of a STEM Public-Private Partnership; and (vi) the creation of a Higher Education Advisory Committee.

Accreditation of schools; delayed implementation of certain statutes and regulations, etc. The measure provides for the delayed implementation of statutes and regulations upon which the accreditation of schools in the Commonwealth is based that were not already in effect on June 30, 2008, with the exception of the graduation and completion rate index and the economic and financial literacy requirement, until July 1, 2012, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action.

Tuition Assistance Grant Program. The measure amends the criteria for institutions of higher education to be eligible to receive tuition assistance on behalf of eligible students. For an institution to be eligible, the institution must have either been receiving such funds as of January 1, 2011, or (i) be formed, chartered, established, or incorporated within the Commonwealth; (ii) have the principal place of business in the Commonwealth; (iii) conduct their primary educational activity within the Commonwealth; and (iv) be accredited by a nationally recognized regional accrediting agency. The measure also contains a definition of "principal place of business."

Public schools; physical education requirement. The measure requires at least 150 minutes of physical education per week on average during the regular school year for grades K through eight, with a similar goal for high school students.

Failed

Family life education. The measure requires each school division to implement the standards of learning for the family life education program promulgated by the Board of Education, or a family life education program consistent with the guidelines developed by the Board.

Nonpublic school students; participation in interscholastic programs. The measure directs a nonprofit corporation founded in Virginia in 1913 to organize and govern interscholastic programs among the public high schools to deem eligible for participation in interscholastic programs a student who meets certain conditions.

Elections

Failed

State Board of Elections; Director of Elections. The measure provides for the position of Director of Elections to be appointed by the Governor for a four-year term, subject to confirmation by the General Assembly. The Director shall serve as head of the elections agency.

General Laws

Passed

Defective Chinese drywall; disclosure, assessed value, real estate tax exemption. The measure addresses disclosure of Chinese drywall in a dwelling unit, the reassessment of property that contains Chinese drywall, and the placement of property containing Chinese drywall in a rehabilitation district.

Professions and occupations; expiration of certain documents issued to spouses of individuals serving in the armed forces of the United States. The measure provides an

extension of the expiration of certain licenses, certifications, and registrations held by the spouse of a member of the armed forces of the United States when the spouse accompanies the individual for a period of service outside of the country.

Office of the Inspector General. The measure establishes the Office of the Inspector General to be headed by a State Inspector General to investigate complaints alleging fraud, waste, abuse, or corruption by a state agency or nonstate agency or the officers and employees thereof.

Property transfer Richmond Slave Trail; Virginia Commonwealth University; City of Richmond. The measure authorizes the board of visitors of Virginia Commonwealth University to convey certain real property to the City of Richmond to be used for the official Richmond Slave Trail located in Richmond, Virginia. Such use must commence within five years of the conveyance.

Common interest communities; charges for access to association books and records. The measure provides that charges for access to association books and records may be imposed only in accordance with a cost schedule adopted by the board. The measure has a delayed effective date of July 1, 2012.

Illegal gambling; definitions. The measure amends the definition of "illegal gambling" to clarify that the purchase of a product or other thing (e.g., phone card, Internet time), which purchase credits the purchaser with free points or other measurable units that may be risked by the purchaser for an opportunity to win money, is deemed consideration for the purposes of illegal gambling.

Failed

Virginia Racing Commission; simulcast horse racing; allocations. The measure authorizes wagering on historical horse racing.

Health

Passed

Schedule II drugs; identification required in filling prescriptions. The measure specifies that certain duties imposed upon a pharmacist in the delivery of Schedule II drugs may be undertaken by the agent of the pharmacist.

Vital records; copies for veterans. The measure allows any veteran or his survivor to obtain a certified copy of a vital record to obtain service-connected benefits, free of charge.

Board of Health; regulation of facilities. The measure requires the Board of Health to promulgate regulations

containing minimum standards for policies related to infection prevention, disaster preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities. This measure provides that certain minimum standards shall also apply to any facility in which five or more first trimester abortions per month are performed, and that such facilities shall be classified as a category of hospital for the purposes of such requirements. This measure requires the Board of Health to promulgate regulations within 280 days of enactment.

Local Government

Passed

Commission on Local Government; mandates. The measure provides that the Commission shall assist a five-member task force to be appointed by the Governor to review state mandates imposed on localities and to recommend temporary suspension or permanent repeal of such mandates.

Joint aid agreements by localities. The measure provides that a locality may, by ordinance or resolution, authorize its chief administrative officer to arrange for provision of aid to other localities or receipt of aid from other localities, including approval by the chief administrator of agreements with other localities, subject to availability of resources. Deployed personnel acting pursuant to the ordinance or resolution of the governing body shall have the same authority and immunity in other localities as in the locality where they are employed or volunteer.

Failed

Urban development areas. The measure makes incorporation of urban development areas optional rather than mandatory. Any locality that has previously adopted urban development areas may, and upon voter petition shall, reconsider such action. Also, when a locality votes to adopt a comprehensive plan, it shall also vote to readopt all of its zoning ordinances.

Local government; publication of notices for charter changes, referenda, and public hearings, etc.; alternatives. The measure gives localities alternatives to publication in a newspaper of general circulation in the locality for legal ads and other notices of proposed action.

Militia and Police

Passed

Secretary of Veterans Affairs and Homeland Security. The measure establishes the Office of the Secretary of Veterans Affairs and Homeland Security with responsibility to

the Governor for veterans services and homeland preparedness and security.

Pneumatic gun regulations; exceptions. The measure requires that any ordinance that prohibits the shooting of pneumatic guns in certain areas shall have, among its exceptions, an exception to allow the firearm to be discharged on private property with permission of the owner when discharge is conducted with reasonable care to prevent a projectile from crossing the bounds of the property.

Concealed handgun permits; lost or destroyed permits. The measure allows a concealed handgun permit holder to obtain a replacement permit in the event that the original permit is lost or destroyed.

Failed

Wireless telecommunications devices in motor vehicles. Numerous measures regarding hands-free use of cell phones while driving did not pass.

Texting while driving. Numerous measures making texting while driving a primary offense did not pass.

Motor Vehicles

Passed

Vehicles damaged by water. The measure increases the threshold for reporting water damage from \$1,000 to \$3,500 and requires insurance companies to report payment of such a claim to the Department of Motor Vehicles.

Special license plates; fleet vehicles of businesses. The measure provides for the issuance of special license plates for fleet vehicles of business entities and that these plates have their own fee structure and criteria for issuance.

Regulation of motor carriers by DMV; commercial driver's licenses. The measure revises statutes relating to motor carriers. The measure also updates Virginia law on commercial driver's licenses to comply with federal requirements.

Motor vehicle dealers and manufacturers. The measure places limitations and conditions on the relationship between motor vehicle dealers and manufacturers.

Failed

Following too closely; passing other vehicles. The measure adds bicycles, electric personal assistive mobility devices, electric power-assisted bicycles, and mopeds to the list

of vehicles that the driver of a motor vehicle shall not follow more closely than is reasonable.

Natural Resources

Passed

Care of agricultural animals by owner; penalty. The measure provides standards of care specifically for agricultural animals that ensure accommodation for customary farming activities. The measure also clarifies certain procedures for the seizure and impoundment of agricultural animals.

Agriculture; resource management plans. The measure allows owners of agricultural land who implement and maintain a resource management plan to be deemed as being in full compliance with certain state and federal water quality requirements. The Soil and Water Conservation Board shall by regulation, and in consultation with the Department of Agriculture and Consumer Services and the Department of Environmental Quality, specify the criteria to be included in a resource management plan. The measure sets out minimum criteria for such regulations.

Fertilizer; regulation of application and labeling. The measure prohibits the sale, distribution, and use of lawn maintenance fertilizer containing phosphorus, with certain exemptions, and any deicing agent containing urea, nitrogen, or phosphorus intended for application on parking lots, roadways, and sidewalks, or other paved surfaces beginning December 31, 2013. However, retailers are allowed to sell their existing inventory. The measure also requires golf courses to implement nutrient management plans by July 1, 2017.

Dam safety; regulation of impoundment structures. The measure allows the Director to provide financial assistance for the determination of the hazard classification for impounding structures, dam break analysis, the mapping and digitization of dam break inundation zones, incremental damage analysis, and other engineering requirements such as emergency action plan development.

Failed

Coalbed methane gas; conflicting claims to ownership. The measure provides that, in order to establish a conflicting claim to the ownership of coalbed methane gas, a claimant who is not the surface owner must submit the document by which the interest in coalbed methane gas was severed from the surface estate and identify with specificity the writing that conveys such interest.

Menhaden fishery. The measure directs the Virginia Marine Resources Commission to adopt regulations to implement the Interstate Fishery Management Plan for Atlantic Menhaden.

Retirement

Passed

Virginia Retirement System; collection of overpayments. The measure authorizes the Virginia Retirement System to collect overpayment of retirement benefits from the retiree's employer under certain conditions.

Virginia Retirement System; loss of benefits for certain felony convictions. The measure provides that a member of any of the retirement programs administered by the Virginia Retirement System forfeits his retirement benefits if it is determined that he has been convicted of a felony that arose out of misconduct in any position covered under the retirement programs administered by the Virginia Retirement System.

Failed

Virginia Retirement System; optional defined contribution retirement program for state and local employees. The measure creates an optional defined contribution retirement program and other related benefits for state and local employees beginning January 1, 2012.

Local defined contribution retirement plan. The measure permits any locality or school board to establish a defined contribution retirement plan in lieu of any other retirement plan for employees hired after such plan is established.

Virginia Retirement System; defined contribution plan; member contributions. The measure creates an optional defined contribution retirement plan for state employees and would allow political subdivisions that participate in the Virginia Retirement System to establish a substantially similar defined contribution plan. The measure also requires all state employees who participate in the Virginia Retirement System to contribute five percent of their salary to their defined benefit retirement accounts. Local employers would retain the option of paying member retirement contributions on behalf of their employees participating in the Virginia Retirement System.

Social Services

Passed

Regulation of child day programs; use of outdoor play equipment and areas. The measure provides that regulations

governing child day centers shall not prohibit child day programs providing care for school-age children at a location that is currently approved for school occupancy and that houses a public or private school during the school year from allowing school-age children to use outdoor play equipment and areas approved for use by students of the school during school hours.

Adult adopted person; access to identifying information. The measure requires the State Registrar of Vital Records to make an adult adopted person's original certificate of birth available to the adult adopted person for inspection and copying upon order of the Commissioner of Social Services or order of a circuit court. The measure also provides that if a circuit court corrects or establishes a date of birth for a person born in a foreign country during an adoption proceeding or upon a petition to amend a certificate of foreign birth, the State Registrar shall issue a certificate of birth showing the date of birth established by the court.

Child day programs; exemption from licensure requirements. The measure clarifies that a child day program where, by written policy given to and signed by a parent or guardian, children are free to enter and leave the premises without permission or supervision shall be exempt from licensure requirements.

Recognition of foreign adoptions. The measure provides that in cases in which a child has been adopted pursuant to the laws of a foreign country and enters the United States with an IR-3 or IH-3 visa issued by the United States Citizenship and Immigration Service, the adoptive parents shall not be required to readopt the child in Virginia and the adoption shall be recognized by the Commonwealth and the rights and obligations of the parties shall be determined as though the order of adoption was entered by a court of the Commonwealth. This measure also establishes a streamlined process whereby adoptive parents of children adopted pursuant to the laws of a foreign country and brought into the United States with an IR-3 or IH-3 visa may obtain a certificate of birth for the child.

Failed

Eligibility for TANF; drug-related felonies. The measure requires persons otherwise eligible to receive Temporary Assistance for Needy Families (TANF) benefits to not be denied benefits solely due to a previous conviction of a felony drug offense pursuant to § 18.2-250.

Taxation

Passed

Income tax; farm wineries and vineyards tax credit. The measure creates an income tax credit for licensed farm wineries equal to 25 percent of the cost of certain winery equipment and materials for taxable years beginning on and after January 1, 2011. There is a \$250,000 cap on the total amount of credits allowed in a calendar year.

Income tax; telework expenses tax credit. The measure provides a tax credit to employers for expenses incurred in allowing employees to telework pursuant to a signed telework agreement for taxable years beginning on or after January 1, 2012, but before January 1, 2014.

Real estate tax relief for the elderly and permanently and totally disabled. The measure authorizes local governments to establish annual income or financial worth limitations as a condition of eligibility for real property tax relief for the elderly and permanently and totally disabled. The measure contains an emergency clause.

Real property tax; exemption for disabled veterans. The measure codifies the constitutional amendment adopted by voters in November, 2010, that provides for a property tax exemption for veterans who have a 100 percent, service-related disability. The constitutional amendment requires the General Assembly to enact the exemption in general law.

Failed

Income tax; educational improvement scholarships. The measure establishes a credit beginning in taxable year 2012 for corporations donating cash to nonprofit organizations providing education improvement scholarships to students who would have been eligible for the free and reduced lunch program under federal law, in order for them to attend nonpublic elementary or secondary schools.

Corporate income tax; market-based sourcing. The measure changes the way the sales factor is determined, for purposes of the corporate income tax, so that it will be market-based sourcing rather than costs-of-performance, which is the current method used.

Transportation

Passed

Transportation funding. The measure creates the Virginia Transportation Infrastructure Bank to fund transportation

projects. The measure authorizes the issuance of Commonwealth of Virginia Transportation Grant Anticipation Revenue Notes whose outstanding aggregate principal amount, shall not exceed \$1.2 billion, less any principal amounts outstanding from Notes issued pursuant to Chapters 1019 and 1044 of the Acts of Assembly of 2000. Proceeds of the Notes shall be used for transportation projects as determined by the Commonwealth Transportation Board. The measure also increases the aggregate principal amount of Commonwealth of Virginia Transportation Capital Projects Revenue Bonds that may be issued in the fiscal years ending June 30, 2012, and June 30, 2013, from \$300 million to \$500 million and \$600 million, respectively. Finally, the measure increases the annual cap on the program size of the revenue sharing program to \$200.0 million, increases the per project cap to \$10.0 million, and provides that the funds allocated by the CTB will be distributed only to projects included in the Six Year Improvement Program or a locality's capital improvement plan.

Failed

Fuels taxes; indexing of tax rates. The measure increases or decreases each year the rates of Virginia's fuels taxes using a fuel efficiency index with 2007 as the base year for the fuel efficiency index.

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