



2020 Virginia Special Session Report

10.21.2020

The 2020 Special Session began on Tuesday, Aug. 18, to address the forecasted budget shortfall, impacts directly associated with COVID-19, and the ongoing calls for social and criminal justice reforms. At the start of the special session, Governor Northam introduced a budget that was crafted to meet a projected \$2.7 billion revenue shortfall over the course of the current biennium. When the COVID-19 shutdown started impacting state finances, the Governor froze (unallotted) most new discretionary spending until new revenue forecasts could be obtained and the General Assembly could meet in a special session to make adjustments. When the new revenue forecasts became available, they showed that while the state's revenues declined, it was not as dire as was originally predicted. This was most likely due to the fact that Virginia benefits from a large federal government presence which did not wane as COVID-19 appeared, and Virginia's large technology sector was still able to operate effectively despite the closure of many physical offices. With this information, prior to special session, the Governor proposed a revised budget. In this revised budget, the Governor balanced the budget by making most of the budget freezes (or "unallotments") permanent, while sparingly introducing a few new spending priorities. Links to the conference report of the budget are located at the end of this update.

From a process standpoint, the special session was unlike any other before it. To ensure the safety of its members, the House moved floor sessions and all committee meetings to a virtual format. The Senate, taking a different approach, continued to meet in person for floor sessions and committee meetings, albeit in a larger temporary space inside the Science Museum of Virginia. Citizen input to the House and Senate committee meetings was limited solely to written testimony and virtual appearances via videoconference.

The Virginia General Assembly finished consideration of bills and the budget on Friday, Oct. 16, making it the same length as a traditional "long" session (60 days). The Governor is now in the process of considering amendments to bills that have passed and we expect the special session to formally adjourn shortly after the upcoming election on Nov. 3.

With the special session winding down, the General Assembly is now faced with only two and half months left to prepare for the 2021 regular session, which is scheduled to begin on Wednesday, Jan. 13, 2021. As of now, there has been no formal decision on what the 2021 session will look like, but we do know the House and Senate will not meet inside the Capitol for floor sessions. At this point it seems most likely that an all or partially virtual session is in store for 2021.

Legislation passed during the 2020 Special Session:

The House and Senate followed through on many of their promises to address police and criminal justice reform. They passed bills to ban chokeholds, “no knock” warrants, and establishing minimum training standards for law enforcement agencies. They passed measures giving local government the option to create civilian review boards with subpoena power to investigate alleged police misconduct and giving the Attorney General the power to investigate allegations of systemic racism within law enforcement agencies. Another priority for House and Senate Democrats was to change several traffic offenses to secondary offenses, which eliminates the ability of law enforcement to pull over a vehicle to issue a citation. Most notable, the bill prohibits the use of the odor of marijuana as justification to search a motor vehicle.

Two bills create major changes in criminal law. HB 5148 allows inmates to earn up to 4.5 days off their sentence for every 30 days they serve if they “...*participate in and cooperate with all programs, job assignments, and educational curriculums to which the person is assigned*” Certain violent crimes are excluded. The second bill is SB 5007, which gives a defendant the option of having a jury sentence or a judge sentence. Virginia was one of the only states in the U.S. where juries both find guilt *and* determine the sentence. Proponents of the bill argue that this creates a huge disincentive for defendants to choose juries; juries are perceived to impose substantially longer sentences than judges who have the benefit of sentencing guidelines as well as more knowledge of what sentences similarly situated defendants have received for committing the same crime.

Below is a comprehensive list of bills, including those addressing COVID-19, that have passed the General Assembly^[1].

- [HB 5029](#) Law-enforcement officer; failure to intervene in an unlawful use of excessive force, penalties.
- [HB 5041](#) Nursing homes, certified nursing facilities and hospice facilities; public health emergency, etc.
- [HB 5043](#) Mental health awareness response & community understanding serv. (Marcus) alert syst.; establishes.
- [HB 5045](#) Inmate, parolee, probationer, detainee or pretrial defendant, etc.; carnal knowledge.
- [HB 5046](#) Telemedicine services; originating site.
- [HB 5047](#) Virginia Post-Disaster Anti-Price Gouging Act; manufacturers and distributors.
- [HB 5048](#) Outbreaks of communicable disease of public health threat; posting of information about cases.

- [HB 5049](#) Law-enforcement agencies; acquisition and use of military property.
- [HB 5050](#) Emergency Services and Disaster Law; powers and duties of Governor, purchase of PPE.
- [HB 5051](#) Law-enforcement officers or jail officers; notice to Criminal Justice Services Board of misconduct.
- [HB 5052](#) Legal holidays; Juneteenth.
- [HB 5055](#) Law-enforcement civilian oversight bodies; localities may establish, duties, effective date.
- [HB 5058](#) Marijuana and certain traffic offenses; issuing citations, etc.
- [HB 5059](#) Hospices, certain, home care organizations, etc.; immunity from civil liability, COVID-19.
- [HB 5062](#) Court authority in criminal cases; prosecutorial discretion to dispose of a criminal case.
- [HB 5064](#) Virginia Residential Landlord & Tenant Act; landlord remedies, noncompliance with rental agreement.
- [HB 5068](#) Emergency relief payments; automatic exemption from creditor process.
- [HB 5069](#) Law-enforcement officers; prohibition on the use of neck restraints, exception, penalties.
- [HB 5072](#) Law-enforcement; Attorney Gen. authorized to file civil suit or inquire into any unlawful practice.
- [HB 5087](#) Unemployment compensation; extends date VEC is required to establish, etc., short-time compensation.
- [HB 5093](#) Emergency Services and Disaster Law; powers and duties of the Governor, executive orders, penalty.
- [HB 5098](#) Hate crimes; falsely summoning or giving false reports to law-enforcement officials, penalty.
- [HB 5099](#) Search warrants; provide notice of authority.
- [HB 5104](#) Law-enforcement officers, deputy sheriff, etc.; minimum qualifications, disclosure of information.
- [HB 5108](#) Criminal Justice Services Board and Committee on Training; change in membership & responsibilities.
- [HB 5109](#) Law-enforcement officer training & qualifications; DCJS to develop uniform curriculum & plans, etc.
- [HB 5113](#) School boards, certain; student meals, participation in the Community Eligibility Provision.
- [HB 5115](#) Emergency laws; civil relief, citizens furloughed or otherwise receiving reduced wages or payments.
- [HB 5148](#) Earned sentence credits; 4.5 credits may be earned for each 30 days served on certain sentences.
- [HJ 5010](#) Speaker of the House of Delegates; confirms various appointments.
- [SB 5007](#) Criminal cases; sentencing reform.
- [SB 5013](#) Marijuana; possession, violations by an adult shall be prepayable.
- [SB 5014](#) Law-enforcement officers; officers to complete crisis intervention training.
- [SB 5017](#) Correctional facility, local; clarifies definition.

- [SB 5018](#) Terminally ill prisoners; conditional release.
- [SB 5024](#) Law-enforcement; Attorney Gen. authorized to file civil suit or inquire into any unlawful practice.
- [SB 5029](#) Marijuana and certain traffic offenses; issuing citations, etc.
- [SB 5030](#) Policing reform; acquisition of military property, training of officers in de-escalation techniques.
- [SB 5031](#) Legal holidays; Juneteenth.
- [SB 5033](#) Court authority in criminal cases; prosecutorial discretion to dispose of a criminal case.
- [SB 5034](#) Terminally ill prisoners; conditional release, sentence credits.
- [SB 5035](#) Law-enforcement civilian oversight bodies; localities may establish, duties, effective date.
- [SB 5036](#) Alcoholic beverage control; local special events license, limitations on events, etc.
- [SB 5038](#) Mental health crises; DCJS to assist DBHDS, etc., with development of Marcus alert system.
- [SB 5039](#) Emergency Services and Disaster Law; powers and duties of Governor, purchase of PPE.
- [SB 5042](#) Nursing homes, certified nursing facilities, and hospice facilities; public health emergency, etc.
- [SB 5080](#) Telemedicine services; originating site.
- [SB 5081](#) Outbreaks of communicable disease of public health threat; posting of information about cases.
- [SB 5082](#) Hospices, certain, home care organizations, etc.; immunity from civil liability, COVID-19.
- [SB 5083](#) School boards; board required to post on its website the COVID-19 virus mitigation plan.
- [SB 5088](#) Virginia Residential Landlord & Tenant Act; landlord remedies, noncompliance with rental agreement.
- [SB 5090](#) COVID-19 virus; Commissioner of Health shall make information available to public on a website.
- [SB 5106](#) Local land use approvals; extension of approvals to address the COVID-19 pandemic.
- [SB 5117](#) Emergency Services and Disaster Law; powers and duties of the Governor, executive orders, penalty.
- [SB 5120](#) Elections, Department of; appropriations to provide prepaid postage for return of absentee ballots.

Failed legislation during the 2020 Special Session:

Although both the House and Senate are controlled by Democrats, there was still sharp disagreement on several common priorities. Listed below is a short summary of notable initiatives that we expect to see come back for consideration during the 2021 Session.

- Paid sick and family medical leave mandates for employers;

- Civil immunity for employers related to COVID-19 exposure;
- Legalization of marijuana;
- Workers compensation and presumption of COVID-19 as a cause of death or disability;
- State tax conformity related to federal tax changes; and
- Several additional bills related to criminal justice reform.

Special Session Budget Amendments:

On Aug. 18, Governor Northam called the General Assembly into Special Session to address a \$2.7 billion revenue shortfall in the biennial budget. During the Reconvened Session in April, and without the benefit of a formal revenue reforecast, the Governor and General Assembly “unallotted”, or put a hold on, most new discretionary spending in the state budget. Although this was a temporary budget maneuver, the budget reforecast in August necessitated the Governor to make many of these cuts permanent. Fortunately, the state’s receipt of federal funds, including \$3.1 billion in CARES Act funding and other federal funds to address the COVID-19 epidemic, negated the need for the legislature to cut into core funding or make additional cuts beyond those proposed in the Reconvene Session.

As revenues continued to improve throughout the late summer and into the fall, the budget conferees identified specific items they felt could be built back into the budget as a contingent appropriation. They also began to consider other new COVID-19 expenses that could be funded using CARES Act money. These actions on the budget caused further delay as the Governor stated he would not sign a proposed budget that included significant “contingency” spending.

After further negotiations, the House and Senate budget conferees presented their new proposed budget on Oct. 15, which restored some unallotted items, included language directing the Governor on how to spend remaining CARES Act funds, and required the Governor to inform the legislature of his spending of any existing or new federal money. Listed below are some of the key unallotments and new funding priorities in the biennial budget.

The budget conferees included \$18.6 million in the budget to implement new laws regarding police oversight and criminal justice issues, along with \$6.6 million for police body cameras.

Key spending priorities included money for K-12 education, funding for higher education, and health and human services. Virginia’s public education systems took a financial hit this year because of their reliance on sales tax revenue which decreased as a result of the pandemic and subsequent economic restrictions. To offset these losses, the budget includes more than \$90 million in one-time funding from the state’s tax on skilled gaming machines. The budget also includes \$120 million worth of COVID-19 relief funding for higher education institutions.

The General Assembly also restored some of the funding in their original budget to provide a raise to employees. The budget included a \$1,500 bonus for state employees and state-supported local employees in fiscal year 2022, if revenue permits, and added a \$500 bonus this year for police officers. The budget directs Governor Northam to propose some type of pay increase for teachers in 2022 if

there is enough money in the budget.

The budget includes \$254 million for emergency housing, rent and utility relief and eviction legal aid, including \$100 million in COVID-19 relief funds to assist Virginians who fell behind on their utility bills. Language in the budget prohibits evictions for those who've suffered economic hardships because of COVID-19 and prohibits utility shutoffs.

The budget also included \$85 million (an increase of \$15 million over what passed in March) for broadband expansion in rural parts of the state to address the need for reliable internet service for remote education.

The budget directs how the Governor should spend the state's remaining \$1.3 billion in CARES Act funds. CARES Act funds must be spent by the end of the year on COVID-19 related expenses. Most funds were directed to state agencies to cover PPE costs, vaccine costs, cleaning and other direct COVID-19 expenses. The federal government will audit the state's use of the CARES Act dollars to ensure they were spent on allowed expenses.

The proposed budget does not use any reserve funds and proposes a deposit of \$60 million into the Revenue Reserve Fund.

The legislature will wait until after the Nov. 3 election to send the final proposed budget to the Governor. The reason for the delay is the budget failed to include Senate-backed enabling language for a bipartisan redistricting commission that would have been contingent on a redistricting constitutional amendment being approved by Virginia voters in a November ballot initiative. Senate leadership have said Governor Northam intends to pass this language down in the form of a budget amendment if the constitutional amendment passes.

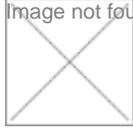
Once the Governor receives the budget, he then has six weeks to make amendments or veto language. If the Governor does make any changes, the legislature will likely reconvene to vote on any proposed changes.

A link to the conference report for the House budget is found here: [Budget Amendments -HB 5005](#).

[1] Bills in this list have passed the General Assembly as of the date of publication, but many are awaiting further action by the Governor who can amend, sign or veto a bill.

[Click here](#) or on the image below for a printer friendly version.

Image not found or type unknown



Related People

- Hon. David B. Albo – 703.760.5210 – dalbo@williamsmullen.com
- Jordan E. Chillon – 804.420.6045 – jchillon@williamsmullen.com
- Matthew M. Cobb – 804.420.6390 – mcobb@williamsmullen.com
- Patrick A. Cushing – 804.420.6541 – pcushing@williamsmullen.com
- Hon. Patrick O. Gottschalk – 804.420.6425 – pgottschalk@williamsmullen.com
- Nicole Pugar Lawter – 703.760.5241 – nlawter@williamsmullen.com
- Elizabeth O. Rafferty – 804.420.6245 – erafferty@williamsmullen.com

Related Services

- Government Relations