

WILLIAMS MULLEN 2022 VIRGINIA GENERAL ASSEMBLY SESSION OVERVIEW

General Overview:

The 2022 General Assembly session adjourned *sine die* on March 12, 2022. This year's session was a so-called "long session," and lasted 60 days instead of the 45 day "short session," which occurs in odd-numbered years. Over the course of this year's session, the General Assembly considered approximately 2,000 bills and 1,000 resolutions. Of these, a little over 800 bills made it out of both the Senate and the House and on to the governor's desk for action.

While the General Assembly may have adjourned on March 12, it did so without completing all of its work. The House and Senate were unable to come to an agreement on the budget, and an additional 45 bills were left in conference. Accordingly, the House and Senate adjourned with the understanding that they would reconvene later in the spring to finish their conference work and budget work.

Currently, the governor's office is reviewing all passed legislation and must act on it – sign, amend, or veto – by midnight on April 11, 2022. The General Assembly will then return to Richmond on April 27 for the Reconvened Session (a.k.a. "Veto Session") where the legislature will deal with any vetoes or amendments from the governor.

On March 23, Gov. Youngkin formally called for the General Assembly to return to Richmond for a Special Session on April 4. At this juncture, it does not appear a deal has been reached on the budget so the timeline for special session is still unknown. It is not uncommon for the General Assembly to meet for one day and then return once there is an agreement on the budget. Once an agreement is reached, the governor can offer amendments to the budget and any unresolved bills during a reconvene session of the special session.

In many ways, the 2022 Regular Session brought a return to normalcy to the General Assembly, as both chambers returned to a fully in-person format for the first time since early 2020. 2021 saw the House of Delegates adopt a virtual model and the Senate of Virginia adopt a hybrid model, with the latter's in-person meetings being held in the Science Museum of Virginia. For both chambers, all public participation was limited to virtual testimony. In 2022, virtual committee testimony remained in place, but in-person public participation was once again allowed, permitting stakeholders and lobbyists critical face-to-face access to legislators.

NOTE: Listed in the section below are short summaries of significant legislation that passed the General Assembly. This list is not inclusive of every bill in each category. For a full list of legislation that passed during the 2022 session, please visit the General Assembly's Legislative Information Systems website at: <http://leg1.state.va.us/>.

Below are selected bills of significance, organized by topic. The links are active, so by clicking on them, you can access the bill's summary, full language and legislative history.

Tax Reform and the Budget:

With Virginia's unprecedented budget surplus and the governor's campaign promises of significant tax relief, tax reform was a top priority for both the Republican-controlled House and Democratic-controlled Senate. While both chambers have endorsed major tax relief initiatives, disagreement as to the magnitude of those changes has stalled the General Assembly with the House and Senate at odds over how much tax relief (both temporary and permanent) should be adopted and what future spending priorities should be put on hold.

Income Tax Deductions: The governor has proposed raising the standard income tax deduction from \$4,500 to \$9,000 for single filers and from \$9,000 to \$18,000 for married couples filing jointly. The House has adopted this proposal, but the Senate has called for a study of the issue. According to some studies, doubling the deduction could result in reducing state revenues by \$1.24 billion in FY 2023. The Commonwealth Institute has estimated that this could balloon to \$2.1 billion in lost revenue over the next two years. Because of the magnitude of the fiscal impact, the income tax deduction proposal is the primary reason budget negotiations stalled at the end of session.

Gas Tax: Several bills were introduced to either suspend or eliminate the gas and diesel tax in Virginia. While several initiatives cleared the House, all were defeated in the Senate. On March 16, Gov. Youngkin announced that he was going to send down a bill during the special session to suspend the gas and diesel tax for three months, resulting in potential savings at the pump but a cost of \$437 million in transportation funding.

Grocery Tax: Gov. Youngkin made repealing the grocery tax one of his top campaign promises in 2021, and both chambers have proposed some variation of it. The House has proposed repealing the 1.5 percent state tax and the 1 percent local tax but requires the Commonwealth to provide supplemental funding to localities to make up for lost school funding from the elimination of the grocery tax. The Senate bill repeals only the 1.5 percent state portion of the tax, leaving the local portion intact. While these proposals seek to hold localities harmless when it comes to education funding, neither chamber has proposed how to make up for the lost transportation funding that will result from these cuts.

Income Tax Rebates: Both the House and Senate have agreed to one-time tax rebates of \$300 per individual and \$600 per married couple. Such rebates would reduce the state revenue by approximately \$1.25 billion in FY 2023.

Special Session: As referenced before, the General Assembly will return to Richmond on April 4 for a Special Session to finish work on the budget as well as the other legislation left in conference. The governor has stood by his tax cut proposals, arguing, "I do believe we can and should have the largest tax reduction in the history of Virginia." While Gov. Youngkin acknowledged that he had not yet spoken with Senate Democrats about his proposals, he remains confident that the General Assembly will have a budget ready for action by April 4.

Beyond these tax cut and tax repeal proposals, there are several other tax-related bills worth highlighting here. [HB 1121](#) and [SB 692](#) permit a qualifying pass-through entity (PTE) to make an annual election for Taxable Years 2021 through 2025 to pay an elective income tax at a rate of 5.75 percent at the entity level. The bill would also allow a corresponding refundable income tax credit for Taxable Years 2021 through 2025 for any amount of income tax paid by a PTE having Virginia taxable

income if such PTE makes the election and pays the elective income tax imposed at the entity level. In effect, this would allow a PTE to pay income tax rather than its owners and, thereby, enact a Virginia PTE workaround to the \$10,000 cap on the federal deduction for state and local taxes paid.

[HB 971](#) and [SB 94](#) were the annual tax conformity bills, advancing Virginia's date of conformity to the Internal Revenue Code (IRC) from December 31, 2020 to December 31, 2021. This allows Virginia to generally conform to the American Rescue Plan Act as well as change Virginia's existing policy in regard to certain COVID-19 related business assistance programs. Most notably, these bills allow for 100% deductibility for PPP loans forgiven in the 2021 tax year.

[HB971/SB94](#) Commonwealth's taxation system; conformity with the Internal Revenue Code, etc.

[HB1121/SB692](#) Income tax, state; pass-through entities.

Casinos and Gaming:

Activity in the gaming space was as lively as it was in years past. Amongst their various priorities this year, the General Assembly looked to more heavily regulate charitable gaming and to rein in so-called "games of skill," the gaming machines currently seen in convenience stores, restaurants, truck stops, and more.

Moreover, a set of bills that could have had huge ramifications on the viability of a casino in the City of Richmond were docketed in both chambers. In November 2021, Richmond's plan to approve a casino in South Richmond looked all but dashed after citizens voted against a referendum on a \$563 million casino and hotel. In January 2022, however, Richmond City Council voted 8-1 to allow a second referendum vote to take place in November 2022. Concurrently, Sen. Joe Morrissey and Delegate Kim Taylor introduced [SB 203](#) and [HB 1134](#), which proposed giving the City of Petersburg exclusive rights to a casino referendum and placing a five year moratorium on an additional referendum in the Richmond. While both bills were defeated, there is a budget amendment in the Senate's budget proposal that would prohibit Richmond from holding another referendum. The final outcome on casino viability in the Central Virginia Region will not be known until a final budget is passed and signed by the governor.

Below is a list of key casino and gaming bills from the 2022 Session:

HB765/SB402	Charitable Gaming Board; powers and duties.
HB77	Illegal gambling; exceptions, internet poker conducted in a private residence.
HB763/SB403	Charitable gaming; electronic gaming is restricted to social organizations, etc.
HB766	Illegal gaming laws; Illegal Gaming Enforcement Coordinator created.
HB767/SB399	Charitable gaming; conducting without a permit, civil penalty.
HB940	Illegal gambling; eliminates certain provisions from definition.
SB394	Charitable gaming; registration of landlords, Texas Hold'em poker operations.
SB401	Illegal gaming laws; Illegal Gaming Enforcement Coordinator created.
SB530	Illegal gaming devices; manufacturing, etc., device, civil penalty.
HB1108	Public schools; instruction concerning gambling, report.
HB1134/SB203	Casino gaming; eligible host cities, limits on local referendums.

[SB462](#) Video gaming terminals (VGTs); regulation, penalties.

Education:

Gov. Youngkin campaigned extensively on education reform and school choice, and as a result there were a number of related bills considered throughout session.

As of March, only two key education reform bills were still alive: [HB 346](#) and [SB 598](#). These would permit any public institution of higher education or private institution of higher education to apply to the Board of Education to establish a college partnership laboratory school as a new school or through the conversion of all or part of an existing school. Under current law, only public and private institutions of higher education that operate approved teacher education programs are permitted to apply to the board to establish such a school and no explicit provision is made for the conversion of an existing school. [HB 346](#) and [SB 598](#) were still in conference when the General Assembly adjourned, so their fates are not yet known. When the legislature reconvenes this April, they'll once again work on these bills.

Another top issue in education this year was funding for school construction. Numerous bills were introduced seeking ways to fund extensive renovations or new construction, though most were defeated. At adjournment, just two school construction bills remained active, [HB 563](#) and [SB 473](#), which establish the School Construction Program for the purpose of providing grants to school boards that leverage federal, state, and local programs and resources to finance the design and construction of new school buildings and facilities or the modernization and maintenance of existing school buildings and facilities. As with the other education bills mentioned here, these two remain in conference and will be readdressed when the General Assembly reconvenes.

Key Education Bills:

<u>HB344</u>	Public charter schools; applications, review and approval.
<u>HB346/SB598</u>	College partnership laboratory schools; application and establishment.
<u>HB356/SB125</u>	Public schools; regional charter school divisions.
<u>HB533</u>	Public elementary and secondary schools; agreements to establish opportunity classrooms.
<u>SB608</u>	Public charter schools; applications, review and approval.
<u>SB635</u>	Public charter schools; applications, review and approval.

Health Care:

Because of the impact on citizens and the state budget, health care is a perennial topic in the General Assembly. As an example, the Department of Medical Assistance Services (Medicaid) accounts for 25% of the General Fund budget and 36% of the budget growth over the past decade. In addition to the budget implications, there is constant friction between hospitals, doctors, nurses, health insurers, large businesses, self-insured individuals, pharmaceutical companies, and pharmacists. Health care is one of the largest industries in the Commonwealth and there is never a shortage of legislation on this topic. Below is a list of some key bills considered during the 2022 session:

<u>HB679/SB300</u>	Opioids; providers of treatment for addiction, conditions for initial licensure, location.
------------------------------------	--

<u>SB511</u>	Opioid treatment program pharmacy; medication dispensing, registered/licensed practical nurses.
<u>HB81</u>	Statewide Telehealth Plan; Board of Health shall contract with the Virginia Telehealth Network.
<u>HB45/SB525</u>	Health Carriers; licensed athletic trainers.
<u>HB158</u>	Emergency Services and Disaster Law; limitation on duration of executive orders.
<u>HB80</u>	Healthcare Regulatory Sandbox Program; established, report, sunset date.
<u>SB436</u>	Statewide Telehealth Plan; Board of Health shall contract with the Virginia Telehealth Network.
<u>SB375</u>	Optometrists; allowed to perform laser surgery if certified by Board of Optometry.
<u>HB481</u>	Hospitals; price transparency.
<u>HB768/ SB335</u>	Health Insurance; association health plan for real estate salespersons.
<u>HB842</u>	Commonwealth Health Reinsurance Program; federal risk adjustment program.
<u>HB925/ SB405</u>	Health Insurance; coverage for prosthetic devices and components.
<u>HB93</u>	Home Care Organizations; Changes the license renewal requirement.
<u>SB580</u>	Department of Health; triennial audit requirement for home care organizations.

Cannabis:

In 2021, the General Assembly paved the way for legalized cannabis in Virginia. As a part of their comprehensive cannabis bill, the General Assembly legalized the simple possession of up to one ounce of cannabis and home cultivation of up to four cannabis plants. While these were significant steps in Virginia, the General Assembly did not, however, create a framework for a legalized retail market, instead setting a target date of 2024 and leaving the details to be worked out in the interim.

As the 2022 legislative session began, once more the General Assembly seemed primed to take up the issue of a retail cannabis market. Numerous bills were introduced to this effect, as legislators identified a variety of goals pertaining to cannabis, including speeding up the debut of retail market, revising limitations or prohibitions on vertical integration, readdressing social equity provisions, further engaging in criminal justice reform and more.

While hopes were high that compromise legislation could be developed and passed, ultimately the chambers did not find common ground. While the Senate did ultimately vote to adopt a comprehensive retail cannabis bill, [SB 391](#), the House elected to continue the bill to the 2023 session to provide them more time to work on the issues. The House's own comprehensive retail legislation, [HB 950](#), was never heard and was left in House General Laws.

Even more limited attempts at an expedited retail market failed this session. [HB 211](#), [SB 313](#), and [SB 621](#) all sought to prop-up a temporary retail solution via certain pharmaceutical processors. [HB 211](#) was left in General Laws, [SB 621](#) was incorporated into [SB 313](#), and [SB 313](#) itself was stricken from Senate calendar. Furthermore, other attempts to revise individual provisions of the 2021 legislation failed. For example, [HB 176](#) tried to revise the social equity and vertical integration pieces of

the cannabis laws, but it too was left in House General Laws. Criminal justice reform measures met similar fates. [SB 745](#), which created a process for an automatic hearing to consider a modification of a sentence for a marijuana-related offense from before its legalization, was killed in House Appropriations committee.

While these bills all met their demise this session, the General Assembly will once more take up the issue in the 2023 legislative session. Democratic legislators have expressed concern that waiting any longer will continue to foster an illicit black market, while Republican legislators have cautioned that the underlying issues are simply too big and complex to rush through.

The only real cannabis-related bill of note that found support in both chambers was [SB 591](#). This bill creates stricter regulations for producers and retailers of cannabis-derived products, aiming to prevent and discourage mislabeling and illicit business practices pertaining to certain (ingestible) cannabis products. Specifically, [SB 591](#) modifies the definition of "marijuana" to include any substance containing a total THC concentration that exceeds 0.3 percent or more than 0.25 milligram of THC per serving or more than one milligram per package. This new definition would apply to any synthetic or natural version of THC. In now defining these substances as "marijuana," the bill would de facto ban their sale. [SB 591](#) passed both the House and Senate and has reached the governor's desk, who has until April 11 to act on it. In recent weeks, however, this legislation has generated increased concern and opposition, with affected stakeholders expressing fear that this will result in arbitrary and excessive restrictions on the legal hemp industry. Some industry representatives have even called on Gov. Youngkin to amend or veto the bill, though his decision remains to be seen.

Energy:

The 2022 Session saw a number of important bills passed that will have a lasting impact on the energy sector in Virginia for years to come. In particular, there were several bills that aim to more thoroughly analyze and, if necessary, mitigate the lasting impact that energy sources, especially solar energy, has on Virginia.

[HB 744](#) and [SB 499](#), from Delegate Keith Hodges and Sen. Lynwood Lewis, directs the State Corporation Commission, in consultation with the Department of Energy and Department of Environmental Quality, to create a task force to analyze the life cycle of renewable energy facilities, including solar, wind, and battery storage components. The analysis shall assess the (i) feasibility, costs, recycling and salvage opportunities, waste strategies, and liability for the decommissioning of materials; (ii) potential impacts of underground infrastructure post-decommissioning; (iii) potential impacts of the life cycle on farming, forestry, and sensitive wetlands; and (iv) potential beneficial economic impact of solar, wind, and battery storage development.

Also of note were several attempts to address waste coal piles that have stacked up in Southwest Virginia. Sen. Travis Hackworth's [SB 120](#) and Delegate Will Wampler's [HB 657](#) initiates a study of waste coal, directing the Department of Energy to identify the approximate volume and number of waste coal piles present in the area and options for cleaning up such waste coal, including potential use in electricity generation. Delegate Terry Kilgore also introduced legislation to this effect as well. [HB 1326](#) declares that the removal of waste coal from previously mined sites in the coalfield region of the Commonwealth is in the public interest and asks the Commission on Electric Utility Regulation to review information on the approximate volume and number of waste coal piles and options for cleaning them up.

When it comes to the lasting impact of energy on Virginia, of the most pressing issues in the realm of energy policy this session was the growing concern over land use, namely the tension between increasing renewable energy deployment and preserving agricultural land. Legislation introduced by Delegate Michael Weibert sought to address this concern.

[HB 206](#) requires, as a condition for a permit by rule (PBR) for a small energy project, that the applicant conduct an analysis of the beneficial and adverse impacts of the proposed project on natural resources. If the Department of Environmental Quality (DEQ) determines that there will be a significant adverse impact on wildlife, historic resources, prime agricultural soils, or forest lands, the applicant must also submit a mitigation plan. Beyond this general provision, however, [HB 206](#) actually specifies that a disturbance of more than 10 acres of prime agricultural soils or 50 acres of contiguous forest lands is *automatically* deemed to be a significant adverse impact.

As introduced, this bill generated serious concerns and opposition. Accordingly, after weeks of debate and negotiations, new language was added to the final bill that requires that DEQ, in consultation with the Department of Forestry (DOF), the State Corporation Commission (SCC), the Department of Energy (DOE), the Virginia Economic Development Partnership (VEDP), and other relevant stakeholders convene an advisory panel to assist in further developing regulations regarding certain evaluation criteria. Additionally, [HB 206](#) now provides that any small renewable energy project for which an initial interconnection request application has been received and accepted by the regional transmission organization or electric utility by December 31, 2024 is exempt from the provisions of this act.

Delegate Kilgore introduced a bill that, in part, also intended to address this issue. [HB 894](#), amongst other initiatives, directs the Virginia Cooperative Extension to develop and maintain a map or repository of prime farmland in the Commonwealth. Such a map or repository is intended for use by local governments in the planning process, particularly as it relates to industrial scale solar.

Beyond these assorted bills dealing with the impacts of solar on rural land, there were plenty of other bills that address or tweak energy policies in Virginia, ranging from the taxation of small solar projects to net metering pilot programs., from electric cooperatives to roof replacement. See below for a more comprehensive list of relevant legislation passed this session.

Key Energy Bills:

HB 206	Small renewable energy projects; impact on natural resources, report.
HB 266 / SB 505	Electric cooperatives; net energy metering, power purchase agreements, etc.
HB 272 / SB 501	Local land use approvals; extension of approvals to address the COVID-19 pandemic.
HB 396	Electric utilities; municipal net energy metering.
HB 657 / SB 120	Waste coal piles; Department of Energy to identify volume & number, use of coal ash.
HB 774 / SB 499	Renewable energy facilities; SCC shall create a task force.
HB 894	Advanced small modular reactors; Department of Energy to study development in the Commonwealth.
HB 1087 / SB 502	Solar photovoltaic projects; local taxation for projects less than five megawatts.
HB 1204	Renewable energy certificates; priority of procurement.
HB 1225 / SB 13	Energy performance-based contracts; roof replacement.
HB 1326	Waste coal; removal in the public interest.
SB 660	Shared solar programs; evaluation for Phase I Utilities & electric cooperatives.

Transportation:

The House and Senate Transportation Committees had a busy session, buttressed by the increased federal funding from the Bipartisan Infrastructure Law, as enacted in the Infrastructure Investment and Jobs Act. The Commonwealth will receive billions of dollars in funding over the next five years to build and maintain bridges, roads and rail. Although wrangling for the upcoming funds will take place in the upcoming budget negotiations (beginning again on April 4), a number of significant bills came before the body in 2022.

Many of the transportation bills this session were focused on motorist safety. [SB 362](#), patroned by Sen. Richard Stuart, prohibits bicyclist, motorcyclists, skateboarders and scooters from riding two abreast in a lane. This bill would require the motorists to ride in a single file line until the drivers pass them from the rear. This bill was closely monitored, particularly by the residents of rural localities, as bicycle pelotons have increasingly created traffic snarls on Virginia's scenic back roads.

In a show of bipartisan legislation, Delegate Terry Kilgore and Sen. Scott Surovell introduced [HB 920](#) and [SB 247](#), which would automatically render a guilty Class 1 misdemeanor verdict if a driver causes the death or serious injury of a vulnerable road user, defined as a pedestrian, a bicycle operator or passenger, an electric personal assistive mobility device, an electric power-assisted bicycle, a wheel chair or wheel chair conveyance, skateboard, roller skates, motorized skateboard or scooter, an animal-drawn vehicle or any person riding an animal. Prior to this bill, Virginia law included only the *injury* of a vulnerable road user, not death. This glaring omission in the Code was laid bare, as several witness impact statements detailed the anguish that was caused when a driver was not charged with negligence in traffic accidents that caused the deaths of the witnesses' loved ones. Unsurprisingly, the bills passed each chamber unanimously.

One transportation bill that received significant coverage was Sen. Mark Peake's [SB 777](#), which banned the modification of vehicles that cause the front bumper to be raised four inches higher than the rear bumper. This so-called "Carolina Squat" modification, which has seen a rise in popularity in Virginia, is particularly dangerous due to the skyward facing angle of the headlights of the modified vehicle. These modified cars caused at least one fatality in the Commonwealth, and the family of the deceased was present alongside Gov. Youngkin and Sen. Peake at the bill signing. [SB 777](#) was signed into law by the governor on March 22, and since it contained an emergency clause, the new law took effect immediately.

Bills to combat the rash of catalytic converter theft that has plagued the Commonwealth over the past several years also made their way through the body and on to the governor's desk. [HB 740](#) and [SB 729](#), patroned by Delegate Rob Bell and Sen. Frank Ruff, make it a Class 6 felony to willfully break, injure, tamper with, or remove any part of a vehicle that would cause it to malfunction without the consent of the vehicle owner. The bill also requires scrap metal purchasers to maintain detailed records for any transaction involving a catalytic converter. This bill aims to curb a burgeoning illegal market, which has been spurred on as the value of the precious metals contained in catalytic converters has skyrocketed during the pandemic. According to the National Insurance Crime Bureau, this increasing value has led to an almost 400% increase in catalytic converter theft between 2019 and 2020.

Other pertinent transportation bills are included below.

Key Transportation Bills:

<u>HB62</u>	Insurance; obsolete provisions and notice.
<u>HB1144</u>	Gasoline and diesel fuel; lowers the rate of tax on July 1, 2022.
<u>HB530</u>	Driver training; governmental entities authorized to test/train drivers employed by another entity.
<u>HB740</u>	Catalytic converters; penalties.
<u>HB67</u>	Projecting vehicle loads; flagging.
<u>HB920</u>	Careless driving; vulnerable road users.
<u>SB705</u>	Towing; certain large vehicles, civil penalty.
<u>SB237</u>	Mileage-based user fee program; protection of data.
<u>SB105</u>	Law-enforcement officers; evidence obtained during prohibited stop. Analysis of breath to determine alcoholic content of blood; failure to advise person of rights.
<u>SB642</u>	Driver education programs; parent/student driver education component.
<u>SB78</u>	Motor vehicle insurance; underinsured motor vehicle.
<u>SB754</u>	Bicycles and certain other vehicles; riding two abreast.
<u>SB362</u>	Careless driving; vulnerable road users.
<u>SB247</u>	Careless driving; vulnerable road users.

Insurance:

As has been the case for the last several sessions, paid family leave was a hot button issue in the 2022 General Assembly Session. [HB 1156](#) and [SB 15](#) establish paid family leave as a class of insurance that can be regulated by the Bureau of Insurance. As a result, the legislation allows employers to voluntarily purchase family leave plans that provide income replacement to employees for the following reasons: birth of a child or adoption of a child by an employee; placement of a child with the employee for foster care; care of a family member of the employee who has a serious health condition; or circumstances arising out of the fact that the employee's family member who is a military member is on active duty or has been called to active duty status. [HB 1156](#) and [SB 15](#) garnered substantial support within the business community and with legislators of both parties. These bills passed the General Assembly and await signing by the governor.

There were several other insurance related measures worth briefly noting here.

[SB 754](#) requires any motor vehicle liability insurance policy issued, delivered, or renewed in the Commonwealth after July 1, 2022, to include a specific statement regarding the insurer requirements to provide underinsured motorist coverage that pays any damages due to an insured in addition to any bodily injury or property damage liability that is applicable to the insured's damages. Additionally, the bill requires underinsured motorist coverage to be paid without any credit for the bodily injury and property damage coverage available for payment, unless any named insured elects to reduce any underinsured motorist coverage payments by notifying the insurer. If an injured person is entitled to underinsured motorist coverage under more than one policy may elect to receive a credit to the extent that the available liability coverage exceeds the amount of underinsured motorist coverage from a higher priority policy.

[HB 1269](#) and [SB 679](#) provide that the face amount of any life insurance policy issued to fund a preneed funeral contract shall not be decreased over the life of the life insurance policy except where such policies have lapsed due to nonpayment of premiums or have gone to a nonforfeiture option that lowers the face amount as allowed for in the provisions of the policy.

[HB 44](#) decreases the minimum nonforfeiture amount interest rate from one percent to 0.15 percent.

[HB 82](#) requires that certain insurers that are members of an insurance holding company system file a group capital calculation in accordance with the National Association of Insurance Commissioners (NAIC) Group Capital Calculation Instructions and a liquidity stress test in accordance with the NAIC Liquidity Stress Test Framework.

Finally, as has occurred in past sessions, several pieces of legislation were introduced seeking to expand the groups of people to whom Association Health Plans (AHPs) are an available option. This year, [HB 768](#) and [SB 335](#) successfully expanded AHPs to associations of real estate salespersons.

Data Centers:

Data centers continue to be big business in the Commonwealth. It is often cited that over 70% of all the world's internet traffic passes through Northern Virginia. And with tech companies continuing to invest in new developments in Henrico, Culpeper and other localities across the Commonwealth, Virginia's dominance in data centers is likely to continue.

As data centers continue to come online, however, an interesting disparity in local taxation practices has arisen. Approximately 75% of the development costs for data centers is for the infrastructure equipment, or data center fixtures. This encompasses the electrical equipment, mechanical equipment, HVAC systems, etc. (including emergency power generators, water tanks, and more). Some localities have used a "cost approach" of valuing this equipment, which accounts for physical, functional, and economic depreciation. Other localities, however, have used a "dollar per kilowatt" (\$/kW) income model for valuing the equipment, which does not account for depreciation and is often based on inaccurate or incomplete data. Further confusing the matter, this equipment's taxation depended on whether the infrastructure equipment was owned by the building owner or the tenant. As a result of this, very similar or even identical data center equipment is valued very differently, leading to significant inequities from locality to locality or, at times, even within the same locality.

To rectify this disparate approach that localities could take, legislation was introduced by Delegate McNamara and Sen. McPike that provides certainty in future taxation practices. [HB 791](#) and [SB 513](#) establishes that localities shall use the "cost approach" to value data center infrastructure equipment. This treats the data center fixtures the same, regardless of whether they're owned by the data center owners or tenants, providing clarity and certainty to future data center investments.

Mask Mandates:

Gov. Youngkin made lifting mask mandates in schools a priority during his campaign, and upon taking office he immediately took action to follow through on his promises. On the first day of his term, the governor signed [Executive Order Number Two](#), which allowed parents to elect whether to send their children to school in masks.

The Executive Order was immediately subject to legal challenges. Seven school districts (Alexandria City, Arlington County, City of Richmond, Fairfax County, Falls Church City, Hampton City, and Prince William County) filed lawsuits against the order. The ACLU also filed suit, claiming that the Executive Order violated the Americans With Disabilities Act. At the time of publication, this matter is still being deliberated.

The General Assembly also took up this issue through Sen. Dunnavant's [SB 739](#), which permits, notwithstanding any other provision of law or any regulation, rule, or policy implemented by a school board, school division, school official, or other state or local authority, the parent of any child enrolled in a public elementary or secondary school, or in any school-based early childhood care and education program, to elect for such child to not wear a mask while on school property. Additionally, this legislation removes school districts' autonomy to close schools and institute remote instruction.

While controversial, [SB 739](#) ultimately passed both the Senate and House and was signed into law by the governor. As an emergency clause had been added to the legislation, [SB 739](#) took effect on March 1 rather than the usual July 1 enactment date.

Procurement:

Two favorable pieces of legislation regarding procurement were introduced and passed by the General Assembly this session. [HB 429](#) and [SB 225](#) provide that the sum of all projects performed in an architectural and professional engineering contract term shall not exceed \$10 million, and the fee for any single project shall not exceed \$2.5 million. The bill simplifies the dollar limits for term contracts and allows a contract for multiple architectural or professional engineering projects to be renewable for up to three additional terms at the option of the public body.

Consumer Data Protection Act:

A handful of bills made it through the General Assembly this year that deal with the Consumer Data Protection Act.

[HB 381](#) and [SB 393](#) provide that a controller that has obtained personal data about a consumer from a third party shall be deemed in compliance with a consumer's request to delete such data if the controller either (i) retains a record of the deletion request and the minimum data necessary for the purpose of ensuring that the consumer's personal data remains deleted and does not use such retained data for any other purpose or (ii) opts the consumer out of the processing of that data for any purpose except those purposes exempted pursuant to the Consumer Data Protection Act.

[SB 534](#) and [HB 714](#) authorize the Attorney General to pursue actual damages to consumers to the extent they exist if a controller or processor of the personal data of Virginians continues to violate the Consumer Data Protection Act (the Act) following a 30-day cure period offered by the Attorney General or breaches an express written statement provided to the Attorney General. This legislation also abolishes the Consumer Privacy Fund and provides that all civil penalties, expenses, and attorney fees collected from enforcement of the Act shall be deposited into the Regulatory, Consumer Advocacy, Litigation, and Enforcement Revolving Trust Fund.



Virginia State Government Relations Team



Hon. David B. Albo
Partner
703.760.5210
dalbo@williamsmullen.com



Patrick A. Cushing
Partner
804.420.6541
pcushing@williamsmullen.com



Matthew M. Cobb
Partner
804.420.6390
mcobb@williamsmullen.com



Hon. Patrick O. Gottschalk
Partner
804.420.6425
pgottschalk@williamsmullen.com



Nicole Lawter
Director of Government Relations*
703.760.5241 | 804.420.6437
nlawter@williamsmullen.com



Christopher J. McDonald
Director of Government Relations
804.420.6371
cmcdonald@williamsmullen.com



Carter T. Whitelaw
Government Relations Specialist*
804.420.6302
cwhitelaw@williamsmullen.com

* Non-attorney