

March 2009

Government Relations

Legislative UPDATE



2009 Virginia General Assembly Post-Session Update

Budget Issues

Virginia's ever-increasing budget deficit took center stage this General Assembly session as legislators wrangled to rebalance the state budget in the face of drastically reduced revenue expectations. In December, the Governor announced his revenue reforecast, estimating a budget shortfall of \$2.9 billion. As the New Year came and the session began, that number continued to increase, bringing the total revenue shortfall to \$3.7 billion. Virginia expects to receive federal stimulus dollars in the amount of \$4.6 billion that will help alleviate that budgetary deficit.

The final budget is a product of lengthy debate and partisan differences between both legislative chambers. Health, education, transportation and public safety were major issue areas of debate and many programs and services were cut in both temporary and permanent fashions.

Virginia Indoor Clean Air Act

Besides the budget, the topic that generated the most debate was the consideration of a statewide ban on smoking in restaurants. The Virginia Indoor Clean Air Act prohibits smoking in all indoor restaurants and bar and lounge areas in Virginia, with the exception of private clubs, outside venues and restaurant or bar areas with separate ventilation systems for smoking customers. Signs that indicate "No Smoking" must be posted in regulated establishments and any violations of this act will result in a \$25 civil penalty.

Speaker of the House Bill Howell (R-Stafford) led the House majority in a compromise effort with the Governor and the Democratic-controlled Senate to pass this legislation amidst colored debate and opposition. Delegates from Northern Virginia and parts of Hampton Roads were particularly supportive of the legislation after public polls indicated nearly 70 percent of Virginians favored such action. Representatives from more rural parts of the state found the measure less appealing and feared it would not only hinder business but infringe on personal property rights.

The smoking ban takes effect December 1 of this year.

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Text Messaging While Driving

Cell phone usage while driving is a recurring issue at the state capitol that gained more momentum this session with the passage of a ban on text messaging while driving. The legislation prohibits operation of a motor vehicle while using any handheld personal communications device to enter or read text messages. The ban is a secondary offense, meaning drivers must first be observed committing another violation before a law enforcement officer may stop and charge a person for the offense.

The text messaging ban comes on the heels of last year's passage of a ban on cell phone usage, talking or texting, for teenagers who are driving on a graduated license.

Health Care

Medicaid issues garnered considerable attention this session in debates over the budget. The Governor's legislative package included a proposal to double the cigarette tax from \$0.30 to \$0.60 and in turn use that extra revenue to supplement Medicaid funding. Many legislators in favor of the smoking ban were simultaneously in fervent opposition to this tax increase and the proposal failed in a Senate committee.

Other proposals included closing or consolidating several training centers and transitional health care facilities throughout the state. Ultimately, federal stimulus package monies were dedicated to Medicaid funding in Virginia, lessening the need to make drastic cuts to health care.

Another major health care issue dominating the session was proposed changes to certificate of public need requirements. The criteria, review process, and procedures for satisfying conditions on certificates were all streamlined under the leadership of Del. Phil Hamilton (R-Newport News), Chairman of the House Health, Welfare, and Institutions Committee.

Mortgage Lending in Virginia

Several measures were passed that change the level of regulation on mortgage lending activity in Virginia. Amendments to the Mortgage Lender and Broker Act place new obligations on mortgage brokers to use "reasonable skill, care, and diligence" in exercising their duties and to make reasonable efforts to secure a mortgage loan that is in the best interests of the applicant, considering the applicant's circumstances and loan characteristics.

As a result of new legislation, the Virginia Attorney General will have new powers to investigate, and enforce where violations are found, the alleged use of deception, fraud, false pretense, false promise, or misrepresentation in connection with a mortgage loan transaction.

Finally, Virginia passed its version of the federal S.A.F.E. Act, as required by the previously passed federal legislation. Pursuant to this legislation, Virginia will participate in a nationwide mortgage loan originator registry and licensing system. In order to become licensed in Virginia, mortgage loan originators will need to undergo a criminal background check, participate in pre-licensing education and pass a licensing test. The creation of this system marks the first time that individual loan originators will need to become licensed in Virginia.



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Corporate Income Tax

Changes to the corporate income tax apportionment for manufacturers have been sought for many years. New legislation allows manufacturers to elect an apportionment formula of multiplying their income by the sales factor or using the formula prescribed for other businesses, whether the manufacturers have a sales factor or not. The provisions of the bill would be phased in after 2011 with the apportionment formula having a 100 percent sales factor by 2014.

In addition, the General Assembly enacted legislation to require the Joint Legislative Audit and Review Commission (JLARC) to conduct a comprehensive study of the corporate income tax. Such a study has not been done in over 30 years.

Energy & the Environment

Energy and environment issues received more attention in this year's session than in years past. The Governor's Commission on Climate Change, the fluctuating costs of foreign oil, the increasing costs of energy generation, utilities and building materials, and the new federal administration's attention to environmental and energy-related issues were all catalysts for the rise of such issues this year.

Energy efficiency programs were promoted by advancing a measure that authorizes investor-owned electric utilities to recover, through a rate adjustment clause, the costs of designing and operating energy efficiency programs. Similarly, incentives for biofuels production were granted by distinguishing between rates for advanced and standard biofuels.

Offshore drilling was a topic as well, as a new law now authorizes the Marine Resources Commission to lease subaqueous lands for the purpose of generating electrical energy from offshore sources. Transmission of energy from such sources to shore is required under a lease and connected to a royalty. All royalties collected will be appropriated to the Virginia Coastal Energy Research Consortium.

**Please note that the General Assembly reconvened session is April 8, 2009, at which time the Governor will introduce his amendments to bills from this session, including those mentioned here, and may exercise his power of veto.*



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Government Relations Team Successes

Williams Mullen's Government Relations Team secured several victories for our clients and our firm as we worked with the legislature over the past year. We prevailed in arenas for health care funding, construction and development projects, transportation and financial institutions.

Stabilizing health care plans...

We successfully represented the insurance industry in defeating efforts to mandate costly health care coverage for certain disorders. Such mandates would have been detrimental to small businesses and individuals by significantly increasing health care premiums.

Continuing as a leader on transportation issues...

We tackled transportation issues by working to offset the unbalanced representation on the state towing board, to impose restrictions on text messaging while driving and to strengthen the requirements for installing ignition interlock systems in the vehicles of DUI offenders.

Securing state funding for key projects...

Significant efforts were taken to secure state funding for arts initiatives and health care information and service providers. We were successful in securing essential operating funds for a major, renowned state arts facility.

Our legislative team also worked with a major hospital to maintain critical funding within the state Medicaid budget for select neonatal intensive care units. We were also successful in restoring funding for a national leader in healthcare data collection and analysis that provides information to health care providers, policy-makers, and patients.

Promoting innovative business solutions for community development...

We advanced efforts to benefit the state, regional and local Richmond economy by negotiating the redirection of a portion of the state sales tax revenue for a major urban revitalization effort. As a result of our work, certain sales tax revenues generated by transactions related to a stadium for a minor league professional baseball-affiliated team and attached structures will be used to repay bonds issued to finance the construction of such publicly-owned stadium.

This success allows for the redevelopment of a brownfield, installation of an advanced municipal stormwater system, creation of a significant economic development engine, and completion of multi-use, mixed use developments to benefit commercial, real estate, public and private communities.

Advocating for vital financial services...

We advocated for financial entities by successfully crafting legislation that satisfied federal law while avoiding creating undue burdens on loan originators. Additionally, we were involved in the passage of legislation that provided additional protections to consumers, leveled the playing field for mortgage lenders by discouraging dishonest lending practices and streamlined state code to reduce compliance burdens on lenders.

Providing comprehensive advocacy and monitoring for associations...

Our Team continued its ongoing efforts to review, analyze, and monitor legislative activity for organizations. We advocated on behalf of our association clients regarding critical legislation and testified before committees on a wide range of complex issues including immigration, professional services, contractual agreements and procurement issues.



Williams Mullen Government Relations Team

Looking forward, the Williams Mullen Government Relations Team is ready to serve client needs in the legislative, regulatory or investigative arenas at the local, regional, state, and federal levels.

Ralph L. “Bill” Axselle, Jr. is a 16-year veteran of the Virginia House of Delegates. He was a ranking member on a number of major committees including serving as vice chair of the committee that wrote the Virginia Public Procurement Act. Mr. Axselle served as chairman of Richmond Region 2007 and is a past chairman of the Greater Richmond Chamber of Commerce.

Sandra D. Bowen* previously served for four years as Secretary of Administration in the Cabinet of Governor Mark Warner. She also served as Secretary of the Commonwealth during the administration of Governor Gerald L. Baliles, and as a staff assistant to Governor Charles Robb. In the interim between the two Cabinet positions, Ms. Bowen served as Senior Vice President of the Virginia Chamber of Commerce for 12 years.

Carrie D. Hileman* is our Government Assistant. She gained experience at the Virginia General Assembly as the main staff liaison for agricultural issues for the former Chairman of the House Agriculture, Chesapeake, and Natural Resources Committee. She previously served as a Governor’s Fellow in the Secretariat of Natural Resources.

Travis G. Hill represents clients before the Virginia General Assembly and the State Corporation Commission. He handles legislative issues for not-for-profit entities, private foundations, associations and major corporate clients.

Reginald N. Jones* has represented clients before the Virginia General Assembly for more than 30 years. He serves on the board of directors of the Jamestown-Yorktown Foundation and was the founding president of the Henrico County Bar Association.

Jerry W. Kilgore served as Virginia’s Attorney General from 2002 to 2005. Working with the Virginia General Assembly, he successfully promoted over 100 pieces of legislation, a record for a Virginia Attorney General. Mr. Kilgore also served on the Executive Committee for the National Association of Attorneys General and as the chair of the Republican Attorneys General Association.

Christopher R. Nolen previously served as served as Special Counsel & Chief of Opinions and then as Chief Counsel to the Attorney General of Virginia. Mr. Nolen brings more than 16 years of experience in politics and government to his representation of clients before the Commonwealth’s executive agencies and the Virginia General Assembly.

Terrie L. Suit* previously served for nearly a decade as a member of the House of Delegates in the Virginia General Assembly representing the citizens of Virginia Beach and Chesapeake. During her tenure she chaired both the General Laws Committee and the Virginia Housing Commission.

C. William Waechter, Jr. previously served as assistant general counsel and later as general Attorney for the Virginia State Corporation Commission.

Our Virginia team is further complemented by the talents and experience of our government relations professionals in North Carolina and Washington, D.C.

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