

Specific Legislation and Legislation for Discussion
Board of Supervisors Legislative Committee
January 29, 2021

Specific Legislation

New Bills – 2021 GA

HB 2114 (Ransone) (HCCT) expands from only localities in Planning District 23 to all localities a provision that provides that in any instance in which a locality has submitted a timely notice of public hearing to a newspaper published or having general circulation in the locality and the newspaper fails to publish the notice, such locality shall be deemed to have met certain notice requirements so long as the notice was published in the next available edition. Under current law, this provision that was created by the 2020 Regular Session and only applies to localities in Planning District 23 will expire on July 1, 2022. The provision in the bill as it applies to all localities will also expire on July 1, 2022. Recommend support. (21100430D)

Transportation

HB 2138 (Guzman) (Passed House; STRAN) authorizes the Department of Motor Vehicles to issue identification privilege cards to applicants who do not meet the citizenship or legal presence requirements for a special identification card or a limited-duration special identification card and have reported income from Virginia sources or been claimed as a dependent on an individual tax return filed with the Commonwealth in the preceding 12 months. The bill provides that identification privilege cards shall be treated as special identification cards unless otherwise provided in the Code of Virginia. The bill limits the release of certain information stored by the Department. The bill has a delayed effective date of January 1, 2022. Recommend support. (21102728D-E)

HJ 542 (McQuinn) (HAPP) requests the Department of Rail and Public Transportation to conduct a two-year study of transit equity and modernization in the Commonwealth. Recommend support. (21102752D)

Education

SJ 294 (Lewis) (Agreed to by Senate) directs the Joint Legislative Audit and Review Commission to study the true cost of education in the Commonwealth and provide an accurate assessment of the costs to implement the Standards of Quality. Recommend support. (21102747D-E)

Elections

HB 2081 (Levine) (Passed House; SJUD) prohibits any person from knowingly possessing a firearm within 40 feet of any building, or part thereof, used as a polling place, including one hour before and one hour after its use as a polling place, except for (i) a qualified law-enforcement officer or retired law-enforcement officer, (ii) any person occupying his own private property that

falls within 40 feet of the polling place, or (iii) a licensed armed security officer whose employment or performance of his duties occurs within 40 feet of the polling place. The bill further provides that no person shall knowingly possess a firearm within 40 feet of a meeting place for the local electoral board while the electoral board meets to ascertain the results of an election or any place used as the setting for a recount. A violation of the provisions of the bill is a Class 1 misdemeanor. Recommend support. (21102618D)

Health and Human Services

HB 1874 (Coyner) (Passed House; SRSS) provides that the State Board of Local and Regional Jails, in establishing the minimum standards for behavioral health services in local correctional facilities, shall include a requirement that if a behavioral health screening indicates that the person may have a mental illness, an assessment of his need for mental health services shall be conducted within 72 hours of the time of the screening. Recommend oppose unless amended to delay enactment until sufficient state funds are in place for implementation. (21102895D-H1)

HB 2191 (Leftwich) (House Floor) provides that the local department of social services shall disclose to the parents of a child in the local department's custody the location of the child, unless the local department finds that such disclosure is not in the best interests of the child. Recommend oppose. (21103371D-H1)

SB 1297 (Obenshain) (Passed Senate) allows the circuit court, upon a finding that an incapacitated adult has been, within a reasonable period of time, subjected to an act of violence, force, or threat or been subjected to financial exploitation, to include in an emergency order for adult protective services one or more of the following conditions to be imposed on the alleged perpetrator: (i) a prohibition on acts of violence, force, or threat or criminal offenses that may result in injury to person or property; (ii) a prohibition on such other contacts by the alleged perpetrator with the adult or the adult's family or household members as the court deems necessary for the health and safety of such persons; or (iii) such other conditions as the court deems necessary to prevent (a) acts of violence, force, or threat; (b) criminal offenses that may result in injury to persons or property; (c) communication or other contact of any kind by the alleged perpetrator; or (d) financial exploitation by the alleged perpetrator. The bill provides that any person who violates any such condition is guilty of a Class 1 misdemeanor. Also, the bill provides that hearings on emergency orders for adult protective services shall be held no earlier than 24 hours and no later than 72 hours after the notice required has been given, unless such notice has been waived by the court. Current law just requires such hearing be held no earlier than 24 hours. Recommend support. (21102422D)

SB 1366 (Barker) (Senate Floor) provides that, in providing aging services, the Department for Aging and Rehabilitative Services shall prioritize older persons with significant social need and defines "social need" as need caused by noneconomic factors, including physical and developmental disabilities; language barriers; cultural, social, or geographic isolation, including that caused by racial or ethnic status; gender identity or gender expression; sexual orientation; or status as a person infected with human immunodeficiency virus that restricts an individual's ability to perform normal daily tasks or threatens such individual's capacity to live independently. Recommend support. (21103857D-S2)

SB 1472 (Suetterlein) (SRSS) directs the Department of Medical Assistance Services to study and develop recommendations related to options for increasing access to virtual supports and services for individuals with intellectual and developmental disabilities, including increasing access to assistive technology and environmental modifications to facilitate increased access to virtual supports and services, with the goal of addressing such recommendations as part of any concurrent review of regulations related to services for individuals with intellectual and developmental disabilities, and to report its findings and conclusions to the Governor and the General Assembly by November 1, 2021. Recommend support. (21101385D)

Children's Services Act

HB 2117 (VanValkenburg) (HAPP) requires that funds expended for special education services under the Children's Services Act only be expended on educational programs that are licensed by the Department of Education. The bill adds children and youth previously placed in approved private school educational programs for at least six months, who will receive transitional services in a public school setting for no longer than 12 months, to the target population for eligibility for the state pool of funds. The bill requires the Secretary of Education, in conjunction with the Office of Children's Services and the Department of Education, to establish a work group (the Work Group) with appropriate stakeholders to develop a detailed plan to direct the transfer of Children's Services Act funds currently reserved for children requiring an educational placement in a private special education day school or residential facility to the Department of Education and to develop a standardized reporting process, template, and reporting requirement for private special education day school tuition rates to ensure that tuition rates can be accurately compared across schools and over time. The bill requires that the Work Group submit its plan and recommendations to the Chairmen of the House Committee on Appropriations and Senate Committee on Finance and Appropriations by November 1, 2021. Recommend amend. Support provisions that allow CSA funding for transitional services from private special education schools to public schools, and requirements that private special education schools be licensed to receive CSA funds. Also support retaining comprehensive study language in the legislation on moving administration of CSA funds from OCS to DOE without prior study by a comprehensive work group, as that could potentially impact state sum sufficiency funding for CSA, which is a top County priority. (21103572D-H1)

SB 1313 (Mason) (SFIN) requires that funds expended for special education services under the Children's Services Act only be expended on educational programs that are licensed by the Department of Education. The bill adds children and youth previously placed in approved private school educational programs for at least six months, who will receive transitional services in a public school setting for no longer than 12 months, to the target population for eligibility for the state pool of funds. The bill requires the Secretary of Education, in conjunction with the Office of Children's Services and the Department of Education, to establish a work group (the Work Group) with appropriate stakeholders to develop a detailed plan to direct the transfer of Children's Services Act funds currently reserved for children requiring an educational placement in a private special education day school or residential facility to the Department of Education and to develop a standardized reporting process, template, and reporting requirement for private special education day school tuition rates to ensure that tuition rates can be accurately compared across schools and over time. The bill requires that the Work Group submit its plan and recommendations to the Chairmen of the House Committee on Appropriations and Senate Committee on Finance and

Appropriations by November 1, 2021. Recommend amend. Support provisions that allow CSA funding for transitional services from private special education schools to public schools, and requirements that private special education schools be licensed to receive CSA funds. Also support retaining comprehensive study language in the legislation on moving administration of CSA funds from OCS to DOE without prior study by a comprehensive work group, as that could potentially impact state sum sufficiency funding for CSA, which is a top County priority. (21103505D-S1)

SB 1133 (Suetterlein) (SFIN) expands eligibility for use of the state pool of funds under the Children's Services Act to services that are provided in a public school setting and requires that private day schools be approved and licensed by the Department of Education or an equivalent out-of-state licensing agency to be eligible for the state pool of funds. The bill requires the Department of Education and relevant local school boards to develop and implement a pilot program for up to four years in two to eight local school divisions in the Commonwealth. In developing the pilot, the Department is required to partner with the appropriate school board employees in each such local school division to (i) identify the resources, services, and supports required by each student who resides in each such local school division and who is educated in a private school setting pursuant to his Individualized Education Program; (ii) study the feasibility of transitioning each such student from his private school setting to an appropriate public school setting in the local school division and providing the identified resources, services, and supports in such public school setting; and (iii) recommend a process for redirecting federal, state, and local funds, including funds provided pursuant to the Children's Services Act, provided for the education of each such student to the local school division for the purpose of providing the identified resources, services, and supports in the appropriate public school setting. The bill requires the Department of Education to make a report to the Governor, the Senate Committees on Education and Health and Finance and Appropriations, and the House Committees on Education and Appropriations on the findings of each pilot program after two and four years. Recommend amend. Support provisions that allow CSA funding for transitional services from private special education schools to public schools, and requirements that private special education schools be licensed to receive CSA funds. Also support retaining comprehensive study language in the legislation on moving administration of CSA funds from OCS to DOE without prior study by a comprehensive work group, as that could potentially impact state sum sufficiency funding for CSA, which is a top County priority. (21103477D-S1)

Public Safety

HB 1992 (Murphy) (Reported from HCT) prohibits a person who has been convicted of assault and battery of a family or household member from purchasing, possessing, or transporting a firearm. A person who violates this provision is guilty of a Class 1 misdemeanor. Recommend support. (21103651D-H1)

Procurement

HB 1996 (Murphy) (Passed House; SGL) allows localities to include in the Invitation to Bid criteria that may be used in determining whether any bidder, not just any bidder who is not prequalified by the Virginia Department of Transportation as under current law, is a responsible bidder. Recommend support. (21101375D)

Legislation Provided for Discussion

HB 1880 (Krizek) (HGL) delays by one additional year, from July 1, 2021, to July 1, 2022, the prohibition on the play or offering for play of skill games that was instituted in the 2020 Regular Session. The bill extends the one-year phase-out of existing skill games by one additional year to July 1, 2022, but decreases to 90 percent the total number of machines that a distributor may provide for play to truck stops and Virginia Alcoholic Beverage Control Authority retail licensees (ABC retail licensees) relative to the number of machines such distributor previously reported to the Virginia Alcoholic Beverage Control Authority (the Authority) on July 1, 2020. The bill caps the total number of skill games that persons operating truck stops and ABC retail licensees may make available for play to no more than 20 and six, respectively. The bill extends the prohibition on distributors offering new skill games for play. The bill keeps oversight authority over skill games with the Authority. The bill extends the requirement that each distributor pay a monthly tax of \$1,200 for each skill game provided for play during the previous month. Revenues will accrue one percent to the Problem Gambling Treatment and Support Fund, three percent to the Authority for the purposes of implementing the bill, 33 percent to the localities in which the skill games are located, one percent to the Family and Children's Trust Fund, two percent to the Virginia Breeders Fund, and 60 percent to the Commonwealth Transportation Fund. The bill extends the requirement that distributors report monthly to the Authority the number of skill games provided for play. Finally, the bill prohibits persons younger than 21 years of age from playing skill games or redeeming the evidence of winnings for them. (21102510D)

SB 1384 (Surovell) (Reported from SGL) allows a participating locality, for any procurement solicitation or contract exceeding \$10,000 for goods and services, to require the bidder or offeror to disclose certain information regarding pre-dispute arbitration clauses, defined in the bill, in employment, civil rights, and consumer disputes, and provides that a locality may consider the policies and practices related to arbitration of each bidder and offeror. The bill also provides that a participating locality shall require the bidder or offeror to provide written or electronic submissions to allow the locality to ascertain (i) whether the bidder or offeror requires persons with whom it is in a work relationship or prospective work relationship to sign or otherwise enter into a contract containing a pre-dispute arbitration clause that would cover an employment or civil rights dispute and (ii) whether the bidder or offeror requires consumers to sign or otherwise enter into a contract containing a pre-dispute arbitration clause that would cover a consumer or civil rights dispute as a condition of purchasing products or services, downloading mobile applications, or using websites. The bill authorizes a participating locality to cancel, terminate, or suspend, in whole or in part, the contract of any contractor that has violated a provision of the bill and to declare the contractor ineligible for further contracts with such locality for up to five years. (21102806D)

Elections

HB 1890 (Price) (Reported from HPE)/**SB 1395** (McClellan) (SFIN) prohibits any voting qualification or any standard, practice, or procedure related to voting from being imposed or applied in a manner that results in the denial or abridgment of the right of any United States citizen to vote based on his race or color or membership in a language minority group. The bill further prohibits at-large methods of election from being imposed or applied in a locality in a manner that

impairs the ability of a protected class, defined in the bill, to elect candidates of its choice or to influence the outcome of an election, by diluting or abridging the rights of voters who are members of a protected class. Prior to enacting or administering a covered practice, defined in the bill, the governing body of a locality is required to publish the proposed covered practice and accept public comment for a minimum of 30 days on the proposed covered practice; after the public comment period, a 30-day waiting period is required. During this period, any person who will be subject to or affected by the covered practice may challenge the covered practice as (i) having the purpose or effect of denying or abridging the right to vote on the basis of race or color or membership in a language minority group or (ii) resulting in the retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise. The bill permits the local governing body to instead submit the proposed covered practice to the Office of the Attorney General for issuance of a certification of no objection and, once such certification is issued, to enact or administer the covered practice. Certain unlawful actions, including knowingly communicating false information to voters, that are currently subject to criminal penalties will create civil causes of action under the bill. Current provisions related to language minority accessibility are moved to a newly created chapter relating to the rights of voters. (21103495D-H1, 21103648D-S1)

HB 1883 (VanValkenburg) (HPE) requires the governing body of a covered jurisdiction, prior to enacting or seeking to administer any voting qualification or prerequisite to voting, or any standard, practice, or procedure with respect to voting, to either (i) institute an action in the Circuit Court of the City of Richmond for a declaratory judgment that the covered practice neither has the purpose or effect of denying or abridging the right to vote on account of race or color or membership in a language minority group nor will result in the retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise or (ii) submit such covered practice to the Office of the Attorney General for issuance of a certification of no objection. No covered practice can be given effect until the Circuit Court of the City of Richmond has entered such judgment or the Attorney General has issued such certification. The bill permits certain persons to institute an action to compel the governing body of a covered jurisdiction to institute an action in the Circuit Court of the City of Richmond or to seek issuance of a certification of no objection and provides for appeals by the governing body or certain persons to decisions made by the Attorney General. A covered jurisdiction is defined by the bill as any county or city that is determined by the Attorney General using annual American Community Survey data to have a voting age population that contains two or more racial or ethnic groups, each constituting at least 20 percent of its voting age population, but excludes any county or city that, on or after January 1, 2008, was exempt from the preclearance requirements of § 5 of the Voting Rights Act of 1965, as amended, pursuant to a declaratory jurisdiction issued by the United States District Court for the District of Columbia under § 4 of that Act. (21102660D)

Marijuana

HB 2312 (Herring) (HGL) eliminates criminal penalties for possession of marijuana for persons who are 21 years of age or older. The bill also modifies several other criminal penalties related to marijuana and provides for an automatic expungement process for those convicted of certain marijuana-related crimes. The bill establishes a regulatory scheme for the regulation of marijuana cultivation facilities, marijuana manufacturing facilities, marijuana testing facilities, marijuana

wholesalers, and retail marijuana stores by the Virginia Alcoholic Beverage Control Authority, renamed as the Virginia Alcoholic Beverage and Cannabis Control Authority. The bill imposes a tax on retail marijuana, retail marijuana products, and marijuana paraphernalia sold by a retail marijuana store, as well as non-retail marijuana and non-retail marijuana products at a rate of 21 percent and provides that localities may by ordinance levy a three percent tax on any such marijuana or marijuana products. The bill provides that net profits attributable to regulatory activities of the Authority's Board of Directors pursuant to this bill shall be appropriated as follows: (i) 40 percent to pre-kindergarten programs for at-risk three and four year olds, (ii) 30 percent to the Cannabis Equity Reinvestment Fund, established in the bill, (iii) 25 percent to substance use disorder prevention and treatment programs, and (iv) five percent to public health programs. The bill creates the Cannabis Control Advisory Board, the Cannabis Equity Reinvestment Board, and the Cannabis Public Health Advisory Council. The bill has a delayed effective date of January 1, 2023, with provisions for the Authority's Board of Directors to promulgate regulations for the implementation of the bill and for implementation of the automatic expungement process to begin in due course. In addition, the bill establishes three work groups to begin their efforts in due course: one focused on public health and safety issues, one focused on providing resources for teachers in elementary and secondary schools, and one focused on college-aged individuals. (21101659D)

SB 1406 (Ebbin) (SJUD) eliminates criminal penalties for possession of marijuana for persons who are 21 years of age or older. The bill also modifies several other criminal penalties related to marijuana and provides for an automatic expungement process for those convicted of certain marijuana-related crimes. The bill establishes a regulatory scheme for the regulation of marijuana cultivation facilities, marijuana manufacturing facilities, marijuana testing facilities, marijuana wholesalers, and retail marijuana stores by the Virginia Alcoholic Beverage Control Authority, renamed as the Virginia Alcoholic Beverage and Cannabis Control Authority. The bill imposes a tax on retail marijuana, retail marijuana products, and marijuana paraphernalia sold by a retail marijuana store, as well as non-retail marijuana and non-retail marijuana products at a rate of 21 percent and provides that localities may by ordinance levy a three percent tax on any such marijuana or marijuana products. The bill provides that net profits attributable to regulatory activities of the Authority's Board of Directors pursuant to this bill shall be appropriated as follows: (i) 40 percent to pre-kindergarten programs for at-risk three and four year olds, (ii) 30 percent to the Cannabis Equity Reinvestment Fund, established in the bill, (iii) 25 percent to substance use disorder prevention and treatment programs, and (iv) five percent to public health programs. The bill creates the Cannabis Control Advisory Board, the Cannabis Equity Reinvestment Board, and the Cannabis Public Health Advisory Council. The bill has a delayed effective date of January 1, 2023, with provisions for the Authority's Board of Directors to promulgate regulations for the implementation of the bill and for implementation of the automatic expungement process to begin in due course. In addition, the bill establishes three work groups to begin their efforts in due course: one focused on public health and safety issues, one focused on providing resources for teachers in elementary and secondary schools, and one focused on college-aged individuals. (21103366D-S1)

Public Safety/Criminal Justice

HB 2322 (Herring) (HGL)/**SB 1469** (Barker) (SFIN) establishes the Opioid Abatement Authority. The Authority, with the assistance of the Office of the Attorney General, would administer the

Opioid Abatement Fund, which would receive moneys from settlements, judgments, verdicts, and other court orders, or related agreements, concerning claims regarding the manufacturing, marketing, distribution, or sale of opioids that would be used to provide grants and loans to Virginia agencies and certain localities for the purpose of treating, preventing, and reducing opioid use disorder and the misuse of opioids in the Commonwealth. (21103991D-H1, 21103486D)

Expungement

HB 2113 (Herring) (HAPP) establishes a process for the automatic expungement, defined in the bill, of criminal records for certain convictions, deferred dispositions, and acquittals and for offenses that have been nolle prossed or otherwise dismissed. The bill also provides a process for the automatic expungement of criminal records for charges arising from mistaken identity or the unauthorized use of identifying information. The bill has staggered delayed effective dates in order to develop systems for implementing the provisions of the bill. This bill is a recommendation of the Virginia State Crime Commission. (21103298D-H1)

SB 1283 (Morrissey) (SJUD) establishes a process for the automatic expungement of criminal records for misdemeanors, certain felony convictions, deferred dispositions, and acquittals and for offenses that have been nolle prossed or otherwise dismissed. The bill also provides a process for the automatic expungement of criminal records for charges arising from mistaken identity or the unauthorized use of identifying information. The bill has staggered delayed effective dates in order to develop systems for implementing the provisions of the bill. (21102250D)

SB 1372 (Lucas) (SJUD) establishes a process for the automatic expungement, defined in the bill, of criminal records for certain convictions, deferred dispositions, and acquittals and for offenses that have been nolle prossed or otherwise dismissed. The bill also provides a process for the automatic expungement of criminal records for charges arising from mistaken identity or the unauthorized use of identifying information. The bill has staggered delayed effective dates in order to develop systems for implementing the provisions of the bill. (21102017D)

SB 1339 (Surovell) (SJUD) establishes a process for the sealing of police and court records, defined in the bill, of criminal records for certain convictions, deferred dispositions, and acquittals and for offenses that have been nolle prossed or otherwise dismissed. The bill also allows a person to petition for the expungement of the police and court records relating to convictions of marijuana possession, underage alcohol or tobacco possession, and using a false ID to obtain alcohol and for deferred disposition dismissals for possession of controlled substances or marijuana, underage alcohol or tobacco possession, and using a false ID to obtain alcohol. The bill creates the Expungement Fee Fund, which is funded by all collected expungement fees. The bill provides that expungement fees shall not be refundable, but persons who are indigent or represented by court-appointed counsel shall not be required to pay such fees. The Fund is administered by the Executive Secretary of the Supreme Court and used to fund the costs of court-appointed counsel. The bill also requires a business that collects and sells or licenses the public record information of a consumer to implement security practices to protect the accuracy of a consumer's public record information, obtain express consent of a parent of a minor before selling the public record information of such minor, provide access to consumers to their own public record information that is held by the entity, refrain from maintaining or selling information that it knows to be

inaccurate, and provide a means by which a consumer can opt out of the sale of his public record information. The bill provides that a violation could result in a civil penalty of up to \$7,500 or damages to be awarded to a consumer. The bill also provides for the award of attorney fees and costs. With the exception of the provisions regarding the Expungement Fee Fund, and the funding provisions of such fund, the bill has delayed effective date of July 1, 2022. The bill directs the Department of Criminal Justice Services to adopt emergency regulations to implement the provisions of the bill. (21100793D)

Qualified Immunity

HB 2045 (Bourne) (HCT) creates a civil action for the deprivation of a person's rights by a law-enforcement officer and provides that a plaintiff may be awarded compensatory damages, punitive damages, and equitable relief as well as reasonable attorney fees and costs. The bill provides that sovereign immunity and limitations on liability or damages shall not apply to such actions and that qualified immunity is not a defense to liability for such deprivation of rights. Finally, the bill provides that any public or private entity that employs or contracts for the services of a law-enforcement officer owes a duty of reasonable care to third parties in its hiring, supervision, training, retention, and use of such officers under its employment or contract. (21101696D)

SB 1440 (Surovell) (SJUD) creates a civil action for the use of unlawful acts of force, including deadly force, or failure to intervene as required by law, by a law-enforcement officer or correctional officer while performing his duties for a public entity or private police department. The bill also provides that a public entity or private police department employing such officer is liable for any injuries sustained by the injured party as a result of the officer's actions if they occurred in the ordinary course of the employer's business. Sovereign immunity would not apply to such claims. (21102785D)