

House Bill 29

Amendment No. 1 Reflect COVID-19 Sum Sufficient and Deficit Authorizations (Item 0)

General Assembly Action: All amendments to HB 29 were incorporated into the front page actions of the budget bill.

Governor's Action: Changes additions to balance on the front page to reflect the Governor's actions taken in response to the COVID-19 pandemic. Actions include a \$55.5 million sum sufficient disaster declaration authorization (March 25th Executive Order) and a \$2.5 million deficit authorization for housing.

Notes:

- The \$2.5 million deficit for housing falls under the Department of Housing and Community Development to respond to the need for temporary shelter for the high-risk homeless.

Amendment No. 2 Office of the Governor Reverse Transfer of Executive Mansion Operations to DGS (Item 51)

General Assembly Action: Transferred \$33,706 GF and 4.0 positions associated with Executive Mansion staff from the Office of the Governor to the Department of General Services (DGS).

Governor's Action: Provides \$33,706 GF and 4.0 positions the second year to reverse the transfer, moving the funding and positions back to

the Office of the Governor. A companion amendment to Item 80 removes the funding and positions from DGS (Amendment #3).

Notes:

- This is a net-zero transfer between DGS and the Office of the Governor.
- There is a companion amendment in HB 30.

**Amendment No. 3
Department of General Services
Reverse Transfer of Executive Mansion Staff to DGS
(Item 80)**

General Assembly Action: Transferred \$33,706 GF and 4.0 positions associated with Executive Mansion staff and corresponding funding from the Office of the Governor to the Department of General Services (DGS).

Governor's Action: Removes and transfers \$33,706 GF and 4.0 positions the second year, associated with Executive Mansion staff and operations. A companion amendment to Item 51 reflects the corresponding increase in funding and positions resulting from the transfer (Amendment #2).

**Amendment No. 4
Virginia Employment Commission
Unemployment Insurance Flexibility
(Item 123)**

General Assembly Action: No action.

Governor's Action: Gives the Governor authority to override the provisions of The Virginia Unemployment Compensation Act in response to the COVID-19 pandemic.

Notes:

- Allows the Governor to waive the work search requirement for benefit recipients in order to lessen the spread of the virus.
- According to the Virginia Employment Commission, the intent is not to permit substantive changes to existing law. However, as written, the proposed language may be unnecessarily broad.

**Amendment No. 5
Department of Education
Temporary Flexibility or Waivers in Response to COVID-19
(Item 134)**

General Assembly Action: No action.

Governor's Action: Provides authority for the Superintendent of Public Instruction to grant temporary flexibility or issue waivers of certain deadlines or requirements in the Appropriation Act or in § 22.1, *Code of Virginia* that cannot be met due to the state of emergency or school closures resulting from COVID-19.

- Flexibility or waivers may include, but are not limited to, accreditation, testing and assessments, graduation, licensure, including temporary licensure, school calendars, and program application and reports due to the Department of Education or Board of Education.
- The Superintendent's authority applies only to deadlines and requirements in FY 2020 and FY 2021.

- Prior to granting any flexibility or waiver, the Superintendent is required to report and substantiate to the Secretary of Education how COVID-19 impacted each deadline or requirement, the proposed alternative, and the affected fiscal and school years. The Superintendent is also required to report to the Board of Education on any waivers or flexibility extended.

Notes:

- There is a companion amendment proposed for House Bill 30.

**Amendment No. 6
Direct Aid to Public Education
Prorate Supplemental Lottery Per Pupil Payments
(Item 136)**

General Assembly Action: No action.

Governor's Action: Adds language authorizing the Department of Education to prorate Supplemental Lottery Per Pupil Allocation payments to divisions in the event of a Lottery Proceeds shortfall.

Notes:

- House Bill 30, as enrolled, contains identical language to prorate lottery per pupil payments in the event of a Lottery Proceeds shortfall.

Amendment No. 7
Direct Aid to Public Education
Waive Required Local Effort and Match Obligations
(Item 136)

General Assembly Action: No action.

Governor's Action: Adds language waiving certain local school divisions' required local effort and required local match obligation in FY 2020 due to the state of emergency and school closures resulting from COVID-19.

Notes:

- Currently, Appropriation Act language requires any required local matching funds that a locality has not expended at the end of a school year, pursuant to the Standards of Quality, to be paid by the locality into the General Fund.

Amendment No. 8
Department of Accounts Transfer Payments
Remove Planned Voluntary Revenue Reserve Deposits
(Item 266)

General Assembly Action: Added \$182 million GF the second year, providing a total of \$601.8 million GF in voluntary deposits to the Revenue Reserve Fund in the second year. The additional \$182 million GF also included language stating that the funds may be transferred to the Revenue Stabilization Fund ("Rainy Day Fund") if a mandatory deposit requirement is triggered.

Governor's Action: Removes \$601.8 million GF in planned voluntary deposits to the Revenue Reserve Fund in response to a potential revenue shortfall caused by the COVID-19 pandemic.

Amendment No. 9
Department of Medical Assistance Services
Fund Medicaid Costs of Initial COVID-19 Response
(Item 303)

General Assembly Action: No action.

Governor's Action: Provides \$308,239 GF and \$815,481 NGF to fund emergency actions taken by the Department of Medical Assistance Services for the costs of policy changes implemented to respond to COVID-19. These actions include:

- Elimination of copays for medical services;
- No pre-approvals needed and automatic approval extensions for many critical medical services;
- Outreach to higher risk and older members to review critical needs;
- 90 day supply of many routine prescriptions;
- Ensuring members do not inadvertently lose coverage due to lapses in paperwork or a change in circumstances; and
- Encouraging use of telehealth.

Notes:

- The primary cost is due to the elimination of copays on medical services, which are minimal in Medicaid.

Amendment No. 10
Department of Medical Assistance Services
Increase Nursing Facility Rates in Response to COVID-19
(Item 303)

General Assembly Action: No action.

Governor's Action: Increases the daily per diem rates for nursing homes by \$20 for the COVID-19 response to reflect higher nursing costs related to staffing issues, purchase of personal protection equipment, and additional cleaning. No appropriation is provided based on the assumption that other fee for service costs for medical services will be lower because of COVID-19 and the existing appropriation would be sufficient to cover the costs. The majority of the costs will occur in Medicaid managed care, for which the Department of Medical Assistance Services will require the managed care organizations to make the additional payment with no change in their rates.

Notes:

- This action for FY 2020 proposes to increase fee-for-service Medicaid costs estimated at \$1.9 million GF per quarter, which will reduce the available resources at year-end, assuming sufficient appropriation in Medicaid exists.
- For the managed care companies, the state's requirement to fund the increase (\$26.3 million per quarter) with no adjustment in rates is contrary to the state's risk-based system by not allowing the plans to benefit from the risk they assumed (assuming the plans even have a profit).
- In a separate amendment in HB 30 the Governor delays the nursing home increases the General Assembly funded beginning this July 1, 2020.

Amendment No. 11
Department of Medical Assistance Services
Authority for Changes to Medicaid in Response to COVID-19
(Item 307)

General Assembly Action: No action.

Governor's Action: Provides broad authority for the Department of Medical Assistance Services (DMAS) to make emergency changes to the Medicaid program to address the COVID-19 pandemic. It suspends the normal review requirement for changes to Medicaid and requires the Governor to provide written approval of such actions. DMAS is required to notify the Chairs of the House Appropriations and Senate Finance and Appropriations Committees within 15 days of any actions taken. All such emergency actions shall expire with the end of the Governor's emergency declaration.

Notes:

- It is unclear what other actions need to take place and why specific authority was not sent down as an amendment.
- It is unclear as to how any actions with costs would be funded under such authority.

Amendment No. 12
Department of Medical Assistance Services
Flexibility to Adjust Payment Dates
(Item 307)

General Assembly Action: No action.

Governor's Action: Adds language allowing the Department of Medical Assistance Services to adjust the date of any agency payments if doing so allows the agency to maximize federal reimbursement if such a change in the payments is allowable under state and federal rules.

Notes:

- The federal Families First Coronavirus Response Act (enacted in March) provided an increase in the Medicaid federal match rate from 50 to 56.2 percent for each quarter the Coronavirus public health emergency exists. In the last quarter of the enhanced match rate, this language would allow the Commonwealth to shift payments from one quarter to another to take advantage of the increased match rate for one-time savings.

Amendment No. 13
Department of Medical Assistance Services
Unallot State Savings from Enhanced Federal Match Rate for
Medicaid
(Item 307)

General Assembly Action: No action.

Governor's Action: Includes language directing the Department of Medical Assistance Services (DMAS) to develop an estimate of the state savings from the enhanced federal match rate provided through the federal Families First Coronavirus Response Act (enacted in

March). This act increases the federal match rate for Medicaid from 50 to 56.2 percent during each quarter the nation is under a public health emergency. DMAS is required to report the estimated savings the Chairs of the House Appropriations and Senate Finance and Appropriations Committees. In addition, the Department of Planning and Budget is authorized to unallot the state savings.

Notes:

- Staff estimates that for the last two quarters of FY 2020, the general fund savings is \$314.7 million. If the emergency continues for the first two quarters of FY 2021 then the state would realize at least an additional \$330 million in savings.

**Amendment No. 14
Increase Child Care and Development Block Grant
Appropriation
(Item 340)**

General Assembly Action: No action.

Governor's Action: Provides \$66.0 million in federal appropriation from the Child Care and Development Block Grant in FY 2020 to be used for COVID-19 incentive grants to child care providers, emergency child care, elimination of co-pays for subsidy program participants, and the extension of absence days to temporarily closed child care centers. This additional federal funding was provided through the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Amendment No. 15
Increase Child Care and Development Block Grant
Appropriation to Spend Balances
(Item 340)

General Assembly Action: No action.

Governor's Action: Adds \$2.0 million in federal appropriation in FY 2020 to spend down Child Care Development Fund (CCDF) balances to fund full-day authorization for child care for school age children and sibling enrollment for families already approved for care. This action is in response to the public health emergency.

Notes:

- The CCDF has sufficient cash balances.

Amendment No. 16
Department of Social Services
Unallot State Savings from Enhanced Federal Match Rate for
Federal Foster Care Program
(Item 344)

General Assembly Action: No action.

Governor's Action: Includes language directing the Department of Social Services (DSS) to develop an estimate of the state savings from the enhanced federal match rate provided through the federal Families First Coronavirus Response Act (enacted in March). This act increases the federal match rate for Medicaid from 50 to 56.2 percent during each quarter the nation is under a public health emergency. The Medicaid match rate is also used in the Title IV-E federal foster care program. DSS is required to report the estimated savings to the Chairs of the House Appropriations and Senate Finance and Appropriations

Committees. In addition, the Department of Planning and Budget is authorized to unallot the state savings.

Amendment No. 17
Department of Social Services
Authority for Licensure Exemption and Background Check
Portability for Child Day Programs
(Item 347)

General Assembly Action: No action.

Governor's Action: Adds language providing an exemption from licensure for a child day program operating for children of essential personnel during the COVID-19 Pandemic.

- Programs must file an exemption with the Department of Social Services (DSS), and abide by basic safety requirements and guidance from the Centers for Disease Control and the Virginia Department of Health. DSS has authority to inspect these programs upon reception of a complaint.
- Modifies the background check requirements for child day programs, operating in response to the COVID-19 Pandemic, to allow personnel who have completed a background check in the past two years. In addition, DSS is required to establish a process regarding background check portability.
- Allows any public or private school to operate emergency child care for preschool or school-aged children for essential personnel during the pandemic. These programs are exempt from licensure but required to follow all safety and supervisory standards, including background checks.

**Amendment No. 18
Department of Social Services
Authority for Emergency Program Changes
(Item 348)**

General Assembly Action: No action.

Governor's Action: Proposes to provide authority for the Department to Social Services (DSS) to make changes to its programs, with appropriate approvals from federal agencies if required, that includes eligibility criteria for benefits and services, and payment levels for applicable programs in response to the Coronavirus Pandemic. DSS must receive written approval from the Governor of any such change and notify the Chairs of the House Appropriations and Senate Finance and Appropriations Committees. Any such changes are only in effect for the duration of the Governor's emergency declaration.

**Amendment No. 19
Secretary of Natural Resources
Wildlife Impact of Transportation Projects
(Item 361)**

General Assembly Action: No action.

Governor's Action: Provides language directing the Secretary of Natural Resources, with support of the Secretary of Transportation, to work through the agencies of the natural resources secretariat to identify wildlife habitat impacted by transportation projects.

Notes:

- This amendment is one of a series that provides \$12.0 million NGF for the removal and remediation of migratory shore bird

nesting sites identified on the South Island of the Hampton Roads Bridge Tunnel.

- A companion amendment to the Department of Game and Inland Fisheries authorizes an interim taking permit be issued to the Virginia Department of Transportation until regulations can be permanently modified.
- A companion amendment to the Virginia Department of Transportation Authorizes \$12.0 million NGF for the removal and remediation of the identified nests and eggs.

Amendment No. 20
Department of Game and Inland Fisheries
Migratory Shorebird Permitting Authority
(Item 372)

General Assembly Action: No action.

Governor's Action: Adds language authorizing the Department of Game and Inland Fisheries (DGIF) the authority to issue the Department of Transportation (VDOT) an interim permit to relocate the nest and eggs of any state listed threatened bird species from the South Island of the Hampton Roads Bridge Tunnel in order to facilitate operations of the tunnel boring machine used in the current expansion project. A companion amendment authorizes \$12.0 million NGF in transportation revenues for mitigation of identified project impacts.

Notes:

- Authorizes the Board of Game and Inland Fisheries to establish a permanent regulation for taking of migratory birds and threatened species and requires the VDOT to apply for such permit.

- Authorizes DGIF to require compensatory mitigation from VDOT to address the adverse impact of the take on fish and wildlife habitats, including additional environmental restoration projects, purchase of mitigation bank credits, or in-lieu payments to existing state wildlife funds.
- A companion amendment (#22) in VDOT authorizes the expenditure of up to \$12 million NGF in VDOT Access Road funding to facilitate the relocation of the nests and eggs and provide for appropriate compensatory mitigation of the taking.

Amendment No. 21
Department of Corrections
Authorizes Director to Reassign/Discharge Certain Prisoners
(Item 391)

General Assembly Action: No action.

Governor's Action: Allows DOC Director to (i) discharge from incarceration or (ii) place into a lower level of supervision, including probation, home electronic incarceration, or community corrections, any prisoner – except those convicted of a Class 1 felony or sexually violent offense – with less than one year remaining on their sentence, if it is determined that such action will assist in maintaining the health, safety, and welfare of any prisoner, and is compatible with the interests of society and public safety.

- The authority is limited to when a Governor's declared state of emergency, in response to a communicable disease of public health threat, is in effect.
- Requires DOC Director to develop procedures for implementing the authority, which comply with statutory requirements for providing notice of a prisoner's discharge, to the extent practicable; however, provides any failure to comply with such

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notification provisions shall not affect the authority to discharge a prisoner.

- Provides that the authority expires on July 1, 2021 (there is a companion amendment in HB 30).

Notes:

- Under current law, parole is only available to a) eligible prisoners who were sentenced prior to 1995, and for b) conditional geriatric release for offenders sixty-five or older who have served at least five years, or sixty or older who have served at least ten years.
- The proposed amendment does not involve the Parole Board, which is the entity that currently makes early release decisions, based on parole eligibility authorized in statute.
- The Secretary indicated that just under 2,000 prisoners are eligible based on remaining sentence length.

Amendment No. 22 Virginia Department of Transportation Emergency Wildlife Mitigation (Item 453)

General Assembly Action: No action.

Governor's Action: Authorizes the expenditure of up to \$12.0 million NGF in VDOT Access Road funding to facilitate the relocation of migratory shorebird nesting sites identified on the South Island of the Hampton Roads Bridge Tunnel (HRBT) and provide for appropriate compensatory mitigation for the removal and remediation of sites identified as part of the HRBT Expansion Project.

Notes:

- Funding is from existing balances in the economic development access fund (\$8.0M) and the recreational access fund (\$4.0M) programs.
- The \$12.0 million will be spent over the duration of the HRBT construction project to protect the birds and their habitat for the following: the creation of temporary habitat on Rip Raps Island/Fort Wool at an approximate cost of \$1 million, temporary nesting habitat on floating barges at an approximate cost of \$5 million, and the potential construction of long-term and permanent habitat through the construction of a man-made island at an approximate cost of \$6 million.
- Since the HRBT was constructed in the 1950s, South Island has become the nesting site for as many as 25,000 migratory birds, including terns, gulls, and other colonial nesting species in Virginia.
- In 2018, federal officials reinterpreted a longstanding provision of the federal Migratory Bird Treaty Act of 1918, to significantly limit the protections it provides for migratory birds. Had this interpretation of federal policy remained unchanged, it would have protected the birds on South Island.
- A companion amendment in Item 372 (#20) authorizes compensatory mitigation from VDOT to address the adverse impact of the take on fish and wildlife habitats, including additional environmental restoration projects, purchase of mitigation bank credits, or in-lieu payments to existing state wildlife funds.

Amendment No. 23
Central Appropriations
COVID-19 Response Authority and Match Appropriation
(Item 476.10)

General Assembly Action: No action.

Governor's Action: Provides \$50 million GF the second year in anticipated state matching funds related to COVID-19 federal grants, and to address the COVID-19 pandemic.

- Authorizes the Governor to appropriate funds to state agencies, institutions of higher education, and other permissible entities the federal relief funds provided from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and other legislation in response to the COVID-19 pandemic.
- Requires state agency/entity records management and reporting, consistent with federal and state requirements, including a quarterly report on the distribution of such appropriation to the Chairs of the Senate Finance and Appropriations and House Appropriations Committees.
- Authorizes the Governor to appropriate within Item 476.10, or any other item(s) in the Appropriation Act any revenues deposited to the COVID-19 Relief Fund (Relief Fund), created pursuant to the proposed substitutes to SB 971/HB 881, of the 2020 General Assembly (which prohibited skill games) to establish the Relief Fund and dedicate 84 percent of the monthly revenues generated through the taxation of skill games from July 1, 2020 through July 1, 2021, to the Relief Fund.
- Authorizes that funds from the Relief Fund be used for, but not limited to, i) relief to small businesses, ii) assistance for housing and homelessness, iii) assistance for long term care facilities, and iv) any other purpose designated by the Governor to address the

impact of the COVID-19 pandemic. Requires quarterly reporting by the Governor to the Chairs of the House Appropriations and Senate Finance and Appropriations Committees on any appropriation action from the COVID-19 Relief Fund.

Notes:

- A companion amendment in HB 30 (Amendment #123, Item 479.10) provides the same language authorizing the appropriation of federal relief funds and revenues deposited to the COVID-19 Relief Fund.
- Approximately \$3.3 billion in federal funding is anticipated to be provided to Virginia for COVID-19 pandemic response and preparedness, included within legislation approved by Congress, including the Coronavirus Preparedness and Response Supplemental Appropriations Act (P.L. 116-123), the Families First Coronavirus Response Act (P.L. 116-127), the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116- 136).

**Amendment No. 24
Capital Outlay General Conditions
Delays Implementation of Capital Projects
(Item 2-0)**

General Assembly Action: No action.

Governor's Action: Adds language allowing the Governor or his designee to delay the initiation or continuation of capital projects supported by state revenues in order to address cash flow and debt capacity concerns resulting from the COVID-19 emergency.

Notes:

- There is a companion amendment proposed for House Bill 30 (Amendment #126), with an added provision that the General Assembly reauthorize the capital budget when it next reconvenes and accepts the revenue forecast that confirms the revenues estimated within the Act.
- The reference to delaying the “continuation of capital projects” would possibly give broad authority to freeze existing capital projects.

**Amendment No. 25
Part 3: Interfund Transfers
Require Transfer of COVID-19 FEMA Reimbursements to the
General Fund
(Item 3-1.01)**

General Assembly Action: No action.

Governor’s Action: Amends language transferring federal cost recoveries from the Virginia Department of Emergency Management (VDEM) to the general fund related to FEMA reimbursements for COVID-19 Funding in each fiscal year.

Amendment No. 26
Part 3: Auxiliary Enterprises in Higher Education
Allow Higher Education Institutions Flexibility
with Auxiliary Indirect Cost Recoveries
(Item 3-4.01)

General Assembly Action: No action.

Governor's Action: Adds language allowing institutions of higher education flexibility from recovering 100 percent of calculated indirect cost recoveries to educational and general academic activities.

According to the amendment explanation, this is intended to “help the institutions reduce the hit against their auxiliary cash balances. With higher education institutions closing dormitory, parking and dining operations due to COVID-19, students and parents are expecting refunds for the balance of the semester. Some higher education institutions’ auxiliary cash balances could be challenged to address these refunds.”

Notes:

- There is a companion amendment proposed for House Bill 30 (Amendment #135).

Amendment No. 27
Part 3: Adjustments and Modifications to Tax Collections
Administrative Tax Relief – Abatement of Interest
(Item 3-5.23)

General Assembly Action: No action.

Governor's Action: Requires the Virginia Department of Taxation (TAX) to waive interest for (i) any final, estimated, or extension individual, corporate, or fiduciary income tax payments originally due

during the period from April 1, 2020 through June 1, 2020, provided that full payment is made by June 1, 2020 and (ii) any sales tax payment originally due March 20, 2020 for which a waiver of penalty was granted by TAX, provided that such payment is submitted by April 20, 2020.

Notes:

- In Response to the COVID-19 crisis, TAX extended the deadline for certain sales tax remittances and extended the deadline for Virginia taxpayers to pay their income taxes.
- This amendment authorizes TAX to waive interest on those payments as well.

**Amendment 28
Part 4: Operating Policies
Allow Policy-Making Boards to Meet Virtually
During Emergency Declarations
(Item 4-0.01)**

General Assembly Action: No action.

Governor's Action: Provides authority for public bodies, including agencies, boards, and common interest communities to conduct electronic meetings during a declared state of emergency when it is impracticable or unsafe to assemble a quorum in a single location.

Notes:

- There is a companion amendment proposed for House Bill 30 (Amendment #137).

Amendment No. 29
Part 4: Reversion of Appropriations and Reappropriations
Increase Higher Education Institutional Reserve Amount
(Item 4-1.05)

General Assembly Action: No action.

Governor's Action: Increases the percentage, from three to six, of educational and general unexpended balances that institutions are authorized to carry forward as a reserve, to be available during times of revenue challenges.

Notes:

- There is a companion amendment proposed for House Bill 30 (Amendment #139).

Amendment 30
Part 4: Nongeneral Fund Revenues
Provide Authority for Agencies to Solicit and Accept Donations,
Gifts, Grants, and Contracts that Support the Response to the
COVID-19 Pandemic
(Item 4-2.01)

General Assembly Action: No action.

Governor's Action: Provides authority for agencies to solicit and/or accept donations, gifts, grants, and contracts needed to respond to the direct and indirect impacts of the COVID-19 pandemic.

Notes:

- There is a companion amendment proposed for House Bill 30 (Amendment #140).

- Pre-existing Part 4 language prohibits these actions without the written approval of the Governor.

Amendment No. 31
Part 4: Deficit Authorizations and Treasury Loans
Anticipatory Treasury Loans for Higher Education Institutions
(Item 4-3.02)

General Assembly Action: No action.

Governor's Action: Adds language allowing higher education institutions to request an anticipation treasury loan to address cash flow needs resulting from the loss of auxiliary revenues associated with COVID-19 school closures. The Secretary of Finance shall develop any needed guidelines in evaluating requests received from the institutions of higher education.

Notes:

- Typically, anticipation treasury loans are limited to the amount of anticipated revenue collections (in this case, auxiliary revenues), and require repayment only from the specified revenues collected. In addition, the term for any such anticipation loan granted for operating expenditures shall not exceed 12 months.

Amendment No. 32
Part 4: Special Conditions and Restrictions on Expenditures
Authority to Change Cost Factors to Respond to COVID-19
(Item 4-5.03)

General Assembly Action: No action.

Governor's Action: Proposes to allow state agencies to alter cost factors for services that are implemented or altered in response to COVID-19 if the funding is provided from a nongeneral fund source or from any other source when specifically approved by the Governor in response to the COVID-19 pandemic.

Notes:

- Changes to cost factors (qualification level that controls the number of eligible recipients or the unit cost of benefit payments) are limited to appropriation specifically provided by the General Assembly for such changes. This limitation protects the General Assembly's constitutional authority to appropriate public funds by preventing executive changes to program costs that would otherwise obligate the General Assembly to funding future costs.
- The Governor has authority under disaster declarations to respond to emergencies until such time as the General Assembly can address the underlying fiscal costs.
- It is not clear why this provision would need to be overridden due to COVID-19, especially since other amendments provide authority to make changes to certain programs.

Amendment No. 33
Part 4: Special Conditions and Restrictions on Expenditures
Authority to Establish New Services to Respond to COVID-19
(Item 4-5.03)

General Assembly Action: No action.

Governor's Action: Proposes to allow state agencies to establish new services in response to COVID-19 if the funding is provided from a nongeneral fund source or from any other source when specifically approved by the Governor in response to the COVID-19 pandemic.

Notes:

- Establishing new services that call for future operating costs expenses are prohibited unless first authorized by the General Assembly. This limitation protects the General Assembly's constitutional authority to appropriate public funds by preventing executive changes that would otherwise obligate the General Assembly to funding future costs.
- The Governor has authority under disaster declarations to respond to emergencies until such time as the General Assembly can address the underlying fiscal costs.
- It is not clear why this provision would need to be overridden due to COVID-19, especially since other amendments provide authority to make changes to certain programs, and a special session of the General Assembly is likely prior to the end of this year.

Amendment No. 34

**Part 4: Special Conditions and Restrictions on Expenditures
Hampton Roads Unmanned Systems Park
(Item 4-5.10)**

General Assembly Action: Updated previously approved language in the budget related to a surplus property conveyance associated with the Hampton Roads Unmanned Systems Park.

Governor's Action: Provides additional language, drafted by the Department of General Service, to clarify the process for the transfer of the specified surplus property. Specifically, strikes the ability of the Eastern Virginia Regional Industrial Facility Authority (Authority) to waive the appraisal requirement, includes an additional stipulation that the Authority has the right to enter the property for due diligence activities only provided that they cooperate and adhere to requirements determined by the Commonwealth, and amends the conveyance of property rights to operators of utility-scale solar facilities to allow up to 150 acres to be conveyed.

Amendment No. 35

**Part 4: Reporting Requirements
Flexibility on Reporting Deadlines during Declared Disasters
(Item 4-8.01)**

General Assembly Action: No action.

Governor's Action: Provides authority for the Governor to temporarily delay or defer the submission of reports or studies required by Code or the Appropriation Act that are due prior to June 30, 2020 if impractical due to the impacts of the COVID-19 pandemic on the reporting entity. Requests for delay must be submitted in writing at least 30 days prior to the reporting deadline. Reports must be submitted as soon as the work can be completed and no later than 12 months from the original reporting requirement.

Amendment No. 36
Part 4: Effective Date
Additional Enactments for Elections
(Item 4-14)

General Assembly Action: No action.

Governor's Action: Includes an enactment moving the general and special elections scheduled to be held on May 5, 2020 to November 3, 2020, and directs the Department of Elections to promulgate instructions for the implementation of the delay and the following additional provisions:

- Notwithstanding any provisions of a city or town charter, the offices to be filled at the May 5, 2020 general election shall be filled at the general election on November 3, 2020.
- Candidates who qualified to be on the official ballot for the general or special election on May 5, 2020, or who otherwise raise or spend funds in order to seek or campaign for office shall file campaign finance reports in accordance with § 24.2-947.6, *Code of Virginia*, for candidates for offices to be filled at a November general election.
- Officials elected at a May general election whose terms will expire on June 30, 2020, shall continue in office until their successors are elected at the November 3, 2020 election and have been qualified to serve.
- Officials elected at the November 3, 2020, general election to an office regularly scheduled to be filled at the May 5, 2020, general election, shall serve a term of office that, shall expire (i) for those offices that are for terms of two years, on June 30, 2022, and (ii) for those offices that are for terms of four years, on June 30, 2024. Officials elected at the November 3, 2020, general election to an

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office that was scheduled to be filled at a special election on May 5, 2020, shall serve the unexpired term.

- At the November 3, 2020, general election, any qualified voter will be permitted to vote for an office that was scheduled to be filled at the general election or a special election held on May 5, 2020, regardless of whether such voter was qualified to vote for such offices as of May 5, 2020.
- Any voted absentee ballot requested for the general election or a special election to be held on May 5, 2020 that is received by the appropriate elections official shall not be counted nor will it be accepted or counted at the November 3, 2020 election, and shall be marked spoiled by the general registrar/officer of election and retained.
- Any qualified voter may vote by absentee ballot in accordance with current statutory provisions.

Notes:

- The elections currently scheduled for May 5, 2020 include approximately 60 localities (city, county, and town) for whom general and special elections and local referenda would take place. Moving the May election to November 3, 2020 would coincide with the presidential and congressional federal election.
- In a separate action, the Governor moved the June 9, 2020 federal primary election by 14 days, to June 23, 2020, under his authority in § 24.2-603.1, *Code of Virginia*.
- Current absentee voting laws are in effect until November 3, 2020, pursuant to the second enactment clause of cc. 668 and 669, 2019 Acts of Assembly (no-excuse, in person absentee voting).

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- HB 1, of the 2020 General Assembly, which would become effective July 1, 2020, permits any registered voter to vote absentee by removing the current list of statutory reasons, and extends the deadline for the counting of ballots.

Amendment No. 37 Part 4: Effective Date Authorize Temporary Borrowing (Item 4-14)

General Assembly Action: No action.

Governor's Action: Includes language authorizing the Treasury Board, with the consent of the Governor, to issue revenue anticipation notes, to address cash flow and liquidity, for both the state and localities for FY 2020.

- Funds are to be used to manage the cash flow impact of actual or potential reductions in tax or other revenues or increases in expenses related to, or resulting from the COVID-19 pandemic, and operating expenses incurred in anticipation of the collection of taxes and revenues.
- Authorizes the sale and issuance of 9(a)(2) notes, with the full faith and credit of the Commonwealth, for the Commonwealth. The 9(a)(2) notes mature within 12 months from the date of issuance.
- Authorizes the sale and issuance of 9(d) notes for the Commonwealth or its counties, cities, and towns and mature within two years from the date of issuance. These notes do not constitute a debt of the Commonwealth of Virginia, or a pledge of the full faith and credit of the Commonwealth, but are payable subject to appropriation by the General Assembly, and amounts

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paid by counties, cities, and towns that issue bonds, notes, and obligations.

- Authorizes an aggregate principal of up to \$500 million in notes for the Commonwealth and up to another \$250 million for local governments.
- Authorizes the Governor to select the counties, cities, and towns to participate in the undertakings, and direct the distribution of 9(d) bond proceeds to the particular localities, and directs the Governor to develop a guidance document governing eligibility and priority criteria.
- Authorizes the Virginia Resources Authority (VRA) to purchase and acquire, through proceeds of 9(d) bonds, notes or obligations of counties, cities, and towns for the purposes specified in the language, and establish interest rates and repayment terms.
- Provides the Treasury Board with a sum-sufficient appropriation for the payment of debt service associated with the notes.

Notes:

- There is a companion amendment in HB 30 providing the same funding amounts and specifications for FY 2021 and FY 2022 and is duplicative (Amendment #144).
- In addition to the Coronavirus Relief Fund authorized under the CARES Act, the Federal Reserve has authorized up to \$500 billion in lending to states and municipalities to manage (i) reductions in cash flow caused by an extension of an income tax filing deadline, (ii) potential reductions in tax and other revenues or increased expenses related to, or resulting from, the COVID-

- 19 pandemic, and (iii) required payments of principal and interest on obligations of the relevant unit of government.
- The U.S. Treasury has indicated that it will only work with one entity (per state), and the Virginia Treasury Board is the appropriate entity.
 - The VRA will perform credit analyses of local governments for consideration of bond issuance.
 - An eligible state or local government (“Issuer”) may also use the proceeds of Federal Reserve lending to purchase similar notes issued by, or otherwise to assist, political subdivisions and instrumentalities of the relevant state, city or county for the authorized purposes. Because the Commonwealth is the only authorized Issuer, the amendment allows the Commonwealth to issue debt to purchase local government bonds that would, in turn, be purchased by the Federal Reserve in order to ensure the continued operations of local government entities.
 - While this amendment may allow the Commonwealth to issue short-term debt in FY 2020 to maintain liquidity, for the state or local governments, resulting from the COVID-19 pandemic, the Governor’s other amendments (such as eliminating the Revenue Reserve Fund deposit) should be sufficient for the Commonwealth for FY 2020. However, if the revenue shortfall is much greater than anticipated, this language provides flexibility for the Commonwealth, or its localities, to maintain essential government operations.
 - The language does allow the issuance of short-term debt for operating expenses. The Commonwealth and local governments that utilize such debt will likely need to ensure compliance with rating agencies criteria to ensure there is no impact on credit ratings.