



The 2019 Virginia General Assembly: building on prior progress

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EXECUTIVE SUMMARY

The 2019 legislative session was one for the ages. It will likely be remembered for years to come.

But remembered for what? The drivers license-revocation bill that passed; the hands-free phone driving bill that didn't? The passage of an overhaul to the foster care system; the defeat of the many bills seeking to legalize marijuana?

Though all were significant policy discussions, the 2019 session will be remembered not for the legislation or legislators but for the top three executive branch positions.

Mired in accusations of past racist behavior and sexual assault, Virginia's governor, lieutenant governor and attorney general drew national media scrutiny to the halls of Mr. Jefferson's capitol.

It would have been easy to forgive the General Assembly members if they had thrown their hands up and waited until the dust cloud settled, but that's not what happened. Instead, it was — more or less — business as usual. There were committee hearings to be held, public comment to be gathered and votes to be taken. Virginia's legislative session calendar is an unsparing task master.

And that's where Transparency Virginia (TVa) again came in, taking stock of how the legislature performed when it came to our three core interests:

- ★ notice of committee meetings
- ★ consideration of all bills
- ★ recorded votes on the disposition of bills

Among our findings this year:

- ★ The House was up just half of a percentage point from 2018 to 2019 in terms of how many bills were defeated without a recorded (vote-by-name) vote: 33.3% in 2018, and 33.8% in 2019.
- ★ The Senate percentage of unrecorded votes again rose, owing mostly to the Rules Committee.
- ★ The number of bills killed in House subcommittees crept upwards, from 69.7% in 2018 to 72.8% in 2019.
- ★ The number of bills left in the House without action dropped from 296 to 248, and the percentage of bills left in the full committee dropped by 33%. However, the percentage of bills left in subcommittee went up by nearly the same amount: 39%.
- ★ Only 1 bill referred to a Senate subcommittee was left in that subcommittee without action.

TVa compiles its statistics on recorded votes from publicly available data on the Legislative Information Services website.¹

Other conclusions are derived from the personal observations of TVa volunteers who, because of the diverse interests they represent as lobbyists and advocates, have the opportunity to observe numerous committee and subcommittee meetings.

¹ See <http://lis.virginia.gov>.

Session Overview

Logistically speaking, this session was far easier to navigate than last year, when everything had been relocated down the hill from the old General Assembly Building. Lawmakers, lobbyists, staff and even the public were now familiar with the layout of the Pocahontas Building, the location of committee and subcommittee meetings and the occasional need to be in two different buildings for committee meetings scheduled opposite from one another.

The online streaming of committee meetings by the clerks of the House and Senate, unofficially supplemented by volunteer videographers from Progress Virginia in many subcommittee meetings, is essential for monitoring simultaneously scheduled meetings, as well as for reporters covering multiple bills, and for the public watching from member districts.

The vast majority of bills that are defeated are now done so on a vote by name, thanks to a continued adherence in the House to a rule adopted in 2018 and a Senate rule that's been in place for many years. On the other hand, many bills are defeated without a vote at all, left in committee or subcommittee without any action being taken on them.

Notice of meetings and dockets has vastly improved in the five years Transparency Virginia has been monitoring the General Assembly.

On the down side, the opportunity to testify in sub/committee on bills has contracted over the years, highlighting the tension between efficiency and public engagement, and substitute bills offered in sub/committee catch legislators and the public flat-footed and sometimes unable to adequately assess their position on a bill or modify testimony.

Recorded Votes and Consideration

Bills are defeated when a majority of those present vote to pass the bill by indefinitely (PBI) or to table it, or when a majority votes in opposition to a motion to advance the bill (report).

Because of a change to the 2018 rules in the House, motions to PBI, table or report must be accompanied by a tally of how each person present voted. There are no voice votes on such motions, meaning each lawmaker's position on a bill is documented.

The percentage of bills defeated in House committees and subcommittees without recorded votes was virtually unchanged in 2019 — from 33.3% in 2018 to 33.8% — and still dramatically lower than the high of 94.6% TVa observed in 2016.

But if there is a rule saying that all motions to defeat a bill must be recorded, how can a third of the bills be defeated without a recorded vote?

First of all, there are the bills that are removed from the docket. Either the patron asks to withdraw (strike) the bill, or the bill is combined with another (incorporated or rolled into). Just 7.6% of the bills are disposed of this way in the House, while 38.4% of bills in the Senate are. Nonetheless, TVa does not consider these bills in the recorded/unrecorded vote total.

Then there are the bills that are still on the docket but are not taken up for consideration. The patrons aren't asked to present their bills, the public isn't invited to offer testimony, the subcommittee do not discuss them, and no votes are taken.

The practice is sometimes called a pocket veto. This year the pocket veto accounted for 31.1% of the bills defeated in the House, and all — of course, because they were never heard — without a recorded vote.

There were fewer total bills disposed of in this way in 2019 — down from 296 in 2018 to 248. The percentage of bills left in the full committee dropped by 33%. On the other hand, the percentage of bills left in subcommittees — usually made up of seven or eight people — increased by 39% this year.

Far fewer bills — just 9.4% — are left in Senate committees without action than in the House. And even though the Senate subcommittees cannot defeat bills, one bill was left in one subcommittee without action.

Transparency Virginia cannot speculate on why bills are left without action. As it has in the past, TVa offers its observations without regard for the substance of the bills. The upshot, however, is that the public is left in the dark about why a bill they were interested in (for better or for worse) was never considered, why no one took a position on it and why no one was given an opportunity to weigh in.

While the percentage of bills defeated on unrecorded votes has been on a downward trajectory in the House since TVa began in 2015, the Senate has followed the opposite trend. This year, 21% of bills were defeated in this way, up from 17% last year and just 7% in 2015.

The Senate Rules Committee is almost entirely responsible for this upward trend. As noted in 2018, despite the Senate rule requiring recorded votes, there is also a rule that says recorded votes are not necessary on motions to report *resolutions* “if that resolution does not have a specific vote requirement pursuant to these Rules.”² The Senate Rules Committee docket is heavily weighted with resolutions. On the other hand, there is no prohibition against using a recorded vote, and in years past, even with the rule in place, the Rules Committee did use recorded votes.

Consideration in Sub/Committee

In addition to the problems of leaving bills in committee without consideration, there are also issues surrounding how bills are considered, that is, how the committees are run.

Members of the House and Senate work incredibly hard during the session. There is little time for dithering. Crossover Day must be met, and extending the session past the scheduled adjournment sine die³ is rare. There are thousands of bills and resolutions to consider, and only so many days that committees and subcommittees can meet.

As career lobbyists and advocates, TVa volunteers have seen their share of interminable committee meetings, tedious back and forth exchanges and long, drawn-out and repetitive public testimony. So it is not a surprise that efficiency is prized and zealously pursued. Unfortunately, efficiency is sometimes elevated over all else.

As noted last year, some sub/committee chairs use a timer to limit the amount of time all those for or against a bill will have to testify. Not all chairs use them, and even those that do use them don't do so with every bill.

There is nothing inherently wrong with time-limited public comment, but the practice is also susceptible to inconsistent application, which can negatively impact the quality of the comments:

- ★ Taking up testimony time with frequent reminders to speakers that there is a time limit.

² See Rule 20(d) of the “Rules of the Senate,” https://publications.virgiagieneralassembly.gov/download_publication/88.

³ “Without assigning a day for a further meeting or hearing,” according to Wikipedia, last checked May 20, 2019: https://en.wikipedia.org/wiki/Adjournment_sine_die

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- ★ Instructing speakers who don't necessarily know each to allocate the limited time among themselves.
 - ★ Refusing to take testimony on bills that were heard and defeated the previous year on the misguided assumption that no one's mind could have been changed by constituents, lobbyists or advocates in the intervening time.
 - ★ Discouraging people from reading prepared remarks, a daunting task for citizens not accustomed to testifying on bills.

Some subcommittee meetings — and a few meetings of the full committees — are more difficult to follow than others because of the odd configuration of many of the conference rooms, over which the sub/committee members have no control, and to the not-uncommon practice of speaking in low voices and not using the microphones, which they do.

Meeting Notice

As noted earlier, the meeting notice system implemented by the House in 2016 has tremendously improved the public's ability to be present when bills they are following come up for consideration.

The Senate does not use this system, but it's also much easier to keep track of the Senate, since it has fewer standing committees (11 versus 14 in the House) and its 23 subcommittees, compared to 51 in the House, do not have authority to kill bills. This year, nearly 73% of the bills defeated in the House were defeated by subcommittees.

Only a few incidents were reported to TVa where there was little or no notice of sub/committee meetings, though two instances of it happening involved major decisions. One of these instances was when a meeting of the Senate Commerce & Labor Committee, listed on the LIS for the next day but with no docket or agenda, morphed into a joint meeting of the House and Senates Commerce & Labor Committees on LIS just prior to an 8:30 a.m. start time, but with no agenda and no video feed. Those who were in the area were able to attend, but those at home or in offices outside the Richmond area were unaware that the two committees were interviewing a candidate to fill a long vacant — and very powerful — seat on the State Corporation Commission.

Somewhat similarly, when the Senate Courts of Justice Committee met Feb. 6 to interview candidates for an upcoming vacancy on the Supreme Court of Virginia, the video feed was

shut off. Again, those in the area were able to attend in person, but the public was unable to watch from home or office.

Notice of which bills will be on the docket is essential to the entire legislative process: legislators need to know when they will be expected to present their bills and the public wanting to hear debate or offer testimony needs to know when those bills will be heard.

What the public is not usually given notice of, however, are amendments patrons offer when they are called to the podium to present their bills. Simple word or line amendments are not difficult to follow, but many times the legislator offers an “amendment in the nature of a substitute,” which can be a vast reworking of a bill.

These substitutes are not online prior to the sub/committee, and while staff diligently attempts to provide paper copies during the meeting, the result is a room full of lawmakers and witnesses trying to digest the changes to determine whether their support/opposition is still relevant or how they may need to tailor their questions or testimony to the new language. Harking back to the desire for efficiency in taking testimony, this process wastes valuable time that could be alleviated by advance notice of the new language being offered.

CONCLUSIONS AND RECOMMENDATIONS

There has been immense turnover in the House and Senate since TVa first began its observations in 2015. Thirty-six percent of the seats in the House have turned over, and 30% in the Senate.

With the changes the chambers have made since 2015 — better meeting notice, more recorded votes, video streaming — there are now dozens of new lawmakers in place who are, essentially, “growing up” with transparency as the norm. Many newcomers are unaware that there ever was a time when most bills were killed without a recorded vote in the House. Those who took office in 2017 don’t know a time when committee meetings were not streamed.

This is how the culture shifts: by leaders taking bold action to move forward, making transparency the rule instead of the exception.

TVa offers the following recommendations:

- ★ Subcommittee meetings should be live-streamed and archived, and the Senate floor sessions and committee meetings should be made searchable.
- ★ Fewer bills should be left in sub/committee without action.
- ★ The Senate should adopt the same meeting notice system used in the House.
- ★ Substitute bills should be posted to LIS prior to the meeting when it will be presented.
- ★ Specially called meetings should be live-streamed.
- ★ Substitute bills should be posted online prior to sub/committee meetings.

House of Delegates

Committee	Number of bills referred to committee	Number of Subcommittees	Total number of bills that failed (should equal E+F)	Bills struck by pattern or rolled into other bills at FULL or Subcommittee report		Bills (NOT INCLUDING COLUMN E) that otherwise did not		Bills tabled/PU failed to report from Subcommittee	Bills left in Subcommittee without action	Percentage of bills that failed in Subcommittee (G+H)	Bills tabled/PU failed to report from FULL	Bills left in FULL without action	Percentage of bills that failed in FULL committee (J+K)	Bills killed by or left in Subcommittee without a recorded vote	Bills killed by or left in FULL Subcommittee without a recorded vote	Percentage of Unrecorded votes in FULL and Subcommittee on those bills that were debated	Recorded vote Percentage
				Bills struck by pattern or rolled into other bills at FULL or Subcommittee report	Bills (NOT INCLUDING COLUMN E) that otherwise did not	Bills tabled/PU failed to report from Subcommittee	Bills left in Subcommittee without action										
Agriculture, Chesapeake & Natural Resources	86	4	30	6	24	21	1	1	91.7%	2	0	8.3%	1	0	4.2%	95.8%	
Appropriations	255	9	129	5	124	87	20	1	86.3%	1	16	13.7%	20	16	29.0%	71.0%	
Commerce & Labor	189	3	86	10	76	51	5	5	73.7%	14	6	26.3%	5	6	14.5%	85.5%	
Counties, Cities & Towns	92	3	30	2	28	18	5	5	82.1%	2	3	17.9%	5	3	28.6%	71.4%	
Courts of Justice	318	4	130	4	126	82	13	13	75.4%	1	30	24.6%	13	30	34.1%	65.9%	
Education	152	3	34	3	31	13	7	7	64.5%	5	6	35.5%	7	6	41.9%	58.1%	
Finance	85	3	35	4	31	18	6	6	77.4%	5	2	22.6%	6	2	25.8%	74.2%	
General Laws	201	4	76	3	73	22	3	3	34.2%	5	43	65.8%	3	43	63.0%	37.0%	
Health, Welfare & Institutions	158	4	30	6	24	10	11	11	87.5%	3	0	12.5%	11	0	45.8%	54.2%	
Militia, Police & Public Safety	51	2	27	2	25	23	1	1	96.0%	0	1	4.0%	1	1	8.0%	92.0%	
Privileges & Elections	101	4	62	5	57	37	16	16	93.0%	3	1	7.0%	16	2	31.6%	68.4%	
Rules	173	4	95	7	88	41	7	7	54.5%	3	37	45.5%	7	37	50.0%	50.0%	
Science & Technology	12	0	5	0	5	0	0	0	0.0%	1	4	100.0%	0	4	80.0%	20.0%	
Transportation	111	4	28	4	24	17	1	1	75.0%	3	3	25.0%	1	3	16.7%	83.3%	
TOTAL	1984	51	797	61	736	440	96	96	72.8%	48	152	27.2%	96	153	33.8%	66.2%	

⁴With thanks to Leon Soria, VCOG's 2019 Chip Woodrum Legislative Intern

Senate of Virginia

Committee	Number of bills referred to committee	Number of SUBcommittees	Total number of bills that failed (should equal ERF)	Bills stricken by patron or rolled into other bills at FULL or SUBcommittee	Bills NOT INCLUDING COLUMN E that otherwise did not report	Bills tabled/RFI failed to report from SUBcommittee	Bills left in SUBcommittee without action	Percentage of bills that died in SUBcommittee (GHF)	Bills tabled/RFI failed to report from FULL	Bills left in FULL without action	Percentage of bills that died in FULL committee (AHF)	Bills killed by or left in SUBcommittee without a recorded vote	Bills killed by or left in FULL without a recorded vote	Percentage of unrecorded votes in FULL and SUBcommittee on those bills that were defeated	RECORDED VOTE PERCENTAGE
Agriculture, Conservation & Natural Resources	71	0	17	5	12	0	0	0.0%	10	2	100.0%	0	2	16.7%	83.3%
Commerce & Labor	154	2	48	21	27	0	0	0.0%	27	0	100.0%	0	0	0.0%	100.0%
Courts of Justice	281	0	62	12	50	0	0	0.0%	50	0	100.0%	0	0	0.0%	100.0%
Education & Health	268	5	58	34	24	0	0	0.0%	23	1	100.0%	0	1	4.2%	95.8%
Finance	339	8	73	28	45	0	0	0.0%	32	13	100.0%	0	13	28.9%	71.1%
General Laws & Technology	151	2	13	7	6	0	0	0.0%	6	0	100.0%	0	0	0.0%	100.0%
Local Government	89	0	11	7	4	0	0	0.0%	3	1	100.0%	0	1	25.0%	75.0%
Privileges & Elections	85	4	39	12	27	0	0	0.0%	24	3	100.0%	0	3	11.1%	88.9%
Rehabilitation & Social Services	96	2	11	6	5	0	0	0.0%	5	0	100.0%	0	0	0.0%	100.0%
Rules	90	0	19	3	16	0	0	0.0%	1	15	100.0%	0	15	93.8%	6.3%
Transportation	104	0	21	8	13	0	0	0.0%	13	0	100.0%	0	13	100.0%	0.0%
TOTAL	1728	23	372	143	229	0	0	0.0%	194	35	100.0%	0	48	21.0%	79.0%