



2022 Post-Session Report

Unlike last year's hybrid session, the Virginia General Assembly resumed most of its normal operations for the 2022 legislative session as the Senate and the House of Delegates returned to their respective chambers in the capitol for in-person debate. In a welcome change for AGCVA's advocacy efforts, the public was also allowed back in the building to meet with legislators and testify during committee meetings.

Meanwhile, last year's elections shifted the political dynamics in the General Assembly. The House of Delegates flipped to a 52-48 Republican majority, while the Senate, whose members do not seek reelection until 2023, remained a 21-19 Democratic majority. The split of political control and razor-thin margins in each chamber meant bipartisan compromise would be needed for bills to pass.

The 2022 Session also coincided with the transition of leadership from the Northam Administration to the Youngkin Administration. Along with Governor Glenn Youngkin, Winsome Sears and Jason Miyares were sworn in as Lieutenant Governor and Attorney General, respectively.

AGCVA actively tracked over 70 bills and various budget items over the course of the 60-day session. A handful of priorities stood out among the rest – including those addressing wage theft, project labor agreements, procurement, and workforce development.

AGCVA's advocacy efforts were reinforced by increased member engagement. Members sent 238 emails to legislators during the 2022 Session – a 21 percent increase over last year. Moreover, the action rate and open rate on each AGCVA Action Alert email was above the industry average.

The report below was developed to highlight the most significant pieces of legislation that AGCVA tracked this year.

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Legislation: AGCVA Support

SB 538 (Peake) / HB 889 (Kilgore): Wage theft protections to all contractors

AGCVA Position: Support

Result: Passed Senate & House as amended

During the 2020 Virginia General Assembly Session, a bill was passed that created a series of laws related to wage theft. The law placed the burden of policing the issue on general contractors, creating undue friction in the general contractor subcontractor relationship, while not specifically targeting where the infraction occurs.

Last year, legislation (SB 1209) passed that alleviated some of these concerns by providing limited protections from accusations of wage theft to general contractors, though not subcontractors.

This year, Senate Bill 538 and House Bill 889 enhanced last year's legislation without affecting the original intent of the law – to eliminate wage theft. In fact, the legislation extended protections against wage theft to all subcontractors regardless of tier by requiring both general contractors and subcontractors to obtain written certifications that ensured all subcontractors were paid. Moreover, the requirement to obtain written certifications would speed up the process of identifying potential infractions.

The original language in the legislation included additional protections for contractors acting in good faith from costly and unnecessary litigation. Specifically, the written certifications would have been considered a “valid defense” in a court of law, thereby expediting the process via summary judgment.

The House version of the bill passed the House of Delegates with little opposition, while its Senate counterpart faced more obstacles. SB 538 was amended in Senate subcommittee to strike the “valid defense” language to return it to the current language of “evidence.” The House version conformed to the amended Senate bill and went on to be approved by both the House and Senate.

While AGCVA would have preferred the bill's language to have remained intact, the amended language still extends the protections against wage theft to all subcontractors. As a result, the outcome was a victory for contractors of all tiers in Virginia.

HB 1091 (Wilt): Guardrails on PLAs

AGCVA Position: Support

Result: Passed by indefinitely in Senate Commerce & Labor Committee

During the 2020 Virginia General Assembly Session, legislation was passed (SB 182) allowing state and local governments to mandate project labor agreements on public works construction projects without having to show any cause or reason as to how the PLA would provide a public benefit. AGCVA opposed the legislation because PLAs, when mandated, harm non-union contractors' ability to freely compete for projects. The legislation encourages out-of-state contractors to procure contracts at the expense of Virginia's commercial construction industry.

Fortunately, HB 1091 improved upon the legislation from two years ago by placing guardrails on when and how PLAs can be used. The legislation aligned Virginia's statute similarly with other states and the federal government that allow PLAs.

In the House General Laws Committee, the bill was initially continued to 2023, meaning it died. However, at the request of the Youngkin Administration and support from AGCVA, the bill was reconsidered and reported from the committee. The bill went on to pass the House and moved on to the Senate.

Unfortunately, chances for passage became bleaker when the legislation was referred from the Senate General Laws Committee to the Senate Commerce & Labor Committee. Unlike House committees that have proportional representation, the Senate Commerce & Labor Committee has a more lopsided 12-3 Democratic majority. Despite AGCVA's best efforts to transcend the partisan divide, the bill was defeated by a party-line vote.

AGCVA will continue fighting for commonsense guardrails to ensure Virginia is no longer an outlier among states that authorize mandatory PLAs.

[SB 409](#) (Morrissey) & [HB 282](#) (Coyner): Consideration of criminal record re: licensure, certification, etc.
AGCVA Position: Support
Result: Passed Senate & House as amended

SB 409 and HB 282 were introduced to consider certain factors prior to denying an application for licensure, certification, or registration based on an applicant's criminal record. AGCVA supported the legislation because it removed unnecessary barriers that prevented talented individuals from entering trades like the commercial construction industry. In essence, the legislation promoted workforce development, which AGCVA was happy to support.

The bills were amended to only include professions regulated by DPOR and went on to pass both the House and the Senate with unanimous support.

[SB 28](#) (Marsden): Business Ready Sites Program Fund
AGCVA Position: Support
Result: Passed Senate & House as amended

SB 28 established the Virginia Business Ready Sites Program Fund, which would provide grants on a competitive basis to political subdivisions to prepare sites for industrial or commercial development. AGCVA supported the proposal because it would foster economic development and put the commercial construction industry to work.

The General Assembly saw the benefits of the bill as well, as it passed both the House and the Senate by overwhelming margins.

[HB 1289](#) (Head): Exemptions to Uniform Statewide Building Code
AGCVA Position: Support
Result: Passed House & Senate as amended

HB 1289, modeled after a North Carolina statute, was introduced with the intent to exempt prefabricated buildings for manufacturing, storage, and miscellaneous uses from the energy efficiency standards in the statewide building code. AGCVA supported the bill because removal of such regulations would reduce the cost of construction, which would in turn encourage more construction projects like these in the future.

The bill's impact was diluted during the legislative process to simply a study to *consider* such changes to the statewide building code, but AGCVA supported the proposal all the same. The bill passed both the House and the Senate as amended.

[HB 58](#) (Davis): Prohibition of wage floor by localities for construction projects
AGCVA Position: Support
Result: Passed by indefinitely in Senate General Laws & Technology Committee

HB 58 prohibited localities from establishing provisions related to procurement or construction that would require a wage floor. If passed, the bill would lower the cost of construction and rebalance the market by discouraging out-of-state companies from taking contracts from Virginia contractors who choose not to be members of a union.

AGCVA supported the bill because it would lower the cost of construction and give Virginia's contractors a fair shot during the bidding process. The bill passed the House of Delegates but died on a party-line vote in the Democratic-controlled Senate General Laws and Technology Committee.

While the bill failed to pass, AGCVA will continue to support legislation that encourages free and open competition during the bidding process.

HB 340 (Davis): CTE as Alternative Pathway to Advanced Studies Diploma

AGCVA Position: Support

Result: Passed by indefinitely in Senate Education & Health Committee

HB 340 would have allowed coursework in a career and technical education field (CTE) as alternative criteria eligible for the advanced studies high school diploma. AGCVA voiced its support for the bill because it incentivized CTE within secondary education and promoted the commercial construction industry as a viable career path.

While the House of Delegates advanced the bill, the Senate Education and Health Committee struck the bill down on a party-line vote.

SB 374 (Obenshain) / HB 883 (Byron): PLAs, Prevailing Wage, and Collective Bargaining Changes

AGCVA Position: Support

Result: Passed by indefinitely in Senate Commerce & Labor Committee

SB 374 and HB 883 sought to repeal several provisions of the Code of Virginia related to project labor agreements, prevailing wage, and collective bargaining. AGCVA supported the legislation because it would have eliminated burdensome measures that increase the cost of construction and alienate most of Virginia's contractors who have chosen not to join a union.

Given that these bills would inevitably go through the Senate Democratic majority that enabled passage of these measures in the first place, chances for repeal were extremely slim. Nonetheless, AGCVA voiced its support for the legislation.

While HB 883 made it out of the House of Delegates, both HB 883 and SB 374 were ultimately killed in the Senate Commerce & Labor Committee by a party-line vote.

Legislation: AGCVA Opposition

SB 550 (Bell) / HB 881 (Fowler): Pay-if-paid

AGCVA Position: Oppose

Result: Passed Senate & House as amended

This year, two bills were filed that would substantially undermine the freedom to contract and place the entire financial risk of a construction project on a general contractor.

AGCVA opposed the bills as written while stressing its preference to work together with subcontractors on a solution to the issue of not being paid for work completed. AGCVA consistently maintained that any solution must 1) preserve the freedom to contract, 2) protect general contractors, and 3) protect subcontractors. AGCVA

met with stakeholders advocating for the bill in an effort to reach a compromise on amended language that would benefit all parties. Unfortunately, despite weeks of negotiation via in-person meetings, phone, and email, a consensus could not be reached within the limited timeframe of the legislative session.

The House version of the bill was tabled in subcommittee – meaning it effectively died. Meanwhile, the Senate version passed the Senate and was amended several times in the House, including provisions that 1) removed a sunset provision that had been added in committee, 2) required payment to the general contractor and subcontractors within 45 days, and 3) directed a DGS workgroup to discuss the impact of the legislation and report its findings by December 1st of this year. The amended bill passed the House 91 to 9.

Despite its passage, the addition of a DGS workgroup on the bill should motivate all stakeholders to come to the table in good faith so a better solution can be reached -- just as AGCVA has encouraged since day one.

Senator Bell commended AGCVA as "great partners" in negotiations, and AGCVA will continue working to find a solution that benefits the most members and adheres to the principles as previously outlined; 1) preserves the freedom to contract, 2) protects general contractors, and 3) protects subcontractors.

HB 816 (Torian): Bid listing & payment to all subcontractors before GC is paid

AGCVA Position: Oppose

Result: Left in House Appropriations Committee

Initially introduced as two separate bills, HB 816 would have 1) forced a general contractor to list all subcontractors on a construction contract at the time of bidding and 2) placed the entire financial risk of such project on the general contractor.

AGCVA opposed both proposals because they would increase the cost of construction and be unreasonably punitive to general contractors for actions not of their doing. In fact, the bill would have been particularly detrimental to smaller general contractors who may have less financial capital to take on the additional risk.

AGCVA believes the best approach to protect workers from wage theft is to identify and penalize the bad actor (as HB 889, which AGCVA supported, strengthened), rather than punish a general contractor who has consistently worked in good faith.

Fortunately, the bill was effectively killed when it was left in the House Appropriations Committee.

HB 374 (Williams Graves): Bid listing of all subcontractors

AGCVA Position: Oppose

Result: Left in House General Laws Committee

Like HB 816, HB 374 would have forced general contractors to list and be wholly responsible for all subcontractors on a construction project at the time of bidding. However, HB 374 was even more punitive toward general contractors by including the penalty of debarment for the submission of incorrect information in a bid.

Thankfully, HB 374 met a similar fate to HB 816. AGCVA voiced its opposition to the bill in the House General Laws Subcommittee #4, where the subcommittee ultimately recommended tabling the bill.

HB 705 (Keam): Cooperative procurement by localities

AGCVA Position: Oppose

Result: Left in House General Laws Committee

AGCVA opposed HB 705, which would allow a public body to participate in cooperative procurement for any construction contract valued under \$200,000 purchased by localities. The legislation would allow a locality to bypass competitive bidding and instead piggyback off another locality's contract with a contractor.

The bill was left in the House General Laws Committee, as the patron of the bill acknowledged that the legislation needed work.

HB 529 (Batten): Establishing additional criteria for independent contractor classification

AGCVA Position: Oppose

Result: Left in House Commerce & Energy Committee

HB 529 was proposed to establish alternative criteria for classifying between employees and independent contractors. While AGCVA supports efforts to address worker misclassification, the bill actually made compliance more difficult because the alternative classification method conflicted with existing federal standards. Therefore, AGCVA opposed the bill.

The bill was left in the House Commerce & Energy Committee.

SB 210 (Petersen) / HB 19 (Fowler): Educational foundation disclosure by offerors

AGCVA Position: Oppose

Result: Passed Senate & House as amended

SB 210 and HB 19 were identical bills that required every offeror who is awarded a contract by a public institution of higher education for any construction project over \$5 million to disclose any contributions to the institution totaling \$25,000 or more within a five-year period. AGCVA opposed the legislation because it was a solution in search of a problem and placed an unnecessary burden on a single method of procurement.

While the bills passed both the Senate and the House of Delegates, the language was slightly improved with amendments that applied the disclosure requirement to all procurement methods.

HB 1220 (Clark): Repeal of Right-to-Work

AGCVA Position: Oppose

Result: Stricken from docket by House Rules Committee

HB 1220 would have eliminated right-to-work provisions from the Code of Virginia. AGCVA was pleased to see bipartisan consensus on the bill in the House Rules Committee, where committee members voted unanimously to strike the bill from the docket.

Budget Amendments: AGCVA Support

Budget Amendment: Build Your Future Virginia (Davis, Marsden)

AGCVA Position: Support

Result: Not included in budget

This year, AGCVA lobbied for state funding to support Build Your Future Virginia's effort to expand its *Careers in Construction* campaign. Build Your Future Virginia, which began as a partnership between AGCVA and ABC, promotes career pathways in the construction industry by focusing on outreach to students in high school and middle school with curriculum, multimedia materials, and hands-on learning.

Delegate Glenn Davis and Senator Dave Marsden agreed to carry the budget amendment, which allocated \$250,000 in 2022 and another \$250,000 in 2023. AGCVA worked hard to lobby support for the budget

amendments, which included several AGCVA members coming down to the General Assembly Building on Virginia Small Business Day to meet with their legislators and advocate for funding.

Unfortunately, the budget amendments were not included in the committee-approved budgets in the Senate and House. As explained by the office that carried the House budget amendment, the decision was strictly based on too many competing policy priorities.

AGCVA remains committed to seeking avenues to secure funding for Build Your Future Virginia in the upcoming year.

Budget Amendment: [Repeal of COVID-19 Permanent Standard](#) (Governor Youngkin)

AGCVA Position: Support

Result: Included in Senate budget

In February, AGCVA testified before the Safety & Health Codes Board in support of the repeal of the COVID-19 Permanent Standard that has been a burden on Virginia's commercial construction industry and overall business community. Fortunately, the Board voted in favor of repealing the standard at that meeting.

Language was added to the Senate budget that reflected the Board's vote to rescind the permanent standard, which was a welcome addition to accelerate the administrative process to repeal. The permanent standard was officially repealed on March 23, 2022.

AGCVA represents an industry with a concerted effort focused on the safety and health of its workforce. Repeal of the standard provides companies the flexibility to adopt policies and procedures that fit each individual situation to ensure the safety of Virginia's contractors.