

# Legislative Bulletin



Virginia Municipal League

Virginia Association of Counties



February 3, 2011

## Schedule of activities

### VACo/VML Legislative Day



Richmond Marriott – 5<sup>th</sup> and Broad Streets

<b>9 a.m.</b>	VACo Board of Directors meeting
<b>10 a.m.</b>	VML Board of Directors meeting
<b>11 a.m.</b>	Registration
<b>Noon</b>	Program begins (box lunch provided) (Staff briefing)
<b>1:30 p.m.</b>	Keynote address: <b>Gov. Bob McDonnell</b>
<b>1:50 p.m.</b>	Closing address; adjournment and <b>afternoon visits to Capitol Square</b>
<b>5:30-6:30 p.m.</b>	Reception for local officials (cash bar)
<b>Evening</b>	Please take your state legislators to dinner

## The state budget overview

By [Neal Menkes](#) (VML)

It may not feel like it, but the state's economy is mending. Last year's state budget gap, a \$4.5 billion revenue and spending shock has faded from many legislators' memories. However, the impacts of last session's budget decisions are beginning to affect local services this biennium. Here is a closer look at the resources and spending proposed by Gov. Bob McDonnell.

The introduced budget bill ([HB 1500](#) and [SB 800](#)) includes net new general fund revenues of \$283 million for the biennium. The revenue situation reflects improved performance of payroll withholding and sales tax collections. These two revenue sources account for 84 percent of all

general fund revenues. In addition, the introduced budget proposal includes a net increase of \$112.9 million in unexpended balances from last fiscal year and transfers of non-general fund revenues to the general fund. The introduced budget also proposes \$512 million in targeted savings and technical reductions. Taken all together, the additional revenues and transfers plus the spending cuts result in slightly more than \$900 million available to pay for a like amount of new spending.

House Appropriations and Senate Finance staff, in their analysis of the introduced budget, identified gubernatorial budget priorities in six areas: (1) investing in higher education; (2) partially restoring funding for the Virginia Retirement System (VRS) through higher contribution rates; (3) re-programming unexpended general fund balances from FY 2010 to transportation; (4) expanding funding for economic development programs and incentives; (5) paying the Virginia Information Technologies Agencies (VITA) for incurred technology costs; and (6) providing additional resources for increasing Medicaid service demands.

It is unfortunate for local governments that the top budget bill priorities do not reflect local needs. Aid to localities continues to slide. After the 2010 session, 49 percent of all general fund appropriations were categorized as local aid. In the introduced budget bill, the figure is 48 percent—\$15,222.7 billion. Public education, which comprised 31 percent of the biennial budget after last session, falls to 30 percent—\$9,592.3 billion.

Regarding actions approved last session, the governor did not propose any amendments to restore funding assistance for local police departments (HB 599 program) or to eliminate the \$60 million a year across-the-board cuts imposed on cities and counties.

The \$512 million in proposed spending cuts would affect the bottom line of many localities. The \$57.6 million, which holds harmless the 97 school divisions negatively affected by changes in the local composite index, would be reprogrammed to boost the state share of public school teacher retirement contributions. In addition to the loss of hold harmless money, an extra \$94.7 million in educational cuts is proposed for this year and next.

The proposed cuts also affect comprehensive services for at-risk youth and families, including an increase in the local match rate for Therapeutic Foster Care Services (\$7.5 million), elimination of state funding for services for non-mandated children (\$5 million), and equalizing the local match rate for services provided in public schools (\$3.9 million).

Gov. McDonnell did propose a number of amendments that local governments welcome, including:

- \$16.6 million to restore sheriffs' funding through the Compensation Board.
- \$7.4 million for jail per diems in FY 2011.
- \$4 million for an industrial site development program.
- \$1 million to increase enterprise zone funding.
- \$53.2 million for the state share of public school teacher retirement contributions.
- \$1 million to expand the tourism partnership grant fund.
- \$40.5 million of additional sales tax revenue for public education.

- \$32.8 million as a deposit to the Water Quality Improvement Fund with the bulk of the money assigned to nonpoint source activities.

Also of note is the use of the budget as an instrument to set or change state policy. For example, the introduced budget includes language mandating that new public education employees pay the 5 percent member contribution to VRS and allows local governments and school boards to re-impose this requirement on their current employees if at least a 3 percent salary increase is provided at the same time. The budget also includes contingent language for a one-time 2 percent bonus to be paid to most state employees if state agencies generate year-end balances of at least twice the cost of the proposed \$55 million bonus. (In addition, the budget includes a 3 percent salary adjustment for state employees, and language requiring all state employees hired before July 1, 2010 to pay the 5 percent employee share of VRS contribution rates.)

The House Appropriations Committee and the Senate Finance Committee will fashion their respective amendments to the budget bill this week, and will report their actions on Sunday, Feb. 6. It is critical for VML and VACo members to inform their delegates and senators about the impacts of the General Assembly's actions on local budgets.

**VML Contacts:** [Neal Menkes](#), [Janet Areson](#), [Mary Jo Fields](#) and [Joe Lerch](#)

**VACo Contacts:** [Dean Lynch](#), [Larry Land](#) and [Beau Blevins](#)

### **Tax bills require advocacy**

**HB 1636** (Purkey) classifies as capital taxable solely by the state (1) machinery and tools (M&T) that have not been in service for more than three years, (2) machinery and equipment used by farm wineries, and (3) idle machinery and tools. **VML and VACo oppose the bill, which is expected to pass the House of Delegates.** The Senate Finance Committee will consider the measure after crossover.

### **Talking Points**

- In FY 2009, counties, cities and towns collected more than \$213.7 million in M&T revenues; these important local general funds support key services, including K-12 education and public safety.
- Manufacturers are only required to pay M&T on tangible property used directly in the manufacturing process. The rates are often times less than local rates on the general class of tangible personal property. Also, all other tangible personal property of manufacturers, other than motor vehicles, is exempt from personal property taxation. Idle machinery and tools are also exempt from M&T. Surrounding states do not provide these benefits.
- Manufacturers do not pay BPOL or merchant's capital taxes.
- HB 1636 will actually lead to higher administrative costs for both localities and manufacturers. To enforce the measure localities will have to increase their audits, and manufacturers will have additional recordkeeping duties to document which machines are exempt.

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[SB 972](#) (Whipple) provides that retail sales and hotel taxes on transient room rentals are computed based upon the total charges or the total price paid for the use or possession of the room. For those cases in which a hotel or similar establishment contracts with an intermediary (i.e., on-line travel company) to facilitate the sale of the room and the intermediary charges the customer for the room, the bill would require the intermediary to separately state the taxes on the bill or invoice provided to the customer and to collect the taxes based upon the total charges or the total price paid for the use or possession of the room. **VML and VACo support the bill.** Last year a similar bill passed the Senate. If the Senate approves the measure, the House Finance Committee will consider it after crossover.

### Talking Points

- There is no consensus on the amount of new tax dollars the legislation would raise, but one estimate projects over \$20 million for local governments.
- Unlike last year, a number of travel and lodging businesses support SB 972, including the Hilton and Marriott hotel chains. Businesses with a Virginia presence would not support a tax measure if they believed it would hurt their bottom line.
- This is not a new tax. The bill puts online travel companies and local hotels on the same plane by making clear that the basis for calculating sales taxes and transient occupancy taxes are the same.

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[HB 1908](#) (J. Miller) and [SB 780](#) (Reynolds) expand the current recordation tax exemption for refinancing an existing debt to include refinancing with a lender different than the original lender of the debt. HB 1908 would also require the recordation and grantor taxes on deeds to be based solely on consideration, even when it is less than the actual value of the real estate conveyed by the deed. The circuit court clerk, under HB 1908's provisions, would be allowed to require documentation to verify the consideration of the deed. **VML and VACo oppose both bills.** The Senate Finance Committee reported SB 780 on Feb. 2; HB 1908 was heard by the House Finance Committee on Feb. 2.

### Talking Points

- HB 1908's provisions on basing recordation taxes solely upon consideration would have a negative impact on the state general fund, the state Transportation Trust Fund, and local recordation tax revenue. The minimum amount of revenue loss in FY 2014 would be \$5.4 million (general fund), \$600,000 (Transportation Trust Fund), and \$2.8 million (local recordation taxes).
- The fiscal impact of both bills regarding refinancing could be substantial. Fairfax County estimates a minimum loss of \$8 million per year. Local recordation taxes flow to the general fund to pay for public education, public safety, and other local services.
- Several localities rely on state recordation taxes to service debt associated with road construction projects. It is unclear at this time, but the changes contemplated in HB 1908 and SB 780 could make investors uncomfortable about the security of the debt tied to these projects.

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[HB 1437](#) (Cole), [HB 1587](#) (Iaquinto), and [SB 1408](#) (Ruff) deal with the Business, Professional and Occupational License (BPOL) tax. HB 1437 allows localities the option to impose BPOL on either the gross receipts or the Virginia taxable income of a business. HB 1587 allows localities through ordinance to provide an exemption, refund, rebate or other relief from BPOL for businesses locating for the first time in a given locality for a period not to exceed two years. The bill also provides that a business is not deemed to locate for the first time on the basis of merger, acquisition, similar business combination, or a change in business form. SB 1408 would allow localities to exempt any business that loses money and does not have a profit for the taxable year from the BPOL tax. The business would be required to offer its income tax return to the local commissioner of revenue as proof of the losses.

The two house bills have passed the House of Delegates, and have been referred to the Senate Finance Committee. SB 1408 cleared the Senate Finance Committee earlier this week.

**VML and VACo support Gov. McDonnell's proposed language in the budget bill, requiring [JLARC](#) to study the impact on local revenue streams if BPOL was restructured from gross receipts to net income tax.** However, all of the bills described above are permissive, and subject to local approval.

#### **Talking Points**

- In FY 2009, counties, cities and towns collected \$660.1 million in BPOL revenue. This money funds local services, including public education and public safety.
- It is imperative that these bills remain driven by local option, especially if suitable replacement revenue is not provided.

**Staff Contacts:** [Neal Menkes](#) (VML) and [Dean Lynch](#) (VACo)

#### **Support undoing of \$60 million-per-year cut in aid to localities**

The budget adopted at the 2010 session requires that cities and counties shoulder an additional \$60 million a year in an across-the-board cut in state aid to localities. Cities and counties have to choose the programs to be shorted. The state budget reductions do not provide localities with any regulatory flexibility nor are any standards of performance or accountability relaxed to take into account the cuts in state dollars.

The Senate Finance Committee has a budget item before it to restore the \$60 million in FY11 and FY12. Make sure your senator knows of your support for this amendment.

**Staff Contacts:** [Neal Menkes](#) (VML) and [Dean Lynch](#) (VACo)

#### **Support education funding and retention of composite index hold harmless program**

Gov. Bob McDonnell's budget amendments reverse an action agreed upon by the General Assembly and the governor last session. The governor's amendments would eliminate the \$57 million hold harmless funding included in the FY12 budget for school divisions adversely

affected by changes in the local composite index. Gov. McDonnell proposes to use that funding to pay the state share of a 2 percent increase in the teacher retirement contribution rate. Local governments would have to pay their share of that increase as well. Thus school divisions—and local governments—would be hit by the double whammy of losing state funds already included in the FY12 budget and having to pay the local share of the increased teacher contribution rate. This additional VRS cost is estimated at an additional \$100 million next year.

Please urge members of the House Appropriations Committee and the Senate Finance Committee to support restoration of the hold harmless money, and thank those who put in budget amendments: [Del. Mamyé E. BaCote](#), [Del. Betsy B. Carr](#) and [Del. Robert Tata](#); and [Sen. Henry L. Marsh III](#), [Sen. Frederick M. Quayle](#) and [Sen. W. Roscoe Reynolds](#).

A number of other budget amendments have been introduced, including Sen. Edd Houck's amendment which restores \$87.7 million in funding to K-12 education. State aid for K-12 education is less now than in FY07 on both a per pupil and actual dollar basis. The state should invest in the future of the Commonwealth by taking steps to restore funding for K-12 education.

**Staff Contacts:** [Mary Jo Fields](#) (VML) and [Beau Blevins](#) (VACo)

### **Bills would alter retirement benefits**

Several bills have been introduced that revamp retirement benefits for state and local employees. The House Appropriations Compensation Subcommittee reported a substitute for [HB 2410](#) (Putney) that would establish a defined contribution program. Employers would be required to make the plan available and new and current employees would have the option of either joining the defined contribution plan or participating in the defined benefit plan. Under the House substitute, the employer and employee would be required to make a 5 percent contribution to the defined compensation program, meaning that at least 10 percent of salary would be going into the employee's defined contribution plan. In addition, the employer would be required to match an employee's voluntary contribution on a 1 percent to 1 percent basis, up to an additional 3.5 percent. Thus employer contributions are capped at 8.5 percent.

On Feb. 2, the Senate Finance Committee passed by indefinitely bills to establish a defined contribution plan, instead opting to study the issue. The retirement issue will likely continue to be debated for the remainder of the session.

Remember that any legislation will have to be evaluated in tandem with Gov. Bob McDonnell's budget amendment on retirement. That amendment requires state employees hired before July 1, 2010, to pay the required 5 percent member contribution, contingent on a 3 percent salary increase. Local employers that have elected to pay the 5 percent member contribution on behalf of their employees hired before July 1, 2010, would be allowed to require those employees to pay the 5 percent member contribution, contingent upon a minimum of a 3 percent salary increase. Further, local employees hired after July 1, 2011, would be required to pay the 5 percent member contribution to the defined benefit plan. State employees hired after July 1, 2010 already have to pay that 5 percent.

Local officials should let their legislators know what components they would like to see in legislation enacted this year.

**Staff Contacts:** [Mary Jo Fields](#) (VML) and [Dean Lynch](#) (VACo)

### **Oppose shifting of Line of Duty Act costs to local governments**

The budget adopted in the 2010 session shifts the costs for the state-mandated benefits for local employees under the Line of Duty Act to local governments. The 2010 budget allowed localities the ability to opt-out of the statewide funding pool and provide the identical benefits to their own employees independently. There is not adequate information available for localities to determine whether or not to opt out of the VRS program by the current deadline of July 1, 2011.

Please ask your delegates and senators to support restoration of state funding for the Line of Duty Act program, or at the very least, to extend the deadline for localities to opt out of the program.

Please thank these legislators who have introduced amendments to restore state funding: [Del. Paula J. Miller](#), [Del. John M. O'Bannon III](#), [Del. Brenda L. Pogge](#) and [Del. Thomas C. Wright, Jr.](#); and [Sen. Phillip P. Puckett](#), [Sen. Frederick M. Quayle](#) and [Sen. Richard L. Saslaw](#).

Please thank [Del. Riley E. Ingram](#) and [Sen. Walter A. Stosch](#) for their amendments to extend the deadline for localities to opt out of the statewide Line of Duty program from July 1, 2011 to July 1, 2012.

**Staff Contact:** [Dean Lynch](#) (VACo) and [Mary Jo Fields](#) (VML)

### **Compromise reached on bills dealing with reassessment of real estate**

After many hours of negotiation, VML, VACo and the Virginia Association of Realtors have reach a compromise on [HB 1588](#) (Iaquinto) and [SB 1350](#) (Norment), dealing with reassessments of real estate. The bills are now identical. The changes from current practice are as follows:

- When the owner of fewer than four residential units appeals a reassessment, the assessor must send a notice of the taxpayer's rights. If the taxpayer requests, the assessor must provide the records used in the assessment.
- If the assessor fails to comply with either requirement, the assessor must put on his evidence first— in the board of equalization or in court.
- The assessment continues to enjoy the presumption of correctness throughout the appeals.

While the assessment will continue to be presumed to be correct, for appeals to court the burden of proof lowers from its current standard to a preponderance standard. This will prove to be a significant change in the law that will likely lead to more appeals by major landowners, as they will have a lower burden to overturn the assessment.

A House Finance Subcommittee has recommended approval of HB 1588, and the full committee is expected to report the bill this week, perhaps at its afternoon meeting scheduled for Feb. 2. The Senate Finance Committee reported SB 1350 on Feb. 2.

**VML and VACo consider this issue resolved for the year, and hopefully for some years to come.**

**Staff Contacts:** [Mark Flynn](#) (VML), [Neal Menkes](#) (VML), [Dean Lynch](#) (VACo) and [Phyllis Errico](#) (VACo)

### **Local authority to regulate fireworks threatened**

[HB 1834](#) (Scott, E.) redefines the types of fireworks that are permissible in Virginia and prohibits localities from adopting ordinances that go beyond the Fire Prevention Code in prohibiting the use, display, storage, sale, or transportation of permissible fireworks, or the setup or supervision of these fireworks. The bill expands considerably the list of permissible fireworks to include ground based fountains, illuminating torches, wheels, ground spinners and other ground and hand-held devices. **VACo and VML oppose this bill, which was heard by the House General Laws Committee on Feb. 2.**

#### **Talking Points**

- There are thousands of injuries related to the use of consumer fireworks in the United States each year.
- City, county and town governing bodies are in the best position to determine the regulation of fireworks in their jurisdictions.
- What is safe in a rural county may not be safe in a crowded city neighborhood. The county, city or town should make that decision—one-size-fits-all rules are impractical.
- The expansion of the types of permissible fireworks will lead to additional injuries and accidental fires.

**Staff Contacts:** [Phyllis Errico](#) (VACo) and [Randy Cook](#) (VML)

### **Governor proposes transportation funding bills**

Delivering on a prominent campaign promise, Gov. Bob McDonnell is proposing omnibus legislation in combination with budget amendments to pump an additional \$4 billion into an identified list of more than [900](#) transportation construction projects over the next three years. The essential elements of the package rely on issuing new debt, accelerating already authorized debt, and allocating future general fund revenue growth towards construction projects. Companion bills [HB 2527](#) (Howell) and [SB 1446](#) (Wampler and Colgan) introduced on behalf of the administration include the following key provisions:

- \$1.8 billion in state-backed bonds to be issued over the next three years. These bonds were authorized by the General Assembly in 2007, and were supposed to be issued at \$300 million per year. But the state lacked the cash necessary to meet debt service requirements. The governor wants to issue some \$600 million a year for the next three years.

- A bond issuance of \$1.1 billion to be backed by future federal allocations to Virginia for road construction. The state match needed to qualify for the GARVEE bonds would come from credits earned by the state from public and private spending on toll roads.
- Creates the Virginia Transportation Infrastructure Fund and the Virginia Transportation Infrastructure Bank whose board of directors administers the Fund. Up to 20 percent of the Fund may be used to make grants to localities for transportation projects as determined by the Bank, and the remainder is used to make loans to private or public entities for transportation projects as determined by the Bank. The governor proposes initially capitalizing the bank with \$150 million in FY11 from the general fund and \$250 million in FY11 from the Commonwealth Transportation Fund ([Item 452](#) governor's budget amendments).
- Make annual deposits in the newly created infrastructure fund by altering the priorities for assigning any year-end general fund surplus. Any surplus funds would continue to be set aside first for required deposits to the Revenue Stabilization Fund (Rainy Day Fund). After that transaction, two-thirds of the remaining money would be assigned to the Virginia Transportation Infrastructure Fund. Any surplus remaining after these priorities are satisfied would be directed to the Virginia Water Quality Improvement Fund and other commitments including certain public institutions of higher education.
- Increases the availability of the local Revenue Sharing funds, specifically eliminating the \$1 million cap per project and the \$50 million total limit on funds allocated by the Commonwealth Transportation Board (CTB). In the near term the governor proposes a budget amendment ([Item 452](#)) that increases the FY12 appropriation for Revenue Sharing from \$15 million to \$50 million using Commonwealth Transportation Funds. In a recent solicitation of interest in Revenue Sharing for FY 12 local governments indicated that they will request more than \$44 million in the 50 percent matching funds under this program.
- Gives discretion to the governor to submit in his proposed budget an appropriation of up to 2 percent of growth in general fund revenues to transportation projects when the projected revenues are at least 5 percent greater than the projected general fund revenues from the previous year.

In addition to the omnibus proposal, the governor seeks to generate surplus revenue for transportation from his proposal to privatize ABC as outlined in [SB 1417](#) (Obenshain).

Lastly, Gov. McDonnell has introduced legislation that would redirect portions of the state sales and use tax to the Northern Virginia Transportation Authority and the Hampton Roads Transportation Planning Organization. [HB 2404](#) (Rust, Oder, Anderson and Cosgrove) and [SB 1394](#) (McWaters) would dedicate a portion of the state sales and use tax equal to 0.25 percent in the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, and the Counties of Arlington, Fairfax, Loudoun, and Prince William to the Northern Virginia Transportation Authority. The bills also dedicate an identical percentage of the tax in the cities of Chesapeake Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, and the counties of Isle of Wight, James City and York to the Hampton Roads Transportation Planning Organization.

The money could only be used for projects in the state's Six-Year Improvement Program, and would revert to the state if not obligated to an active project in the design or construction phase within four years of the transfer. In Northern Virginia, the amount of revenue generated for transportation purposes would rise from \$90.5 million in FY12 to \$112.6 million by FY17. In Hampton Roads, the revenue impact is projected at \$49.7 million in FY12, rising to \$61.8 million by FY17. The bills would not draw down from sales tax revenue already dedicated for transportation or public education. Nor would the bills be applied to revenues raised by the 1 percent local sales and use tax. The major state and local programs that would be negatively affected by the two measures include public safety, higher education, economic development, environmental protection, and K-12.

Both the House Appropriations and Senate Finance committees have reported out their respective versions of the governor's transportation package. Although both committees approved the debt provisions, changes were made to the other features of Gov. McDonnell's plan.

### **Talking Points**

- Local governments support an adequate and dedicated source of funding for transportation that does not risk general fund dollars in the near and long term.
- Local governments support fully funding the Revenue Sharing program.
- The governor's plan will provide only short-term relief. The state's identified capital transportation needs are roughly \$20.0 billion.

**Staff Contacts:** [Neal Menkes](#) (VML) and [Joe Lerch](#) (VML); [Larry Land](#) (VACo) and [Ted McCormack](#) (VACo)

### **Revised ABC privatization plan preserves General Fund, but questions remain**

[HB 2456](#) (Brink) and [SB 1417](#) (Obenshain) contain Gov. Bob McDonnell's revised plan to privatize the sale of distilled spirits in the Commonwealth. HB 2456 is in House General Laws and SB 1417 is in Senate Rehabilitation & Social Services. Both committees will meet before crossover, so the bills potentially could move forward. Their future appears cloudy, however.

Under the revised plan, the state retains control of wholesale operations, but privatizes retail operations. This approach results in slightly higher proceeds in ABC profits for the general fund. The original plan produced an estimated \$47 million shortfall in the state general fund.

The auctioning of retail liquor store licenses included under the bills is estimated to produce a one-time revenue windfall of \$200 million, which would be used to fund the governor's transportation initiatives. Both bills call for the granting of no more than 1,000 private retail licenses statewide, with at least one private liquor store in each locality that currently has a state ABC store.

Both bills preserve the current provisions in the statutes dealing with the application of local merchants' license taxes to the sale of alcoholic beverages.

Many details surrounding the privatization of liquor stores may be answered during testimony on HB 2456 and SB 1417, or may not be known until the ABC Board develops its new regulations. Some of those critical details include:

- Will localities be able to regulate the location of stores selling liquor under local government land use authority?
- Will the current ABC Board hearing process that permits localities to object to the issuance and transfer of beer and wine licenses also apply to private liquor stores?
- Will there be a limit on the number of private liquor stores located in any one area of a locality?

**Staff Contacts:** [Ted McCormack](#) (VACo) and [Mark Flynn](#) (VML)

### **Support state assistance to local police budget amendments (HB 599 program)**

State assistance for local law enforcement (the HB 599 program) will drop to the lowest level in 12 years unless the General Assembly acts. The only chance to improve this level of funding is for local governments to weigh in on these amendments with General Assembly members.

Local and state officials know that the cost of law enforcement has not declined over these years. In fact, local governments have increased law enforcement spending with local dollars by 79 percent since FY00. By comparison, state assistance for local law enforcement dropped by more than \$37 million from FY08 to FY11.

Funding for the HB 599 program is supposed to be tied to General Fund growth. Although state General Fund revenue growth is projected to increase by 4.99 percent next fiscal year, Gov. Bob McDonnell offered no increase in state funding for local law enforcement services. As such, the FY12 funding level will plummet by an additional \$18.7 million as compared to the FY11 state dollars.

Del. Robert Tata and Sen. Janet D. Howell have introduced amendments to restore funding for the HB 599 program. Delegates and senators, particularly those on the House Appropriations and Senate Finance Committees, must hear from local governments in support of these amendments. Remind them that local governments have more than shared in the amount of state cuts for basic services. As Sen. Walter A. Stosch commented to his fellow members on the Senate Finance Public Safety Subcommittee, this drop in state funding to HB 599 just “reverses our commitment to these localities,” and “puts more burden on local taxpayers.”

Municipalities and counties with police departments need to remind their legislators that police departments serve and protect more than two-thirds of the state’s population.

**Staff Contacts:** [Janet Areson](#) (VML) and [Dean Lynch](#) (VACO)

## **CSA bills amended, likely to pass**

A compromise between state and local governments was reached on [HB 1679](#) (Bell) and [SB 1171](#) (Marsden), identical bills that deal with the authority of the State Executive Council (SEC) of the Comprehensive Services Act for At-Risk Youth (CSA) to withhold reimbursements to a local government if it did not follow state or federal laws, regulations, or policy in regards to CSA service provision. Under the compromise, the SEC must develop a policy regarding the withholding of funds, and this policy must undergo public comment before it is adopted. In addition, the new policy will affect only those expenditures made after July 1, 2011.

The House Health, Welfare and Institutions Committee reported the amended HB 1679 on Feb. 1; the Senate Committee on Rehabilitation and Social Services will take up SB 1171 on Feb. 4.

**Staff Contacts:** [Janet Areson](#) (VML) and [Beau Blevins](#) (VACo)

## **Help needed with CSA budget amendments**

During the last two years, the overall cost of the Comprehensive Services Act for At-Risk Youth and Families has decreased by \$77.7 million. These reductions are due to extensive efforts by local governments and the state to emphasize community-based services. That has been a key goal of this program since it started in the early 1990s.

Budget amendments introduced by Gov. Bob McDonnell would reverse the progress by eliminating a critical funding stream and reclassifying a community-based service as a residential service, thereby increasing the local match. A third change would restrict the use of CSA funding to keep children in special education in public schools.

These changes together would shift an estimated \$16.5 million in costs to local governments. These amendments appear to be based purely on a budget target and have alarmed not just local governments, but also professionals involved in behavioral health, juvenile justice and the courts system.

Please communicate with your delegates and senators, and with the members of the Health & Human Resources subcommittees of the [Senate Finance](#) and [House Appropriations](#) committees to support amendments to:

- Restore the state share of non-mandated funding.
- Restore the existing state match for therapeutic foster care.
- Decrease the local match rate for residential services under CSA.
- Authorize the use of regional contracts for the provision of therapeutic foster services.

Our thanks to the patrons: [Del. Robin A. Abbot](#), [Del. Robert H. Brink](#) and [Del. L. Scott Lingamfelter](#); and [Sen. Charles J. Colgan](#), [Sen. Emmett W. Hanger, Jr.](#) and [Sen. Mary Margaret Whipple](#).

**Staff Contacts:** [Janet Areson](#) (VML) and [Beau Blevins](#) (VACo)

### **Budget amendments would help with local juvenile justice programs**

Repeated cuts to the Virginia Juvenile Community Crime Control Act (VJCCCA) have crippled communities' ability to offer key intervention services to youths first coming to the attention of law enforcement, as well as services to youths returning to the community from juvenile justice facilities. Since 2002, the state has cut program funding by more than 81 percent. Two budget amendments have been introduced to partially restore the cuts to this program. Our thanks to the patrons—[Del. Harvey B. Morgan](#) and [Sen. John C. Miller](#).

Please ask your legislators and members on the [House Appropriations](#) and [Senate Finance](#) Committees to support these amendments.

**Staff Contacts:** [Beau Blevins](#) (VACo) and [Janet Areson](#) (VML)

### **Budget amendments would restore state funding for liability insurance**

The introduced budget included an item to completely shift the cost for liability insurance for constitutional officers from state to local governments. Budget amendments have been introduced to reverse this action and restore the state funding. Our thanks to the patrons: [Del. Watkins M. Abbitt, Jr.](#) and [Del. Terry G. Kilgore](#) and [Sen. W. Roscoe Reynolds](#).

Please ask your legislators and members on the [House Appropriations](#) and [Senate Finance](#) Committees to support these amendments.

**Staff Contacts:** [Beau Blevins](#) (VACo) and [Janet Areson](#) (VML)

### **Water Quality Improvement Fund update**

Virginia's unfunded commitment to reimburse local governments for required sewage treatment plant upgrades is currently more than \$100 million, and will continue to grow substantially in the face of even stricter controls under the recently approved EPA Chesapeake Bay cleanup plan. Due to this shortfall, local governments with signed grant agreements (with the exception of certain hardship exemptions) are currently receiving only 85 percent of qualifying reimbursements. Additionally, beginning July 1, Virginia will run out of reimbursement funds, thereby leaving it unable to fulfill any of its commitment.

Gov. Bob McDonnell, as part of his budget amendments, is proposing to add \$3.644 million in FY11 to the Water Quality Improvement Fund (WQIF) to reimburse localities for sewage treatment plant upgrades from projected General Fund revenue surplus. Sen. Mary Margaret Whipple has sponsored a budget amendment that adds \$100.3 million in FY 12 to the WQIF for the same purpose in order to make up the estimated shortfall beginning July 1, 2011. **VML and VACo support both budget amendments.**

### **Talking Points**

- Virginia has made a commitment to reimburse local governments for mandatory water quality improvements.

- These budgets amendments will fully fund the Commonwealth's commitment under currently signed grant agreements. Without them local governments will have no choice but to raise utility rates or other local revenue in order to pay the costs.

**Staff Contacts:** [Larry Land](#) (VACo) and [Joe Lerch](#) (VML)

### **Several eminent domain bills remain alive**

[HJ 647](#) (Bell) and [HJ 693](#) (Joannou) create new rights for citizens, a provision limiting the amount of land that can be taken, and a prohibition on eminent domain if the primary purpose is economic development, increasing jobs or increasing tax revenues. Despite opposition from local governments and other constituencies, it is expected that the committee will report out one of the resolutions at the Feb. 4 meeting of the House Privileges & Elections Committee. Earlier in the session, a subcommittee of the Senate Privileges & Elections Committee refused to endorse [SJ 307](#) (Obenshain), which basically would have put current language governing eminent domain in the state constitution. **VACo and VML oppose a constitutional amendment on eminent domain.**

### **Talking Points**

- The current eminent domain statute has only been on the books for 3 and a half years. It has not been tested by the courts and has not led to any significant complaints by citizens about the use of eminent domain by local governments. An amendment to the constitution is premature and unnecessary.
- Passage of these amendments could add staggering amounts to the cost of eminent domain.

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**VML and VACo also oppose two other bills relating to eminent domain that are before the legislature.**

- [HB 2161](#) (Iaquinto) makes changes to the procedure for offering to sell condemned property back to the former owner to clarify that an offer is required to be made if after 20 years the land taken has not been turned into a public use, or its public use has been discontinued. The bill also provides that if a condemnor is required to provide an appraisal to the owner, then the condemnor must provide copies of all appraisals that the condemnor obtained. The bill is on the House floor.

- [HB 2110](#) (Armstrong) provides that any restriction, change, or loss of access to or from property taken under the power of eminent domain shall be considered when determining compensation. HB 2110 is currently in the House Courts of Justice Committee, which meets Wednesdays and Fridays after adjournment of the House session.

**Staff Contacts:** [Randy Cook](#) (VACo and VML) and [Mark Flynn](#) (VML)

## **E-verify bills could prove onerous**

[HB 1727](#) (Carrico) requires localities to enroll in the federal Electronic Work Verification Program by Dec. 1, 2011, and to use the program for each newly hired employee who is to perform work within Virginia. Localities that fail to do so are subject to suspension or revocation of certain licenses and invalidation of public contracts. A subcommittee recommended reporting the bill to the House Courts of Justice Committee, which meets Wednesday and Friday afternoons. **VACo and VML oppose the bill.**

### **Talking Point**

- Mandatory participation in E-Verify will substantially raise costs for localities.

Two other E-Verify bills deserve mentioning. [SB 1049](#) (Barker) and [SB 1288](#) (McWaters) require all public contractors and their subcontractors to register and participate in a federal Electronic Work Verification Program or similar programs. Both bills are in the Senate Courts of Justice Civil Laws Subcommittee.

**Staff Contact:** [Randy Cook](#) (VACo and VML)

## **Oppose unnecessary expansion of whistleblower bill**

[HB 1399](#) (Janis) that would allow local government employees to sue their employers under the whistleblower provision of the Fraud Against Taxpayers Act. The bill would have an obvious fiscal impact at the local (and state) level. The bill has passed the House and is in the Senate Courts of Justice Committee. **VML and VACo oppose the bill.**

Currently, if a private sector employee is fired because he complained that his employer was committing fraud in providing goods or services to a government, the employee can sue his employer for damages and attorneys fees. This recourse is appropriate because it is the only protection for this type of whistle-blowing employee in the private sector.

The situation is completely different for local government employees. If a city, town or county employee is fired for blowing the whistle on a fraud committed by a supervisor, the employee has grievance rights. Therefore, under current law, there already is a protection for local employees. Please let your senator know of your opposition to HB 1399.

### **Talking Points**

- Government employees are covered under grievance procedures. This bill will grant government employees additional protections.
- Employees would be allowed to sue to collect attorneys' fees, back pay and compensation for damages.
- There would be a significant impact on state and local governments.

**Staff Contacts:** [Randy Cook](#) (VML and VACo) and [Phyllis Errico](#) (VACo)

## **Wind turbine bill is amended to make it a local option**

[SB 862](#) (Wagner) as originally introduced would have required all local governments to develop ordinances by July 1, 2012, for the siting of renewable energy projects, thereby making such facilities a "by-right" use and usurping local zoning authority. As currently defined in Virginia law, "renewable energy" is derived from sunlight, wind, falling water, biomass, sustainable or otherwise, energy from waste, municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas or nuclear power. VACo and VML worked with Sen. Frank W. Wagner on a compromise that makes it optional for local governments to develop ordinances for the siting of only wind and solar projects. The amended bill specifies that if local governments develop ordinances for the siting of wind and solar projects, then the ordinances will include provisions for establishing requirements that limit noise, identify buffer areas and setbacks, protect viewsheds, and address the decommissioning of a the wind or solar facility. **VML and VACo opposed the bill as originally introduced, but have no position on the amended version.** The bill is on the Senate floor.

### **Talking Points**

- Local governments support increasing the Commonwealth's portfolio of available energy derived from renewable sources.
- Local governments oppose any proposals to usurp local authority in the siting of wind, solar and other renewable energy facilities.

**Staff Contacts:** [Larry Land](#) (VACo) and [Joe Lerch](#) (VML)

## **Liens against landowners for tenants' unpaid water bills to be evaluated**

[HB 2425](#) (Ingram), [SB 1216](#) (Smith) and [SB 1466](#) (Edwards) would make it more difficult for localities and their water authorities to enforce a lien against a landowner for his tenant's delinquent water bills. After negotiation, the three bills will likely be conformed into identical form. The changes expected to be adopted are much more workable for local governments than the bills as originally introduced. In addition, the negotiations identified that local governments and water authorities should have access to the same method for the enforcement of liens, which is not the case under current law. The bills are meant to be a temporary compromise on the issues related to holding property owners liable for tenants' unpaid water bills. A request is expected to be sent to the Housing Study Commission to examine this issue, and the affected parties have agreed to participate.

HB 2425 will be heard on Feb. 3 at 7 a.m. in a House Counties, Cities and Towns subcommittee, and in the morning on Feb. 4 by the full committee. SB 1216 was reported by the Senate Local Government Committee in a compromise form. However, SB 1466 was reported in its original form. VML and VACo will work on improvements to SB 1466, which in its current form creates hardships for local water authorities.

**Staff Contacts:** [Mark Flynn](#) (VML) and [Ted McCormack](#) (VACo)

## **Notice of adverse judgment bill would have harmful impact**

[HB 2455](#) (Comstock) would require any locality that has a judgment entered against it for a water or sewer rates case to send notice of the judgment to ALL customers by first-class mail within 30 days. This means that if a water bill was reduced by court for a minor amount, in the form of a judgment, the locality would have to spend the time and money to notify all customers of the city, county or town.

The bill is to be heard by House Counties, Cities and Towns Subcommittee 2 on Feb. 3 at 7 a.m., and, if approved by the subcommittee, will be before the full committee on Feb. 4 at 7 a.m.

**VML and VACo oppose the bill.** Please contact your member of House Counties, Cities and Towns in opposition.

### **Talking Points**

- The bill will increase costs for all local governments providing water or sewer services.
- The mailing of notices will produce no value for the customers.
- Local media typically cover these types of issues and the additional notice is pointless.

**Staff Contacts:** [Mark Flynn](#) (VML) and [Ted McCormack](#) (VACo)

## **Calls needed on bill requiring reappropriation of school surpluses**

A bill before the General Assembly would usurp the authority of councils and boards of supervisors by requiring that they reappropriate unexpended school funds back to the school boards.

[SB 1031](#) (Barker) will be before the Senate Education and Health Committee at its Feb. 3 morning meeting. A subcommittee on Jan. 31 unanimously recommended reporting the bill.

If the bill is reported from committee, please urge your senator to oppose the bill on the floor.

### **Talking Points**

- Councils and boards of supervisors have the responsibility of setting tax rates in order to raise revenues for services. These unexpended funds come from local revenues and should continue to revert back to councils and boards.
- Councils and boards of supervisors have the responsibility of setting priorities for spending local revenues for a variety of services including education, public safety and human services.
- Many councils and boards of supervisors have reached agreements with their school boards on how unexpended school funds will be handled. The General Assembly does not need to get involved in setting a statewide approach for matters that should be settled between local bodies. A one-size fits all approach is detrimental.

A similar bill is in the House of Delegates, but Del. Robert Tata has indicated that he will ask that [HB 1786](#) be pulled.

**Staff Contacts:** [Phyllis Errico](#) (VACo) and [Mary Jo Fields](#) (VML)

## Oppose bill to eliminate authority for photo-red programs

[HB 2327](#) (Lingamfelter), which limits photo red programs to only programs in place before July 1, 2011, will be heard House Militia, Police and Public Safety Committee on Feb. 4 at 9 a.m. While the patron amended the bill in subcommittee to allow a locality to expand its current photo red program to add more cameras, it still eliminates the authority to create new programs.

### Talking Points

- A just released study from the Insurance Institute for Highway Safety shows that camera enforcement has reduced the rate of fatal red light running crashes by 24 percent.
- Local governments support the current authority to establish local photo-camera traffic enforcement and oppose HB 2327.

**Staff Contacts:** [Kimberly Pollard](#) (VML), [Joe Lerch](#) (VML) and [Ted McCormack](#) (VACo)

### At your fingertips

- **[House Membership](#):** Link to General Assembly Web site listing all members of the House of Delegates and their contact information. There is a tab at the top of the Web page showing committee membership.
- **[Senate Membership](#):** Link to General Assembly Web site listing all members of the Senate and their contact information.
- **[House and Senate Committees and Subcommittees](#):** Link to General Assembly Web site listing membership of all House and Senate committees and their contact information.

## Schedule of Legislative Meetings

(Meetings are held in the General Assembly Building,  
9<sup>th</sup> and Broad Streets, unless otherwise noted)

### Thursday afternoon, February 3

Time	Committee and Room
Noon	<b>House &amp; Senate convene-</b> State Capitol
2 p.m.	<b>Senate Transportation-</b> Senate Room B SB 1112 – specifies role of MPOs in state’s transportation decision-making process
1/2 hours after House adjourns	<b>House Commerce and Labor-</b> House Room D
Immediately after House adjourns	<b>House General Laws Subcommittee #2 FOIA/Procurement-</b> House Room C
Immediately after	<b>House General Laws Subcommittee #3 ABC/Gaming-</b> House

General Laws Subcommittee #2 adjourns	Room C HB 1409 – no regulation of prayer at public events HB 1584 – makes internet gambling cafes illegal
2 hours after General Laws Subcommittee #2 adjourns	<b>House General Laws-</b> House Room C
3:30 p.m.	<b>House Appropriations Compensation &amp; Retirement Subcommittee-</b> 9th Floor Appropriations Room
4 p.m.	<b>Senate Courts of Justice Civil Subcommittee-</b> 4th Floor East Conference Room SB 845 – speech or debate civil liability immunity for local officials SB 1049 – E-Verify SB 1288 – E-Verify

### Friday, February 4

7 a.m.	<b>House Counties, Cities and Towns-</b> House Room D HB 1721 – makes UDAs optional HB 2425 – water liens HB 2455 – adverse judgments
8:30 a.m.	<b>Senate Rehabilitation and Social Services-</b> Senate Room B SB 1171 - authority of the State Executive Council to withhold CSA reimbursements
9 a.m.	<b>House Militia, Police and Public Safety-</b> House Room C HB 2327 – prohibits any new photo-red systems
9:30 a.m.	<b>House Privileges and Elections-</b> 9th Floor Appropriations Room HJR 647/HJR 693 – eminent domain constitutional amendments
9:30 a.m.	<b>State Water Control Board-</b> Department of Environmental Quality Office, 629 East Main Street, Richmond
1/2 hour after House adjourns	<b>House Appropriations-</b> 9th Floor Appropriations Room