

Capitol Contact

Virginia General Assembly

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Friday, February 10, 2017

Revised wireless bill applies only to antennas; local authority for approving cell towers is preserved

Upon completion of lengthy negotiations with the wireless industry, VACo has agreed to support a substitute to [SB 1282 \(McDougle\)](#) that was approved Thursday afternoon in the [House Commerce and Labor Committee](#).

As originally drafted, the bill would have gutted local land use authority for the siting of new wireless support structures (towers, poles) and forced the use of local government property without adequate compensation. Those provisions have been removed with the result that the substitute bill now only applies to zoning approval for the placement of small cell facilities (i.e. antennas) on existing structures.

In the agreed upon substitute, localities may only require administrative approval of such facilities if the applicant “... *has permission from the owner of the structure to co-locate equipment on that structure and notifies the locality in which the permitting process occurs.*” Additionally, the locality may deny approval of an application if the placement of the antenna would interfere with existing or planned public safety communications facilities, or conflict with the provisions of locally established historic districts.

The revised bill also prescribes how much a locality can charge to review an application, and how long a locality can take to review a completed application.

As part of the agreement, [VACo sent a letter](#) to the patrons of the legislation with a commitment to work with the wireless industry in expanding service to rural areas.

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VACo Contact: [Joe Lerch, AICP](#)

Bill to preserve local authority over short-term rentals passes Senate

[SB 1578 \(Norment\)](#), a bill to affirm and clarify the role local governments play in making sure short-term rentals are in compliance with local lodging and zoning ordinances, passed the Senate this week and will be before the [House General Laws Committee's Subcommittee #1](#) next Tuesday.

In 2016, the company Airbnb backed an unsuccessful proposal to limit local authority to regulate vacation rentals offered through its online hosting platform. The legislation would have preempted local zoning authority and limited the role of localities to collect and audit sales and lodging taxes.

By contrast, this year's legislation authorizes a locality to adopt an ordinance requiring the registration of persons offering property for short-term rental. The bill defines "short-term rental" as the provision of a room or space suitable for sleeping or lodging for less than 30 consecutive days. The bill authorizes localities to impose fees and penalties on persons who violate the registry ordinance or who offer short-term rentals that have multiple violations of state or federal laws or ordinances, including those related to alcoholic beverage control.

VACo supports the bill and urges you to contact your Delegate to vote YES on SB 1578.

TALKING POINTS

- As with any other business situated in a residential setting, local governments are best suited to determine how to allow for and regulate short-term rentals.
- The bill expressly grants localities the authority to protect the health and safety of the consumers and citizens who both lease and rent such property.

KEY CONTACTS

[House General Laws Committee's Subcommittee #1: Peace \(Chairman\), Greason, Helsel, Hodges, Bell, Richard P., Bulova, Hester](#)

[VACo Members – Share your thoughts on FlagPoll.](#)

VACo Contact: [Joe Lerch, AICP](#)

Broadband bill passes the House; patron agrees to strike language harmful to local authorities

With a pledge from the patron to remove language that would effectively halt public-private partnerships to deploy broadband to unserved and underserved areas, [HB 2108 \(Byron\)](#) passed the House and will be voted on in [Senate Commerce and Labor Committee](#) Monday afternoon.

It is anticipated that Delegate Kathy Byron will request to strike language to remove FOIA exemptions that are in direct conflict with existing law for establishing public-private partnerships. It is important that this provision be removed because such exemptions were adopted by the legislature to give localities the ability to partner with private sector providers in service provisioning. Without them, trade secrets and intellectual property will be open to the public and competitors. This would effectively limit the willingness of private internet service providers to explore and potentially partner successfully with localities to provide broadband.

The original bill was amended twice to remove many elements that localities opposed, with the only remaining objection being removal of the FOIA exemptions. This is because it could halt efforts by localities to deploy broadband to serve schools, businesses, and residential areas. When the bill is amended to strike the removal of FOIA exemptions, **VACo will no longer oppose.**

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VACo Contact: [Joe Lerch, AICP](#)

House ‘fracking trade secret’ bills to be heard next week in Senate committees

[HB 1678 \(Robinson\)](#) is scheduled to be considered by the [Senate General Laws and Technology Committee](#) when it meets 45 minutes after adjournment of the Senate on February 13. This measure is one of two bills **opposed by VACo** that establish “trade secret” status for chemicals used in the process of hydraulic fracturing process. The other bill, [HB 1679 \(Robinson\)](#), has been referred to the [Senate Agriculture, Conservation and Natural Resources Committee](#), which will hold its next scheduled meeting 30 minutes after adjournment on February 16.

Last week, two Senate companion bills, [SB 1291 \(Chafin\)](#) and [SB 1292 \(Chafin\)](#), were defeated in the Senate Finance Committee by 8-8 votes following testimony by Secretary of Natural Resources Molly Ward. She contended that both bills would impose a substantial fiscal impact upon state government.

With supporters of the two House bills working actively to have them pass in the Senate, VACo is urging county officials to contact members of both the [Senate General Laws and Technology Committee](#) to oppose HB 1678 and the [Senate Agriculture, Conservation and Natural Resources Committee](#) to oppose HB 1679.

TALKING POINTS

- In cases of emergencies resulting from the process of hydraulic fracturing, first responders and medical care professionals may need timely information about chemicals used in the fracking process.
- In the process of evaluating requests for permits to allow for a fracking operation, local government officials would benefit by having fuller knowledge of these chemicals during the pre-application meetings required under DMME regulations.
- Knowledge of chemicals used in the fracking process would help protect groundwater supplies.

KEY CONTACTS

[Senate General Laws and Technology Committee](#): [Ruff \(Chairman\)](#), [Locke](#), [Barker](#), [Vogel](#), [Black](#), [Ebbin](#), [Reeves](#), [Wexton](#), [Surovell](#), [DeSteph](#), [McPike](#), [Suetterlein](#), [Dunnavant](#), [Sturtevant](#), [Mason](#)

[Senate Agriculture, Conservation and Natural Resources Committee](#): [Stuart \(Chairman\)](#), [Hanger](#), [Ruff](#), [Obenshain](#), [Petersen](#), [Marsden](#), [Stanley](#), [Black](#), [Ebbin](#), [Lewis](#), [Chafin](#), [Dance](#), [Suetterlein](#), [Mason](#), [McClellan](#)

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VACo Contact: [Larry Land, CAE](#)

Agritourism ‘home rental’ bill to be heard by subcommittee on Monday

[SB 1491 \(Stuart\)](#) is scheduled to be heard by the [House Agriculture, Chesapeake and Natural Resources Committee’s Agriculture Subcommittee](#) at 4:30 p.m. on February 13. SB 1491 expands the definition of “agritourism activity” by including the rental of a single-family residence for a period of at least one week. **VACo opposes this measure** because it further reduces local land use regulatory authority. SB 1491 passed the Senate on a [31-9 vote](#).

Under legislation passed by the General Assembly in 2014, [HB 268 \(Orrock\)](#) and [SB 51 \(Stuart\)](#), localities were restricted from regulating any “agritourism activity” (as defined in [Section 3.2-6400](#) of the Code of Virginia) unless the operation has a “substantial impact upon the health, safety, or general welfare of the public.” Under the 2014 legislation, localities were also prohibited from requiring a special exception, special use permit or any “administrative permit” not required by state law.

VACo urges members to contact Delegates on the [House Agriculture, Chesapeake and Natural Resources Committee’s Agriculture Subcommittee](#) to oppose SB 1491.

TALKING POINTS

- Defining these rental properties as Agritourism will severely limit local land use authority and will prevent localities from regulating these short-term rentals.
- The subject of shorter-term rentals of single family residences should be addressed through legislation and regulations that apply to Airbnb and similar companies.
- SB 1491 does not define a “single family residence,” which could be a large structure in which many customers can be temporarily housed at the same time.

KEY CONTACTS

[House Agriculture, Chesapeake and Natural Resources Committee’s Agriculture Subcommittee](#): [Knight \(Chairman\)](#), [Orrock](#), [Poindexter](#), [Webert](#), [Bloxom](#), [James](#), [Keam](#)

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VACo Contact: [Larry Land, CAE](#)

Update on election legislation of interest

[HB 1733 \(Anderson\)](#), which would have provided for a process by which local elected officials could be recalled from office, was left in the House Privileges and Elections Committee. Currently, removal from office is a judicial proceeding that is initiated by voter petition; the bill would have provided for recall elections, to be triggered by a petition signed by a number of registered voters equal to 20 percent of the votes cast for the office in the most recent election. **VACo**

expressed some concern about introducing changes to an established process.

[HB 2364 \(Heretick\)](#), which provides that an elected or appointed constitutional officer or local official who is convicted of a felony is to be automatically suspended upon conviction, regardless of any appeals, passed the House with an emergency clause. During the suspension, the officer's salary is to be kept in a separate account and would be paid to the officer if he or she prevailed on appeal. As introduced, HB 2364 and its Senate companion, [SB 1487 \(Lewis\)](#), were limited to Constitutional Officers, but the measures were broadened in House Privileges and Elections Committee.

[HB 1409 \(Cole\)](#), which permits the General Assembly to make technical adjustments to legislative district boundaries after redistricting in order to fix split precincts, was reported by the House Privileges and Elections Committee and passed the House 62-33. The bill has been referred to the [Senate Privileges and Elections Committee](#). **VACo continues to support this legislation.**

[VACo Members – Share your thoughts on FlagPoll.](#)

VACo Contact: [Katie Boyle](#)

Budget amendments propose major changes to Children's Services Act

As discussed at County Government Day, language in both chambers' budgets proposes changes to funding for private educational day placements for children with disabilities receiving services through the Children's Services Act (CSA). Language in the House budget would require that the Office of Children's Services (OCS), the Department of Education (VDOE), the Department of Social Services (VDSS), and the Department of Juvenile Justice (DJJ) submit an implementation plan for the transfer of funding for children receiving certain special education services through CSA from CSA to VDOE. Stakeholder input is to be solicited in order to ensure that legal requirements would continue to be met.

The Senate language is broader and requires that OCS, in collaboration with VDOE, convene a workgroup to assess what would be required to implement various options dealing with the growth of private day placements. One option to be considered by the workgroup is the transfer of private day placement funding to VDOE, but the workgroup is also to consider identification of resources needed to support children in a less restrictive environment than private day settings, and the collection of data on the efficacy of private day placements.

The Senate language, since it takes a more deliberate approach, is preferable. VACo is advocating that the General Assembly proceed with caution in this area. Special education has been part of CSA since its inception, and VACo would oppose efforts by the state to cap its contribution to the program. The risk to localities is that if funding is moved out of CSA and reallocated under a new formula through VDOE, it is likely that only a fixed amount will be transferred, rather than the current sum-sufficient allocation; if costs to serve children increased, the state's contribution would be limited and localities could then be obligated to make up the difference.

VACo will be encouraging budget conferees to adopt a careful approach that is closer to the Senate position, and will advocate for local participation in any workgroups that examine this issue.

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VACo Contact: [Katie Boyle](#)

Two helpful studies moving forward

[HB 2183 \(Yost\)](#) directs the Department of Medical Assistance Services to convene a workgroup to develop processes for streamlining Medicaid enrollment for eligible jail inmates. This work will build upon current efforts to obtain Medicaid coverage for inpatient services for eligible inmates, which has the potential to save localities significant dollars in medical costs, as discussed in [a recent article in County Connections](#). HB 2183 passed the House unanimously and was reported from the Senate Education and Health Committee to the Senate floor this week.

Also on the Senate floor is [HB 1728 \(Ransone\)](#), which directs the Virginia Department of Health to convene a workgroup to review the use of air ambulance services, including issues surrounding billing for those services. Problems surrounding availability and costs of these services in rural areas were the subject of discussion at VACo meetings last fall.

Most of the study resolutions that were introduced this year have failed to advance, as the House Rules Committee tabled nearly all study measures, and the Senate Rules Committee reported only a handful of bills directing studies.

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VACo Contact: [Katie Boyle](#)

Key Dates for 2017 General Assembly Session

- **January 11:** General Assembly convenes at noon. Prefiled legislation must be submitted by 10 a.m.; this is also the last day to file bills dealing with the Virginia Retirement System or legislation creating or continuing a study.
- **January 13:** Budget amendments by General Assembly members must be submitted by 5 p.m.
- **January 20:** All bills must be filed by 3 p.m.
- **February 5:** The Senate Finance and House Appropriations Committees must report their respective budgets.
- **February 7:** Crossover (deadline for legislation to pass its chamber of origin)
- **February 9:** Deadline for each chamber to complete work on its budget
- **February 20:** Deadline for committee action on legislation
- **February 25:** Scheduled adjournment *sine die*
- **April 5:** Reconvened session to consider the Governor's amendments and vetoes