

# Capitol Contact

## Virginia General Assembly

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Wednesday, February 22, 2017

# The Final Days of the 2017 General Assembly Session

The 2017 General Assembly is heading rapidly toward its scheduled adjournment *sine die* on Saturday, February 25. Surviving bills are either on the House or Senate floors, under negotiation in conference committees, or on the way to Governor Terry McAuliffe for approval. The last day for committee action on legislation was Monday, February 20, and the last day to place bills in conference is Thursday, February 23. The major bill of interest in conference is the budget. Conferees met over the weekend and it is possible that the conference report may be available sometime on Wednesday, February 22. The House Conferees this year are Delegates Jones, Cox, Landes, O'Bannon, Greason, and Torian. The Senate Conferees are Senators Norment, Hanger, Saslaw, Howell, Newman, Ruff, and Wagner.

VACo Contact: [Katie Boyle](#)

## Short-term rental bill passes House

[SB 1578 \(Norment\)](#), which affirms local government authority over short-term rentals, passed the House on Wednesday afternoon by a vote of 86-14.

VACo supports **SB 1578** because it preserves local authority and 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 Contacts:** [Joe Lerch, AICP](#) and [Phyllis Errico, CAE](#)

## Revised wireless bill passes; local authority for approving cell towers is preserved

[SB 1282 \(McDougle\)](#) has passed both chambers and now must be acted upon by the Governor by March 27. After lengthy negotiations with the wireless industry, **VACo has agreed to support the revised bill.** 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.

The effect of the legislation is that localities would only be permitted to 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.

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

## Revised broadband bill passes Senate; provision harmful to local authorities is struck

With removal of language that would have effectively halted public-private partnerships to deploy broadband to unserved and underserved areas, **VACo no longer opposes [HB 2108 \(Byron\)](#).** The bill passed the Senate and is now headed to the Governor for consideration.

At the request of Delegate Kathy Byron, language was struck that would have removed 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.

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

## **Mental health screening and assessment bills fail to advance**

Legislation intended to standardize the mental health screening and assessment process for inmates in local and regional jails has been tabled. However, the issue may be addressed in the budget conference report.

[HB 1783 \(Bell, R.B.\)](#) and [SB 940 \(Cosgrove\)/SB 1442 \(Deeds\)](#), as passed by the Senate, would have required all inmates to be screened for mental illness upon admission to the local jail, using a scientifically validated instrument that would be designated for use by the Department of Behavioral Health and Developmental Services. Inmates who appeared to have a mental illness would then be assessed by a qualified mental health professional within 72 hours of the initial screening. The Joint Subcommittee to Study Mental Health Services in the 21<sup>st</sup> Century had examined this issue during 2016 and expressed an interest in increasing uniformity in the screening process; the subcommittee learned that most jails are screening inmates for signs of mental illness, but there is no single screening tool used in all jails.

The Governor's introduced budget contained \$4.2 million to fund implementation of these bills (\$4 million for grants to localities and \$200,000 for the state Department of Criminal Justice Services to train local and regional jail employees on the use of a standardized screening instrument), but both the House and Senate budget proposals redirected this funding.

In the expectation that the budgets to be reported on February 5 would not contain funding for this initiative, HB 1783 was tabled by House Appropriations shortly before crossover. SB 940 and SB 1442 were heard on February 16 in the House Appropriations Public Safety Subcommittee. VACo was asked to speak to the local impact of the bills and indicated general support for the goals of the legislation, but some concern about local jails' ability to comply with the bills' requirements, particularly the 72-hour deadline for mental health assessments, in the absence of additional funding. The bills were tabled, but subcommittee members expressed interest in continuing to work on the issue, and the possibility remains that some funding could be reinstated in the budget conference report.

Regardless of the outcome in this year's budget, this issue can be expected to be a continued topic of discussion in the Joint Subcommittee, particularly in the context of a potential restructuring of local Community Services Boards' responsibilities. Local CSBs provide mental health assessments in a number of local jails.

**VACo Contact:** [Katie Boyle](#)

## Bill requiring DMV photos in electronic pollbooks advances

[SB 1253 \(Obenshain\)](#) requires electronic pollbooks to display registered voters' photos, which would be provided by the Department of Motor Vehicles through the Department of Elections. As introduced, the requirement to download photos onto electronic pollbooks was a local option, but the bill was amended in the Senate to make it mandatory. **VACo opposes this bill** without accompanying funding, since there will be local costs to implement the bill's provisions. After narrowly passing the Senate (21-19), the bill passed the House (65-34). The Administration has voiced opposition to the bill.

**VACo Contact:** [Katie Boyle](#)

## Regulations governing placement of children in residential treatment delayed

In August 2016, the Department of Medical Assistance Services (DMAS) announced changes to the process by which children would be placed in residential treatment via Medicaid. DMAS had determined that the current Family Assessment and Planning Team process may not be in compliance in all localities with federal regulations governing the composition of the team, choice of providers, and appeals, and sought to change the process by having an independent team (Independent Assessment, Certification, and Coordination Team, or IACCT) determine medical necessity for admission to residential treatment. Localities could contract with Magellan, the state's behavioral health administrator, to have their local Community Policy and Management Teams serve as the IACCT, or Magellan would assemble the team by contracting with the local Community Services Board, or with representatives from its network of private providers.

DMAS initially asked for expressions of interest from localities in August with a deadline of September 2016, and with the new regulations set to take effect December 1, 2016; these deadlines were subsequently delayed until November

2016 and January 2017, respectively. Throughout the fall, VACo expressed serious concerns to the Administration about the speed with which the regulatory process was proceeding, particularly given the number of unanswered questions that remained as the implementation deadline approached, and advocated a delay until July 1, 2017, to allow time for questions to be answered. Local government representatives on the State Executive Council similarly advocated for a delay.

In mid-December, official guidance from the Office of Children's Services was issued, but very little time remained between the issuance of such guidance and the January 1 implementation deadline to train local staff on new procedures. Late in December, the regulations were delayed until further notice; in early January, representatives from VACo and other organizations met with the Governor's staff and representatives from DMAS to outline concerns with the new process, and local representatives held several subsequent meetings with DMAS staff.

Earlier this month, DMAS announced that the effective date of the regulations would be delayed until July 1, 2017, as requested by VACo. The regulations have now been [posted on the state's Town Hall site](#) and the public comment period is open until March 22. It should be noted that despite the delayed effective date, the Administration is still encouraging localities to ensure compliance with federal regulations; the Governor's approval memo states, "While the regulation approved here will not be effective until July 1, 2017, full compliance must be achieved as quickly as possible, and I encourage DMAS to take all reasonable steps to encourage early compliance."

DMAS staff have committed to continuing to work with VACo and VML and other local government representatives this spring to develop a basic Memorandum of Understanding through which interested localities could demonstrate compliance with the federal regulations without major changes to existing processes. The option to contract with Magellan to serve as the IACCT would remain, as would the option to have Magellan handle the admissions process with private providers.

**VACo Contact:** [Katie Boyle](#)

## **Amended 'stormwater' bill supported by VACo passes General Assembly**

[HB 1774 \(Hodges\)](#), this year's major stormwater related bill supported by VACo, has unanimously passed both chambers of the General Assembly. As amended, [HB 1774 \(Hodges\)](#) authorizes a cooperative study facilitated by the Virginia Coastal Policy Center at William and Mary Law School. Under the bill, the Commonwealth Center for Recurrent Flooding Resiliency will convene a work

group with representatives from the Virginia Institute of Marine Science, Old Dominion University, VDOT, DEQ, the Chesapeake Bay Commission, local governments, representatives from environmental groups and a few other stakeholders.

HB 1774 also delays from July 1, 2017 to July 1, 2018 the effective date of the comprehensive stormwater legislation that the 2016 General Assembly passed (or 30 days after the implementing regulations are approved by the State Water Control Board, whichever is later).

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

## All ‘fracking trade secret’ bills defeated

[HB 1679 \(Robinson\)](#) was stricken from the February 21 docket of the [Senate Agriculture, Conservation and Natural Resources Committee](#). This was the last surviving bill that would have provided “trade secret” status for certain chemicals used in the process of hydraulic fracturing. The other three defeated bills were [HB 1678 \(Robinson\)](#), [SB 1291 \(Chafin\)](#) and [SB 1292 \(Chafin\)](#). **VACo opposed all four bills.**

Regulations recently promulgated by the Department of Mines, Minerals and Energy have provisions that allow for chemicals used in the “fracking” process to receive “trade secret” status. However, under the regulations, the trade secret status of such chemicals is not protected through Freedom of Information Act (FOIA) exemptions that would have been established had the bills passed the General Assembly.

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

## Termination for FOIA violation dies in committee

VACo opposed [HB 2402 \(Morris\)](#), which provided that if the court finds that any officer or employee of a public body receives a request for records that was sent by certified mail, return receipt requested, and without legal excuse or justification, deliberately, willfully, and knowingly fails to make a response to such request, such officer or employee may be terminated for cause by his appointing authority or agency head. This bill failed to pass in Senate General Laws Committee on February 20.

**VACo Contact:** [Phyllis Errico, CAE](#)

## GIS bills gone

[HB 2145 \(LeMunyon\)](#) died in Senate General Laws Committee, meeting the same fate as its Senate counterpart [SB 1572 \(Stanley\)](#). This bill would have required that most GIS work could only be done by licensed land surveyor photogrammetrists. This would add a cost to localities who would have had to hire licensed consultants or to have all their people go through the license process in order to do GIS work. The bill sought to eliminate a long standing negotiated exemption for GIS work in the law.

VACo Contact: [Phyllis Errico, CAE](#)

## 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