

# Capitol Contact

## Virginia General Assembly

Virginia Association of Counties • 1207 E. Main Street, Suite 300 • Richmond, VA 23219  
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Tuesday, January 15, 2019

## Several Bills Introduced to Enhance County Taxing Authority

[SB 1127 \(Favola\)](#), introduced at VACo's request, would provide counties with the same taxing authority currently granted to cities and towns, effective July 1, 2020. In the intervening time, the Division of Legislative Services would be directed to convene a stakeholder group to recommend any additional statutory changes that would be necessary; this provision is intended to ensure that no existing special taxing authority is accidentally overridden. This bill has been referred to the Senate Local Government Committee. The companion measure, [HB 2189 \(Kilgore\)](#), has been referred to the House Counties, Cities, and Towns Committee. VACo is grateful to Senator Barbara Favola and Delegate Terry Kilgore for carrying this legislation.

[SB 1512 \(Carrico\)](#) and [HB 1946 \(Campbell, J.L.\)](#) are two bills that would allow additional authority for counties to levy cigarette taxes, though they differ in the requirements for levying the tax and the proposed use of the revenues generated. SB 1512 permits counties to impose a cigarette tax at a rate of 5 cents per pack or the amount levied under state law (currently 30 cents per pack), pursuant to approval in a local referendum. Like last year, VACo supports this bill as a step towards parity with city and town taxing authority. HB 1946 allows all counties to impose a cigarette tax at 5 cents per pack or the amount levied under state law without the requirement for a referendum, but would require the revenues raised to be used for school capital projects, and bar counties from using the cigarette tax revenues to supplant existing funds that would otherwise have been used for school construction. (Neither bill affects the existing authority exercised by Arlington and Fairfax Counties.) SB 1512 has been referred to the Senate Finance Committee and is expected to be heard on Wednesday, January 16. HB 1946 has been referred to the House Finance Committee.

[HB 1634 \(Edmunds\)](#) allows counties and cities to impose an additional local option sales and use tax by ordinance, after approval in a local referendum. The additional revenues would be required to be used for school construction or improvement projects. VACo supports this legislation as an additional tool for localities to fund school capital projects. The bill has been referred to the House Finance Committee and was scheduled to be heard on January 14 but was deferred to a later meeting.

[HB 2084 \(Watts\)](#) would grant counties with populations greater than 100,000 the “uniform charter” powers currently exercised by cities and towns, which would include broad taxing and borrowing authority; equalize those counties’ ability to levy meals, cigarette, admissions, and transient occupancy taxes; and allow them to qualify for road maintenance payments currently made to cities and larger towns. The bill provides that roads currently maintained by the Virginia Department of Transportation (VDOT) would continue to be maintained by the VDOT until they were brought up to a satisfactory standard before the county would receive funds to take over road maintenance. This bill has been referred to the House Counties, Cities, and Towns Committee.

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

## Proffer bills seek to address impacts of residential growth

Changes made by the 2016 General Assembly to Virginia’s law on cash and in-kind proffers has severely limited the ability of localities to address the fiscal impacts of new development when considering a rezoning application. Multiple bills working their way through the legislature attempt fixes to this problem.

[SB 1373 \(Favola\)](#) and [HB 2342 \(Thomas\)](#) were proposed by the Homebuilders Association of Virginia. While the introduced bills are not identical, it is VACo’s understanding that both bills will be amended in committee to conform with one another and include the following changes in law:

- Provides a separate development review process (distinct from existing law) where an applicant may voluntarily submit any onsite or offsite proffer they deem “reasonable and appropriate, as evidenced by the signed proffers.” The current law assumes that any proffer is “unreasonable” unless it addresses an impact that is specifically attributable to a proposed new residential development and is a listed public facility or improvement.
- To initiate legal action against a locality for requiring an unreasonable proffer, an applicant must have “objected in writing to the governing body regarding a proposed condition prior to the governing body’s grant or denial of the rezoning application.”

- Verbal communications with applicants cannot be “used as a basis that an unreasonable proffer or proffer condition amendment was required by the locality.”
- Does not “prohibit or require presentation, analysis, or discussion of the potential impacts of new residential development or new residential use on the locality's public facilities.”

[SB 1143 \(Peake\)](#) and [HB 1801 \(Ware\)](#) add additional categories of public facility improvement including animal shelters, school buses, and capital equipment. The bills also tackle a key issue related to public facilities capacity not addressed by the Favola and Thomas bills by removing the “specifically attributable” language of the 2016 bill thus allowing applicants to address the impact of applications on the existing capacity of public facilities. This fixes the current standard that only allows addressing the impacts “in excess existing public facility capacity at the time of the rezoning or proffer amendment” that is “specifically attributable to the new residential development or use.”

Building on the expanding definition of public facilities above, [SB 1524 \(Black\)](#) adds libraries, community facilities, stormwater management facilities, affordable housing, and “any other public facility identified in a locality’s capital improvement program” to qualify for the acceptance of proffers. The legislation also changes the standard of “specifically attributable” to “reasonably attributable” in determining if a proffer is unreasonable in addressing the impacts of new development.

[HB 2276 \(Murphy\)](#) creates the ability for a locality, by ordinance, to “opt out” of the changes enacted in 2016 if it creates a stakeholder advisory committee consisting of representatives from the development community and residents to help craft the ordinance. Additionally, any such ordinance must include (1) “provisions for credits or offsets against any recommended cash contributions for in-kind contributions such as land dedication, public facility construction, affordable housing units, and for the underlying density permitted prior to the rezoning.” And (2) “require that any offsite proffers bear, at minimum, a reasonable relationship to the projected impacts of the new or proposed residential development on local public infrastructure and facilities.”

VACo is encouraged by the proposed changes to the existing proffer law that work towards allowing greater flexibility in the application process for determining and addressing impacts of development. These bills, individually and collectively, move the needle closer toward this objective.

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

## Senate Finance Committee prepares to hear presumption legislation

The Senate Commerce and Labor Committee referred to the Senate Finance Committee two pieces of legislation impacting worker's compensation for firefighters and other public safety employees.

[SB 1030 \(Cosgrove\)](#) adds cancers of the colon, brain, or testis to the existing list of conditions currently presumed to be an occupational disease when developed by firefighters and certain public employees and therefore covered by the Virginia Workers' Compensation Act. The bill also removes the compensability requirement that the employee who develops cancer had contact with a toxic substance encountered in the line of duty. The Committee incorporated identical legislation – [SB 1022 \(Chase\)](#), [SB 1172 \(McPike\)](#), & [SB 1528 \(Vogel\)](#) – into SB 1030. The bill, which is a companion to [HB 1804 \(Hugo\)](#), was reported and referred by the Committee unanimously 14-0 on January 14.

[SB 1465 \(McPike\)](#) establishes a presumption that post-traumatic stress disorder (PTSD) is an occupational disease for firefighters, law-enforcement officers, 9-1-1 emergency call takers, and other first responders and is therefore covered by the Virginia Workers' Compensation Act. The bill is a companion to three House bills – [HB 2281 \(Filler-Corn\)](#), [HB 2513 \(Hugo\)](#), and [HB 1706 \(Kory\)](#). SB 1465 was reported and referred by the Committee unanimously 14-0 on January 14.

VACo staff has expressed concern to the Patrons and Committees regarding the fiscal impact of the bills on localities and cautioned that any major legislative action on Workers' Compensation Presumption issues should wait until the Joint Legislative Audit & Review Commission (JLARC) completes its [study](#) of the issue.

**VACo Contact:** [Jeremy Bennett](#)

## Troublesome FOIA bill reintroduced

VACo opposes [SB 1554 \(Surovell\)](#), which is the reboot of last year's [SB 630 \(Surovell\)](#). This bill provides civil penalties against public officials in their individual capacity in addition to any penalties currently imposed under the Freedom of Information Act. Specifically the bill provides that if a court finds that any officer, employee, or member of a public body failed to provide public records to a requester in accordance with the provisions of FOIA because the public official intentionally altered or destroyed the requested public records prior to the expiration of the record retention period set by the Virginia Public Records Act court **shall** impose upon such official in his individual capacity, a civil penalty of up to **\$100 per record altered or destroyed**.

In addition, the bill provides that if a court finds that a member of a public body voted to certify a closed meeting and at the time of such certification such certification was not in accordance with the requirements of FOIA, the court may impose on each such member voting to certify in his individual capacity, a civil penalty of \$500.

In summary, this bill would mandate a court to hold that every deletion of a text, email, social media post or other form of message which meets the definition of public record subject to a separate penalty of \$100 and penalize individuals for unintentional and inadvertent discussions about things such as a person's health, as violations of the closed meeting provisions of FOIA. VACo opposes these provisions as the act already has adequate remedies for violations and these additional individual civil penalties are unnecessary and extreme.

Please contact members of the [Senate General Laws and Technology Committee](#) to oppose SB 1554.

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

## **Oppose bill mandating training of School Resource Officers by the Virginia Center for School and Campus Safety**

VACo opposes [SB 1130 \(Locke\)](#) that seeks to mandate that all School Resource Officers (SROs) receive job-entry and in-service training administered by the Virginia Center for School and Campus Safety (VCSCS) in addition to any existing law-enforcement training and broadens the type of training required for both SROs and School Security Officers (SSOs).

**Action Required** – Contact your [Senators](#) and express opposition to SB 1130. If communicating via letter or email, please send a copy to Jeremy Bennett at [jbennett@vaco.org](mailto:jbennett@vaco.org).

SRO training is currently only offered by VCSCS in a weeklong on-site course for 36 hours. The additional training topics needed to be covered by this legislation would necessitate a longer training time that would exceed the week parameters. Localities currently pay for the costs of travel and lodging for this training, and this bill would increase those costs.

Governor Ralph Northam has proposed additional funding for VCSCS to develop online options for training, but development and implementation will take time and is contingent upon approval from the General Assembly.

The Senate Courts of Justice Committee referred SB 1130 to the [Senate Education and Health Committee](#) by a 13-0 vote.

**VACo Contact:** [Jeremy Bennett](#)

## Oppose bills allowing School Boards to keep unexpended funds

VACo opposes [HB 1969 \(Delaney\)](#) and [HB 1921 \(Bourne\)](#) that seek to allow school boards to retain unexpended funds appropriated to them by localities. The former bill has no other stipulations, while the latter mandates that such funding be dedicated to finance capital projects.

**Action Required** – Contact your [Delegates](#) and express opposition to HB 1969 and HB 1921. The bills have been referred to the [House Appropriations Committee’s Elementary and Secondary Education Subcommittee](#). If communicating via letter or email, please send a copy to Jeremy Bennett at [jbennett@vaco.org](mailto:jbennett@vaco.org).

Currently, all year-end funds appropriated to local school divisions by the locality revert to the locality, retaining discretion with the governing body to evaluate and approve reallocation of year-end fund balances. The bills would subvert this authority given to localities and would be a dramatic policy change negatively impacting local governing bodies financially and in their relationships with other governmental entities.

**VACo Contact:** [Jeremy Bennett](#)

## Several bills related to Children’s Services Act introduced

VACo has historically supported efforts to enhance the capacity of local school divisions to serve children with higher-level needs within the local school division when possible, recognizing that private day placements may be the best option for some students.

VACo supports several helpful bills that allow access to state pool funds provided through the Children’s Services Act (CSA) for services delivered within public schools. VACo also supports other bills directing pilot projects to be undertaken to determine what resources may be needed within the public school setting to support children who may otherwise receive services in private placements.



[HB 1619 \(Thomas\)](#) seeks to allow CSA funding to be used for children transitioning from private placements to a Stafford County public school special education program, when the public program is able to meet the students' needs. Currently, under the Virginia Department of Education's 2010 interpretation of federal law, CSA funds cannot be used for services within public schools during the school day (but may be used for "wraparound" services that may help students with special needs remain in the community). The bill was heard in a subcommittee of the House Education Committee on January 14 and recommended to be reported by the full committee and referred to House Appropriations. [SB 1104 \(Peake\)](#) takes a broader approach to the issue, providing that CSA funds may be used to pay for services within public schools. The bill has been referred to Senate Finance.

[HB 2408 \(Adams, L.R.\)](#) and [SB 1264 \(Vogel\)](#) direct the Department of Education to work with two school divisions on pilot projects to study the feasibility of transitioning students in the school districts who are receiving special education in private school settings to an appropriate public school setting, including what resources would be needed to support each student. The Department would also be tasked to recommend a process for redirecting funds, including CSA funds, to the school division to support the resources needed to meet the students' needs within the local division. HB 2408 has been referred to the House Education Committee, while SB 1264 has been sent to the Senate Rules Committee. [SB 1576 \(Suetterlein\)](#), a similar bill, requires pilots to be conducted for up to four years in two to eight local school divisions, and requires reporting to the Governor and relevant legislative standing committees on the outcomes for children enrolled in the pilot projects. The bill has been referred to the Senate Education and Health Committee.

**VACo Contacts:** [Katie Boyle](#) and [Jeremy Bennett](#)

## School Behavior Analyst staffing requirement advances

The Senate Education and Health Committee reported and referred to the Senate Finance Committee legislation requiring local school boards to employ one full-time equivalent licensed behavior analyst or licensed assistant behavior analyst per five schools within a local school division. Licensed Behavior Analysts try to teach students more effective ways of behaving and making changes to social consequences of existing behavior.

[SB 1258 \(Dunnivant\)](#) adds this requirement to the Standards of Quality governing staff ratios for local school divisions and would require additional state and local funding to implement. The committee incorporated into the bill, [SB 1134 \(Favola\)](#), which sought to include licensed behavior analysts to list of

student support positions. SB 1258 was reported and referred by the Senate Finance Committee on a 13-2 vote on January 10.

VACo staff expressed concerns to the Committee regarding the fiscal impact of the bill to localities.

**VACo Contact:** [Jeremy Bennett](#)

## Bill to increase minimum wage advances

On January 14, the Senate Commerce and Labor Committee voted 6-4 to report [SB 1200 \(Dance\)](#), which incrementally increases the minimum wage from current federally mandated level of \$7.25 per hour to \$15 per hour effective July 1, 2021. The first increase would raise the minimum wage to \$10 per hour effective July 1, 2019. This is the latest development in a multi-year effort by the bill's patron to raise the minimum wage. The bill is expected to go before the full Senate later this week.

**VACo Contact:** [Jeremy Bennett](#)

## VACo opposes diversion of resources from public education for non-public use

On January 10, the [Senate Education and Health Committee's Public Education Subcommittee](#) discussed two pieces of legislation impacting local school divisions and students receiving home instruction.

[SB 1021 \(Black\)](#) requires any local school board that offers a driver education program to make said program available to any student receiving home instruction residing within the school division. The bill also prohibits the school board from charging a fee in excess of any fee charged to public school students. The bill was struck at the request of the patron.

[SB 1275 \(Black\)](#) requires any local school board that offers a Junior Reserve Officers Training Corps (JROTC) program to make the program available to any student residing in the local school division receiving home instruction. The bill is problematic in that it prohibits the local school board from requiring any such student to enroll part or full-time in the local school division or to meet any other eligibility requirements. VACo staff shared their concerns. The Subcommittee narrowly recommended, 3-2, to report the bill.

**VACo Contact:** [Jeremy Bennett](#)



# Key Dates for 2019 General Assembly Session

In accordance with the [procedural resolution](#) adopted by the House and Senate on January 9, key dates for the 2019 General Assembly Session are as follows:

- **January 9:** General Assembly convenes at noon. Bills that are “prefiled” must be submitted by 10 a.m. House bills affecting the Virginia Retirement System or creating or continuing a study must be filed before adjournment of the House; a similar deadline applies to Senate bills. The House and Senate will meet in Joint Assembly, typically at 7 p.m., for the Governor’s “State of the Commonwealth” address.
- **January 11:** Budget amendments from General Assembly members must be submitted to the House Appropriations and Senate Finance Committees by 5 p.m.
- **January 18:** All bills must be filed by 3 p.m. (bills may be introduced after the deadline by unanimous consent)
- **February 3:** House Appropriations and Senate Finance Committees report their respective budgets by midnight.
- **February 5:** “Crossover” deadline for each chamber to complete work on legislation originating in that chamber (except for the budget bills)
- **February 7:** Deadline for each chamber to complete work on its budget
- **February 13:** Deadline for each chamber to complete work on the other chamber’s budget and appoint budget conferees; also the deadline for each chamber to act on revenue bills from the other chamber and appoint conferees.
- **February 18:** Deadline for committee action on bills
- **February 23:** Scheduled adjournment *sine die*
- **April 3:** Reconvened session to consider gubernatorial amendments and vetoes

VACo Contact: [Katie Boyle](#)

# Advocate for your locality at VACo County Government Day

In Partnership with VAPDC's 50<sup>th</sup> Anniversary



**January 31, 2019 | Omni Richmond Hotel**

100 S 12th Street | Richmond, VA 23219

[Registration Form](#) | [Register Online](#) | [Omni Room Reservation Form](#)

Join us at VACo County Government Day on Thursday, January 31! This is our day to advocate on behalf of Counties at the 2019 General Assembly Session.

The event kicks off with a box lunch at noon as Governor Ralph Northam takes the podium. We're excited to learn more about how the Governor's legislative agenda will strengthen Virginia's communities. In addition, VACo staff will provide legislative reports on the major issues facing Counties in the 2019 General Assembly Session. Attendees will then meet with their General Assembly representatives.

- 930am** VACo Board of Directors' Meeting
- 11am** Registration
- Noon** Governor Ralph Northam | VACo Staff Reports
- Afternoon** Visit Capitol and Lobby Legislators
- Evening** Make plans to take your state legislators to dinner

For information on how to reach your representatives, see the [Virginia House of Delegates](#) and the [Senate of Virginia](#) member websites. Find information about

VACo's positions in the [2019 Legislative Program](#). We will distribute our VACo County Government Day Bulletin at the event.

We encourage all Counties to participate in the legislative process - listen to reports about the issues and speak with your representatives about your County's concerns.

Register for the event at [VACo County Government Day Online](#) or fax the [Registration Form](#) to 804.788.0083.

**VACo Contact:** [Angela Inglett](#)