

Capitol Contact

Virginia General Assembly

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Tuesday, January 16, 2018

VACo Opposes Solar Zoning Ordinance Bills

[SB 429 \(Stanley\)](#) and [HB 508 \(Hodges\)](#) severely limit a local government's ability to determine the siting of solar facilities. SB 429 will potentially be heard in [Senate Local Government Committee](#) on the afternoon of Tuesday, January 23. HB 508 is referred to [House Counties, Cities and Towns Committee](#). As of yet, no hearing has been scheduled for HB 508.

TALKING POINTS

- The bills remove local ability to determine the best approach for integrating solar facilities within the unique setting of each community.
- The bills represent a trend in granting special privileges that dictate basic local tax and land use policy for the solar industry.

The bills prescribe a “one-size-fits-all” approach for localities that makes roof-mounted solar facilities serving the electricity needs of that building a “by-right” use in all agricultural, residential, commercial, industrial, institutional, and mixed-use districts. They also state that “unless a local ordinance provides otherwise,” any similarly configured ground-mounted solar generation facility in those districts shall be allowed as well. Additionally, larger ground-mounted solar facilities in agricultural areas, that serve “150 percent” of the customer’s electricity needs, are given the same allowance.

While the bills do make allowances for compliance with any building height and setback requirements, as well as compliance with any local historic districts, they seek to have the state legislature micromanage local zoning authority.

It’s important to note that for larger solar facilities – serving agricultural, commercial, industrial, and institutional operations – the General Assembly passed a law in 2014 declaring such equipment exempt from local taxation. If the

bills pass, local governments will be faced with losing control of determining both local land use and taxing policy.

VACo Members – please call your legislators now to oppose [SB 429](#) and [HB 508](#).

KEY CONTACTS

[Senate Local Government Committee](#): [Stanley \(Chairman\)](#), [Hanger](#), [Marsden](#), [Favola](#), [Lewis](#), [Surovell](#), [DeSteph](#), [Dunnivant](#), [Chase](#), [Sturtevant](#), [McPike](#), [Carrico](#), [McClellan](#)

[House Counties, Cities and Towns Committee](#): [Ingram \(Chairman\)](#), [Stolle \(Vice Chair\)](#), [Marshall](#), [Poindexter](#), [Morefield](#), [Wilt](#), [Hodges](#), [Webert](#), [Austin](#), [Campbell](#), [McGuire](#), [Thomas](#), [Herring](#), [Heretick](#), [Boysko](#), [Bell](#), [John J.](#), [Krizek](#), [Mullin](#), [Hayes](#), [Guzman](#), [Reid](#), [Roem](#)

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

FOIA and COIA Bills Introduced

A flurry of FOIA related bills would change public records disclosure and public meeting procedure.

FOIA Formal Advisory Opinions

[HB 213 \(Mullin\)](#) requires that formal advisory opinions issued by the Virginia Freedom of Information Advisory Council (Council) be approved by the Council and, after such approval, be published on the Council's website. The bill also provides that no officer, employee, or member of a public body shall be found to have willfully and knowingly violated certain enumerated provisions of the Freedom of Information Act if the alleged violation resulted from his good faith reliance on a formal advisory opinion of the Council made in response to his written request for such opinion and such opinion was made after a full disclosure of the facts.

Custodian of Records bills

Several bills change the definition of Custodian of the record under the act that may result in localities being responsible not only for their own records but also those of other public bodies that they may have a copy of. [HB 504 \(Mullin\)](#) defines “custodian,” for purposes of the Virginia Freedom of Information Act, as a public body or its officers, employees, or agents who (i) have prepared or (ii) own or are in possession of a public record. The bill allows for more than one custodian per record. [HB 664 \(Kilgore\)](#) is a similar bill that requires a public body initiating a transfer of public records to any entity, including to any other public body, to remain the custodian of those records only if the public body has

transferred the entirety of those public records. Current law requires the public body initiating a transfer of public records to remain the custodian if it has transferred possession of any public records. The bill also prohibits a public body from withholding a public record in its entirety on the grounds that information contained in such public record was provided by another public body. Delegate David Yancey has three related bills dealing with this issue, [HB 957 \(Yancey\)](#), [HB 958 \(Yancey\)](#), and [HB 959 \(Yancey\)](#).

Trade Secret Exclusion

[HB 904 \(Robinson\)](#) creates a general record exclusion for trade secrets submitted to a public body. The bill provides that a record is eligible for exclusion as a trade secret if the submitted information qualifies as a trade secret of the submitting entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) and requires the submitting entity to make a written request to the public body (i) invoking such exclusion upon submission of the trade secret information for which protection from disclosure is sought, (ii) identifying with specificity the trade secret information for which protection is sought, and (iii) stating the reasons why protection is necessary. The bill permits a requester filing a FOIA petition challenging a record's designation as an excluded trade secret to name the submitting entity or its successor in interest, in addition to the public body, as a defendant. The bill also permits the public body to request that the court add the submitting entity as an additional defendant in the action. The bill provides that the general exclusion for trade secrets shall not be construed to authorize the withholding of such information that no longer meets the definition of a trade secret under the Uniform Trade Secrets Act. This bill is a recommendation of the Virginia Freedom of Information Advisory Council.

Electronic Meetings

[HB 907 \(Robinson\)](#) and [HB 908 \(Robinson\)](#) make changes to the electronic meetings provisions of the Freedom of Information Act. HB 908 removes the requirement that the remote locations from which members of a public body participate in meetings through electronic communication means be open to the public. Instead, members of the public must be provided an electronic communication means substantially equivalent to that provided to members of the public body through which the public may witness the meeting. The bill provides that public access to remote locations from which members of the public body participate through electronic communication means shall be encouraged, but not required; however, if three or more members are gathered at the same remote location, such remote location must be open to the public.

[HB 909 \(Robinson\)](#) clarifies that the discretionary exemptions contained in the Freedom of Information Act pertaining to law-enforcement and criminal records may be used by any public body. Current law only permits such exemptions to be used by public bodies engaged in criminal law-enforcement activities. The bill also restricts the application of the discretionary exemption for those portions of noncriminal incident or other noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature, the

release of which would jeopardize the safety or privacy of any person, to only those portions of noncriminal incident or other noncriminal investigative reports or materials that are in the possession of public bodies (i) engaged in emergency medical services, (ii) engaged in fire protection services, (iii) engaged in criminal law-enforcement activities, or (iv) engaged in processing calls for service or other communications to an emergency 911 system or any other equivalent reporting system.

Bills Mandating Public Comment

[HB 1101 \(Robinson\)](#) requires that every public body, except for governing boards of public institutions of higher education, afford an opportunity for public comment during any open meeting. The bill provides, however, that if a public body holds more than four meetings in a calendar year, such public body may, by recorded vote, limit the number of meetings at which an opportunity for public comment is afforded to four meetings per calendar year. The bill requires that the notice given by a public body prior to a meeting include information as to the approximate point during the meeting when public comment will be received. In current law, this requirement applies only to public bodies where at least one member has been appointed by the Governor. The bill permits public bodies to choose the approximate point during the meeting when public comment will be received and permits public bodies to adopt reasonable rules governing the public comment portion of the meeting, including imposing reasonable restrictions on time, place, and manner, but prohibits public bodies from limiting public comment to only the submission of written comments.

Delegate Ben Cline has a similar bill, [HB 1247 \(Cline\)](#), as does Senator Mark Peake, [SB 336 \(Peake\)](#). Because of the very broad definition of the term “Public Body,” the requirements of this bill will apply to a wide variety of advisory groups and other entities.

[HB 1277 \(Garrett\)](#) amends the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.) to facilitate the sharing of data among agencies of the Commonwealth and between the Commonwealth and political subdivisions.

Added penalties for violations of FOIA

[SB 630 \(Surovell\)](#) provides that in addition to any penalties imposed under FOIA, (i) 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 such officer, employee, or member of a public body intentionally altered or destroyed the requested public records prior to the expiration of the applicable record retention period set by the retention regulations promulgated pursuant to the Virginia Public Records Act by the State Library Board, the court shall impose upon such officer, employee, or member in his individual capacity, whether or not a writ of mandamus or injunctive relief is awarded, a civil penalty of up to \$100 per record altered or destroyed, which amount shall be paid into the Literary Fund, and (ii) 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 shall impose on each such member voting to certify in his individual capacity, whether or not a writ of mandamus or injunctive relief is awarded, a civil penalty of \$500, which amount shall be paid into the Literary Fund.

Access to Court Records bill

[SB 727 \(Stuart\)](#) exempts the judiciary, including courts of record, courts not of record, and the Office of the Executive Secretary of the Supreme Court of Virginia, from the provisions of the Virginia Freedom of Information Act. The bill directs the Supreme Court of Virginia to develop Rules of Court to govern public access to records in the custody of the judiciary.

Public record and social media

[SB 730 \(DeSteph\)](#) clarifies that the definition of "public record" does not include records that are not prepared for or used in the transaction of public business. The bill defines "social media account" and creates a new discretionary exemption for social media records of General Assembly members when such records relate to the use of a social media account by a member in such member's individual capacity. The bill requires the public body to be a necessary party in any enforcement proceeding.

Conflicts and Ethics Bills

[HB 655 \(Murphy\)](#) provides that an officer or employee of local government who has a personal interest in a transaction but who is still eligible to participate in the transaction because he is a member of a business, profession, occupation, or group of three or more persons the members of which are affected by the transaction need only declare his interest in the transaction at the first meeting at which the transaction is discussed and at least one subsequent meeting thereafter. Current law requires that such interest be disclosed at each meeting of the governmental or advisory agency at which the transaction is discussed.

[HB 989 \(Gilbert\)](#) authorizes the designee of the Virginia Conflict of Interest and Ethics Advisory Council (Council) to release proposed formal advisory opinions for public comment prior to the Council's approval of such opinions. The bill provides that such proposed opinions do not confer the same immunity protections as formal advisory opinions until their approval by the Council.

[HB 992 \(Gilbert\)](#) clarifies that an individual required to file a disclosure statement under the provisions of the State and Local Government Conflict of Interests Act must file a new disclosure statement if, subsequent to filing the disclosure statement for the individual's current position or office, such individual holds or seeks a position or office that also requires the filing of a disclosure statement, unless the reporting period for both filings are identical. The bill provides that any individual who has met the requirement for filing a disclosure statement shall not be required to file an additional disclosure statement upon reappointment to the same office or position if the

reappointment occurs within 12 months of the filing; currently, certain officers and employees reappointed to the same office or position must file new disclosure statements if the reappointment occurs more than six months after the filing.

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

“Ban the Box” Bill Advances

[SB 252 \(Dance\)](#) prohibits state agencies from asking for information related to an arrest, charge, or conviction prior to receiving a conditional offer of employment. Exceptions to the prohibition include positions designated as sensitive or related to law-enforcement. The offer of employment may be withdrawn if the arrest or charge resulted in a conviction and if the crime directly relates to the duties and responsibilities of the position sought. The language is permissive for local hiring processes, and stipulates that any locality may, by ordinance, prohibit the inclusion on any application for employment of a question inquiring whether the prospective employee has ever been arrested or charged with, or convicted of, any crime. The bill has passed the [Senate General Laws and Technology Committee](#).

VACo Contacts: [Phyllis Errico, Esq., CAE](#) and [Khaki LaRiviere](#)

Health Profession Legislation Discussed

[SB 315 \(Ruff\)](#) allows licensed audiologists to fit and sell hearing aids if they have earned a doctoral degree. Current law requires audiologists to also pass an examination to obtain licensure in the Commonwealth. While in the [Senate Education and Health Subcommittee for Health Professions](#), an amendment passed to exempt both audiologists and opticians from the examination requirement. The bill reported out of Committee with the amendment.

Two bills reported out of the Subcommittee to be carried over for the year in the full [Senate Education and Health Committee](#). [SB 369 \(Newman\)](#) and [SB 634 \(Dunnivant\)](#) makes participation mandatory in the All-Payer Claims Database for certain groups. The legislation covers issuers of individual and group sickness and accident insurance policies providing coverage for certain expenses, third-party administrators and others who collect charges, contributions, or premiums, or adjust or settle claims for Virginia residents, as well as certain services of the Department of Medical Assistance Services including Medicare, TRICARE, and the Federal Employees Health Benefits Plan.

VACo Contact: [Khaki LaRiviere](#)

Senate Commerce and Labor Committee to consider Virginia Healthcare Marketplace and minimum wage increase

On January 15, the [Senate Commerce and Labor Committee](#) met for its first hearing of the 2018 General Assembly Session. The Committee, under the leadership of Chairman Frank Wagner, examined 11 pieces of legislation. These bills dealt with a wide range of proposals including the creation of a Virginia Healthcare Marketplace under the Affordable Care Act, a revision of rights of entry procedure with regard to natural gas pipeline surveys, an increase of the state minimum wage, legislation to amend current regulations of Virginia's electricity providers, and legislation to award compensation to certain public intervenors for their work during State Corporate Commission proceedings.

For a complete listing of Monday's bills under consideration by the Senate and Commerce and Labor Committee, please click [here](#). VACo will continue to closely monitor proceedings in the Committee and advocate on behalf of Virginia's Counties.

VACo Contact: [Angela Inglett](#)

Key Dates for 2018 General Assembly Session

The Joint Rules Committee met on December 18 to adopt the procedural resolution that sets the [schedule](#) for the 2018 General Assembly session. Although the procedural resolution will be considered by the full House and Senate in January, typically it is agreed upon without amendments. Key dates in the procedural resolution are as follows:

- **January 10:** 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 12:** Budget amendments by General Assembly members must be submitted by 5 p.m.
- **January 19:** All bills must be filed by 3 p.m.
- **February 13:** Crossover (deadline for legislation to pass its chamber of origin)

- **February 18:** The Senate Finance and House Appropriations Committees must report their respective budgets.
- **February 22:** Deadline for each chamber to complete work on its budget
- **March 5:** Deadline for committee action on legislation
- **March 10:** Scheduled adjournment *sine die*
- **April 18:** Reconvened session to consider the Governor's amendments and vetoes

VACo Contact: [Katie Boyle](#)

Advocate for Your Locality at VACo County Government Day

February 8, 2018 | Omni Richmond Hotel

[Registration Form](#) | [Register Online](#) | [Book Online Omni Richmond Hotel](#)

This is our day to advocate for counties at the 2018 General Assembly Session. Join us for VACo County Government Day on Thursday, February 8!

Registration opens at 11 a.m. and the event kicks off with lunch at noon. Governor-Elect Ralph Northam has been invited to speak on issues that affect counties. VACo staff will provide legislative briefs before inviting all present to meet with their General Assembly representatives that afternoon.

For information on how to reach your representatives, see the [Virginia House of Delegates](#) and the [Senate of Virginia](#) member listings websites. Find information about VACo's positions in the [2018 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 briefs about the issues and speak with your representatives about your County's concerns. The VACo County Government Day event should conclude around 1:30 p.m.

Register for [VACo County Government Day online](#) or by faxing in a [registration form](#) to 804.788.0083. Register early and get involved in the legislative process.

VACo Contact: [Dean Lynch, CAE](#)