

Capitol Contact

Virginia General Assembly

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Oppose Bills that Upset Well-Established Real Estate Tax Appeal Processes

[HB 786 \(Keam\)](#) and [HB 787 \(Keam\)](#), as passed by the House, would provide that a taxpayer appealing an assessment of real property would not be required to prove that the assessment is a result of manifest error or disregard of controlling evidence. Manifest error is a long-standing judicial standard that has been consistently applied over the years that reflects the presumption of correctness historically afforded to the assessor.

Action Required – Contact members of the [Senate Finance Committee](#) to oppose HB 786 and HB 787. The bills will be heard soon, perhaps as early as this week.

Courts have avoided picking and choosing among possible values within a range of reasonable valuations by presuming that the assessor's valuation is correct unless manifest error can be demonstrated. The manifest error standard has traditionally set a high bar for the courts to intervene in assessment disputes. This legislation would make a major change to this long-standing policy.

KEY POINTS

- HB 786 and HB 787 would gut the long-standing presumption of correctness afforded to real property assessments. Without this presumption of correctness, judges will be required to pick among competing experts' opinions of property values, all of which, under current law, may be within the range of reasonable disagreement.

- Removing the manifest error standard will invite large numbers of appeals of cases where the contested valuation is a matter of differing opinions among experts. This would increase the number of cases litigated, adding a burden to courts and localities.
- The current law has resulted in a consistent process to resolve these cases, and up-ending the system will cause confusion and protracted litigation.

KEY CONTACTS

Senate Finance Committee: [Norment \(Co-Chair\)](#), [Hanger \(Co-Chair\)](#), [Howell](#), [Saslaw](#), [Lucas](#), [Newman](#), [Ruff](#), [Wagner](#), [McDougle](#), [Vogel](#), [Carrico](#), [Obenshain](#), [Barker](#), [Dunnavant](#), [Stuart](#), [Dance](#)

VACo Contacts: [Katie Boyle](#) and [Phyllis Errico, Esq., CAE](#)

Bills Gutting Local Authority to Address Siting of Wireless Towers Advance

Late last week, the House and Senate passed bills allowing wireless companies to place cell towers up to 50 feet tall within rights-of-way without local control. Additionally, for towers of greater height, the bills hamstringing localities' ability to obtain information and address citizen concerns through the public hearing process. VACo opposes any weakening of local authority for the siting of new wireless support structures.

[SB 405 \(McDougle\)](#) passed by a vote of 22 to 13. The following Senators voted to strip local governing bodies of their ability to act on community concerns on the siting of wireless towers –

Black, Carrico, Chafin, Chase, Cosgrove, Dance, Dunnavant, Edwards, Hanger, Howell, Lucas, Marsden, McDougle, Newman, Norment, Obenshain, Ruff, Saslaw, Stanley, Sturtevant, Suetterlein and Wagner.

[HB 1258 \(Kilgore\)](#) passed by a vote of 56 to 41. The following Delegates voted to strip local governing bodies of their ability to act on community concerns on the siting of wireless towers –

Adams, L.R., Austin, Ayala, Bell, John J., Bell, Robert B., Bourne, Byron, Campbell, Carr, Cline, Collins, Convirs-Fowler, Cox, Delaney, Edmunds, Fariss, Filler-Corn, Fowler, Freitas, Garrett, Gilbert, Habeeb, Head, Helsel, Heretick, Hugo, Hurst, Ingram, James, Jones, S.C., Kilgore, Kory, Landes, Leftwich, Marshall, McGuire, Miyares, Morefield, Mullin, O'Quinn,

Orrock, Peace, Pillion, Poindexter, Ransone, Rush, Stolle, Torian, Toscano, Tyler, VanValkenburg, Ware, Watts, Wilt, Wright and Yancey.

While the bills have passed their respective chambers, they now crossover to both the House and Senate to be voted again in committee and on the floor. **Please continue to contact your legislators to oppose SB 405 and HB 1258.**

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

Helpful Bill Regarding Ballot Question for Bond and Meals Tax Referenda Reported from Committee

[HB 1390 \(Aird\)](#) applies to an instance in which a county seeks to pay for debt-funded projects with revenues derived from a meals tax. It permits the county to put before the voters a consolidated question on the implementation of the meals tax and the issuance of debt to be supported with meals tax revenues, rather than asking two separate questions, as is currently set out in Code. This change would avoid a situation in which voters approve debt, but not the revenues to be used to support the debt, as has happened several times in the recent past. The bill was reported from subcommittee on a 5-2 vote and from the House Privileges and Elections Committee on February 9, on a vote of 15-7. The bill now heads to the House floor.

VACo Contact: [Katie Boyle](#)

Regional Charter Schools Bill Carried Over to 2019

[SB 516 \(Obenshain\)](#), which creates regional charter schools, has been carried by for the year and will be taken back up by the Senate Finance Committee in 2019.

Senator Mark Obenshain's bill allows the Board of Education to establish regional charter school divisions consisting of at least two but not more than three existing school divisions in regions where each school division has an enrollment of more than 3,000 students and where one or more schools have been denied accreditation for two of the past three years. SB 516 requires such regional charter school divisions to be supervised by a school board that consists of eight members appointed by the Board and one member appointed by the localities of each of the underlying divisions. The bill authorizes the school board, after a review by the Board, to review and approve public charter school applications in the regional charter school divisions and to contract with the

applicant. The bill requires that the state share of Standards of Quality per pupil funding of the underlying school district in which the student resides be transferred to such school.

SB 516 was referred to the Senate Education and Health Committee, where it was heard on February 1. The bill was reported by a narrow 8-7 vote and rereferred to the [Senate Finance Committee](#), where it was carried over to 2019 by a 16-0 vote.

VACo has historically opposed measures that would remove the authority from local school boards to make decisions about the establishment of charter schools.

VACo Contact: [Chris McDonald, Esq.](#)

Update on Bills Regarding Land Use Value Taxation, Assessment of Wetlands

[HB 871 \(Orrock\)](#) is the result of discussions over several years between the Rappahannock River Basin Commission and the Virginia Department of Forestry, along with the Virginia Farm Bureau, and makes several changes to the statutes governing land use value taxation. It provides that the definition of “land devoted to agricultural use” includes land used for the sale of products made from plants and animals located on the property (the current definition includes land used for the sale of the plants and animals themselves); it makes a similar change regarding the definition of “land devoted to horticultural use.” It provides that land designated for use value assessment would not lose this designation because of its location in a newly-created zoning district that was not requested by the property owner. It also provides that if uniform standards developed by the Commissioner of Agriculture and Consumer Services for eligibility for real estate devoted to agricultural or horticultural use require a minimum length of time of a specified use, then the use of similar property by a lessee of the owner must be included in calculating the time of use. The Commissioner must also include in the uniform standards a shorter minimum length of time for real estate to qualify for use value assessment if the owner submits a statement of intent regarding use of the real estate containing elements of the uniform standards. As introduced, the bill would have provided for revalidation every two to six years; representatives of the Commissioners of the Revenue worked to amend the language to allow for revalidation at least every six years (currently, localities may require annual revalidation).

[HB 1442 \(Orrock\)](#), as introduced, would have required the commissioner of the revenue to separately and specially assess wetlands when requested by the property owner, and to use the National Wetlands Inventory Map or other similar federal or state map if he or she disagrees as to the presence of wetlands. Under current law, the commissioner must only consider assessing wetlands separately and specially upon request, and must consider such maps if he or she disagrees

with the owner. After concern was expressed that the bill might require commissioners to undertake time-consuming site visits to assess wetlands, the bill was amended to remove the requirement to make a separate assessment and now simply requires the commissioner to recognize a particular type of wetland delineation map provided by the property owner.

VACo Contact: [Katie Boyle](#)

Pretrial Services Bill Gone for the Year

[HB 997 \(Gilbert\)](#) would repeal the Pretrial Services Act established in 1995. Repealing the Pretrial Services Act would require more defendants to remain in confinement in both local and regional jails, leading to increased jail overcrowding at a great cost to localities and the state.

There are 33 pretrial service agencies that serve 100 of 133 localities across the state, and are managed and operated at the local level. Pretrial services provide courts with information on whether to release a defendant back into the community, lower public safety costs, and provide important supervisory services while defendants await trial. By a unanimous voice vote, the bill was carried over for the year at the recommendation of the [House Courts of Justice Committee's Subcommittee #1](#).

Other pretrial Bills move forward

[HB 996 \(Gilbert\)](#) and [SB 783 \(Peake\)](#) require the Department of Criminal Justice Services to annually report to the Governor and the General Assembly on operating standards and biennial plan compliance across all pretrial service agencies. The House bill reported out of the [House Courts of Justice Committee](#), 15-0. The Senate version has been referred to the same Committee.

VACo Contact: [Khaki LaRiviere](#)

Update on CSA Bills

Several bills have been introduced that seek to address localities' interest in flexibility in serving children with high-level needs within local school divisions. [HB 176 \(Bell, Richard P.\)](#) and [SB 975 \(Vogel\)](#) require the Department of Education to implement a pilot program in two school divisions to determine what resources would be needed to transition students currently being served in private placements back to the public school setting.

HB 176 was tabled in a subcommittee of House Appropriations, as was [HB 1346 \(Thomas\)](#), a bill that would have allowed CSA funds to be used to support students transitioning away from private placements into a public school special

education program operating in Stafford County; however, the subcommittee indicated during the discussion of HB 176 that the topic may be addressed in budget deliberations.

In the Senate, the fate of SB 975 is unclear; it was originally assigned to the Senate Rules Committee, but then re-referred to the Senate Education and Health Committee, which, as of the time of this writing, is not scheduled to meet again prior to “crossover.” [SB 205 \(Stuart\)](#), the companion to HB 1346, passed the Senate on February 9 and awaits action in the House.

VACo supports these bills as a step toward determining how the state can work with localities to support children in local school divisions, while recognizing that private placements may be the most appropriate option for some children.

Budget language directing a study of the issue of management of the quality and costs of private day placements funded through CSA was included in the budget by the 2017 General Assembly; the biennium budget continues this study. [HJ 29 \(Bell, Richard P.\)](#) would direct a broad JLARC study of the CSA program; the House Rules Committee referred all proposed JLARC studies to JLARC for consideration by its Studies Subcommittee, which has been working to establish a queue of studies to be undertaken as JLARC staff complete previously-assigned work.

VACo Contact: [Katie Boyle](#)

Eminent Domain Bills Move Forward

[SB 278 \(Petersen\)](#) requires that condemning authorities pay agreed settlements or court awards in condemnation cases to the landowners or their attorneys within 30 days. VACo worked with Senator Chap Petersen to add language insuring that the recipients of such payments are responsible for getting outstanding liens on the property released. The bill passed out of the Senate unanimously and has been referred to the [House Courts of Justice Committee](#).

[SB 809 \(Petersen\)](#), which incorporates [SB 911 \(Chase\)](#), corrects a drafting error from the 2017 Session that resulted in business owners affected by condemnation proceedings being eligible for three years of lost profits if a part of the business property is taken, but for only one year of lost profits if the entire property is taken despite the added cost of increasing the compensable time period. The bill passed out of the Senate 39-0.

VACo Contact: [Khaki LaRiviere](#)

House Appropriations Compensation and Retirement Subcommittee Tables VRS-Related Bills

[HB 66 \(McQuinn\)](#) would have expanded the requirement for local school divisions to provide a health insurance credit of \$4 per year of service to all retired members of local school divisions with at least 15 years of service; currently, the health insurance credit is provided only to teachers at the \$4/year level, and non-teacher school division employees are eligible for a credit of \$1.50/year, depending on whether the locality has elected to provide the benefit. VACo opposed this bill as a mandate on localities. The bill was tabled by a vote of 4-3. Similar action was taken on [HB 1326 \(Reid\)](#), which would have made E-911 dispatchers eligible for hazardous duty benefits, if a locality opted to provide the enhanced benefit.

VACo Contact: [Katie Boyle](#)

Distracted Driving Bills

At least 10 bills were introduced to address, in some manner, the increase in traffic accidents due to drivers' use of mobile phones and other handheld devices. All four Senate bills have been killed in the Senate Courts of Justice Committee. Four House bills have also been killed, including [HB 116 \(Webert\)](#), which was backed by the Virginia Association of Chiefs of Police and Virginia Sheriffs' Association and would have authorized localities to adopt local ordinances on the subject.

Two bills, however, are moving forward, [HB 181 \(Collins\)](#) broadens the current statute that bans texting while driving to prohibit any use of a handheld device in a manner that "substantially diverts" a driver's attention from operation of the vehicle. A violation of this prohibition would be considered less serious than a reckless driving charge, with a maximum fine of \$500. The bill will be discussed on the House Floor today. [HB 1525 \(Yancey\)](#) would impose a mandatory minimum fine of \$250 for violating this prohibition while driving in a highway work zone. The bill passed out of the House, 99-0.

VACo Contact: [Khaki LaRiviere](#)

Legislation to Impose Standards on License-Exempt Child Day Programs Tabled in House; Passes Senate

[HB 1480 \(Filler-Corn\)](#) and [SB 539 \(Hanger\)](#) are complex bills that represent a second attempt to make distinctions among the variety of child day programs currently exempt from licensure and impose certain minimum health and welfare standards on programs deemed to be more akin to child care. Similar legislation was considered in 2017 but became entangled in the question of how child day programs operated pursuant to an exemption from licensure for religious institutions should be regulated, and was ultimately vetoed by Governor Terry McAuliffe. VACo worked last year with VML and the Virginia Recreation and Parks Society to attempt to remove day programs operated by local parks and recreation departments under the auspices of local governments from the category of day programs that would be subject to oversight by the Virginia Department of Social Services, arguing that such supervision was unnecessary, but were unsuccessful.

Under HB 1480 and SB 539, as in 2017, parks and recreation programs would remain exempt from licensure requirements, but would be required to file an annual statement with the Commissioner of Social Services, report serious injuries or deaths, and notify parents that the programs are exempt from licensure. The bills were amended in their respective committees of origin to remove a problematic enactment clause that would have allowed the Department of Social Services to periodically review whether local parks and recreation programs should remain exempt from licensure, and to separate programs operated by local school divisions from programs operated by local governments. HB 1480 was tabled in a subcommittee of House Appropriations on February 9; SB 539 has passed the Senate and been referred to the House Health, Welfare, and Institutions Committee. It is unlikely that further amendments regarding the status of parks and recreation programs will be successful, but the bill has a delayed enactment date of July 1, 2019, which provides another opportunity for consideration of the question of how local parks and recreation programs should be treated.

VACo Contact: [Katie Boyle](#)

Update: Mandated Land Use Value Assessment Bill on House Floor

[HB 1204 \(Hugo\)](#) is a problematic bill that would require that certain property be assessed based on use value in certain localities meeting specified population growth criteria. The bill would require that real property of at least five acres that

is devoted to open space be assessed based on the property's land use value. Although the legislation applies to a limited number of localities now, it sets a worrisome future precedent by requiring a locality to assess property as if it were part of a local program of use value taxation, regardless of whether the locality has adopted use value taxation. Adopting use value taxation is a local option under current Code. This bill would supersede that local authority and direct that certain property be afforded preferential tax treatment. The bill was prompted by a dispute between two property owners and one locality. The General Assembly has enacted a process for property owners to appeal assessments. This bill would interpose the General Assembly in this existing process for resolution of disputes about the valuation of property.

VACo opposes this legislation and spoke against it in subcommittee; the House Finance Committee reported the bill on February 7 and the bill awaits action by the full House.

VACo Contact: [Katie Boyle](#)

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:

- **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](#)