

Capitol Contact

Virginia General Assembly

Virginia Association of Counties • 1207 E. Main Street, Suite 300 • Richmond, VA 23219
www.vaco.org • 804.788.6652



Thursday, February 15, 2018

Opposition to Wireless Bills Mounting as They Cross Over between House and Senate

Two proposals by the wireless industry have made the halfway point and now get further consideration in each chamber. Below is a brief summary of where each stands and continued action needed to contact legislators in opposition.

Oppose gutting of local authority to address siting of wireless towers

The first measure, [HB 1258 \(Kilgore\)](#) and [SB 405 \(McDougle\)](#), are bills that gut local zoning authority to address the siting of wireless towers. Specifically, they allow 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 bill hamstringing localities' ability to obtain information and address citizen concerns through the public hearing process. HB 1258 passed by a vote of 56 to 41 and has been assigned to [Senate Commerce and Labor Committee](#). VACo did advocate for an amendment to the bill requiring wireless service providers to provide an annual report on "the expansion of service in previously unserved areas." The purpose of this requirement is to give an accounting of how a private entity, seeking the privileges of a public utility, will increase service to citizens. **Even with the amendment, VACo still opposes.** Additionally, VACo notes that an [updated floor vote](#) for HB 1258 indicates three delegates recorded as voting yes when they intended to vote no. This increases the possibility of defeating the bills with sustained opposition. SB 405 passed by a vote of 22 to 13 and has been assigned to [House Commerce and Labor Committee](#).

ACTION REQUIRED – Contact your legislators now to oppose this gutting of local authority to address the siting of wireless towers.

KEY POINTS

- The bill offers NO guarantee of better access to broadband or wireless services to unserved, underserved and urban / suburban areas of Virginia.
- The bill allows a wireless structure up to 50 feet in height to be placed within rights-of-way without local control.
- The bill strips local governing bodies of their ability to act on community concerns on the siting of wireless towers.

Oppose capping of local charges for use of public right-of-way

The second proposal, [HB 1427 \(Kilgore\)](#) and [SB 823 \(McDougle\)](#), sets a limit on what VDOT and localities may charge for the use of publicly owned rights-of-way by the wireless industry for the placement of poles and towers. HB 1427 passed by a vote of 83 to 14 and has been referred to [Senate Commerce and Labor Committee](#). In an encouraging note, SB 823, after reporting out of committee by an overwhelming vote of 12 to 3, barely survived by a [vote of 19 to 18](#) on the Senate floor on February 13. This shows sustained opposition from local elected officials is starting to influence legislators. The bill now heads to [House Commerce and Labor Committee](#).

ACTION REQUIRED – Contact your legislators now to oppose this giveaway of publicly-owned property to a private entity.

KEY POINTS

- Virginia's roads and highways are publicly-owned assets whose value has been enhanced through significant investments in construction and maintenance.
- Local elected bodies are empowered to negotiate, through contract, with private entities for the use of publicly-owned land.
- The state should not usurp local authority in the management of locality owned assets

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

Problematic Bills Changing Real Estate Assessment Appeals Process Continued to 2019

[HB 786 \(Keam\)](#) and [HB 787 \(Keam\)](#), which would have provided 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, were continued to 2019 in the [Senate Finance Committee](#) on February 14. **VACo opposed** these bills due to the major changes they would make to the long-standing judicial standard of manifest error, which reflects the presumption of

correctness historically afforded to the assessor. By relying on this standard, courts have avoided picking and choosing among possible values within a range of reasonable valuations for property.

The bills' patron indicated that he would pursue legislation on this topic in the future and encouraged local government representatives and proponents of the bill to work on the issue after the conclusion of the session. VACo is grateful to members who contacted Senate Finance Committee members to express opposition to the bills.

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

Medicaid Discussions Continue as “Budget Sunday” Approaches

As the [House Appropriations Committee](#) and the [Senate Finance Committee](#) prepare to report their respective budgets on Sunday, February 18, the issue of Medicaid expansion continues to be a major focus of discussion. The introduced budget proposes to expand Medicaid eligibility to childless adults who are younger than 65 and earn up to 133 percent of the federal poverty level, in accordance with the Affordable Care Act, effective October 1, 2018. The state share of this expanded coverage would be funded by an assessment on net patient revenue of private acute care hospitals. The introduced budget assumes savings of approximately \$422 million associated with drawing down the additional federal funds that would accompany this coverage expansion. Medicaid expansion proposals have been rejected by the General Assembly in the past; there appears to be movement on the issue this year, but the House and Senate are taking different approaches, which will ultimately need to be reconciled in the budget conference committee.

Earlier this week, the House passed [HB 338 \(Miyares\)](#), which would direct the Department of Medical Assistance Services (DMAS) to apply for a waiver to allow the state to implement requirements for able-bodied, working-age Medicaid recipients to participate in a new Training, Education, Employment, and Opportunity Program. Participants would be required to work in subsidized or unsubsidized employment or participate in training, education, or community-service activities, such as job skills training, job searching, or caregiving; the number of hours per week that would be required would gradually escalate with the duration of enrollment in Medicaid. These requirements would not apply to individuals in several eligibility categories, such as children under the age of 18, individuals diagnosed with serious mental illness, or individuals who are the primary caregiver for a dependent.

DMAS would be permitted to waive the work requirement for areas of the Commonwealth with high unemployment rates, but would not be able to waive

the requirement for participation in training, education, or other community engagement opportunities. The bill provides that Virginia Workforce Centers or One-Stops would provide some services to participants and that existing funding streams available through the Workforce Investment Act, Temporary Assistance for Needy Families, and other similar programs would be used to support the Program.

The expectation that current workforce and related programs would provide services to the new Medicaid enrollees is part of the Joint Legislative Audit and Review Commission's analysis of expected costs to implement the Program. JLARC estimates that total costs of case management for the Program would range from \$16.5 million to \$52.9 million in FY 2019 and from \$34.1 million to \$110.9 million in FY 2020, depending on the level of involvement of local Department of Social Services Staff; the local component of these costs would range from \$2.3 million to \$7.4 million in the first year and from \$4.8 million to \$15.6 million in the second year. These local costs reflect the traditionally-required 15.5 percent local match for administrative costs and operations. The Department of Planning and Budget had assumed higher implementation costs in its fiscal impact statement, based on an expectation that the case management would not overlap with existing workforce programs.

In discussion on this bill in House Appropriations last week, Secretary of Health and Human Resources Daniel Carey estimated that the federal government could take 18 to 24 months to approve the waiver to allow Virginia to implement the new program, based on the experience of other states, which raises the possibility that the delay may preclude the incorporation of the expected federal funds into Virginia's biennial budget.

Earlier this week the Senate passed [SB 915 \(Dunnavant\)](#), which would direct DMAS to amend the existing GAP program (which covers individuals with serious mental illness who otherwise would not be eligible for Medicaid) to create the Priority Needs Access Program. The bill would increase the income eligibility from 100 to 138 percent of the federal poverty level; expand program eligibility to individuals with diagnoses of mental illness, substance use disorder, or a life-threatening or complex chronic medical condition; include coverage for inpatient hospital and emergency room services in the benefit package; and place the program under managed care. The bill would place an overall cap on enrollment of 20,000 people who would be newly-eligible. The bill also directs the creation of additional Community Living, Family and Individual Support, and Building Independence waivers for individuals with intellectual or developmental disabilities; requires the Department of Behavioral Health and Developmental Services to establish a statewide alternative transportation system for adults and children subject to temporary detention orders; requires DMAS to ensure that children enrolled in Medicaid are screened for adverse childhood experiences; and requires the Department of Aging and Rehabilitative Services to expand services for people with brain injuries.

As introduced, the bill's coverage expansion and other provisions would have been funded by a provider assessment on private acute care hospitals, but the funding mechanism was removed in the version that ultimately passed the Senate. The bill contains an enactment clause making its provisions subject to appropriation, which means that it will be part of the budget negotiations. Since this program would expand an existing waiver program, it would draw down federal funds at the current rate (a 50-50 state/federal split), not at the enhanced rate contemplated by the expansion provisions contained in the introduced budget. It appears that the Priority Needs Access Program could be implemented in addition to the expansion contemplated in the introduced budget, or in lieu of the proposed expansion – a decision that will likely be made as part of the larger budget conversation.

“An additional proposal was put forward today by Delegate Terry Kilgore, who advocated in a Roanoke Times op-ed for Virginia to pursue a Medicaid waiver similar to the program recently enacted by Kentucky, which involves requirements for recipients to participate in work, education, or community engagement.”

Sunday's money committee meetings will offer a first look at the House and Senate positions on the issue of expansion; discussions are expected to continue throughout the remainder of the session.

VACo Contact: [Katie Boyle](#)

School Bus Advertising Bill Stopped

[HB 809 \(O'Quinn\)](#), which would permit local school boards to display advertising material on the school buses, has ended its ride through the 2018 General Assembly Session.

The bill permits local school boards to display commercial advertising material on the sides of school buses between the rear wheels and the rear of the bus, provided that no such material 1) obstructs the name of the school division or the number of the school bus; 2) is sexually explicit; or 3) pertains to alcohol; food or beverages that do not meet the nutrition standards developed by the U.S. Department of Agriculture pursuant to the federal Healthy, Hunger-Free Kids Act of 2010 or any additional state or local nutrition standards for food or beverages sold to students in school; gambling; politics; or tobacco.

Delegate Israel O'Quinn worked extensively with various stakeholders to ensure the type of advertisements permitted was very narrowly defined in order to avoid various First Amendment concerns. More recently, Delegate O'Quinn had offered an amendment that would allow school boards to advertise for open school positions (including bus driver positions) as well.

HB 809 passed the House on February 2 by a vote of 74-22 and was referred to the [Senate Education and Health Committee](#). Questions arose, however, in the ensuing weeks about where this advertising revenue would or should go (to the locality or to the school board) and whether it should be spent in particular ways. Thus on February 15, the Committee voted to carry HB 809 over to the 2019 session and instruct the Joint Committee to Study the Future of Public Elementary and Secondary Education in the Commonwealth to further examine this concept.

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

School Calendar Bill Carried Over to 2019

[HB 372 \(Robinson\)](#), Delegate Roxann Robinson's school calendar bill, has been carried over to 2019. The bill was one of two school calendar bills that reached crossover this year; the other bill, [HB 1020 \(Adams, L.\)](#), was incorporated into Delegate Robinson's bill in the [Senate Education and Health Committee](#). For more information on all the school calendar bills introduced during this session, please see our [February 8 Capitol Contact](#).

HB 372 sought to let local school boards determine the opening day of the school year and eliminated the post-Labor Day opening requirement and "good cause" scenarios for which the Board of Education may grant waivers of this requirement. Delegate Robinson included language in this bill that would require school boards that set the school calendar with a pre-Labor Day opening date to close all schools in the division from (1) the Thursday immediately preceding Labor Day through Labor Day or (2) the Friday immediately preceding Labor Day through the Tuesday immediately succeeding Labor Day. This five-day weekend provision was an effort to appease the tourism and hospitality industries who historically oppose this kind of measure due to concerns about potential lost revenue.

After robust debate, the Senate Education and Health Committee moved to carry the bill over to 2019 by a 9-6 vote.

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

Senate Finance Unanimously Reports Several Helpful Measures

The Senate Finance Committee reported several bills on February 14 that are beneficial to local governments. **VACo supports** these measures.

[HB 495 \(Hodges\)](#) authorizes a local commissioner of the revenue, treasurer, or director of finance to disclose taxpayer information to a non-governmental entity with whom the locality has contracted to provide services related to tax administration, with the exception of auditing services. For the contractor to have access to this information, the contractor would agree to be bound by the confidentiality provisions that apply to the commissioner or treasurer. This legislation will assist localities that require outside expertise to undertake certain projects, such as upgrading software systems in commissioners' or treasurers' offices.

[HB 119 \(Thomas\)](#) provides localities an additional economic development tool by creating a separate class of merchants' capital for certain wholesaler inventory, which would allow localities that impose a merchants' capital tax to impose a lower tax rate on that inventory.

[HB 1092 \(Hodges\)](#) specifies that dredging projects, other than projects of the Virginia Port Authority (unless a locality is contributing to a Port Authority project), are eligible to be funded through tax increment financing.

VACo Contact: [Katie Boyle](#)

Legislation Allowing Consolidated Meals Tax/Bond Referendum Ballot Question Passes House

[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, and 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 passed the House by a vote of 76-24 and has been referred to the [Senate Finance Committee](#).

VACo Contact: [Katie Boyle](#)

State General Fund Revenues Continue Strength in January; Effect of Federal Tax Reform Unclear

January revenue figures were released on February 13, and Secretary of Finance Aubrey Layne made presentations to the House Appropriations Committee and Senate Finance Committee on February 14. Overall General Fund (GF) revenues rose 5.1 percent in January relative to January 2017, and collections have grown 5.8 percent on a fiscal year-to-date basis, ahead of the forecast of 3.4 percent growth. Payroll withholding increased by 14 percent (growth partially attributable to an additional deposit day in January) and grew by 4.7 percent on a fiscal year-to-date basis, ahead of the forecast of 3.5 percent.

Nonwithholding collections grew by 20.2 percent on a year-to-date basis, far outpacing the forecast of 4.3 percent growth. Sales tax collections, although slightly ahead of the forecast on a year-to-date basis, were somewhat disappointing; December and January collections, reflecting the Christmas shopping season, were 0.4 percent above collections in December and January 2017. Secretary Layne speculated that gifts of services rather than goods and an increasing trend toward online shopping might be factors in the lackluster sales tax collections.

Although the overall revenue picture is encouraging, the Administration and General Assembly leadership are taking a cautious approach to the state's revenue projections, opting not to re-forecast revenues mid-General Assembly session. Secretary Layne told both committees that it is difficult to determine how much of the windfall in nonwithholding collections is due to "wealth events" such as the sale of a business and how much is a result of tax planning strategies influenced by the federal tax reform legislation enacted in December 2017. The state Department of Taxation is working to understand the ramifications of federal tax reform, but does not expect to complete its review before the end of the General Assembly session. House Appropriations Chairman S. Chris Jones suggested that a special session to revise Virginia's tax code in light of the federal changes might be scheduled in fall 2018, perhaps in October.

Secretary Layne's revenue report is available [here](#) and his presentation to the money committees is available [here](#).

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 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](#)