

# Capitol Contact

Virginia General Assembly

Virginia Association of Counties • 1207 E. Main Street, Suite 300 • Richmond, VA 23219  
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Thursday, January 24, 2019

## VACo Opposes Stripping Counties of Authority to Address Impacts of Massive Solar Projects

[SB 1398 \(Stanley\)](#) and [HB 2621 \(Ingram\)](#) take away the authority of local elected officials to negotiate the terms and conditions for restoration of property upon the removal (aka decommissioning) of “certified solar energy equipment, facilities, or devices” installed for utility-scale solar projects. This includes not only solar panels, but any related battery storage devices.

**Action Required** – VACo Members please contact your legislators on the [Senate Local Government Committee](#) to oppose SB 1398. Also please contact your Delegates on the [House Counties, Cities and Towns Committee’s Subcommittee #2](#) to oppose HB 2621.

The legislation would only allow for addressing the terms of restoration at the site plan review process, long after a local governing body decides if the property in question is in conformance with the comprehensive land use plan and zoning ordinance. The measure also places strict limits on the removal requirements, such as limiting the depth of soil restoration to three feet and mandating that the salvage value of any equipment be credited towards financial assurance for any defaults in the obligation to remove the solar equipment.

### Key Points

- Existing and proposed utility-scale solar projects in Virginia range in size from a few hundred acres to more than 9 square miles in area.
- Preservation of local authority to negotiate the terms of restoration upon removal solar energy equipment must be maintained.

## Key Contacts

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

**House Counties, Cities and Towns Committee's Subcommittee #2:** [Stolle \(Chairman\)](#), [Marshall](#), [Hodges](#), [Webert](#), [McNamara](#), [Mullin](#), [Hayes](#), [Roem](#), [Ingram](#)

**VACo Contacts:** [Joe Lerch, AICP](#) and [Chris McDonald, Esq.](#)

## Casino bill rolls on

Legislation seeking to legalize and regulate casinos in certain parts of the Commonwealth took a big step forward on January 21, as the [Senate General Laws and Technology Committee](#) voted 9-3-1 to report [SB 1126 \(Lucas\)](#) and rerefer the bill to the [Senate Finance Committee](#) for further consideration.

SB 1126 was one of three bills to hit the docket on Monday. Ultimately, the Committee opted to incorporate the other two bills – [SB 1503 \(Carrico\)](#) and [SB 1706 \(Lewis\)](#) – into [SB 1126 \(Lucas\)](#) and consider one larger casino bill that contemplates possible casino projects in Bristol, Danville, and Portsmouth, as well as two casino projects that the Pamunkey Indian Tribe is considering for Norfolk and Richmond.

As drafted, the bill would allow each of the five localities to hold a referendum on a casino in the Fall of 2019 and would not allow the Commonwealth to grant a casino license until July 1, 2020. This timeline was established to provide a year for the State to undertake a comprehensive study, a chief concern of many legislators as well as Governor Ralph Northam. The proposed study would be completed before the beginning of the 2020 session to afford the General Assembly adequate time to consider the findings and propose any necessary changes to the law.

Next up for the casino bill is a stop in the powerful Senate Finance Committee, a formidable committee known for its intense scrutiny and analysis. SB 1126 has not yet been scheduled to be heard, but it will likely be considered early next week.

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

## Update on Constitutional amendments

VACo opposes Constitutional amendments that would expand current mandatory real property tax exemptions to additional qualifying individuals and to new types of property were heard in the House and Senate earlier this week. VACo pointed out that the current mandatory real property tax exemptions – for disabled veterans and their surviving spouses and for the surviving spouses of servicemembers who are killed in action – have been a strain on local finances, costing localities more than \$50 million statewide in 2018.

In the House, Constitutional amendments have been assigned to the [Privileges and Elections Committee's Subcommittee #4](#), which is hearing all amendments before deciding on a limited number to advance to the full committee, so as not to generate a lengthy ballot at the November 2020 election, when any Constitutional amendments approved in both the 2019 and 2020 sessions would go before the voters. The subcommittee heard a series of amendments on Monday afternoon, including [HJ 657 \(Pogge\)](#) and [HJ 676 \(Filler-Corn\)](#). HJ 657 would expand the existing mandatory real property tax exemption for the surviving spouses of disabled veterans to apply in cases in which the veteran died prior to January 1, 2011. Currently, the exemption applies in cases in which the veteran died after that date. HJ 676 would mandate a personal property tax exemption for a motor vehicle owned by a veteran of the U.S. armed forces or the Virginia National Guard who has a 100 percent service-connected, permanent disability. Currently, localities have the authority to provide for taxation of a motor vehicle owned by a veteran with certain disabilities at a lower rate or to provide a full exemption, at local option. No votes were taken at the hearing, but some subcommittee members expressed interest in enacting the measures as local options.

[SJ 278 \(Reeves\)](#), the companion measure to HJ 676, relating to personal property tax exemptions, was heard in [Senate Privileges and Elections Committee](#) on Tuesday afternoon and reported unanimously with one abstention. Senator John Cosgrove, who sits on the committee, encouraged members to help find a way to mitigate the effects of mandatory property tax exemptions on local budgets.

Other Constitutional amendments of interest to localities that were heard this week include [HJ 615 \(Cole\)](#), which would require that the General Assembly and localities in which the governing body is elected from districts set up independent redistricting commissions, and [HJ 591 \(Cole\)](#), which would allow the General Assembly to make technical adjustments to legislative districts after the completion of decennial redistricting. VACo supports HJ 591 to address split precincts and spoke in favor of the measure.

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

## Alcohol Beverage Control reform bills advance

[SB 1110 \(Reeves\)](#) and [HB 2634 \(Hurst\)](#), which seek to reform one of Virginia's foremost alcohol beverage control laws, have each advanced in their respective chambers. The bills, introduced by Senator Bryce Reeves and Delegate Chris Hurst, seek to allow the sale of mixed beverages by licensed restaurants and the sale of alcoholic beverages by the Board of Directors of the Virginia Alcoholic Beverage Control Authority in any county, town, or supervisor's election district unless a referendum is held, and a majority of votes prohibit such sales.

Today, state law prohibits such sales in a locality unless they have been approved through a local referendum process. These bills would essentially flip a presumption of "dry" to "wet," while still affording localities the chance to hold a referendum to remain "dry."

The legislation includes a grandfathering provision that allows the granting of a mixed beverage license to any specific establishment that was in effect prior to the effective date of this bill, notwithstanding the provisions of the bills related to local referendums but subject to other applicable laws and regulations. The legislation also provides that the result of any referendum held prior to the effective date of the bill shall remain valid and enforceable. Finally, the bills have a delayed effective date of July 1, 2020 to allow localities a full year to adapt or make plans for a referendum.

Currently, there are nine remaining dry counties in Virginia: Bland, Buchanan, Charlotte, Craig, Grayson, Highland, Lee, Patrick and Russell. State code has become rife with special exceptions for specific establishments, and current law does allow for alcohol referendums to be held for specific magisterial districts, so beyond these nine totally dry counties, portions of an additional 31 counties are also dry.

[SB 1110 \(Reeves\)](#) was referred to the Senate Rehabilitation and Social Services Committee and reported out by a 11-3 vote. Senator Bill DeSteph, Senator Monty Mason, Senator Jeremy McPike, and Senator Lionell Spruill have signed on as co-patrons. SB 1110 passed the Senate on January 23 by a 23-17 vote and will now head to the House for consideration.

[HB 2634 \(Hurst\)](#) was referred to the House General Laws Committee's Subcommittee #3, which heard the bill on January 22 and recommended reporting by a 8-0 vote. HB 2634 will now be heard by the full Committee.

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

## Broad equal taxing authority measure defeated; cigarette tax study continued

[SB 1127 \(Favola\)](#), legislation introduced at VACo's request, was heard in the Senate Finance Committee on January 23. The bill would have equalized taxing authority between counties and cities and towns, effective July 1, 2020. In the intervening time, a work group convened under the auspices of the Division of Legislative Services would determine any Code changes necessary to implement the provisions of the bill. The delay was intended to ensure that no special taxing authority provided to individual localities in the Code was accidentally overridden.

Senator Barbara Favola encouraged the Senate Finance Committee to view the bill as a question of fundamental fairness, and also as a way for counties to reduce their reliance on property taxes to generate revenues. VACo testified in favor of the bill, pointing out that residents' expectations of service delivery from local governments have evolved over time and that counties need revenue options to provide these services. Fairfax County also spoke in favor of the bill. After testimony by representatives from the restaurant and retail industries and the Virginia Farm Bureau in opposition, the bill was passed by indefinitely. [HB 2189 \(Kilgore\)](#), which contains the same provisions as SB 1127 and was also introduced at VACo's request, has been assigned to the [House Counties, Cities, and Towns Committee's Subcommittee #2](#), and has not yet been heard.

[SB 1371 \(Norment\)](#) creates new definitions for alternative nicotine products to address "vaping," and, of particular interest to local governments, extends by one year the study directed in the 2018 Appropriations Act of "possible reforms to the taxation of tobacco products that will provide fairness and equity for all local governments and also ensure stable tax revenues for the Commonwealth." This study is to be conducted by the Joint Subcommittee to Evaluate Tax Preferences and presents another avenue for counties to advocate for parity in options for generating necessary revenues.

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

## VACo opposes bill mandating every school division provide alternative education program

VACo spoke in opposition to [HB 2387 \(Bulova\)](#) that would require local school boards to provide alternative education programs for suspended students and assign licensed instructional personnel for such programs at division-wide ratios of students to full-time equivalent teaching at a ratio of 10 to 1. Though the provisions of the bill would become effective after the rebenchmarking of the

direct aid to public education budget for the 2020-2022 biennium, and thus receive state funding support through the Standards of Quality, this mandate would still require additional local funding, staffing, and remove certain existing flexibilities.

Currently, local school divisions are not required to provide alternative education programs to suspended students and must give information regarding the availability of community-based educational programs, alternative education programs or other educational options. This bill would eliminate the option of referring students to community based-programs and other options, and instead require the local school division to manage and staff its own alternative program.

The [House Education Committee](#) voted 17-4 to report HB 2387 to the [House Appropriations Committee](#) on January 21.

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

## VACo working to improve food truck legislation

[SB 1425 \(Dunnavant\)](#), as reported by the Senate Finance Committee on January 16, would provide that a food truck would only be subject to license taxes in the locality in which it is registered and where its owner pays personal property taxes on the truck. Other localities in which the food truck conducted business would be barred from requiring the business to apply for a business license and from collecting the license fee to which the truck would otherwise be subject (itinerant businesses like food trucks pay a “peddler’s license” tax, which is capped at \$500 annually).

The patron’s intention is to assist small businesses, particularly start-ups operating with small profit margins, but as introduced, the bill is broadly drafted and applies to food truck businesses of all sizes. When the bill was heard in committee, VACo and VML objected in particular to the restrictions on requiring food truck businesses to register in the other localities in which they operate; without registering for a business license, apportioning sales and meals tax collections will be extremely difficult. VACo also pointed out that allowing food trucks to avoid paying license taxes in localities where they operate outside of their “home” jurisdictions places those localities’ restaurants, who are subject to local license taxes, at a competitive disadvantage. Committee members asked the patron to work with local governments to address concerns as the bill moved forward. VACo and VML have offered some suggestions for ways to narrow the bill’s scope and to preserve the requirement that food trucks register with all localities in which they do business.

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

## Tree conservation/replacement bills fail to advance

Two bills that would authorize a locality to adopt an ordinance exceeding the minimum tree canopy requirements for tree preservation, planting, or replacement during the development process failed to advance out of subcommittee on January 23.

Currently, only a locality in Planning District 8 with a population density of 75 persons per square mile and which is classified as an eight-hour nonattainment area for ozone under the federal Clean Air Act and Amendments of 1990, in effect as of July 1, 2008, may adopt such an ordinance for the *conservation* of trees during the land development process. Similarly, only a locality with a population density of 75 persons per square mile or within the Chesapeake Bay watershed may adopt such an ordinance for the *planting and replacement* of trees during the land development process.

[HB 2146 \(Turpin\)](#) sought to authorize any locality to adopt an ordinance providing for either the conservation of or the planting and replacement of trees during the land development process.

[HB 2333 \(Keam\)](#) was more specifically tailored. This bill sought to authorize a locality to adopt an ordinance requiring tree preservation, planting, or replacement in development or redevelopment to assist in achieving specific water quality or water quantity goals identified in the ordinance, including (a) achieving the locality's Chesapeake Bay TMDL Watershed Implementation Plan local area planning goals using forested buffers or other urban tree best management practices, (b) meeting a locality's MS4 permit for the Chesapeake Bay Action Plan to reduce nitrogen, phosphorus, or sediments by converting impervious or pervious land to forest or adding streamside forested buffers, (c) establishing or reestablishing effective forested buffers in Chesapeake Bay Protection Act resource protection areas, (d) meeting requirements enacted by the locality in accordance with § 62.1-44.15:33, or (e) local flood control.

[HB 2146 \(Turpin\)](#) and [HB 2333 \(Keam\)](#) were referred to the House Counties, Cities and Towns Committee, though they both failed to advance out of the Committee's Subcommittee #3 meeting on January 23.

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

## Authority to re-examine property tax exemptions for certain nonprofits remains with the state

A Constitutional amendment approved by the voters in November 2002 allowed localities to grant real or personal property tax exemptions by ordinance, within certain categories set by the General Assembly. Prior to passage of this amendment, property tax exemptions were granted only by the General Assembly. Exemptions granted by the legislature before the Constitutional amendment took effect on January 1, 2003, may only be repealed by the General Assembly, while post-2003 exemptions granted by local governments may be revoked by local governments.

[HB 2566 \(LaRock\)](#), introduced at the request of Frederick County, would have repealed the pre-2003 exemptions enacted by the General Assembly, effective July 1, 2024, and allowed localities to decide whether to continue the tax exemptions of affected organizations via local ordinance.

VACo spoke in favor of HB 2566, which would have placed property tax exemptions granted before and after the passage of the Constitutional amendment on the same footing, with localities making the decisions about continuation of tax exemptions affecting local revenues. After representatives of nonprofits spoke about the potential harmful effects of loss of their tax exemptions – assuming that the localities in which they operate would discontinue the exemptions – the House Finance Committee’s Subcommittee #2 voted to table the bill.

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

## Trash receptacle screening bills canned for the year

[SB 1155 \(Black\)](#) and [SB 1635 \(Boysko\)](#) were scheduled to be heard by the Senate Local Government Committee on January 22, but ultimately Senator Richard Black and Jennifer Boysko asked that the bills be stricken from the agenda.

The legislation would have authorized a locality, by ordinance, to require that trash, garbage, refuse, litter, and other debris at any business or multi-family residential property that has a central collection receptacle be shielded or screened from view of a person standing at ground level from outside of the property on which the central collection receptacle is located.

Citing significant opposition to these bills, Senator Boysko noted that she and the interested locality agreed that the short 2019 session was not the right time to

bring such legislation and that they would readdress it in advance of the 2020 session.

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

## Local flood plain regulation bill passes House

[HB 2310 \(Hayes\)](#), which provides greater authority to localities to regulate flood plains, passed the House of Delegates on January 24.

The bill, an Administration bill introduced by Delegate Cliff Hayes, authorizes any locality to, by ordinance, regulate the activity on, or use or development of, a flood plain in a manner consistent with any state and federal flood plain management programs and requirements. HB 2310 was amended in the House Counties, Cities and Towns Committee to stipulate that this authority shall be given retroactive and prospective effect.

HB 2310 was reported from [House Counties, Cities and Towns Committee](#), 20-0, and will be voted on by the full House on January 24. The bill is expected to pass and will next head to the Senate where it will likely be referred to the [Senate Local Government Committee](#).

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

## Legislation helps to address problem of misassigned voters

Several bills have been introduced to address a problem that surfaced after the 2017 elections, when it was discovered that some voters may have been placed in incorrect districts. Some of these situations stemmed from human error in the manual assignment of voters to districts within the state's voter registration system, and some were the result of "edge cases" in which a boundary line between districts or between localities might run through a house. Some were cases in which the boundary lines between localities were not clear – for example, in situations where a body of water demarcating a boundary has gradually shifted over time. In some of these more complex cases, some neighboring jurisdictions may have had informal agreements as to where voters resided that did not coincide with the Census block boundaries that must be used to determine voting assignments. In the latter instances, a change to voter district assignments after a closer review in 2018 meant that some residents who had voted and paid taxes in one locality for years were now determined to be residing in a neighboring locality.

VACo participated in a group of stakeholders convened by Senator Mark Peake over the summer to help develop a mechanism to address situations where there is a discrepancy between a boundary line for a Congressional or state legislative district (based on Census blocks) and the boundary traditionally used by the localities. [SB 1102 \(Peake\)](#) provides that when these two lines virtually coincide, the legislative district boundary will conform to the boundary line agreed upon between the localities, provided that the localities adopt ordinances with the agreed-upon boundaries and report them to the Census Bureau and several state entities specified in the bill. The State Board of Elections would have the opportunity to review the adjustments to ensure that the proposed changes were made without fraudulent intent, and a voter would be able to request a review by the general registrar if he or she believed he or she was assigned to the incorrect district. Localities would have the chance to resolve these voter “appeals” in cases where the district assignment was in question because of a discrepancy in the boundary line between localities. VACo spoke in support of the bill on January 22 when it was heard in [Senate Privileges and Elections Committee](#) and was reported to the Senate floor.

[As reported in an earlier Capitol Contact](#), two related bills, [HB 1649 \(Fowler\)](#) and [SB 1594 \(Dunnavant\)](#), would allow all localities to use GIS maps in making voluntary boundary adjustments. VACo supports these bills.

[SB 1018 \(Chase\)](#) requires that each locality review voter assignments for correctness by comparing the assignments with a Geographic Information System map, which would be provided by the state unless the locality had its own. The state would also aid with the review, which must be completed prior to the 2020 general election, upon request. [HB 2760 \(Sickles\)](#) would require that GIS maps be used in local redistricting and provides that the state Department of Elections would review these maps and the voter district assignments for accuracy and direct any corrections to be made if necessary. VACo has discussed the bill with the patron and is determining whether a possible amendment might be necessary to provide that the state would assist with the development of GIS maps for localities without in-house GIS capability.

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

## 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](#)