

# Capitol Contact

Virginia General Assembly

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Thursday, February 14, 2019

## Bill to Rewrite Local Ordinance Regulating Airbnb Fails

[SB 1701 \(Ebbin\)](#) would have mandated that Fairfax County triple the number of nights per year (from 60 to 180) that residential dwellings be allowed “by right” to provide short-term rentals typically facilitated through online platforms such as Airbnb, FlipKey, and HomeAway. After passing the Senate, SB 1701 was defeated in House Counties, Cities and Towns Committee’s Subcommittee #2 on February 13 by a 5-3 vote.

Fairfax County adopted regulations in 2018 to allow such short-term rentals in residential neighborhoods where previously they were not allowed. Based on input from the community, including 11 public hearings and conduction of an online survey, the Board of Supervisors put in place reasonable restrictions, to address multiple stakeholder viewpoints.

**VACo opposed the legislation** as it would set an unwelcome precedent and have a chilling effect on the willingness of local elected bodies to accommodate short-term rentals in residential areas.

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

## Understanding the impact of Virginia Tax Reform (HB 2529, SB 1372) in response to the Federal Tax Cuts and Jobs Act of 2017

On Monday, February 11, the Virginia General Assembly enacted state tax reform in response to impacts from the Federal Tax Cuts and Jobs Act of 2017 (TCJA). The new state tax law returns (or intends to return) individual income tax revenue resulting from enactment of the TCJA back to taxpayers. With a couple of relatively minor exceptions, additional new business-related tax revenue

generated for the state as a result of the TCJA is retained in the state general fund.

The TCJA was the largest federal tax reform legislation in over 30 years - impacting both individuals and businesses. Beginning in tax year 2018, federal tax changes included up to 20 modifications for individuals and up to 30 modifications for business and corporate tax returns. The estimated federal tax impact on Virginia residents and businesses amounted to a *reduction* of about \$4 billion per year in federal tax collections mainly due to a lowering of federal income tax rates. In contrast, the TCJA modified income definitions and rules that created large potential state revenue *increases* by subjecting more income to Virginia's unchanged tax rates. Without changes to Virginia tax law, estimated increases in state revenue resulting from the TCJA would have amounted to \$594 million in FY 2019, growing to \$950 million in FY 2024. Individual income tax changes under the new federal law are temporary and expire after tax year 2025. The business tax changes are permanent.

Over the years, Virginia has routinely conformed to small changes in federal income tax laws. However due to the large changes in TCJA, Virginia conformity to the new federal income definitions was a bigger than normal issue and became wrapped up in the larger Virginia tax reform response to TCJA. The enactment of HB 2529 (Hugo)/SB 1372 (Norment) conformed Virginia to most new provisions in TCJA beginning in tax year 2018, while also reforming several Virginia income tax provisions to provide tax relief.

First, Virginia will provide a one-time individual income tax refund of up to \$110 for single filers and \$220 for married filers prior to October 1, 2019, to all taxpayers with tax liability. The expected cost is \$420 million. For businesses, \$32 million in permanent tax relief is provided beginning in tax year 2018 by 1) a subtraction modification to certain corporate global intangible low-taxed income ("GILTI") and 2) a partial 20 percent restoration of net interest deductions eliminated in the new federal law. Finally, an additional \$80 million is reserved in the Taxpayer Relief Fund in FY 2019. In total, \$532 million is returned or reserved for taxpayers in FY 2019, equaling the estimated individual income revenue resulting from federal tax reform. The remaining \$62 million, mostly resulting from federal business provision changes, remains in the state general fund.

The bulk of the new state tax reform is effective in tax year 2019 through tax year 2025 – matching the temporary nature of the federal individual tax changes. For individuals, the Virginia standard deduction is increased from \$3,000 to \$4,500 for singles and married filing separately, and from \$6,000 to \$9,000 for married filing joint returns. New state law de-conforms from the federal \$10,000 limitation on property tax deductions and allows an individual income tax deduction for the actual amount of real and personal property taxes imposed by Virginia or any other taxing jurisdiction. New state tax law also re-imposes the "Pease" limitation for high income taxpayers. This *reduces* itemized deductions

by 3 percent of the amount by which a taxpayer's adjusted gross income exceeds the threshold amount (\$261,500 for singles; \$313,800 for married filers). Finally, any individual taxpayer revenues generated from TCJA above the amount returned must be transferred to the "Taxpayer Relief Fund" for future tax relief.

The following table presents the estimated state revenue impacts from the TCJA and the corresponding enacted state tax reform.<sup>1</sup>

	<b>Estimated Revenue Impact (\$ Mil.)</b>					
TCJA Impact:	<u>FY 19</u>	<u>FY 20</u>	<u>FY 21</u>	<u>FY 22</u>	<u>FY 23</u>	<u>FY 24</u>
Individual Income	\$532	\$444	\$467	\$493	\$520	\$546
Business and International	<u>\$62</u>	<u>\$167</u>	<u>\$187</u>	<u>\$306</u>	<u>\$423</u>	<u>\$405</u>
<b>Total TCJA Est. Impact</b>	<b>\$594</b>	<b>\$611</b>	<b>\$654</b>	<b>\$799</b>	<b>\$943</b>	<b>\$951</b>
<b>State Tax Reform:</b>						
\$110 S/\$220M Refund	(\$420)	\$0	\$0	\$0	\$0	\$0
50% Standard Deduction Increase, Unlimited Property Tax Deduction, Deconform Pease Limitation	\$0	(\$308)	(\$204)	(\$208)	(\$212)	(\$216)
International GILTI and 20% Net Interest Deduction	(\$32)	(\$23)	(\$24)	(\$26)	(\$27)	(\$28)
Taxpayer Relief Fund	(\$80)	(\$113)	(\$238)	(\$260)	(\$281)	(\$302)
<b>Remaining for State GF</b>	<b>\$62</b>	<b>\$167</b>	<b>\$187</b>	<b>\$306</b>	<b>\$423</b>	<b>\$405</b>

*Fiscal Analytics, Ltd.*

<sup>1</sup> For a more complete description of state revenue impacts see the Virginia Department of Taxation fiscal impact statement on SB 1372.

<http://lis.virginia.gov/cgi-bin/legp604.exe?191+oth+SB1372FER161+PDF>

**VACo Contact:** Jim Regimbal | Fiscal Analytics, Ltd.

## Home instruction JROTC bill defeated

VACo opposed [SB 1275 \(Black\)](#), which requires any local school board that offers a Junior Reserve Officers Training Corps (JROTC) program to make it 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 and would impose an unfunded mandate on localities.

JROTC programs receive federal funds for partial reimbursement of program expenses. All other expenses incurred in the running of the program by a local school division are the responsibility of the locality.

The bill was referred to the [House Education Committee](#) where it was heard on February 13. After a lengthy procedural process that included several proposed amendments, the bill initially failed to report, 12-10. But then after another proposed amendment, the bill failed again to report when the second vote ended in an 11-11 tie.

Thank you to VACo Members who responded to our call to action and contacted their Delegates on the committee.

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

## Constitutional amendments on redistricting, car tax exemption likely headed to conference

[HJ 676 \(Filler-Corn\)](#), as passed by the House, provides for a local option to exempt from personal property taxes one motor vehicle belonging to a veteran with a 100 percent service-connected, permanent and total disability. As introduced, the resolution would have required this exemption. VACo objected to expanding mandatory property tax relief to another type of property, as the existing mandatory real estate tax exemptions (for disabled veterans and their surviving spouses and the surviving spouses of servicemembers killed in action) have been costly to localities, and the resolution was amended in a subcommittee of House Privileges and Elections to provide instead for a local option. [SJ 278 \(Reeves\)](#), as passed by the Senate, remains a mandate on localities. On Monday, the same subcommittee of House Privileges and Elections conformed SJ 278 to the local-option language passed by the House; Senate Privileges and Elections took similar action on HJ 676 on Tuesday, conforming the local-option version to the Senate's mandatory version. The resolutions will likely be placed in a conference committee early next week. VACo will advocate for the local option to prevail in conference.

[HJ 615 \(Cole\)](#) deals largely with a process for drawing state House and Senate and Congressional districts by a redistricting commission, but also includes provisions requiring local governing bodies that are elected from districts to establish a local independent redistricting commission after each decennial census. This commission would be composed of four members, with equal representation given to the two parties with the highest vote totals at the most recent gubernatorial election. [SJ 306 \(Barker\)](#) also deals with state-level redistricting, although it takes a different approach to the appointment of a state-level redistricting commission, and does not address redistricting at the local level.

VACo has taken no position on the redistricting process at the state level but has expressed concern about the inclusion of local districts in HJ 615, viewing the requirement to establish the redistricting commission as unnecessary. Localities currently have the option to convene advisory redistricting commissions, the membership of which may extend beyond the political party representatives envisioned in the resolution. As many local elected officials run for office without party endorsements, establishing a commission composed of party representatives may have the unintended consequence of injecting partisanship into the drawing of local districts. This issue is expected to be resolved in conference; on Monday, the same House Privileges and Elections subcommittee conformed SJ 306 to the House measure, and the Senate Privileges and Elections Committee acted similarly on HJ 615 on Tuesday.

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

## Troublesome FOIA bill amended in subcommittee

[SB 1554 \(Surovell\)](#) was heard in a House General Laws subcommittee this week and was substantially amended for the better. This bill as introduced 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 such officer, employee, or member of a public body altered or destroyed the requested public records with the intent to avoid the provisions of this chapter, the court may impose a civil penalty of up to \$100 per record altered or destroyed.

A second provision of the bill as introduced 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.

The subcommittee striped out the second provision, which could penalize individuals for unintentional and inadvertent discussions about things such as a person's health as violations of the closed meeting provisions of the Freedom of Information Act. SB 1554, which is much less objectionable with the amendments, will be heard by the [House General Laws Committee](#) on February 14.

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

## Online check registry bill bounces

**VACo opposed** [SB 1262 \(Sturtevant\)](#), a proposal that would require every locality with a population greater than 25,000, and every school division with greater than 5,000 students, to post on its website a register of all transactions. The measure failed to pass in the House Counties, Cities and Towns Committee's Subcommittee #2 on February 12 by a 6-2 vote.

Given the potential costs for localities to comply with this mandate, VACo testified in committee that it should be a local option. In addition to the cost of software, the bill would require significant staff time to implement, since staff would need to review transactions and redact certain payments (such as payments to undercover law enforcement). Similar legislation, [HB 1907 \(VanValkenburg\)](#), failed to pass in subcommittee on February 5.

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

## Bills mandating Freedom of Information Act training for local elected officials receives helpful amendments in subcommittee

[SB 1431 \(Obenshain\)](#) as introduced mandates FOIA training for local elected officials by December 31, 2019, and thereafter biennially. The training would be given by the FOIA Council Staff and records of the training must be maintained by the clerk for five years. Currently, local government records officers are the only local government folks required to complete training.

In addition, to the new training requirements, the bill eliminates a three-day notice period for a hearing on a petition for mandamus or injunction for a violation of the law involving open meetings.

A substitute was offered that moves the initial training deadline to be completed by December 31, 2020, and eliminates the three-day notice only when the alleged

violation involves the open meeting provisions of the act. SB 1431 passed the Senate and was heard in a House General Laws subcommittee where the bill was amended by the patron at the request of VACo and VML. The bill as recommended for reporting by the General Laws subcommittee now allows the training to be also done by the local government attorney as well as the FOIA council and provides that no penalty shall be imposed for missing the training. SB 1431 will be heard by the [House General Laws Committee](#) on February 14.

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

## Rural stormwater bill heads to House Appropriations

Senator Emmett Hanger's rural stormwater bill reported out of the House Agriculture, Chesapeake and Natural Resources Committee on February 13 and was rereferred to the [House Appropriations Committee](#).

[SB 1328 \(Hanger\)](#) authorizes the Department of Environmental Quality (DEQ) to provide Stormwater Local Assistance Fund (SLAF) grants to smaller, rural localities that are not regulated under municipal separate storm sewer (MS4) permits for stormwater management. Eligible projects are those that solely use SLAF funds for stormwater capital projects, including (a) new stormwater best management practices, (b) stormwater best management practice retrofitting or maintenance, (c) stream restoration, (d) low-impact development projects, (e) buffer restoration, (f) pond retrofitting, and (g) wetlands restoration. Furthermore, SB 1328 directs the DEQ to prioritize grants for stormwater management projects that are regional in scope.

SB 1328 further stipulates that while the DEQ is granted this authority, no more than 20 percent of SLAF moneys could be awarded to non-MS4 localities. So, the Director of the DEQ would have the discretion of authorizing 0-20 percent of SLAF funds for non-MS4s. Additionally, if any SLAF moneys remain after the DEQ has completed its annual solicitation of grant applications and made authorization decisions for non-MS4 localities, any remaining SLAF moneys that had been designated for non-MS4s shall be made available for MS4 localities.

**VACo supports** this legislation and will speak in support on February 15 when it is heard in the House Appropriations Committee.

VACo Members are encouraged to contact Delegates on the [House Appropriations Committee](#) to express support for SB 1328.

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

## Sale of surplus property for economic development could help counties break new ground

A proposal to give local governments a first right of refusal on state surplus property for sale, so long as the land in question is for a “*bona fide economic development activity*,” is making its way through the legislature.

[SB 1681 \(Mason\)](#) and [HB 2182 \(Austin\)](#) direct the Department of General Services (DGS) to notify the county administrator and any Economic Development Authority (EDA) or Industrial Development Authority (IDA) where the property is located regarding the proposed sale. The county, EDA or IDA will have up to 180 days from the date of notification to submit a proposal to DGS to use the property for a specified economic development proposal. If DGS finds that the proposal “...is viable and could benefit the Commonwealth” then sale of the property may be negotiated. If no agreement can be reached, DGS will continue under current law to sell the property through public auction, sealed bids, or through the real estate market.

Both bills passed overwhelmingly in their respective chambers and are likely to become law.

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

## Boundary adjustment bills just steps away from the finish line

Two bills seeking to add another tool to localities looking to make voluntary boundary line adjustments have nearly reached the end of their journey through the General Assembly.

VACo supports [HB 1649 \(Fowler\)](#) and [SB 1594 \(Dunnavant\)](#), which would allow all localities to make voluntary boundary line adjustments using Geographic Information System (GIS) surveys. This streamlined process to address situations in which census boundaries do not align with locally drawn or commonly adhered to boundaries is less costly than completing an expensive “metes and bounds” survey.

Currently, GIS mapping for this purpose is only allowed in three instances: regarding the boundary between the Counties of Louisa and Goochland, between the County of Loudoun and any town therein, or between the Counties of Spotsylvania and Orange. HB 1649 and SB 1594 would release this tool to the rest of the Commonwealth’s localities.



SB 1594 has now passed the Senate and House and will head to the Governor for a signature. HB 1649 passed the House on January 24, reported from the Senate Local Government Committee on February 12, and will be heard on the Senate floor.

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

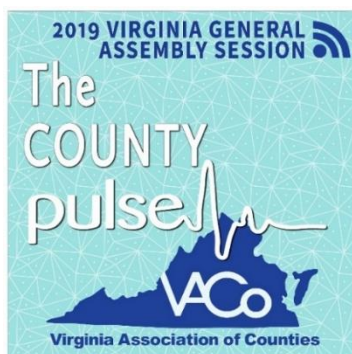
## Mechanics Lien Notice of sale bill moves ahead in House

[SB 1336 \(Edwards\)](#) specifies that the notice of sale for property to be sold pursuant to a mechanics' lien shall be posted in any of the following places: (i) a public place in the county or city where the property is located; (ii) a website operated by the Commonwealth, the county or city where the property is located, or a political subdivision of either; or (iii) a newspaper of general circulation in the county or city where the property is located, either in print or on its website. Under current law, such notice of sale is required to be advertised in a public place, defined as a premise owned by the Commonwealth or a political subdivision thereof, or an agency of either, that is open to the general public.

VACo and VML asked for the bill to be amended, as local government websites are not available for posting by private entities or businesses. While the patron was unwilling to amend the bill, both he and the proponents of the bill (VA Automobile Dealers Association) have stated that local governments can just say no to such a request.

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

## VACo County Pulse | 2019 General Assembly Edition | Part 3



Welcome to the VACo County Pulse. VACo Lobbyists Joe Lerch and Chris McDonald talk about a variety of issues, including alcohol reform, I-81 improvements, industrial hemp, casinos, proffers, and more.

[Listen to the Podcast.](#)

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

# 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](#)

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