

# Capitol Contact

## Virginia General Assembly

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## Governor Releases Amendments to 2019 Legislation; General Assembly to Consider Governor's Actions at April 3 Reconvened Session

Governor Ralph Northam released amendments to 46 bills this week, in addition to proposing 40 amendments to the state budget. The General Assembly will meet on Wednesday, April 3, to consider the Governor's amendments, as well as the 17 bills vetoed by the Governor.

### **Bills of interest to local governments**

#### **Boards of Zoning Appeals (BZA)**

Under Virginia Code a BZA can only overturn the decision of a zoning administrator by majority vote of the board. [HB 2686 \(Knight\)](#) changes current law by declaring that only a majority of the membership of the board "present and voting" shall be necessary to reverse any decision. For example, if only three members of a five-member BZA are present, only two votes would be necessary to overturn a decision rather than three as required by current law.

Governor Northam has amended the bill to allow a locality to make this voting procedure an option and not a mandate. VACo supports the Governor's amendment to allow local option.

#### **Split Precincts**

[SB 1087 \(Obenshain\)](#), as introduced, requires localities to adjust precinct lines after the completion of decennial General Assembly redistricting so that precincts are contained within Congressional or state legislative districts. If a locality is unable to draw precinct boundaries without splitting the precinct between districts, it may apply to the State Board of Elections for a waiver to administer a split precinct. The State Board would be authorized to grant the waiver or to direct the local governing body to establish a

precinct with fewer than the minimum number of registered voters. The bill emerged from conference in the House's preferred form, which would authorize the General Assembly to make technical adjustments to legislative districts to address split precincts; VACo preferred this approach as well. The Governor's amendments return the bill to its introduced form. VACo has concerns about the feasibility of this approach, as many localities cannot wait for the General Assembly to complete its redistricting process to start redistricting at the local level, and it is unclear how the State Board will make decisions about granting waivers for the administration of split precincts.

### **Interstate 81**

[HB 2718 \(Landes\)](#) and [SB 1716 \(Obenshain\)](#), as introduced, authorized the Commonwealth Transportation Board (CTB) to impose tolls along I-81 to finance necessary improvements to remove crippling bottlenecks and delays for commerce and travelers. The legislation was modified in both chambers to remove the tolling authority and create a committee to further study the improvement plan and report to next year's legislature recommendations to implement it.

The failure of the legislature to muster support during the legislative session to raise the revenue necessary to implement the \$2 billion [Interstate 81 Corridor Improvement Plan](#) did not stop the Governor from an effort to secure funding not only for I-81, but other interstate corridors.

According to estimates prepared by the Administration, proposed amendments to generate annual revenue include the following:

- \$76 million from an increase in truck registration fees;
- \$142 million increase (3-year phase in) in the road tax and diesel tax for trucks; and
- \$60 million from a 2.1 percent regional fuel tax along the I-81 corridor.

And estimated annual distribution of revenue will be allocated as follows:

- \$150.8 million for I-81 improvements;
- \$39.2 million for I-95 improvements;
- \$27.6 million for I-64 improvements;
- \$42.6 million for other interstate corridor improvements; and
- \$20 for the Northern Virginia Transportation Authority (NVTA).

### **Behavioral Health Standards in Jails**

[HB 1942 \(Bell, R.B.\)](#) requires the Board of Corrections to develop standards for behavioral health services in local and regional jails, to include requirements for discharge planning for individuals with serious mental illness. As part of the discharge planning process, the bill requires coordination with community providers; the Governor's amendments require coordination with the individual's family, as appropriate.

### **School Counselors**

[HB 2053 \(McQuinn\)](#) lowers the ratio of guidance counselors to students at the elementary, middle, and high school levels required by the Standards of Quality and changes the name of guidance counselors to school counselors effective in the 2019-2020 school year. The bill as passed by the House and Senate was consistent with the state share of appropriations for FY 2020 in the conference report. The Governor's amendment further reduces the ratio of required counselors to students but makes those reductions effective in the 2020-2021 school year at one counselor per 375 students at the elementary school level, one counselor per 325 students at the middle school level, and one counselor per 300 students at the high school level.

### **Firefighters and Emergency Medical Technicians Procedural Guarantee Act**

[HB 2263 \(Krizek\)](#)/[SB 1494 \(Edwards\)](#), as passed both houses, provide that any evidence gathered through the conduct of an interrogation that violates the provisions of the Firefighters and Emergency Medical Technicians Procedural Guarantee Act shall not be admissible in any case against a firefighter or emergency medical services personnel. The Governor's amendment substitutes the words "administrative hearing" for the word "case," making it clear that this provision pertains to administrative situations.

### **Emergency Shelters**

[HB 2303 \(Leftwich\)](#)/[SB 1047 \(Cosgrove\)](#), as passed by the General Assembly, provide that a registered sex offender must notify staff in an emergency shelter operated by the state or a political subdivision of his/her status as an offender as soon as practicable after entering the shelter. Failure to make such notification is a Class 3 misdemeanor. The bill provides that an offender may not be denied entry to the shelter solely on the basis of his or her status as an offender, unless his or her presence is otherwise prohibited by law, but allows shelter staff to deny entry to a person convicted of a sexually violent offense until the safety of other individuals in the shelter can be ensured. The Governor's amendments retain the requirement for offenders to notify shelter staff, but eliminate the misdemeanor penalty and the provisions permitting temporary denial of entry. The Governor also proposes requiring the state and local emergency operations plans to set out procedures for the required notification and to provide for emergency shelter for offenders while protecting the health and safety of all persons in the shelter.

### **Penalties for Freedom of Information Act (FOIA) Violations**

[SB 1554 \(Surovell\)](#), among other provisions, allows a court to impose a civil penalty upon a public body if a member of the public body voted to certify a closed meeting if the certification violated FOIA, if an attorney representing the public body was present at the time of the certification. The Governor's amendments revise the bill to apply in cases where the public body votes to certify the closed meeting, and remove the language regarding the presence of the public body's attorney. The Governor also adds language providing for the court to consider mitigating factors in determining whether to impose a civil penalty, including reliance upon opinions of the Attorney General, case law, and published opinions of the Freedom of Information Advisory Council.

## **Other Bills of Interest**

### **Firearms Ordinances for Properties in Multiple Localities**

[HB 2252 \(Head\)](#) provides that a landowner who owns contiguous parcels that span more than one locality may opt to apply the firearms ordinances of the locality in which the largest portion of the property falls to apply to anyone hunting on any portion of the property. The Governor proposes to add a reenactment clause to the bill, and to direct the Department of Game and Inland Fisheries to study the issue.

### **Criteria for Congressional and General Assembly Districts**

[SB 1579 \(Suetterlein\)](#) provides criteria for the establishment of Congressional and General Assembly districts, including substantially equal population sizes, respect for existing political boundaries, compactness and contiguity, and consideration of keeping communities of interest together. The Governor's amendments would forbid districts from being drawn to restrict minority communities' ability to elect candidates of choice and from being drawn to favor a political party or incumbent, among other provisions.

### **Handheld Communications Devices in Motor Vehicles**

[SB 1768 \(Mason\)](#) prohibits a driver from holding a personal communications device while driving in a highway work zone, with certain exceptions. The Governor's amendments revisit a broader proposal to ban the holding of personal communications devices while driving, which had been under discussion until the last day of the session. The amendments would generally prohibit holding personal communications devices while driving, with certain exceptions, and require public outreach on the issue before the bill would take effect on January 1, 2020. A proposed enactment clause directs annual reporting on the citations issued under the new provisions, including demographic information on drivers who are cited.

### **Criminal responsibility for suppliers of controlled substances**

[HB 2528 \(Hugo\)](#) provides that a person who unlawfully supplies a controlled substance to someone who dies as a result of using the controlled substance is guilty of second-degree murder, even if the death occurred at another time and place than the transfer of the controlled substance. The Governor's amendments provide that seeking medical attention for the person experiencing the overdose is an affirmative defense to prosecution for the supplier of the controlled substance in certain circumstances.

## **Veto**

The Governor vetoed 17 bills on a variety of subjects. In order to override a gubernatorial veto, both chambers must vote to pass the bill in the form in which it left the General Assembly (the "enrolled" version) by a supermajority vote of two-thirds of members present (which must include a majority of the members elected) in each chamber. Given this high threshold for overturning a veto and the closely-divided nature of both the House and Senate, it is expected that the Governor's vetoes will be sustained next week.

Among bills of interest to localities that were vetoed by the Governor are [HB 2034 \(McGuire\)](#), which proposes to provide certain protections to general registrars in proceedings for their removal, and [HB 2142 \(Thomas\)](#), which would establish the category of school protection officers, defined as retired law enforcement officers hired on a part-time basis by local law-enforcement agencies to provide school security services, and direct the Department of Criminal Justice Services to establish training standards for these employees. VACo [reported](#) on vetoes of several bills on environmental issues in a recent County Connections article. The full list of Governor's vetoes is available at [this link](#).

## Governor Proposes Helpful Flexibility on Teacher Salary Increases in Budget Amendments

Among the 40 [amendments](#) proposed by Governor Ralph Northam to the 2019 Appropriations Act is a recommendation to provide additional clarity and flexibility regarding the state share of salary increases for instructional and support staff listed in the Standards of Quality (SOQ) for the three percent salary incentive increase effective July 1, 2019, and the two percent salary incentive increase effective September 1, 2019. All school divisions are eligible to receive some or all of the additional two percent in state funding for salary increases if they provide a salary increase between July 1, 2019, and September 1, 2019. Under the budget as passed by the General Assembly, in order to qualify for the state share of the two percent salary increase, school divisions had to have provided salary increases over the biennium to match the three percent increase, in addition to the local share of the two percent increase or portion thereof.

The Governor recommends that any school division that was unable to provide the three percent salary increase over the biennium would still be eligible to receive the state share of a salary increase up to two percent effective September 1, 2019. Salary increases for these positions are voluntary. **VACo supports this amendment.**

The Governor proposed several other budget amendments of interest to local governments, including:

- Providing \$1.5 million in General Funds (GF) in FY 2019 to support outreach in preparation for the 2020 Census. This funding was included in the introduced budget but was removed by the General Assembly during the Session.
- Providing an additional \$4 million GF in FY 2019 for the Virginia Housing Trust Fund.
- Revising language in the enrolled budget directing the convening of a workgroup on balance billing for emergency services by health care providers who are out-of-network for insurance companies. The enrolled budget directed the State

Corporation Commission (SCC) to convene the workgroup; the Governor's amendments would instead assign the responsibility to the Secretary of Health and Human Resources, in collaboration with the SCC and the Secretaries of Administration and Finance.

- Extending the Joint Subcommittee Studying Mental Health Services in the Commonwealth in the 21<sup>st</sup> Century from December 1, 2019, through June 30, 2020.
- Authorizing bond funding for the replacement of Central State Hospital. The Governor also proposed amendments to language directing the Department of Behavioral Health and Developmental Services to develop a plan to “right-size” the state behavioral health hospital system; the amendments would require the plan to evaluate the possibility of relocating forensic beds to state-owned property other than the current Central State Hospital location.
- Eliminating budget language that would prohibit a state agency from purchasing or implementing body-worn cameras.
- Eliminating budget language that captures the first \$40 million of sales and use taxes collected from online retailers with a physical nexus within the Commonwealth, effective July 1, 2020, for the Major Headquarters Workforce Grant Fund established as part of the Amazon HQ2 project.
- Specifying that the Department of Taxation is not permitted to grant waivers to temporarily suspend or delay requirements for marketplace facilitators (such as eBay) to collect or report sales and use taxes due. This authority had been provided to the Department in legislation that passed in 2019 to implement the U.S. Supreme Court's decision in the *Wayfair* case about collection of sales and use taxes from remote sellers.

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