

Capitol Contact

Virginia General Assembly

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



Tuesday, February 18, 2020

Oppose Unfunded Mandate for Public Defender Salary Increases

A problematic bill that mandates local governments supplement public defenders' salaries narrowly passed the House of Delegates and will be heard by the Senate Judiciary Committee on Wednesday, February 19.

[HB 869 \(Bourne\)](#) requires that the governing body of any County or City that supplements the compensation of the attorney for the Commonwealth, or any of their deputies or employees, above the salary of any such Attorney of the Commonwealth, deputy, or employee, to proportionally supplement the compensation of the public defender, or any of his deputies or employees.

ACTION REQUIRED – Contact legislators on the [Senate Judiciary Committee](#) to oppose HB 869.

KEY POINTS

- If any locality supplements its Commonwealth's Attorney's salary – as many, if not most, localities already do – this creates an unfunded mandate requiring that they also supplement their Public Defender's salary.
- Commonwealth's Attorneys are independently elected, constitutional officers, while Public Defenders are state employees. Requiring local governments to fund state employees sets a dangerous precedent.
- The legislation lacks clarity on how to properly address Commonwealth's Attorney's offices or Public Defender's offices that are shared by multiple localities.

- The legislation lacks clarity on how to address supplements to positions that exist in a Commonwealth’s Attorney’s office but do not exist in a Public Defender’s office.
- Local discretionary funding decisions must remain local governing body decisions.
- This would take effect for any supplement made on or after July 1, 2020, meaning that it directly affects local budgets now under development.

HB 869 narrowly escaped the House Courts of Justice Committee, first *failing* to report, 11-11, but eventually reporting to the House, 12-10, after the vote was reconsidered. On the House floor, the bill barely survived by a razor thin, two-vote margin (48-50). HB 869 will be heard now by the Senate Judiciary Committee on Wednesday afternoon – one half hour after the adjournment of the full Senate.

KEY CONTACTS

[Senate Judiciary Committee](#) – Email entire committee

[Senate Judiciary Committee](#): [Edwards \(Chair\)](#), [Saslaw](#), [Norment](#), [Lucas](#), [Obenshain](#), [McDougle](#), [Stuart](#), [Stanley](#), [Chafin](#), [Deeds](#), [Petersen](#), [Surovell](#), [McClellan](#), [Boysko](#), [Morrissey](#)

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

Problematic “preclearance” bill to be heard in Senate Privileges and Elections; calls needed

[HB 761 \(VanValkenburg\)](#) would establish a process by which the state would review certain election practices at the local level before those actions could take effect, similar to the federal preclearance previously required under the Voting Rights Act. The bill passed the House 59-40 and has been referred to the Senate Privileges and Elections Committee.

VACo opposes this bill and has raised concerns during hearings in the House about how the proposed preclearance process would be implemented, in particular, the need to avoid unnecessary delays in implementing routine changes in practice, such as minor changes to polling locations.

ACTION REQUIRED – Please express concerns about HB 761 to members of the [Senate Privileges and Elections Committee](#).

HB 761 would apply to any locality that has a voting-age population containing two or more racial or ethnic groups, each constituting at least 20 percent of the voting-age population. The list of covered jurisdictions would be determined each year by the Attorney General, in consultation with the State Board of Elections and relevant executive branch agencies.

For covered localities, before enacting certain voting practices or procedures, the governing body would be required to seek preclearance through one of two options: (1) seeking a declaratory judgment in the circuit court that the practice would not impose barriers to voting on account of race or color or membership in a language minority group, or (2) submitting the practice to the Office of the Attorney General, who would have 60 days to object (the bill would allow for an expedited approval upon good cause shown). The governing body would be able to appeal the Attorney General's objection in the circuit court, and an aggrieved voter would be able to appeal the Attorney General's lack of objection, if his or her right to vote was affected by the covered practice.

Practices that would require preclearance include changes to the method of election of members of a governing body or school board; changes to the boundaries of a jurisdiction or to election districts or wards within the jurisdiction; or changes that would reduce the number of, consolidate, or relocate polling places (except under certain emergency circumstances).

KEY POINTS

- Federal preclearance requirements applied to states and political subdivisions with a history of imposing barriers to voting by members of minority communities. HB 761's definition of "covered jurisdiction" seems to take the position that a certain level of racial or ethnic diversity automatically requires state oversight of voting practices, regardless of whether a jurisdiction has any recent history of discriminatory action.
- The bill does not apply to the state, which prescribes voter qualifications and many voting-related practices by statute or regulation.
- The localities covered by the legislation may change from year to year with fluctuations in demographics, making it difficult for localities to plan for potential legal costs associated with preclearing election practices.
- The bill would require even routine changes such as minor relocations of polling places to be precleared. Current law requires transparency in any polling place or precinct changes; polling places and precincts must be adopted by ordinance, and notice of any change must be mailed to affected voters and published in a general-circulation newspaper once a week for two weeks. Notice of a change in location of the general registrar's office is required by posting on the county or city website, posting at not less than 10

public places, or by publication in a general-circulation newsletter.

- The bill will add a layer of state review of local redistricting plans, which could be challenging for localities who must prepare for November 2021 local elections.

KEY CONTACTS

[Senate Privileges and Elections Committee](#) – Email entire committee

[Senate Privileges and Elections Committee](#): [Deeds \(Chair\)](#), [Howell](#), [Vogel](#), [Reeves](#), [Ebbin](#), [Chafin](#), [Ruff](#), [Spruill](#), [Peake](#), [McDougle](#), [Surovell](#), [Mason](#), [McClellan](#), [Boysko](#), [Bell](#)

VACo Contact: [Katie Boyle](#)

Stormwater pond inspection bill fails to survive scrutiny of subcommittee

A troubling bill that would have loosened inspection requirements for stormwater ponds failed to advance in the House of Delegates.

[SB 1007 \(Reeves\)](#) directs the State Water Control Board to require that any long-term maintenance agreement for a stormwater pond provide for inspections to be done no more frequently than every three years. Initially, when introduced on the Senate side, the bill had stipulated that inspections could occur no more frequently than every five years, though it was later amended to three years.

While SB 1007 initially passed the Senate without much trouble, the legislation ran into staunch opposition in the House of Delegates from environmental organizations, local governments, and the Northam Administration.

After discussing a number of potential problems with the bill, including possible environmental impacts, local government preemption issues, and conflicts that would arise due to permitting requirements, the Chesapeake Subcommittee of the House Agriculture, Chesapeake and Natural Resources Committee ultimately voted to lay the bill on the table, 5-3.

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

Competing plastic bag tax proposals cross over

Both the House and Senate have struggled throughout the session to develop consensus proposals to impose taxes on plastic bags provided by retailers. Areas of dispute include whether the tax should be levied statewide or on a regional basis, whether taxes should be imposed by the state or by localities, and the use of the revenues generated. Two House bills are now before the Senate Finance and Appropriations Committee, and a Senate bill has been referred to the House Finance Committee.

[HB 534 \(Carr\)](#) would impose a five-cent fee on disposable plastic bags, collected by the state Tax Commissioner, beginning July 1, 2021. Certain bags, such as those provided to transport newspapers, dry cleaning, or certain meat or dairy products, would be exempt from the fee. Retailers would be allowed to retain one cent of the five-cent fee, and the remaining revenues would be divided between the Water Quality Improvement Fund and the Litter Control and Recycling Fund. This bill narrowly passed the House (52-46) after initially failing on the House floor by one vote.

[HB 1151 \(Lopez\)](#) would authorize localities to impose a five-cent tax on each disposable plastic bag (the same exemptions as in HB 534 would apply), beginning July 1, 2020. The Tax Commissioner would collect the tax. Retailers would be authorized to retain one cent of the tax, and the remaining revenues, after the Department of Taxation recouped its expenses for administering the tax, would be divided between the Water Quality Improvement Fund and the Natural Resources Commitment Fund. This bill also passed narrowly (50-46).

[SB 11 \(Ebbin\)](#), as amended on the Senate floor, would establish a bifurcated system: in Planning District Eight, the state would impose a five-cent tax on each plastic bag, which would be collected by each locality, and in the rest of the state, the tax would be imposed by local ordinance and collected locally. All revenues collected by localities would be directed to environmental purposes, such as education programs or litter mitigation. The same exemptions for certain plastic bags used for certain purposes, as in the other bills, would apply. Beginning July 1, 2021, and ending July 1, 2023, retailers would be allowed to retain two cents per bag, but would be required to use half of this amount to promote the use of reusable bags; after that time, retailers would be allowed to retain one cent, but without restriction on the use of those funds. The bill would take effect July 1, 2021. A floor version passed 26-14 after the Senate Finance and Appropriations version (which imposed the tax statewide) failed, with the Lieutenant Governor casting the tie-breaking vote against the bill.

VACo Contact: [Katie Boyle](#)

Differing approaches to redistricting reform still in play

After several years of unsuccessful attempts to reform Virginia's redistricting process, the 2019 General Assembly approved a Constitutional amendment that would task a 16-member Virginia Redistricting Commission with drawing district lines for the General Assembly and the U.S. House of Representatives. Since a Constitutional amendment must pass the legislature twice in identical form before being submitted to the voters, this amendment is being considered by the 2020 General Assembly as [SJ 18 \(Barker\)](#), [HJ 34 \(Cole, M.\)](#), and [HJ 71 \(VanValkenburg\)](#). The General Assembly is also considering bills that would accompany the Constitutional amendments by providing additional parameters for the establishment and operation of the Commission, as well as a bill that is intended as a replacement for the Constitutional amendment. In addition, several bills are under consideration that would specify criteria, which would govern the drawing of district lines.

Constitutional amendment

The Senate passed the Constitutional amendment by a vote of 38-2. The House is still considering the House versions of the amendment (the procedural resolution governing the schedule of the session sets a deadline of February 20 for each chamber to pass Constitutional amendments that are being considered for the second year).

Key provisions of the Constitutional amendment:

- Establishes a 16-member Virginia Redistricting Commission, which would consist of eight legislators (two Senators from the majority party, appointed by the President pro tempore, and two Senators from the minority party, appointed by the minority leader; two Delegates from the majority party, appointed by the Speaker, and two Delegates from the minority party, appointed by the minority leader) and eight citizen members (chosen by a committee of retired circuit court judges from lists submitted by General Assembly leadership).
- The Commission shall submit plans for General Assembly districts no later than 45 days following the receipt of Census data, and shall submit plans for Congressional districts either 60 days after the receipt of Census data or by July 1, whichever is later. Plans must be supported by six of the eight legislative members and six of the eight citizen members in order to be submitted.
- The General Assembly would vote on the House of Delegates and Senate districts as a single bill on which no amendments would be permitted. If the General Assembly fails to approve the bill within 15 days of receipt, the

Commission must submit a new plan within 14 days, which the General Assembly must vote on within seven days of receipt. If the General Assembly still fails to approve the plan, the Supreme Court of Virginia will draw the districts.

- Commission meetings must be open to the public and the Commission must hold three public hearings in different parts of the state prior to proposing any redistricting plans, and all records will be considered public information.

Virginia Redistricting Commission bills

[HB 758 \(VanValkenburg\)](#), which passed the House 83-14-2, and [SB 203 \(Lucas\)](#), which passed the Senate with the Lieutenant Governor's tiebreaking vote, are nearly identical bills that provide additional detail on the selection and operations of the Virginia Redistricting Commission, including requirements for the Supreme Court's development of district lines, should the Commission proposals fail to be enacted by the General Assembly. The bills are contingent on approval of the Constitutional amendment at the November 2020 general election.

Key provisions of HB 758/SB 203:

- Specifies qualifications for the members of the Redistricting Commission Selection Committee, who are retired circuit court judges; the legislation would bar service by judges who are related to members of Congress or the General Assembly and would require consideration of the racial, ethnic, geographic, and gender diversity of the Commonwealth in selecting the members.
- Requires the Selection Committee to establish an application process for Commission members and specifies certain information that must be collected from applicants with respect to their political activities and employment history and that of their relatives. Requires Virginia Redistricting Commission members to be selected with consideration to the racial, ethnic, geographic, and gender diversity of the Commonwealth and specifies certain disqualifications from service on the Commission.
- Sets out requirements for public participation in the Commission's deliberations.
- Specifies criteria for establishment of congressional and General Assembly districts, to include:
 - A population deviation of no more than 5 percent when drawing districts
 - Adherence to Constitutional provisions and federal and state laws and judicial decisions regarding racial and ethnic fairness
 - Prohibitions on drawing districts that result in a denial or abridgement of the right of any citizen to vote on account of race or color or

membership in a language minority group, or limitations on the ability of any racial or language minority group to participate in the political process and to elect candidates of their choice

- Requirements to preserve communities of interest and to draw districts that are contiguous and compact and do not, when considered on a statewide basis, unduly favor or disfavor any political party
- Requires that an individual incarcerated in a federal, state, or local correctional facility be counted either at his or her address at the time of incarceration (if the address was located within the Commonwealth), or at the location of the facility (if his or her address at the time of incarceration was located outside the Commonwealth or is not known).
- Spells out the procedures for submission of proposed plans to the General Assembly.
- Requires the Supreme Court to enact rules and procedures governing its establishment of congressional or General Assembly districts in case the General Assembly fails to enact plans recommended by the Commission, which include requirements for public participation and the appointment of two special masters from lists submitted by General Assembly leadership. HB 758 states that the Court “shall follow” these stipulations, while SB 203 states that the Court “shall give consideration to” them.

[HB 1256 \(Price\)](#) provides an alternative mechanism for redistricting that would not require passage of the Constitutional amendment and would not provide for the Supreme Court’s involvement in drawing districts.

Key provisions of HB 1256:

- Establishes a Virginia Redistricting Advisory Commission, with a composition as envisioned in HB 758/SB 203, and generally selected in the same manner by the Redistricting Commission Selection Committee.
- Provides for seven public hearings by the Commission (the other bills contemplate three hearings, plus additional hearings by the House and Senate Privileges and Elections Committees), as well as video recording and archiving of meetings.
- Contains the same criteria for drawing districts as in HB 758/SB 203, including the counting of incarcerated individuals at their pre-incarceration addresses.
- Provides that plans submitted by the Commission for Congressional, House of Delegates, and Senate districts would be voted on as separate bills. No amendments would be allowed during the first two attempts at consideration

of plans except “those of a purely corrective nature.” If the first plan fails, a second plan would be considered; if a third plan is required, the bill would be subject to amendment “in the same manner as other bills,” so the General Assembly could rework the plan.

Criteria bills

[HB 1255 \(Price\)/SB 717 \(McClellan\)](#) specify the criteria by which districts would be drawn. These criteria are also embedded in the bills establishing the Virginia Redistricting Commission (HB 758/SB 203) or the Virginia Redistricting Advisory Commission (HB 1256), and would include racial and ethnic fairness; compactness, contiguity, and the preservation of communities of interest; and the counting of incarcerated individuals at their pre-incarcerated addresses (if known and if located within the Commonwealth) discussed above. HB 1255 passed the House 55-45, and SB 717 passed the Senate 20-19.

Next steps

The House’s deadline to approve the House version of the Constitutional amendment is Thursday, February 20. If it opts not to take up the House amendments, it could still consider and act favorably on the Senate version. The two approaches to the Commission advanced by the House (HB 758 and HB 1256) are now before Senate Privileges and Elections Committee.

VACo Contact: [Katie Boyle](#)

Clean energy financing bill reports out of Senate Local Government, heads to Senate Finance

Delegate Nancy Guy’s bill aimed at helping localities more easily take advantage of creative clean energy financing mechanisms has survived its first hurdle in the Senate, reporting out of the Senate Local Government Committee, 14-1, on February 17.

[HB 654 \(Guy\)](#) authorizes the Department of Mines, Minerals and Energy (DMME) to sponsor a statewide clean energy financing program. More specifically, this legislation would enable DMME to engage with a private entity in order to develop and administer a statewide Commercial Property Assessed Clean Energy (PACE) program.

PACE is an innovative financing mechanism that enables low-cost and long-term funding for energy efficiency, renewable energy, and water conservation projects. The appeal of PACE is that it can cover up to 100 percent of a project’s upfront hard and soft costs, and then can be repaid on the property tax bill over a period of up to 30 years, enabling longer payback periods that can be cash flow positive from day one. PACE financing is repaid as an assessment on the

property's regular tax bill and is processed the same way as other local public benefit assessments (such as sidewalks or sewers).

While several localities have already adopted their own local C-PACE programs, many localities do not have the time or resources to develop and administer their own. HB 654 seeks to rectify this, creating a statewide framework that any locality could take advantage of.

HB 654 initially passed the House by a wide margin, 75-23. VACo spoke in favor of the legislation before the Senate Local Government Committee and will continue to support the bill before the Senate Finance and Appropriations Committee, where it will next be heard.

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

Local government urban fertilizer program bill advances out of House subcommittee

After unanimously passing the Senate, [SB 849 \(Mason\)](#) has successfully taken its first steps in the House of Delegates, surviving the Chesapeake Subcommittee of the House Agriculture, Chesapeake and Natural Resources Committee. The bill authorizes local governments to enter into agreements with the Commissioner of the Virginia Department of Agriculture and Consumer Services (VDACS) to provide oversight and data collection assistance related to the requirements of certified lawn fertilizer contractor-applicators.

SB 849 (Mason) is one of the Northam Administration's Chesapeake Bay Watershed Implementation Plan (WIP) bills and is simply designed to give a local government the option to work with the VDACS Commissioner to help administer an urban fertilizer program. It is purely permissive in nature. Prior to the bill's introduction, the Administration worked with VACo to ensure that the authority to enter into agreements with VDACS to administer an urban fertilizer program was drafted as a local option, not a mandate.

In addition to the local option to work with VDACS, the bill also reduces from 100 to 50 the total number of acres of nonagricultural land to which a contractor-applicator may apply lawn fertilizer and lawn maintenance fertilizer annually without submitting an annual report to the Commissioner. The bill also increases from \$250 to \$1,000 the civil penalty imposed on a contractor-applicator for a violation of applicable regulations.

VACo spoke in favor of SB 849 and will continue to support the bill before the full House Agriculture, Chesapeake and Natural Resources Committee.

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

Money Committees report budgets

The House Appropriations Committee and Senate Finance and Appropriations Committee reported their budget proposals on Sunday, February 16. Both committees made providing compensation increases for state employees, state-supported local employees, and teachers a priority, as well as making additional deposits to the state's reserve funds. The full text of the Committees' budget amendments will be released on Tuesday, February 18, and VACo will be providing a more detailed review of the two proposals later this week. The full House and Senate are scheduled to vote on their respective budgets on Thursday, February 20, and the budget must be formally placed in conference by Wednesday, February 26.

VACo Contact: [Katie Boyle](#)

Bill authorizing local government employees to issue summonses passes House and Senate

A bill introduced by Delegate Steve Heretick relating to local government's power to issue summonses has now passed the House and Senate and will be sent to the Governor for consideration.

[HB 1213 \(Heretick\)](#) permits localities to appoint and train local government employees to enforce local ordinances by issuing summonses for misdemeanor violations of ordinances that are within the scope of the employee's employment. The bill provides that such employees shall not have the power and authority of constables at common law and their power shall be limited to issuing such summonses in their locality. As such, this bill and this new authority does not apply should the summons be for any violation above a misdemeanor and result in possible arrest.

HB 1213 initially reported out of the House Courts of Justice Committee, 19-0, and passed the full House of Delegates unanimously in a block vote. The bill had similar success in the Senate, reporting out of the Senate Judiciary Committee, 15-0, and passing the Senate unanimously on Monday, February 17.

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

Key Dates for 2020 General Assembly Session

The House and Senate adopted the procedural resolution governing the schedule for the 2020 General Assembly session on January 10, 2020. Key dates for the 2020 Session are as follows:

- **January 8:** General Assembly convened at noon. Bills that were “prefiled” were due to be submitted by 10 a.m. Bills affecting the Virginia Retirement System or creating or continuing a study were required to be filed before adjournment of their respective chambers of introduction.
- **January 10:** Deadline for submission of budget amendments by 5 p.m.
- **January 17:** Deadline for remaining bills to be filed at 3 p.m. (there are some exceptions, such as when legislation is granted unanimous consent to be introduced after the deadline).
- **February 11:** “Crossover” deadline for each chamber to complete work on legislation originating in that chamber (except for the budget bill)
- **February 16:** House Appropriations and Senate Finance and Appropriations Committees report their respective budgets by midnight.
- **February 20:** Deadline for each chamber to complete work on its budget.
- **February 26:** 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.
- **March 2:** Deadline for committee action on bills at midnight.
- **March 7:** Scheduled adjournment *sine die*.
- **April 22:** Reconvened session to consider gubernatorial amendments and vetoes.

VACo Contact: [Katie Boyle](#)