

Capitol Contact

Virginia General Assembly

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



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Revenue fairness bills heading to conference

[HB 785 \(Watts and Kilgore\)](#) and [SB 588 \(Hanger, and incorporating bills by Senators Favola, Lewis, Mason, and Locke\)](#) are working their respective ways toward a conference committee to reconcile the differences between the two bills. HB 785 was heard in the Senate Finance and Appropriations Committee last week and conformed to SB 588 as it passed the Senate, with one additional amendment (to change the date after which a locality in which a meals tax referendum had failed would need to delay imposing the tax). The bill then passed the Senate in its amended form. SB 588 was heard in the House Finance Committee and conformed to HB 785 as it passed the House; the amended bill passed the House floor on February 24. The next steps are for the House to reject the Senate amendments and vice versa; then each chamber will insist on its amendments and appoint committees of conference to resolve the differences.

The key difference between the two bills is the breadth of the authority they would grant to Counties. The Senate approach would authorize Counties to impose admissions taxes with a cap of 10 percent (with the exception of James City County and York County); meals taxes with a cap of 6 percent; and cigarette taxes with a cap of 40 cents per pack. Transient occupancy taxes would be allowed up to 5 percent, with revenues to be dedicated to tourism promotion. The bill would take effect July 1, 2021, and would require a stakeholder study in the interim of streamlining the process of collecting cigarette taxes. The bill would also require the Division of Legislative Services to convene a stakeholder workgroup to recommend any additional technical amendments that might be necessary to effectuate the bill's provisions and to review the differences between County and City authorities and responsibilities. The Senate has included language in the House bill providing that any County in which a meals tax referendum failed between July 1, 2016, and July 1, 2020, would not be able to impose a meals tax until July 1, 2022.

The House approach would not impose caps on the taxes that might be levied, but would require a county in which a meals tax referendum failed prior to July 1, 2020, to wait six years after the date of the referendum to levy a meals tax (unless a subsequent referendum had passed). The bill would also require revenues from transient occupancy taxes imposed at rates between 2 percent and 5 percent to be used for tourism promotion, but would allow revenues generated by rates above 5 percent to be used for general purposes.

VACo Contact: [Katie Boyle](#)

Peer-to-peer vehicle rental bill steers out of House Finance and House Appropriations, reports to full House of Delegates

Legislation seeking to create a comprehensive framework for peer-to-peer vehicle rental platforms has successfully cleared both the House Finance Committee and the House Appropriations Committee and is now set to be considered by the full House.

[SB 735 \(Newman\)](#) is an all-inclusive, compromise bill developed and agreed to by all parties involved in and affected by peer-to-peer vehicle rentals, including local governments, the peer-to-peer industry, car rental companies, insurance representatives, and more. Originally, VACo had partnered with Enterprise, Hertz, the American Car Rental Association, as well as several other regional and local governmental associations to introduce [SB 749 \(Cosgrove\)](#), [HB 891 \(Sickles\)](#) and [HB 892 \(Sickles\)](#), while the peer-to-peer rental industry introduced their own legislation, [SB 735 \(Newman\)](#) and [HB 1539 \(Jones\)](#). One of the main differences (and ultimately the main sticking point) between these two bills was the tax structure that was proposed, an issue that led to the defeat of HB 891 and HB 892 in the House Finance Committee (HB 1539 was rereferred to the House Appropriations Committee but not taken up). After several weeks of negotiations and new hearings, ultimately a new compromise bill was drafted by all parties and introduced as a substitute for SB 735.

Under this new legislation, owners of more than 10 vehicles that use one of these peer-to-peer vehicle rental platforms will be taxed at the same rate as ordinary rental companies. Under the motor vehicle rental tax (MVRT) rate, rentals are taxed at a 10 percent composite rate (4 percent for localities). For owners of 10 or fewer vehicles, however, a tax of 6.5 percent of gross proceeds shall be paid from July 1, 2020, until July 1, 2021. After July 1, 2021, this rate climbs to 7 percent of gross proceeds. This equates to a rate of 2.5 percent to be paid to localities in the first year, and 3 percent each year after.

SB 735 reported from the Senate Finance and Appropriations Committee, 14-1-1, and ultimately passed the full Senate by a vote of 40-0. Last week, SB 735 was heard and unanimously reported out of both the House Finance Committee and the House Appropriations Committee. The Bill is now set to be taken up and evaluated by the full House of Delegates.

VACo is grateful to have been a part of this coalition and has been pleased to support and speak on behalf of the compromise legislation as it has made its way through the General Assembly.

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

Luck likely running out for games of skill

Legislation prohibiting the use of “games of skill” is headed towards passage by both the House and Senate. [HB 881 \(Bulova\)](#) / [SB 971 \(Howell\)](#) specifically define games of skill and add them to the category of illegal gambling prohibited in code. The progress of these bills reflects the will of the General Assembly to enforce a ban on the games instead of pursuing other revenue generating options involving legalization. This is mainly driven by concerns that the games are not well-regulated and having an adverse impact on Lottery revenues, which in turn reduces flexible funding provided to localities for K-12 public education.

Games of skill, also known as regulated electronic gaming devices or “grey machines” are currently found throughout the Commonwealth, often in bars, convenience stores, gas stations, and restaurants. The term grey machines refer to the notion that these machines operate in a grey area of the law; it is currently unclear whether they are legal. These games typically operate in a manner like an electric slot machine and typically rely on a player’s memory to influence the outcome of a wager. Advocates of the games contend that the ability of players to alter the outcome of a particular “spin” differentiates grey machines from gambling based on chance, which is currently illegal in Virginia. There is currently no licensing requirement, regulation, or taxation of grey machine gaming revenue.

According to a November 2019 [report](#) from JLARC on Gaming in the Commonwealth, JLAC staff estimate that more than 9,000 grey machines are in operation currently and could generate annual statewide revenue estimated between \$83 million and \$468 million. This revenue not only goes untaxed, but also is likely depressing revenues from authorized gaming such as the Lottery. This is important to localities as Lottery revenues are distributed on a per-pupil basis to local school divisions to supplement the costs of K-12 education. In FY 2018, this amounted to \$606 million.

At the start of the 2020 General Assembly session, several bills were introduced to either regulate and tax grey machines, or to ban them outright. [HB 1589 \(Bagby\)](#) and [SB 909 \(Norment\)](#) among others, would have provided a regulatory and taxing framework, had they not been left in the House General Laws Committee and incorporate into SB 971 respectively. However, the General Assembly may wish to revisit this issue in future sessions and if/when a ban on grey machines has time to take effect.

HB 881 was reported from the Senate Finance and Appropriations Committee with an amendment 12-3. SB 971 passed the House 69-29-1.

VACo Contact: [Jeremy R. Bennett](#)

Critical local jail funding bill fails

A bill seeking to compensate local governments for the costs associated with local jails failed to advance out of the House Public Safety Committee on Friday morning, being tabled due to its fiscal impact on the state.

[SB 189 \(Peake\)](#) provided for local jails to be compensated for the actual cost of incarcerating convicted felons at the rate calculated in the Compensation Board's annual jail cost report. Current law provides for jails to be compensated for the cost of incarceration of convicted felons as provided for in the general appropriation act.

Currently, localities pay approximately 57.7 percent of jail costs, while the state only pays approximately 36.2 percent. With state funding already having been slashed and costs continuing to rise, this funding strain on localities continues to grow more and more dire. This cost to localities will only get worse in the future, as the Board of Corrections is currently working on new behavioral health and medical care standards for local and regional jails, and those standards will require more resources to implement. The initial cost estimate for the behavioral health care standards alone is approximately \$40 million.

Senator Mark Peake's bill sought to more fully compensate localities for these costs, stating that the new compensation is to be based on "actual cost of incarceration as calculated in the jail cost report prepared annually by the Compensation Board." The Virginia Department of Planning and Budget (DPB) analyzed this and found that this could be done in various ways and would cost the state anywhere from \$2.5 million to \$76.6 million.

SB 189 passed the Senate without much issue, but by the time it was heard in the House the amended budget had been introduced and did not include any funding for this issue. As such, the House Public Safety Committee elected to table the bill, killing it for the year.

VACo spoke in support of SB 189 before both the Senate and House. We are grateful that Senator Peake introduced this bill and are highly appreciative of his hard work on this important matter.

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

Consolidation of early childhood programs at the state level moving forward

Two bills, [HB 1012 \(Bulova\)](#) and [SB 578 \(Howell\)](#), that would consolidate oversight and administration of early childhood programs at the state level within the Department of Education are moving forward this session. Similar legislation had been considered last year, but was delayed to allow for further discussion and the development of a plan by key state leaders. Proponents of consolidation at the state level have suggested that Virginia’s current system of administration and oversight is fragmented – for example, the Virginia Preschool Initiative is administered by the Department of Education, but the child care subsidy program is currently overseen by the Department of Social Services – and that it would be more beneficial to consider all early-learning experiences to be part of a system of early care and education.

The bills would direct the Board of Education to establish a “statewide unified public-private system for early childhood care and education in the Commonwealth to ensure that every child has the opportunity to enter kindergarten healthy and ready to learn.” The Board would be required to establish an early childhood care and education advisory committee, representing licensed providers, license-exempt providers, Head Start providers, local school divisions, the business community, higher education representatives with early childhood expertise, and pediatricians, among other stakeholders. The Board would be responsible for developing a uniform quality rating system, in which all publicly-funded providers of early childhood care would be required to participate (Virginia’s current quality rating system is voluntary). The Board must develop the system by July 1, 2021, and initial quality ratings would be published in fall 2023.

Licensure of child day programs and family day systems, which currently falls under the Board of Social Services, would be transferred to the Board of Education. Authority provided to certain localities in Northern Virginia to regulate child care facilities would be retained. Administration of the child care subsidy program at the local level would remain with local departments of social services, although the bill provides that the Commissioner of Social Services and local departments will administer the program under the auspices of the State Child Care Plan prepared by the Department of Education. Local administration of child care subsidy was an issue discussed last year and many advocates

suggested that retaining this program within local departments would help those departments serve families (who may be receiving other services from local departments in addition to child care subsidies) in a holistic way.

The bills have a delayed effective date of July 1, 2021 (with the exception of the establishment of the advisory committee, which will take effect July 1, 2020), in order to allow the Superintendent of Public Instruction to develop a plan to implement the unified early childhood care and education system, to include statutory and regulatory changes necessary to transfer authority for certain federal programs, such as the Child Care and Development Block Grant and Head Start State Collaboration Office grants, to the Department of Education. The Departments of Social Services and Education are directed to develop a plan for the seamless transition of programs.

The bills are in keeping with a substantial focus on early childhood by the Northam Administration. The Governor's introduced budget included approximately \$95 million to expand access to pre-kindergarten for at-risk three- and four-year olds, by increasing the Virginia Preschool Initiative (VPI) per-pupil amount, funding additional slots for children on the VPI waiting list, and providing additional grants for public-private partnerships to provide preschool for at-risk children, among other investments.

VACo Contacts: [Katie Boyle](#) and [Jeremy Bennett](#)

Senate Finance greenlights new reporting requirements for discharges of deleterious substances

The Senate Finance and Appropriations Committee has greenlit Delegate Kathy Tran's new requirements for reporting discharges of deleterious substances into state waters, voting to report the bill to the full Senate, 15-0.

[HB 1205 \(Tran\)](#) requires that the Department of Environmental Quality (DEQ) shall provide to the Virginia Department of Health (VDH) and local newspapers, television stations, and radio stations, and shall report via official social media accounts and email notification lists, any information pertaining to the discharge of deleterious substances (chemicals, oils, sewage, etc.) into state waters, unless the DEQ determines that the discharge will have a de minimis impact. Current law only requires that the DEQ provide this information to the local newspapers.

As originally introduced, HB 1205 was troubling and earned opposition from VACo and others, as it narrowed the reporting window from 24 hours to 8 hours. Due to concerns over the feasibility of such reporting, however, this was later amended first to 12 hours and then again back to 24 hours.

As amended, HB 1205 passed out of the House Agriculture, Chesapeake and Natural Resources Committee by a 14-8 vote and passed the full House of Delegates by a vote of 59-37. The legislation was first heard by the Senate Agriculture, Conservation and Natural Resources Committee, where it was reported and rereferred to the Senate Finance Committee. HB 1205 will now be taken up by the full Senate.

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

Mandate to provide prepaid postage with absentee ballots amended in Senate committee

[HB 220 \(Krizek\)](#) would require absentee ballots to be sent to voters with postage prepaid. Given the expected increase in absentee voting by mail in future elections with the elimination of the requirement that voters provide an excuse to vote absentee, this requirement could potentially impose significant costs on localities, in addition to the costs associated with early voting overall. In discussing the bill with VACo, the patron has expressed a willingness to work to secure state funding to assist localities or to make other arrangements to reduce mailing costs. The Senate Privileges and Elections Committee added a reenactment clause to the bill when it was heard on February 18, which would require the bill to be passed again next session in order to take effect.

VACo Contact: [Katie Boyle](#)

Tree preservation legislation passes Senate with amendments, heads back to House for final vote

[HB 520 \(Bulova\)](#) has successfully passed the full Senate by a vote of 33-3 and will now head back across the hall to the House of Delegates for a final vote.

HB 520 directs the Department of Environmental Quality (DEQ) to convene a stakeholder advisory group for the purpose of studying the planting or preservation of trees as a land cover type and as a stormwater best management practice (BMP). The bill was the result of several months of stakeholder conversations and negotiations between VACo, the Home Builders Association of Virginia (HBAV), the Virginia Municipal League (VML), and Arlington County about urban forestry and ways local governments could embrace tree preservation or replanting as a potential stormwater BMP that can help meet the goals of the Chesapeake Bay Phase III Watershed Implementation Plan (WIP).

While HB 520 encountered no real opposition in either Chamber, the Senate amended the bill to require that the findings and final report of this study group not only be published by the DEQ but also reported to the Chairs of the House Agriculture, Chesapeake and Natural Resources Committee and the Senate Agriculture, Conservation and Natural Resources Committee.

VACo has been proud to support and speak on behalf of HB 520 over the course of this General Assembly session. The bill – and its new amendments – will likely be reheard by the House in the next week and is expected to pass without issue.

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

Bill to cap liens for unpaid water and sewer bills is amended to only apply to residential property

[SB 826 \(McDougle\)](#) proposes a dollar limit on the lien a locality may place on real estate for unpaid water and sewer bills of tenants or lessees. Under current law such lien may be “up to three months of delinquent water and sewer charges.” The bill proposes to cap that amount at \$300. After passing the Senate, the bill was amended in the House Counties, Cities and Towns Committee to limit its application to only residential properties. The purpose of the amendment was to address concerns regarding potential reduction in revenues that may result in a fiscal liability to meet debt obligations for capital improvements to water and sewer systems.

The amended bill is on the House floor this week for consideration.

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

Local government urban fertilizer bill heads to the Governor’s desk

Senator Monty Mason’s bill pertaining to local government urban fertilizer programs successfully passed the full House of Delegates on Monday morning by a 63-36 vote and will now head to the Governor’s desk for evaluation and signing.

[SB 849 \(Mason\)](#) 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 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. In addition to this local option, 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.

Senator Mason's legislation is purely permissive in nature. Prior to the bill's introduction, the Northam Administration worked with VACo and other stakeholders 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.

VACo supports SB 849, which will soon be signed into law by Governor Ralph Northam.

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](#)