

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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School Modernization Legislation Overview

Many localities continue to face significant challenges raising local funding necessary to undertake school construction and renovation projects. Numerous factors impact the educational achievement of K-12 students, including the state of the facilities in which they are taught. Concern over the physical condition of schools in Virginia is not a [recent](#) development and several bills were introduced this session seeking to address an ongoing problem felt by communities across the Commonwealth. VACo supports additional state resources and additional funding options for localities for capital and school construction projects.

During the 2019 General Assembly session, enacted [legislation](#) granted authority to Halifax County to impose an additional local sales and use tax of 1 percent, the revenues of which would be obligated solely for capital projects for the construction or renovation of schools in the County. The tax would only apply if initiated by a resolution from the Board of Supervisors and approved by a subsequent voter referendum. The Board initiated the referendum, which Halifax County voters subsequently [passed](#) last November.

Several bills considered in the current General Assembly session have passed both the House and Senate and would grant the same authority conferred upon Halifax County to several additional localities. VACo supports legislation maintaining and enhancing local authority and autonomy including matters pertaining to revenue measures. [HB 200 \(Wright\)](#)/[SB 943 \(Ruff\)](#) would give the additional 1 percent revenue raising authority to Mecklenburg County. [HB 486 \(Marshall\)](#) would grant the same authority to Henry County, Northampton County, Patrick County, Pittsylvania County, and the City of Danville. [HB 1631 \(Edmunds\)](#) would grant this authority to Charlotte County as well. Lastly, [SB 224 \(Norment\)](#) would grant this authority to Gloucester County. These bills passed each chamber by wide margins and now head to Governor Northam for further action.

[SB 888 \(McClellan\)](#) establishes the Commission on School Construction and Modernization for the purpose of providing guidance and resources to local school divisions related to school construction and modernization and making funding recommendations to the General Assembly and the Governor. Total membership of the proposed Commission is still under debate by the House and Senate, but it would consist of legislators from both bodies, relevant executive branch agencies, and non-legislative citizen members. The bill passed both the House and Senate, but because of the disagreements over membership numbers, it is likely headed towards conference committee.

The Senate's version of the 2020-2022 budget contains an [amendment](#) to provide \$27.5 million in each year from the Lottery Proceeds Fund to provide grants for nonrecurring costs associated with school construction and modernization, including debt service payments on school projects completed during last 10 years.

Failed Bills

[SB 4 \(Stanley\)](#) would have created the Public School Assistance Fund and Program. The purpose of this program is to provide grants to school boards to be used solely for the purpose of repairing or replacing the roofs of public elementary and secondary school buildings. Priority would have been given to goals based on need and local ability to pay. Deteriorating and unmaintained school roofs can lead to additional problems such as water damage and mold. The bill was passed by the Senate and reported from the House Education Committee before being left in House Appropriations Committee without a vote being taken.

[SB 5 \(Stanley\)](#) would have required the Board of Education to prescribe by regulation uniform minimum standards for the erection of new school buildings and the modernization of existing school buildings. The bill would have required additional reporting and planning requirements for localities for an indeterminate local fiscal impact but met a similar fate to SB 4 by being left in House Appropriations Committee without a vote being taken.

[HB 1274 \(O'Quinn\)](#) / [SB 1087 \(Pillion\)](#) would have established the School Construction Fund and Program as a special non-reverting state fund to provide grants to local school boards leveraging additional resources to finance the design and construction of new school buildings or the modernization of existing ones. The House Appropriations Committee's Elementary and Secondary Education Subcommittee recommended laying HB 1274 on the table. SB 1087 passed the Senate unanimously but met a similar fate as it was left in House Appropriations Committee without a vote being taken.

[HB 86 \(Kilgore\)](#) would have permitted localities with local composite index's of less than 0.2000 and designated as fiscally distressed by the Appalachian Regional Commission or determined to have above-average fiscal stress or higher by the Virginia Commission on Local Government to expend up to 25 percent of the required local effort for basic aid for debt service on school building capital renovation or construction projects.

Though the fate of these bills varied, and some are likely headed towards enactment, the issue of school construction and modernization will likely continue to be considered by the General Assembly in future sessions. This is especially likely as the Virginia Board of Education considers [additional](#) review of the issue and localities continue to carry the primary responsibility for the construction and maintenance of school facilities without additional state support.

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

General Assembly approaches scheduled adjournment

Nearly 500 bills and resolutions await final action by the General Assembly as March 7, the scheduled date of adjournment *sine die*, approaches. The state budget is among the major pieces of legislation still under discussion in a conference committee. If a budget agreement is not reached today, it is likely that adjournment will be delayed in order to allow the required 48 hours for members to review the budget conference report before voting on it, unless a supermajority in both chambers agrees to suspend that rule. VACo will be reporting on the budget conference agreement in a future edition of Capitol Contact.

VACo Contact: [Katie Boyle](#)

Virginia Food Access Investment Fund (VFAIF) ready to be signed into law

As the final days of the 2020 legislative session drawn near, the Virginia Food Access Investment Fund (VFAIF) is that much closer to reality.

Senator Jennifer McClellan's bill, [SB 1073](#), has now passed both the Senate and House of Delegates. It first passed the Senate unanimously on February 5, and it just passed the House of Delegates on March 4 by a vote of 77-19-1. The House counterpart to this bill, Delegate Delores McQuinn's [HB 1509](#), has seen similar success in the General Assembly thus far. It passed the House of Delegates by a vote of 84-13-1 on February 11 and finally passed the full Senate by a unanimous vote on March 5. Now, both SB 1073 and HB 1509 will be sent to the Governor for consideration and eventual signing.

The Virginia Food Access Investment Program and Fund provide funding for the construction, rehabilitation, equipment upgrades, or expansion of grocery stores, small food retailers, and innovative food retail projects in underserved

communities. The effort is a refreshed and revamped form of a bill Delegate McQuinn has carried numerous times the past several years seeking to create the Virginia Grocery Investment Fund (VGIF). While the VGIF sought exclusively to provide funding for public-private partnerships that would aid in opening and expanding grocery stores in underserved communities (“food deserts”), the VFAIF has *two* components, one focusing on infrastructure and one focusing on nutrition efforts.

- Through a selected Community Development Financial Institution (CDFI), the VFAIF will provide funding for the construction, rehabilitation, equipment upgrades, and/or expansion of grocery stores, small food retailers, and innovative small food retail projects in underserved communities.
- On the nutrition incentive side, the Virginia Department of Agriculture and Consumer Services (VDACS) will partner with public and private sector partners to increase the number of Supplemental Nutrition Assistance Program (SNAP) retailers who participate in the Virginia Fresh Match Incentive Program. The Incentive Program provides SNAP recipients with a \$1 to \$1 match for nutritious fruits and vegetables.

While both bills creating the VFAIF are in good shape, the real question that remains is the level of funding that the Budget will provide for the Virginia Food Access Investment Fund. The House included \$5.8 million in FY 2021 for the Fund, while the Senate provided \$611,805 in FY 2021 and \$111,805 in FY 2022. The final level of funding is something the conference committee on the budget bill is currently trying to hammer out.

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

Important solar siting agreement plan bill heads to Governor’s desk

An important bill relating to local governments and siting agreements for solar energy facilities has cleared both the Senate and House of Delegates and will now be sent to Governor Northam.

[HB 1675 \(Hodges\)](#) requires any applicant seeking to locate a commercial solar energy or storage facility on any census tract meeting the eligibility requirements for an opportunity zone as designated by the federal Internal Revenue Service to execute a siting agreement with the host locality in which the census tract is located, prior to the issuance of a permit by rule or certificate of public need. The bill grants localities various powers in executing such siting agreement and contains certain requirements for the agreement provisions. The bill does not apply to any solar photovoltaic (electric energy) generation or storage facility that

has received zoning or site plan approval, preliminary or otherwise, from the host locality on or before January 1, 2020.

Simply put, HB 1675 essentially seeks to mimic the siting agreement process that localities already use for landfills.

This bill previously passed the House of Delegates on February 6 by a vote of 89-7, and on February 26 passed the Senate with amendments by a vote of 40-0. Late last week, the House reconsidered the legislation and ultimately voted to approve the substitute language by a 90-7-1 vote. HB 1675 will now be acted upon by the Governor.

VACo supported HB 1675 and spoke in favor of this important legislation throughout the General Assembly session.

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

Postage mandate reverts to Senate approach with reenactment clause

[HB 220 \(Krizek\)](#), as introduced, would require absentee ballots to be sent to voters with postage prepaid. Due to concerns over the potential fiscal impact to localities, the bill was amended in the Senate to include a reenactment clause, so that the bill would need to be revisited next year in order to take effect. The conference committee opted to take the Senate's approach, which VACo prefers; a delay will allow time to collect data on the use of by-mail voting under the new no-excuse legislation enacted this session, and would allow an opportunity to explore options for state assistance with postage costs, as the patron has expressed interest in undertaking. The conference report has been approved by the House and heads to the Senate for final approval.

VACo Contact: [Katie Boyle](#)

Bill expanding terminology for a County's presiding officer signed by Governor

A bill that broadens the terminology that a County's presiding officer may use for his/her title has been signed into law by Governor Northam.

[HB 738 \(Reid\)](#) specifies that the presiding officer of a board of supervisors shall be called "chairman," "chairwoman," "chair," "chairperson," or "chair-at-large," at the presiding officer's discretion. Prior to this bill's passage, Virginia law

required that all presiding officers be referred to as “chairman” in official correspondence.

Lawmakers have introduced similar bills in prior sessions, but Delegate Reid’s bill was the first to gain serious traction in the General Assembly, let alone make it to the Governor’s desk. HB 738 passed the House 91-8 and passed the Senate 36-3. The bill was signed into law by Governor Northam on March 4.

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

Clean energy project financing bill survives House and Senate, ready for Governor’s pen

A helpful bill that would enable more localities to embrace unique financing for energy and conservation projects has successfully finished its journey through the General Assembly and will be signed into law by the Governor.

[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 will rectify this, creating a statewide framework that any locality could decide to take advantage of.

HB 654 already passed the House of Delegates by a wide margin and is expected to see similar success on the Senate floor. The Senate will take a final vote on this measure within the next few days.

VACo supported HB 654 and was been pleased to speak in favor of the bill multiple times throughout the legislative session.

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

General Government bills of interest

Procurement bills of note

[HB 890 \(Sickles\)](#)/[SB 341 \(Locke\)](#) change the \$10 million threshold local public bodies have for using construction management to the threshold in Secretary of Administration's procedures, which is currently \$26 million.

Project Labor Agreements and Wage Agreements

[SB 8 \(Saslaw\)](#)/[HB 833 \(Foy\)](#) require contractors and subcontractors on state public works contracts above \$250,000 to pay the prevailing wage. The bill is permissive for localities who can require such by ordinance.

[HB 358 \(Lopez\)](#)/[SB 182 \(Saslaw\)](#) authorize any public body to require bidders, offerors, contractors or subcontractors to enter into project labor agreements for construction and public works projects.

Small Purchase

[HB 452 \(Murphy\)](#)/[SB 650 \(Boysko\)](#) increase from \$100,000 to \$200,000 the small purchases exemption under the Virginia Public Procurement Act for single or term contracts for goods and services other than professional services.

Statute of Limitations on construction contracts

[SB 607 \(Norment\)](#)/[HB 1300 \(Hurst\)](#) set the statute of limitations on construction contracts and A/E contracts for state agencies at 15 years from completion of the contract, which is earlier of final payment, final certificate of occupancy or written final acceptance. Or five years after written notice of defect. For localities the statute of limitations is still 5 years but for performance bonds localities have five years after completion, which is an increase from the current provision of one year.

Other procurement bills

[HB 1078 \(Hope\)](#) allows public bodies on certain contracts to include as a factor in evaluating proposals the proposer's employment of persons with disabilities to perform the specifications of the contract.

[SB 380 \(McPike\)](#) allows any locality to include in the Invitation to Bid criteria that may be used in determining whether a bidder who is not prequalified by the Virginia Department of Transportation is a responsible bidder. Such criteria may include a history or good faith assurances of (i) completion by the bidder and any potential subcontractors of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administration; (ii) participation by the bidder and any potential subcontractors in apprenticeship training programs approved by state agencies or the U.S. Department of Labor; or (iii) maintenance by the bidder and any potential subcontractors of records of compliance with applicable local, state, and federal laws.

Freedom of Information, Conflict of Interests and Public Comment; Amendments to Freedom of Information Required Training provisions

[SB 139 \(Stuart\)](#) provides that the training required for all elected public officials can be obtained through in-person as well as online means and also allows the required training completed between January 1, 2020, and July 1, 2020, to count towards the mandatory training requirements that become law July 1, 2020. [SB 138 \(Stuart\)](#) requires that regional public bodies have FOIA officers and that FOIA officers complete training every two years instead of yearly.

Virginia Conflict of Interest and Ethics Advisory Council; powers and duties; guidance; redaction of email addresses

[HB 1011 \(Herring\)](#) clarifies that the Virginia Conflict of Interest and Ethics Advisory Council may give guidance to constitutional officers and legislators regarding the prohibition on representing clients before their agency for one year after leaving office. The bill also requires the Council and the clerks of local governing bodies and school boards to redact email addresses from disclosure forms prior to releasing them to the public. Current law requires such entities to redact any residential address, personal telephone number, or signature.

State and Local Government Conflict of Interests Act and Virginia Freedom of Information Act; training requirements; executive directors and members of industrial development authorities and economic development authorities

[HB 1527 \(Webert\)/SB 701 \(Obenshain\)](#) require the executive director and members of each industrial development authority and economic development authority, as created by the Industrial Development and Revenue Bond Act, to take training on the provisions of the State and Local Government Conflict of Interests Act and the Freedom of Information Act at least once every two years. The bill requires such officials in office on July 1, 2020, to complete such training no later than December 31, 2020. Training on the Virginia Freedom of Information Act may be provided online by the Virginia Freedom of Information Advisory Council or the local government attorney. Training on the State and Local Government Conflict of Interests Act shall be provided by the Virginia Conflict of Interest and Ethics Advisory Council and may be provided online. The clerk of the respective governing body is responsible for maintaining training records.

FOIA tolling period

[SB 153 \(Stuart\)](#) provides that if a requester asks for a cost estimate in advance of a Virginia Freedom of Information Act request, the time to respond is tolled for the amount of time that elapses between notice of the cost estimate and the response from the requester, and that if the public body receives no response from the requester within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn. The bill clarifies that if a cost estimate exceeds \$200 and the public body requires an advance deposit, the public body may require the

requester to pay the advance deposit before the public body is required to process the request.

Public Comment at Meetings

[SB 977 \(Suetterlein\)](#) requires a governing body to provide members of the general public with the opportunity for public comment at a regular meeting at least quarterly.

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

VACo's tree preservation bill to be signed by the Governor

[HB 520 \(Bulova\)](#) has successfully cleared its final hurdle and is ready for the Governor's signature.

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. The House of Delegates accepted these amendments and once again passed HB 520, this time by a vote of 79-20

VACo has been proud to support and speak on behalf of HB 520 over the course of this General Assembly session.

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

Bill requiring written notice to adjoining property owners of zoning decisions is amended

[SB 589 \(Hanger\)](#), which requires zoning administrators to provide notice of all decisions and determinations to property owners adjacent to or across the road from the subject property, was amended so that it only applies to when such decisions could impair the ability of an adjacent property owner to meet the minimum capacity and yield requirements for a residential drinking well pursuant to [§ 32.1-176.4](#).

The bill was amended to address concerns raised about the larger number of written decisions and determinations that a single zoning administrator may make annually when responding for requests to do so, and the burden that would create to comply with the legislation should it become law.

Additionally, the requirement that such notification be delivered by first-class mail to the “*agent or occupants*” of adjacent property was modified to simply require the zoning administrator to provide a copy of any decision, or zoning determination, to adjacent property owners.

The bill has passed both chambers and headed to the Governor for consideration.

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

General Assembly approves new reporting requirements for discharges of deleterious substances into state waters

Legislation enhancing the requirements for reporting discharges of deleterious substances into state waters has now been approved by each chamber of the General Assembly.

[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 first passed the House of Delegates by a vote of 59-37 and passed the Senate 40-0 with slight amendments. The Senate's additional amendments were taken up by the full House earlier this week and ultimately passed by a vote of 60-38. HB 1205 will now be referred to the Governor.

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

Local government urban fertilizer legislation ready to become law

Having already passed the Senate, [SB 849 \(Mason\)](#) has now also passed the House of Delegates and is ready to be signed into law.

SB 849 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 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 was pleased to support SB 849 this session.

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](#)