

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, January 19, 2021

Legislation and Budget Amendments Seek to Implement Recommendations of JLARC's CSA Report

The Joint Legislative Audit and Review Commission released its long-awaited report on the Children's Services Act in November, offering a series of recommendations on ways to improve program administration, in particular the administration of private special education day placements. (VACo provided [an overview of the report's recommendations](#) in County Connections.)

Several bills and numerous budget amendments have been introduced to implement recommendations from the JLARC report. [SB 1313 \(Mason\)](#) was heard on January 14, alongside related legislation [SB 1099 \(Stuart\)](#), [SB 1114 \(Peake\)](#), and [SB 1133 \(Suetterlein\)](#). SB 1313 and its House companion, [HB 2117 \(VanValkenburg\)](#), are expected to be the legislative vehicles for provisions allowing more flexibility in the use of Children's Services Act funds to serve children in public schools. As introduced, the bills would authorize the use of CSA funds for time-limited transitional services for children returning to public school from a private day placement; these services could be provided by private providers under contract with the school division. The bills also incorporate additional recommendations from the JLARC report in restricting CSA special education funds to programs licensed by the Department of Education and directing the convening of a workgroup to develop a plan to transfer private special education day placement funding to the Department of Education. VACo and advocacy partners have requested the incorporation of amendments to clarify the duration and nature of transition services, as well as to add additional elements for consideration by the workgroup, such as the outcomes of public programs currently serving children with high-level needs.

[HB 2212 \(Plum\)](#) adds to the statutorily-required list of duties of the Director of the Office of Children's Services a directive to provide for effective program implementation by localities.

[HB 2289 \(Austin\)](#) authorizes the use of CSA funds for transitional services for children returning from a private day placement and for services for any child whose Individualized Education Program (IEP) team has determined that specialized services could prevent a more restrictive out-of-school placement, as long as these services are estimated to cost more than three times the average annual rate of public school education for a student who does not require the specialized services.

Several House budget amendments would implement additional recommendations (Senate budget amendments are expected to be posted later this week):

- [Item 138 #1h \(Plum\)](#) – directs the Department of Education to develop a plan for administration of CSA funds for students with disabilities, including use of these funds to provide services in public schools
- [Item 138 #2h \(Plum\)](#) – directs the Department of Education to report on certain aspects of private day school staffing and accreditation
- [Item 138 #3h \(Plum\)](#) – directs the Board of Education to promulgate regulations regarding seclusion and restraint in private day schools
- [Item 293 #1h \(Plum\)](#) – requires local CSA programs to serve children in the non-mandated eligibility category
- [Item 293 #2h \(Plum\)](#) – directs the Office of Children’s Services to submit a plan to modify its staffing and operations to enhance its oversight of local CSA programs
- [Item 293 #3h \(Plum\)](#) – directs the Office of Children’s Services to work with the Department of General Services and the Office of the Attorney General to develop statewide contracts to be made available to local programs where beneficial and feasible. VACo has historically supported this concept.
- [Item 293 #5h \(Plum\)](#) – bars receipt of CSA funding by private day schools unless they are licensed by the Virginia Department of Education

VACo Contact: [Katie Boyle](#)

VACo opposes procurement bills; contact House General Laws Committee members to oppose

VACo opposes two procurement bills offered by Delegate Dan Helmer that will be heard by the House General Laws Committee on Thursday, January 21.

[HB 2001 \(Helmer\)](#) would require localities to design certain buildings and renovations with Virginia Energy Conservation and Environmental Standards to include charging stations and tracking of energy efficiency and carbon emissions. The bill applies to new buildings in excess of 5,000 square feet or any building renovated that would increase the value of the building by 50%. There is an opt-out provision that requires a locality by resolution to complete a cost comparison of energy costs over 20 years versus construction without these requirements.

The bill passed a House General Laws Subcommittee on January 19 and will likely come before the full [General Laws Committee](#) on Thursday, January 21 at 1 pm. Please contact committee members to oppose HB 2001.

KEY POINTS

- The bill is a mandate on localities, it subverts the DHCD building code process and instead puts building standards in the Code of Virginia. Building Code rules and regulations should go through the building code amendment process.
- This is a state mandate with a local cost and some localities may not have the expertise to conduct the cost comparison.
- The state can exempt themselves by written report and analysis while localities must do so by resolution.

[HB 1811 \(Helmer\)](#), another state unfunded mandate, requires localities to select only Energy Star certified bids while procuring goods in certain circumstances. VACo opposes this bill, which passed a House General Laws Subcommittee on January 19, and will be heard by the full [General Laws Committee](#) on Thursday, January 21. HB 1811 provides that if a public body receives at least two bids that are Energy Star, it must select one of those bids. The public body cannot consider other preferences or cost, and as drafted, may be forced to accept a bid that greatly exceeds anticipated costs.

Please contact members of the House General Laws Committee to oppose HB1811.

KEY CONTACT

[House General Laws Committee](#) – email entire committee with one click

[House General Laws Committee: Bulova \(Chair\), Carr \(Vice Chair\), Torian, Simon, Murphy, Price, Krizek, Aird, Hurst, Adams, D.M., VanValkenburg, Tran, Convirs-Fowler, Wright, Cole, M.L., Knight, Morefield, Leftwich, Fowler, Miyares, Brewer, Wampler](#)

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

Workers' compensation legislation with local impact advances

Legislation that proposes several changes to the Virginia's Workers' Compensation Act with potentially significant impact to local governments have been filed and heard in subcommittee. On January 19, the House Labor and Commerce Committee's

Subcommittee #1 reviewed bills that would expand the list of presumptive illnesses for certain public employees covered under the Virginia Workers' Compensation Act.

[HB 2207 \(Jones\)](#) establishes a presumption that COVID-19, causing the death or disability of firefighters, emergency medical services (EMS) personnel, law-enforcement officers, and correctional officers, is an occupational disease compensable under the Workers' Compensation Act. The bill provides that such presumption applies to any death or disability occurring on or after March 12, 2020, caused by infection from the COVID-19 virus, provided that for any such death or disability that occurred on or after March 12, 2020, and prior to December 31, 2021, and that the claimant received a diagnosis of COVID-19 from a licensed physician, after either a presumptive positive test or a laboratory confirmed test for COVID-19, and presented with signs and symptoms of COVID-19 that required medical treatment. The bill allows that the presumption would not apply to any eligible employee who refused a vaccine requirement.

Though the intent of this legislation may be well-meaning, VACo staff expressed concerns to the Subcommittee that an expansion of workers' compensation presumptions for COVID-19, in addition to other recent changes last year in the benefits program, could result in substantial fiscal impacts to state and local governments at a time they are struggling to provide essential and expanded services to respond to the impacts of the pandemic.

Furthermore, creating a presumptive workers' compensation standard for a community spread disease introduces a level of liability unprecedented for the infectious disease presumption section of the Virginia Workers' Compensation Act. Whereas existing presumptive infectious diseases such as hepatitis or HIV are linked to a documented exposure to blood or bodily fluids, documenting exposure to COVID-19 poses its own challenges. Generally, workers' compensation does not cover community-spread illnesses like a cold or the flu because they usually cannot be directly tied to the workplace. Though COVID-19 can impact the health of individuals more drastically than either of these illnesses, the same principle applies. It is difficult to determine exactly when and where an individual may have contracted COVID-19, and whether that was in the course of normal employment or through individual actions of the employee outside of the workplace and the control of the employer.

Local governments and risk insurance providers have not budgeted for an expansion of liability to cover additional presumptions related to COVID-19. Many do not yet know if the number of infections will continue to increase or when a vaccine for the virus will become fully distributed. Furthermore, the potentially unknown latent effects of COVID-19, may include lifetime side effects that would need to be treated under a lifetime workers' compensation medical award. All of these unknowns create additional liabilities with significant fiscal impact to local governments. For these reasons, VACo staff reiterated that passage of any legislation that expands presumptions to include COVID-19 be done only if in concert with additional state

funding assistance to local governments to offset additional costs through risk insurance.

VACo staff noted that the patron of the bill introduced a budget amendment [placeholder](#), and strongly urged that if the Subcommittee voted to advance the bill, that the House Appropriations Committee consider the use of remaining unobligated or authorized but unallocated federal relief funding to ensure that local governments are not hit with this unexpected cost. The Subcommittee recommended to report the bill by a 6-2 vote. A senate companion of this legislation has been filed – [SB 1375 \(Saslaw\)](#) – and referred to the Senate Commerce and Labor Committee.

The Subcommittee also considered additional legislation that would address heart and hypertension presumptions for emergency medical services personnel. [HB 1818 \(Heretick\)](#), as originally written, would have mandated the addition of salaried or volunteer EMS personnel to the list of persons to whom, after five years of service, the occupational disease presumption for death caused by hypertension or heart disease applies. In that form, VACo would not be opposed to the intent of this legislation, however, VACo would be opposed to adding additional workers' compensation presumptions specifically for county employees or county supported employees with without additional state funding assistance to local governments to offset additional insurance liabilities. [HB 2080 \(Convirs-Fowler\)](#) as originally written would similarly add presumptions for hypertension or heart disease, but only apply to full-time salaried EMS employees employed by any locality that has opted to provide such a presumption via ordinance. After deliberation of both bills, the Subcommittee incorporated HB 2080 into HB 1818, and language was substituted to apply the presumption to both salaried and volunteer EMS, but with the addition of the language from HB 2080 preserving local option via ordinance. VACo staff expressed thanks to the patrons and the subcommittee for their efforts to prevent an unfunded mandate to local governments. A senate companion – [SB 1275 \(Marsden\)](#) – to HB 1818 as it was originally written has been filed and referred to the Senate Commerce and Labor Committee.

VACo staff will continue to advocate and provide updates on workers' compensation legislation with direct impact to local governments.

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

Sweeping “Environmental Justice” legislation introduced in the House

Sweeping “Environmental Justice” legislation has been introduced in the House by Delegate Shelly Simonds. [HB 2074 \(Simonds\)](#) proposes a wide array of initiatives and strategies for state and local governments.

At the local level, there are several proposals, most notably pertaining to permitting processes and comprehensive plan reviews.

Permitting

HB 2074 prohibits a permit for “any covered activity” from being issued unless the applicant and permitting authority have complied with a number of requirements. No permit shall be issued until the applicant has submitted and the permitting authority has approved a public involvement plan, a cumulative impact statement, and an environmental justice impact statement, if applicable.

Per the proposed legislation, “covered activity” means the construction, expansion, or operation of a facility that comprises a (i) fossil fuel-fired electric generating facility with a capacity of more than 25 megawatts; (ii) sludge or solid waste incinerator or combustor; (iii) sewage treatment plant with a capacity of more than 50 million gallons per day; (iv) recycling facility serving multiple localities, intermediate processing center, or volume reduction facility with a combined monthly volume in excess of 25 tons; (v) sanitary landfill, including a sanitary landfill that contains ash, construction or demolition debris, or solid waste; (vi) medical waste incinerator; (vii) major source of air pollution, as defined by the federal Clean Air Act, including a renewal of an existing facility's major source permit; (viii) fossil fuel-fired compressor station facility used to transport natural gas; (ix) underground or surface coal mine or mineral mine, including a renewal of an existing facility's permit; or (x) methane capture facility.

When it comes to the “cumulative impact” this section (as well as the bill’s other provisions) seeks to address, VACo is also concerned with how broadly the concept is defined. Per the bill’s proposed language, cumulative impact is defined as “the impact on human health or the environment that results from the incremental impact of a covered agency action when added to the effects of other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. [It] can result from individually minor but collectively significant actions taking place over a period of time.”

Comprehensive Plans

In addition to the aforementioned permitting requirements, HB 2074 also requires localities, during each review of its comprehensive plan, to include an environmental justice strategy. Such a strategy shall (1) identify each environmental justice community and fenceline community within the locality; (2) identify objectives and policies to reduce the unique or compounded health risks in each environmental justice community or fenceline community by means that include the reduction of pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, broadband Internet access, safe and sanitary dwellings, and physical activity; (3) identify objectives and policies to promote public involvement by residents of each environmental justice community or fenceline community in the public decision-making process; and (4) identify objectives and policies that prioritize improvements and programs that address the needs of environmental justice communities and fenceline communities.

Next Steps

VACo members are encouraged to read the language of HB 2074 and reach out to VACo staff with their thoughts and concerns. VACo will continue to monitor this bill and report on it as it develops.

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

Legislation introduced permitting gun-free zones on school board property

Delegate Suhas Subramanyam has introduced legislation that would permit the establishment of gun-free zones on school board property.

[HB 1909 \(Subramanyam\)](#) would allow any school board to deem any property that it owns or leases outside of school zones as a gun-free zone and may prohibit any individual from knowingly possessing any firearm while such individual is upon such property. Current law permits the establishment of gun-free zones on school property, and this legislation extends this authority to property owned or leased by a school board but not actually in a school zone, such as school board offices.

Delegate Alfonso Lopez and Delegate Ibraheem Samirah and Senator John Bell and Senator Barbara Favola have joined Delegate Subramanyam as co-patrons of this legislation. HB 1909 has been referred to the Firearms Subcommittee of the House Public Safety Committee.

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

VACo supports bills to expand broadband access in conjunction with electric grid modernization

In 2019, the General Assembly passed legislation establishing a 3-year pilot program allowing Dominion Energy and Appalachian Power to provide (or make available) capacity to “nongovernmental” (private) internet service providers to areas currently without broadband access. As each utility upgrades grid infrastructure, there’s an opportunity to add broadband access. This is because the communication backbone of fiber optic cables connecting utility infrastructure can include additional capacity made available for “middle mile” internet traffic in areas currently lacking access.

Building on the success of the pilot, [SB 1413 \(Boysko\)](#) would make the program permanent while also streamlining the process whereby the State Corporation

Commission (SCC) approves such infrastructure. SB 1413 has been assigned to [Senate Commerce and Labor Committee](#) for consideration.

[HB 1923 \(Ayala\)](#) would allow public internet service providers – such as local broadband authorities – to participate in the program to bring internet to unserved areas. HB 1923 passed unanimously in committee and is now headed to the House floor. VACo staff spoke in support of the bill.

In tandem these bills provide additional and robust assistance to counties that finance, build and operate open access networks for deployment to residents and businesses.

VACo Contacts: [Joe Lerch, AICP](#) and [Jeremy R. Bennett](#)

Bill improving food access and infrastructure introduced in House and Senate

Legislation has been introduced in each chamber seeking to improve food access/distribution infrastructure while assisting Virginia farmers and local and regional food banks.

[HB 2203 \(Filler-Corn\)](#) and [SB 1188 \(Hashmi\)](#) establish the Virginia Agriculture Food Assistance Program and Fund (VFAP). The VFAP will provide funding for Virginia farmers and food producers to donate, sell, or provide agriculture products to charitable food assistance organizations. The Program will also provide funding to local and regional food banks to reimburse farmers or food producers for any costs associated with harvesting, processing, packaging, or transporting agriculture products donated to such charitable food assistance organizations.

While agriculture is Virginia's largest industry, more than one million Virginians are at risk of hunger. The effects of the COVID-19 pandemic, and in particular the impact the pandemic has had on the food access/distribution supply chain, have further highlighted this reality. In 2020, food banks distributed 48 million more pounds of food to households than in 2019 (41% increase) while spending \$31 million on food purchasing to try to keep up with the growing need (three times the spending of 2019).

The VFAP seeks to address the growing need for food while also helping local farmers. Governor Northam's proposed budget includes \$600,000 to establish the VFAP in FY 2022, though coupled with Virginia's food crop donation tax credit and additional federal support, this fund will have a much greater impact.

SB 1188 was heard by the Senate Agriculture, Conservation and Natural Resources Committee on Tuesday afternoon (January 19), where it was unanimously reported and referred to the Senate Finance Committee. HB 2203 has been referred to the

Agriculture Subcommittee of the House Agriculture, Chesapeake and Natural Resources Committee and will be heard Wednesday morning (January 20).

VACo supports HB 2203/SB 1188.

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

Bill placing 60-day limit on Planning Commission review of rezonings gets a timeout

[SB 1249 \(Stuart\)](#), which mandates that any application for a rezoning, special use permit or special exception must be acted upon by a local planning commission within 60 days of official submission, was continued for a week by the [Senate Local Government Committee](#) and will be reconsidered on Monday, January 25. The Virginia Chapter of the American Planning Association (VA-APA) and VACo raised concerns on how this legislation would impact the role and function of planning commissions in making recommendations on such applications. The concerns prompted the continuation of the bill by the committee.

In addition to the 60-day limit, SB 1248 includes problematic language that make it impossible for localities to implement. Specifically, one requirement states that the planning commission must approve or disapprove such applications, and that reasons for disapproval shall be communicated to the applicant in writing. Such notification shall include “... *modifications, or corrections that will permit approval...*” of the application. Given that such applications are approved by the local governing body and the planning commission only provides recommendations, there is no feasible way to comply with the proposed standard.

The bill also states that the “... *local planning commission or other agent shall not delay the official submission ...*” of such applications “... *by requiring presubmission conferences, meetings, or reviews.*”

VACo asks members to review this legislation and provide any comments and concerns on how the proposal will affect the review of applications by county planning commissions to Joe Lerch at jlerch@vaco.org.

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

Body-worn camera system fund reintroduced, reports out of Senate Judiciary Committee

Senator Bryce Reeves has reintroduced helpful legislation that would aid localities with the costs associated with body-worn cameras. [SB 1119 \(Reeves\)](#) creates a special nonreverting fund to be known as the Body-Worn Camera System Fund to assist state or local law-enforcement agencies with the costs of purchasing, operating, and maintaining body-worn camera systems.

Senator Reeves previously introduced this bill during the 2020 Special Session. At that time, [the bill](#) unanimously passed the Senate but was not acted upon by the House, leaving it in the House Appropriations Committee.

SB 1119 was heard early Monday morning (January 18) by the Senate Judiciary Committee. As the bill was identical to his previously introduced version, the Committee moved unanimously to report the bill to the full Senate.

VACo supports SB 1119.

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

Crosswalk bill redesigned to be friendlier to local governments

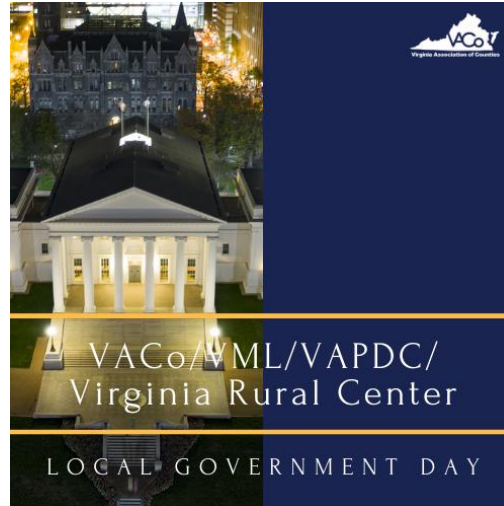
On January 19, the House Transportation Innovation and General Topics Subcommittee heard testimony on [HB 1841 \(Kearm\)](#). As originally written, this legislation would have required new crosswalks and crosswalks receiving future maintenance to be in a zebra pattern and have warning tiles at each end, with additional specifications. Though well intentioned, this would impose additional costs on local governments, including the two counties that maintain their own roads, and preempt local authority to determine the best management of roads in compliance with the Americans with Disabilities Act and guidelines from the Federal Highway Administration's Manual on Uniform Traffic Control Devices.

Thankfully, after VACo and others expressed concerns to the patron, the original bill was replaced with substitute language directing the Commissioner of Highways to convene a workgroup to determine whether there should be model policies for crosswalk design and installation in Virginia and that such workgroup specifically include representation from local governments. The Subcommittee unanimously recommended to report the legislation as amended, 8-0. VACo testified to thank the patron and the subcommittee for their responsiveness in improving the bill.

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

Advocate for your locality at the VACo Local Government Day

In Partnership with VML, VAPDC and the Virginia Rural Center



Thursday, January 28, 2021 | Webex
[Registration Form](#) | [Register Online](#)

Join us at the VACo/VML/VAPDC/Virginia Rural Center Local Government Day on Thursday, January 28! This is our day to advocate for localities at the 2021 General Assembly Session.

The event kicks off at 9am. Governor Ralph Northam is confirmed to speak. In addition, state legislators have been invited to participate and share their thoughts on the 2021 General Assembly Session. Also, VACo and VML staff will provide legislative reports on the major issues facing localities.

- Welcome and Introductions
- Governor Ralph Northam
- State Legislators Roundtable
- Team Legislative Reports

For information on how to reach your representatives, see the [Virginia House of Delegates](#) and the [Senate of Virginia](#) member websites. Find information about VACo's positions in the [2021 Legislative Program](#). We will distribute the Local Government Day Bulletin before the event.

Be a part of the legislative process at the 2021 General Assembly Session.

Register for the event at [VACo Local Government Day Online](#) (you must already have a VACo online registration account to use our online registration system). Or fax the

[Registration Form](#) to 804.788.0083 or email the form to Valerie Russell at vrussell@vaco.org. The cost is \$30.

VACo Contact: [Valerie Russell](#)