

Capitol Contact

Virginia General Assembly

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VACo Members – Encourage Your House of Delegates Members to Pass Helpful Public Notice Bill

VACo supports [HB 2114 \(Ransone\)](#), which provides that in any instance in which a locality has submitted a timely notice of public hearing to a newspaper published or having general circulation in the locality and the newspaper fails to publish the notice, such locality shall be deemed to have met certain notice requirements so long as the notice was published in the next available edition.

HB 2114 was initially reported from the House Counties, Cities and Towns Committee by a vote of 17-4, but it was sent back to the Committee on January 26. The Committee took up the bill again on January 29, when members debated killing the bill in favor of a study. Proponents of the bill, however, noted that the topic has already been thoroughly examined by all relevant parties in the legislative offseason, and consensus on the initiative had been reached prior to the bill's introduction. Ultimately, HB 2114 again reported out of the Committee to the House.

HB 2114 will now be voted on by the full House of Delegates early this week. **VACo members should contact their legislators as soon as possible to encourage them to pass this helpful bill.**

KEY POINTS

- HB 2114 does not circumvent any public notice requirements. The bill only allows a hearing to go forward if the locality has already followed all relevant public notice requirements and the newspaper inadvertently failed to publish the hearing notice.
- Current law already allows this for localities located in Planning District 23; HB 2214 simply expands it to all localities in the Commonwealth.

- This bill is supported by VACo and VML as well as the Virginia Press Association.

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

Bills eroding governmental immunity defeated in House and Senate

Two bills that sought to erode longstanding principles of governmental immunity – [HB 2045 \(Bourne\)](#) and [SB 1440 \(Surovell\)](#) – have been defeated. VACo previously wrote about these bills in the [2021 Legislative Bulletin](#) as well as a [January 29 Capitol Contact Alert](#).

[HB 2045 \(Bourne\)](#) was heard by the House Courts of Justice Committee’s Civil Subcommittee on January 29, where it was laid on the table by a vote of 6-2. A letter will be sent from the subcommittee to the Chair of the Virginia Crime Commission, encouraging that body to take up the issue this year and continue to work on it prior to the 2022 legislative session.

[SB 1440 \(Surovell\)](#) was heard by the Senate Judiciary Committee on February 1, where it was passed by indefinitely by a vote of 9-5. In voting to defeat the measure, Committee members agreed that the Senate Judiciary Committee’s Civil Law Subcommittee should take up the issue after the session concludes to further study the topic. Members noted that the subcommittee was a more proper venue for the study, as the issue is a civil law matter, and not criminal in nature.

VACo opposed these bills and was joined in opposition by a wide array of stakeholders, including representatives from VML, the Virginia Sheriffs Association, the Virginia Law Enforcement Sheriffs Association, the Virginia State Police Association, the Virginia Association of Chiefs of Police, the Virginia Restaurant, Lodging, and Travel Association, and the Virginia Retail Federation.

VACo Contacts: [Phyllis Errico, Esq., CAE](#) and [Chris McDonald, Esq.](#)

School construction and maintenance financing 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.

As previously [reported](#), during the 2019 General Assembly session, VACo spoke in support of pioneering enacted [legislation](#) that 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](#) in November 2019. This authority was expanded to eight additional localities in 2020.

This year, only one piece of legislation seeks to expand this authority to an additional locality. [SB 1170 \(Norment\)](#) would empower Isle of Wight County to use this tool to help fund any school capital projects initiated by the county. VACo is strongly supportive of the bill and also expanding this financing authority statewide and hopes that the [Commission on School Construction and Modernization](#) considers this as a recommendation when it meets. SB 1170 was read a second time and engrossed by the Senate.

In addition to increasing local funding options, VACo is also supportive of legislation that would create additional state resources for counties to build and maintain schools. The Senate printed as engrossed [SB 1106 \(Stanley\)](#), which creates the Public School Assistance Fund and Program, to be administered by the Department of Education, for the purpose of providing grants to school boards to be used solely for the purpose of repairing or replacing the roofs, HVAC, electrical or plumbing systems of public elementary and secondary school buildings in the local school division. The bill permits any school board in the Commonwealth to apply for Program grants but requires the Department of Education to give priority in the award of grants to school boards that demonstrate the greatest need based on the condition of existing school building systems and the ability to pay for the repair or replacement of such systems. In the House, similar legislation – [HB 2093 \(O’Quinn\)](#) – with specific provisions tying funding to the local composite index, was reported by the House Education Committee, 20-2, and referred to the House Appropriations Committee.

[SB 1109 \(Stanley\)](#) provides for a statewide referendum on the question of whether the General Assembly shall issue state general obligation bonds in the amount of \$3 billion for the purpose of K-12 school building construction, repair, or other capital projects related to the modernization of school facilities. The results would be advisory only and are intended only to demonstrate the preference of the citizens of the Commonwealth on the issuance of such bonds. The bill provides that the referendum be held at the November 2021 general election. The bill was referred to the Senate Privileges and Elections Committee and is docketed for the February 2 meeting agenda.

[HB 1924 \(Kilgore\)](#) would have permitted localities with local composite indexes 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. The bill was laid on the table by the House Education Committee's SOL and SOQ Subcommittee, 5-3.

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

Compromise wetland and stream mitigation bank credits bill passes House

A compromise bill dealing with wetland and stream mitigation bank credits has passed the House of Delegates and will now be taken up in the Senate.

[HB 1983 \(Bulova\)](#) is the result of a series virtual workgroup meetings that featured developers, environmental organizations, and local governments. The bill proposes that when a water protection permit applicant is required to purchase wetland or stream mitigation bank credits, but no credits are available either (1) in any mitigation provider's primary service area or (2) at a cost of less than 200% of the price of credits available from a fund dedicated to achieving no net loss of wetland acreage and functions, the applicant may purchase or use credits from a mitigation provider's secondary service area. The bill provides certain requirements that the permit applicant must comply with in order to purchase or use such credits from a secondary service area, including minimum tree canopy requirements. The bill was strategically designed strike a balance between water quality and conservation interests and land development interests.

The House of Delegates passed HB 1983 on January 25 by a vote of 84-15-1. HB 1983 will now be taken up in the Senate, where it has been referred to the Senate Agriculture, Conservation and Natural Resources Committee.

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

Bill placing 60-day limit on Planning Commission review fails

A bill, which would have mandated 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 passed-by-indefinitely in the Senate Local Government Committee on January 25.

[SB 1249 \(Stuart\)](#) also included problematic language that would have been impossible for localities to implement. Specifically, a requirement that the planning commission 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.

Thank you VACo members for sharing your comments and concerns with committee members on how the proposal would have affected the review of applications by the county planning commission.

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

Troubling environmental permit fee bill amended in committee

Concerning and potentially very expensive legislation dealing with environmental permit fees has been favorably amended in Committee.

As introduced, [SB 1210 \(Petersen\)](#) directed the Virginia Waste Management Board to adopt regulations to collect from any person operating certain facilities permitted for the disposal, storage, or treatment of nonhazardous solid waste such annual fees as are necessary to provide funding for the total direct costs of the nonhazardous solid waste management program when aggregated and combined with other existing fees. The bill also directed the State Water Control Board to adopt regulations specifying permit maintenance fees that each permitted facility shall pay to the Board for certain water quality or withdrawal permits. SB 1210 required the fee amounts to be set at an amount that is necessary to collect no less than 40 percent and no greater than 50 percent of the direct costs required for the administration, compliance, and enforcement of such permits.

VACo opposed this legislation as introduced, due to concerns about the fiscal impact of the bill as well VACo’s long-held position opposing the imposition of a state fee, tax, or surcharge on water, sewer, solid waste, or any other service provided by a local government or authority. Notably, there were concerns about the increased costs the bill will generate for local governments, either as the owner of these facilities or as partners in a host agreement with private operators.

Ultimately, Senator Chap Petersen agreed to amend his legislation, opting to simply to form a workgroup comprised of local government representatives, industry representatives, environmental representatives, and Administration representatives to further study the issue and report findings and recommendations to the

legislature. This workgroup will meet after the conclusion of the General Assembly session.

As amended, SB 1210 reported out of the Senate Agriculture, Conservation and Natural Resources Committee, 15-0, and was rereferred to the Senate Finance and Appropriations Committee, where it awaits a hearing.

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

Path forward found for broadband mapping bill

On February 1, the House Communications, Technology, and Innovation Committee considered [HB 2214 \(O'Quinn\)](#), which would require the Virginia Department of Housing and Community Development (DHCD) in coordination with the Commonwealth Broadband Chief Advisor to develop and maintain a map of statewide broadband availability, showing locations served and unserved by providers of fixed or mobile broadband Internet access service.

Mapping of unserved areas remains a large challenge to providing broadband service as existing data filed with the Federal Communications Commission ([FCC Form 477](#)) is overly broad and does not accurately portray address by address data. Under the federal map, if a provider offers broadband service to at least one location in a census block, this area is considered served, even if no other locations have access to broadband. HB 2214 is meant to address this problem while also protecting the proprietary information of service providers. The Committee reported the bill, 21-1.

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

Body-worn cameras system fund passes Senate unanimously

A bill, which seeks to create a non-reverting fund to assist law enforcement with the deployment of body-worn cameras, has passed the Senate and will now be referred to the House.

[SB 1119 \(Reeves\)](#) creates the “Body-Worn Camera System Fund,” which will provide funding to state and local law enforcement to assist with the costs of purchasing, operating, and maintaining body-worn camera systems.

Senator Bryce 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 reported out of the Senate Judiciary Committee, 14-0, and the Senate Finance and Appropriations Committee, 15-0, before passing the full Senate unanimously on February 1. The bill now awaits committee referral in the House.

VACo supports SB 1119.

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

Study of auxiliary grants moves forward

[SJ 293 \(Spruill\)](#) requests the Joint Commission on Health Care to examine issues surrounding the financing of long-term care for individuals of limited means. The study resolution requests the Commission to review data regarding the use of the Auxiliary Grant, as well as to investigate broader use of Medicaid to support assisted living costs, with the goal of developing “a more realistic system of addressing housing and care needs for those Virginians in need of home and community-based services and supports, and assisted living and nursing home care.”

The Auxiliary Grant provides an income supplement to certain individuals who receive Supplemental Security Income and other individuals meeting certain criteria who reside in an assisted living facility, adult foster care home, or supportive housing. Localities provide a 20 percent match for these grants, which cover room and board and basic maintenance and care for recipients. Assisted living facility providers have long contended that the payment rates are inadequate to cover the true costs of caring for recipients. VACo’s Health and Human Resources Steering Committee has been discussing the need to examine how Virginia serves aging adults, and sent a letter to the Joint Commission on Health Care last fall encouraging a review of ways to support aging adults and consideration of what a modern-day safety net should look like and how it should be funded.

A related bill, [SB 1185 \(Dunnavant\)](#), would provide an enhanced auxiliary grant rate for assisted living facilities in which a large percentage of residents are auxiliary grant recipients. VACo had expressed concern about the bill as introduced, which would have provided that facilities in which 30 percent or more of the residents are auxiliary grant recipients would receive 200 percent of the auxiliary grant rate; this increase would also entail a parallel increase in the local share, which could be challenging for some localities. VACo encouraged legislators to take a broader look at the auxiliary grant as a mechanism to fund assisted living, as SJ 293 would do, or perhaps provide the additional supplement with state funds. The Senate Finance and Appropriations Committee’s Health and Human Resources Subcommittee members opted not to move forward with the bill, but expressed a desire to continue to work on the issue, perhaps through the budget process.

SJ 293 was reported from the Senate Rules Committee on January 29; **VACo spoke in support.**

VACo Contact: [Katie Boyle](#)

Expansion of uses for local stormwater fund passes Senate, heads to House

A bill, which expands the eligible uses for a local stormwater management fund, has found favor in the Senate, passing the full chamber unanimously. [SB 1309 \(Ebbin\)](#) authorizes grants from a local Stormwater Management Fund to be used for measures that are part of a comprehensive flood mitigation and protection plan adopted by the locality, including floodproofing, flood protection products, and grading. Current law only allows local stormwater management program funds to be used for the construction, improvement, or repair of a stormwater management facility or for erosion and sediment control.

SB 1309 reported from the Senate Local Government Committee by a vote of 14-0-1 and passed the full Senate on January 21 by a vote of 39-0. The bill was referred to the House Counties, Cities and Towns Committee, where it awaits a hearing.

VACo supports this legislation.

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

Problematic landfill bills to be heard in the Senate Committee

Three problematic land use bills pertaining to landfills have been referred to the Senate Agriculture, Conservation and Natural Resources Committee and will be heard early next week.

[SB 1186 \(Hashmi\)](#) preempts local authority, prohibiting the construction of any new municipal solid waste landfill within three miles of any designated historic district, building, structure, object, or site. The location of such public facilities is outlined in local comprehensive plans that are developed by local planning commissions with input from citizens. This bill's arbitrary three-mile prohibition would severely limit their placement. **VACo opposes SB 1186.**

[SB 1200 \(Hashmi\)](#) requires any application to store, provide treatment for, or dispose of hazardous waste or an application for a new solid waste management facility permit, except for a noncaptive industrial landfill, to include certification from the

governing body for each locality within a five-mile radius of the facility, other than the locality in which the facility is or will be located, granting approval of the facility or activity. SB 1200 would effectively pit localities against one another, effectively granting a neighboring locality control over another locality's land use decisions. **VACo opposes SB 1200** and has historically opposed similar legislation that creates such adversarial situations.

[SB 1319 \(Hashmi\)](#) prohibits the Department of Environmental Quality (DEQ) and the Virginia Waste Management Board from issuing any permit for the construction, modification, or expansion of a new or existing municipal solid waste landfill that will accept 3,500 tons or more of municipal solid waste per day until the General Assembly enacts legislation incorporating the findings and recommendations of the Waste Diversion and Recycling Task Force. SB 1319 also requests the Department to continue expand the scope of the Task Force and continue its work through 2022. VACo does not oppose the expansion in scope or timeline for the Task Force but does have concerns about the results of the proposed permit freeze.

SB 1186, SB 1200, and SB 1319 will be heard in the Senate Agriculture, Conservation and Natural Resources Committee late Tuesday afternoon (February 2).

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

‘Jake Brake’ bill comes to a stop

On February 2, The House Transportation Committee considered legislation that would have authorized counties, cities, and towns to regulate the use of “Jake Brakes,” also known as compression release engine brakes when motor vehicles are operated within their boundaries and adjacent to residence districts. Compression release engine brakes are an engine braking system installed on some diesel engines. Exhaust valves release compress gas trapped in the engine cylinders helping to slow the vehicle, reducing wear and tear on a traditional braking system. Though beneficial for the braking system of the vehicle, the byproduct is often a loud noise.

[HB 1861 \(Guy\)](#) sought to expand to Virginia localities an authority already enjoyed in a number of states to regulate use of these systems in an effort to combat noise pollution. However, industry representatives expressed concern over the impact of the bill, and it was laid on the table by the Committee, 13-7, with a letter from the Chair to stakeholders to work on this issue further.

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

Slight tweaks to Stormwater Local Assistance Fund (SLAF) introduced in the Senate

[SB 1404 \(Lewis\)](#) proposes a slight expansion of project eligibility for Stormwater Local Assistance Fund (SLAF) projects. Specifically, the bill authorizes SLAF awarded for projects related to Chesapeake Bay total maximum daily load (TMDL) requirements to consider total phosphorus reductions or total nitrogen reductions. Additionally, SB 1404 authorizes grants awarded for eligible projects in localities with high or above average fiscal stress (as reported by the Commission on Local Government) to account for more than 50 percent of the costs of a project.

SB 1404 has been referred to the Senate Agriculture, Conservation and Natural Resources Committee, where it will be heard Tuesday afternoon (February 2).

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

Virginia Agriculture Food Assistance Program and Fund finds success in each chamber

Legislation that will improve food distribution infrastructure while assisting Virginia farmers and local and regional food banks has steadily found success in both chambers of the General Assembly so far this session.

[HB 2203 \(Madame Speaker\)](#) 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 otherwise 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. The bill aims to help the over one million Virginians that are at risk of hunger while also directly assisting local farmers as well as local and regional foodbanks.

HB 2203 reported out of the House Agriculture, Chesapeake and Natural Resources Committee, 21-1, and the House Appropriations Committee, 21-0. The bill passed the full House on January 28 by a vote of 97-3.

SB 1188 reported out of the Senate Agriculture, Conservation and Natural Resources Committee, 15-0, and the Senate Finance and Appropriations Committee, 16-0. The bill passed the full Senate unanimously on February 1.

HB 2203 will now be sent over to the Senate for review, while SB 1188 will be taken up by the House. Since the bills are identical, they should have no trouble moving forward.

VACo is pleased to support HB 2203 and SB 1188.

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