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

Tuesday, February 9, 2021

Cigarette Tax Legislation Overhauled; Regional Board Participation Mandate Removed

Legislation that would have mandated county participation in regional cigarette tax boards before the imposition of a cigarette tax has been significantly amended on the Senate floor. As reported from the Senate Finance and Appropriations Committee, SB 1326 (Hanger) would have mandated that any locality that was not already imposing a cigarette tax on January 1, 2021, must be a member of a regional cigarette tax board in order to impose the tax. A regional cigarette tax board was defined in this version of the bill as encompassing at least 10 member localities. The bill made an exception for certain localities that had taken official steps by January 31, 2021, toward implementing a cigarette tax to impose the tax until January 1, 2026, after which time the locality would have to be part of a regional board in order to impose the tax. VACo opposed the bill in this form.

As amended on the Senate floor, the legislation now no longer includes the mandate to participate in a regional cigarette tax board. The bill stipulates that it is the policy of the Commonwealth that regional boards are to be encouraged where practical, and directs the Department of Taxation to establish a task force to develop methods for modernizing cigarette tax collection and to aid localities seeking to develop new regional cigarette tax boards (which would now be defined as encompassing up to six member localities). VACo appreciates Senator Hanger's willingness to revise the bill to accommodate the concerns of VACo members, and thanks members for making those concerns heard.

VACo has been in communication with a number of member counties that are interested in pursuing a regional approach, and looks forward to working with the task force on ways to assist in establishment of those boards.

VACo Contacts: Dean A. Lynch, CAE and Katie Boyle

School board employee striking bill left in committee

Legislation that would have exempted employees of local school boards from the prohibition on striking and from termination of employment for striking did not make it past the deadline for bills to crossover between the House and Senate. HB 1780 (Carter) was left in the House Labor and Commerce Committee without being acted upon. The bill was similar to legislation filed by the same patron during the 2020 General Assembly regular session, though the current version is narrower in scope in that it only applies to school board employees, instead of all public employees except law enforcement. According to Commission on Local Government's Fiscal Impact Statement, costs to local governments resultant of enactment of HB 1780 and a strike by school board employees would potentially include the hiring of substitute teachers and other staff to keep school systems operational during a strike, potential reductions in state Basic Aid if a strike reduced the number of teaching days or teaching hours below 180 days or 990 hours, and community wide impacts such as lost wages as parents struggle to balance work with unexpected childcare needs. All of these costs could vary depending on the number employees striking and the length of a strike.

The ability of school board employees to strike should be viewed in the larger context of K-12 instruction during the pandemic. Conversations over returns to in-person instruction and employee safety involving employee associations and local school boards continue to take place in Virginia and in other states. Legislation enacted from the 2020 General Assembly session authorized local governments to permit collective bargaining for their employees by local ordinance effective May 1, 2021, but specifically maintained the prohibition against striking for public employees, irrespective of any such local ordinance. For now, the prohibition on public employee striking remains the law in the Commonwealth.

VACo Contact: Jeremy R. Bennett

Property tax exemption legislation amended to limit local revenue impact

HB 2308 (Brewer) amends a Code section that deals with the amount of acreage that may be owned by certain benevolent or charitable associations. As reported by the House General Laws Committee, the bill increases the amount of property that may be owned by an association or post of the Veterans of Foreign Wars, American Legion, Disabled American Veterans, or similar association chartered by an act of Congress from the current cap of 75 acres to 200 acres. Property owned by such organizations is tax-exempt under a statute that was enacted before passage of a Constitutional amendment in 2002 that largely vested the granting of property tax

exemptions for nonprofits with localities, so the legislation as reported by committee would have significantly expanded the amount of property that would be required to be exempt from taxation.

The patron, Delegate Emily Brewer, and the Chairwoman of the House Finance Committee, Delegate Vivian Watts, worked with VACo to amend the bill on the House floor to provide that any property in excess of the original 75 acres would be tax-exempt only at local option under the current process for these organizations. Although the bill seeks to address a specific situation, the original version could have had wide-ranging impacts on local finances.

VACo Contacts: Phyllis Errico, Esq., CAE and Katie Boyle

WIP III wastewater bills pass House and Senate; to be heard again in committee

Two important bills that save localities money, provide greater certainty to wastewater treatment plants, and still provide a roadmap for achieving the goals and obligations of the Phase III Watershed Implementation Plan (WIP III) have now passed the House and Senate and will each be re-heard in committees in the opposite chamber.

HB 2129 (Lopez) and SB 1354 (Hanger) establishes a framework and timeline for wastewater treatment plants to undertake improvement projects to achieve specific goals in nitrogen and phosphorous reductions. These goals, and the specific timelines introduced in this legislation, will ensure the wastewater sector – and the Commonwealth as a whole – will meet their Chesapeake Bay nutrient reduction targets by the WIP's 2025 deadline.

The chief objective of HB 2129 and SB 1354 is to provide greater certainty and clarity to local governments and wastewater facilities while also working to roll out upgrades and improvements in the most cost-effective manner possible. The total estimated cost of the necessary projects is approximately $800 million over a five-year period via the Water Quality Improvement Fund (WQIF), but the framework established in these bills will save approximately $173 million compared to what the Commonwealth previously proposed.

HB 2129 passed the House on February 3 by a vote of 58-39, and SB 1354 passed the Senate on February 5 by a vote of 38-0. Each bill will now be reconsidered by the opposite chamber in committee. As the bills are identical, neither should run into any new trouble when they are re-heard.

VACo supports HB 2129 and SB 1354 and has been pleased to speak in favor of these bills numerous times in subcommittee and committee.

KEY POINTS

- This is the most significant Chesapeake Bay clean-up bill for the wastewater sector in over a decade.

- It provides certainty in terms of timelines, what reductions are needed, and what upgrades and investments are required while also providing greater clarity to the General Assembly and localities for future Water Quality Investment Fund (WQIF) needs.

- It ensures that the Commonwealth will meet its WIP III obligations but does so in a manner that is cost-effective and efficient.

- HB 2129 and SB 1354 have a broad array of support, including VACo, VML, the Virginia Association of Municipal Wastewater Agencies (VAMWA), the Chesapeake Bay Foundation (CBF), the James River Association (JRA), and more.

VACo Contact: Chris McDonald, Esq.

VACo supports amending economic development incentive to include creation of teleworking jobs

SB 1418 (McPike) amends an economic development incentive program known as the Commonwealth's Development Opportunity Fund (CDOF) by allowing "new teleworking jobs" to qualify towards the minimum job creation requirements in order to receive a cash grant to offset a qualifying project's related costs, such as site acquisition and development, transportation access, utility extension or capacity development, construction or build-out of buildings, or training. CDOF grants are awarded to local governments on the behalf of the company. For a company to receive a grant award it must enter into performance agreement with the locality. To qualify the new job must be *"… held by a Virginia resident, for which the majority of the work is performed remotely, and that pays at least 1.2 times the Virginia minimum wage, as provided by the Virginia Minimum Wage Act."*

VACo supports the flexibility being proposed as it reflects a growing trend in working from home and/or satellite offices, while providing an appropriate incentive to attract economic development prospects and the expansion of existing industry. SB 1418 passed the Senate by unanimous vote and will be considered by the House General Laws Committee during the extended special session.

VACo Contact: Joe Lerch, AICP

Virginia Voting Rights Act bills pass in chambers of origin

HB 1890 (Price) and SB 1395 (McClellan), which impose state oversight over certain local voting practices, have each passed their respective chambers of origin – HB 1890 by a vote of 55-45 and SB 1395 by a vote of 21-17.

The bills provide broad authority to the Attorney General to file a civil action in circuit court if he or she has reasonable cause to believe that a violation of an election law has occurred; the court may award preventive relief, assess a civil penalty in amounts not to exceed $50,000 for a first violation and $100,000 for a second violation, award a prevailing plaintiff reasonable attorney fees and costs, and award other relief as appropriate, including compensatory and punitive damages.

Under the bills, a locality meeting a certain population threshold of individuals who are members of a language minority and are unable to speak or understand English enough to participate in the electoral process must provide voting or election materials in the language of the applicable language minority group (which is required under federal law), as well as providing translation services at polling places.

The bills offer two options for advance approval of certain "covered practices," which includes any change to the method of election of members of a governing body by adding at-large seats or converting district seats to at-large or multi-member districts; any change to the boundaries of a covered jurisdiction that reduces minority voting age population by a certain percentage; any change to the boundaries of election districts or wards (including redistricting); any change that restricts the provision of interpreter services or limits the distribution of voting materials in languages other than English; and any change that reduces the number of or consolidates or relocates polling places, except in certain emergency circumstances.

Under the first option, prior to implementing any covered practice, the governing body must make information about the proposed covered practice available on the locality's website and provide opportunity for at least 30 days of public comment (the initial notice must be made at least 45 days in advance of the last date for public comment), including at least one public hearing. Following the initial public comment period (or periods, if changes are made and a revised practice is re-advertised), a 30-day waiting period is required, during which time any person who will be affected by the covered practice may challenge it in the circuit court.

In lieu of this process, the locality may seek a certification of no objection from the Attorney General, similar to the federal preclearance process that was in effect in Virginia prior to the 2013 U.S. Supreme Court decision in *Shelby County v. Holder*. A certification of no objection will be deemed to have been issued if the Attorney General does not issue an objection within 60 days of submission. However, the Attorney General's lack of objection does not bar subsequent litigation to enjoin enforcement of the practice.

The bills bar at-large elections from being imposed in a manner that affects the ability of members of a protected class, defined as a group of citizens protected from discrimination based on race or color or membership in a language minority group, to elect candidates of choice or to influence the outcome of an election as a result of the dilution or abridgement of their rights. The bills authorize members of a protected class in a locality that uses at-large voting to initiate a cause of action in circuit court if a violation is alleged.

The bills create civil causes of action in addition to existing criminal penalties for voter intimidation and communication of false information to a voter. The bills also establish a civil penalty not to exceed $1000 per affected voter for instances in which any person acting under the color of law fails to permit or refuses to permit a qualified voter to vote, or willfully fails or refuses to tabulate, count, or report the vote of a qualified voter.

VACo has spoken in opposition to these measures due to their exposure of counties to potentially costly litigation. HB 1890 is before Senate Privileges and Elections; SB 1395 is before House Privileges and Elections.

VACo Contact: Katie Boyle

Legislation reducing the number of required Standards of Learning assessments passes Senate

SB 1401 (Pillion) would reduce the total number and type of required Standards of Learning (SOL) assessments to the minimum required by the federal Elementary and Secondary Education Act of 1965 (ESEA). SOLs are used by the Virginia Department of Education to assess student learning and achievement, as well as factoring largely into the Standards of Accreditation. The tests proposed to be eliminated by this legislation would include:

- Virginia Studies
- Civics & Economics
- End-of-Course World History to 1500
- End-of-Course World History: 1500 to the Present
- End-of-Course World Geography
- End-of-Course Virginia and United States History
- End-of-Course Earth Science
- End-of-Course Chemistry
- Grade 8 Writing
- End-of-Course Writing

Current law requires each local school board to certify annually that it has provided instruction and administered an alternative assessment, consistent with Virginia Board of Education guidelines, to students in grades three through eight in each SOL subject area in which a SOL assessment was not administered during the school year. As such, SB1401 bill would require local school divisions to implement local alternative assessments in place of three eliminated SOL tests at the grade three through eight level: Virginia Studies, Civics & Economics, and Grade 8 Writing. The Virginia Department of Education estimates that if enacted, the bill would save the state approximately $1.8 million in costs. SB1401 passed the Senate, 26-12 and was referred to the House Education Committee.

Companion legislation – HB 2094 (O'Quinn) – failed to recommend reporting, 4-4, in the House Education Committee's SOL and SOQ Subcommittee and was consequently left in committee.

In November 2020, Superintendent of Public Instruction Dr. James F. Lane approved a state-level waiver allowing school divisions the flexibility to choose to administer local alternative assessments in lieu of administering the required Virginia Studies, Civics and Economics, and Grade 8 Writing Standards of Learning (SOL) tests in the 2020-2021 school year. VACo supports changes to educational programs and standards that rely less on standardized testing and more on critical thinking skills such as performance-based assessments.

VACo Contact: Jeremy R. Bennett

Health and Human Services Update

As the General Assembly passes the crossover milestone, several bills related to health and human services await consideration by the House or Senate, respectively.

Following is a brief overview of bills of interest:

HB 1894 (Kory) adds employees of the Department of Juvenile Justice designated as probation and parole officers or as juvenile correctional officers to the list of professionals who are authorized to possess and administer naloxone (a medication used for opioid overdose reversal) pursuant to an oral, written, or standing order issued by a prescriber or a standing order issued by the Commissioner of Health or his designee. This bill has passed the House and is before Senate Education and Health.

HB 1989 (Aird) directs the Virginia Department of Health to implement a system for sharing information in real time regarding confirmed cases of communicable diseases of public health threat with emergency medical services (EMS) agencies during a public health emergency. Information would be derived from reports from local health departments, and would be used by EMS agencies to develop protocols to

ensure the safety of EMS personnel in responding to calls for service. This bill is also before Senate Education and Health.

HB 2065 (McQuinn) directs the Department of Social Services (DSS), in cooperation with the Department of Medical Assistance Services (DMAS), to convene a workgroup to develop a plan for a three-year pilot program to increase consumption of fruits and vegetables by individuals for whom such dietary modifications are recommended by a care provider. The plan is to include a process for issuance of vouchers that may be redeemed for purchase of fruits and vegetables and an outline of the role of the two Departments and local government agencies in administering the program, to include cost estimates and sources of funding. A report is due by October 1, 2021. This bill is now before Senate Rehabilitation and Social Services.

SB 1307 (Dunnavant) would require the state plan for medical assistance services be amended to provide for the payment of Medicaid-covered services delivered to Medicaid-eligible students, even if the student does not have an Individualized Education Program (IEP). Services provided through telemedicine would be covered. DMAS would be directed to provide technical assistance to the Department of Education and local school divisions in complying with federal requirements associated with the bill. This bill should assist school divisions in drawing down federal reimbursement for Medicaid-covered services being provided to students who do not have IEPs, such as behavioral health services. The bill has passed the Senate and is before House Health, Welfare, and Institutions.

SB 1328 (Mason) would create a state-local program to assist relatives in taking custody of children who would otherwise remain in foster care. This concept was recommended by the Joint Legislative Audit and Review Commission in its 2018 report on Virginia's foster care system, as well as by the Virginia Commission on Youth in its 2019 study. Virginia's current federally-funded Kinship Guardianship Assistance program provides monthly payments and access to foster care services to relatives who become legal guardians of children in foster care in order to facilitate a permanent placement of the child, but this program requires the potential guardian to be a licensed foster parent for the child for six months in order to qualify, which has limited participation. The State-Funded Kinship Guardianship program under the bill would operate through the Children's Services Act structure and provide payments to guardians based on an agreement developed with the local department of social services. A child would qualify If he or she had been removed from his/her home and been in the custody of the local department of social services for at least 90 days. Prospective kinship guardians would qualify by completing the relative foster home approval process (or qualifying for a waiver). The Department of Social Services estimates that 90 children will qualify for the program in FY 2022 and 100 children will qualify in FY 2023 and in subsequent years. This bill is now before the House Health, Welfare, and Institutions Committee.

VACo Contact: Katie Boyle

Expanded Stormwater Local Assistance Fund (SLAF) eligibility survives crossover

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 take into account 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 was passed the full Senate on February 5 by a vote of 38-0. The bill will now be considered by the House Agriculture, Chesapeake and Natural Resources Committee.

VACo supports SB 1404.

VACo Contact: Chris McDonald, Esq.