

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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Legislature passes complex changes to laws regarding the siting and taxing of solar and energy storage projects

In 2020, the General Assembly passed legislation providing counties new tools and taxing options in addressing the growing demand to site utility-scale solar projects. In 2021, the legislature adopted additional changes to incorporate large-scale battery storage within this new landscape, while at the same time expanding local authority to address impacts related to land use and local revenue generation. The result is a complex and opaque mix of interrelated bills. This narrative summary attempts to unravel how each piece fits within the larger whole and their potential impact to counties where such facilities seek to be located.

[New law](#) effective July 1, 2020, requires any applicant seeking to locate a utility-solar energy or storage facility greater than 5 Megawatts (MW) in generating or storage capacity on any census tract meeting the eligibility requirements for a federal opportunity zone to execute a host siting agreement with the local jurisdiction prior to issuance of a state permit. The execution of such agreements can include “... i) *mitigation of any impacts of such solar facility; (ii) financial compensation to the host locality to address capital needs set out in the (a) capital improvement plan adopted by the host locality, (b) current fiscal budget of the host locality, or (c) fiscal fund balance policy adopted by the host locality; or (iii) assistance by the applicant in the deployment of broadband...*” [HB 2201 \(Jones\)](#) and [SB 1207 \(Barker\)](#) expand this new law to apply to any project greater than 5 MW. This removes the geographic limitation requiring a host site agreement to only those census tracts meeting the opportunity zone criteria.

However, it is important to note that the legislation includes an enactment clause that states “... *the provisions of this act shall not become effective with respect to energy storage projects unless the General Assembly approves legislation that authorizes localities to adopt an ordinance for taxation of energy storage projects such as solar projects with a local option for machinery and tools tax or solar revenue share.*” What does this mean? This is where [HB 2006 \(Heretick\)](#) and [SB 1201 \(Petersen\)](#) come into play. Without their passage, HB 2201 and SB 1207, even should they become law, would carry no effect. HB 2006 expands the option for a locality to replace the machinery and tool (M&T) tax on solar generating energy generation equipment with an energy tax of up to \$1,400 per MW of capacity to now include “energy storage systems” (typically large-scale chemical battery installations) equipment per MW of storage capacity. It is important to note that these energy storage systems can (and many will likely) be separate from solar panel installations. Counties should also take note the bill also applies the same mandatory exemption from local M&T tax (80% exemption for the first 5 years of operation; 70% exemption for years 6-10; and 60% exemption for years 11 and beyond). The potential revenue reduction from this mandate can conceivably be offset by payments to counties through the expansion of the host siting agreement authority for any project as provided in HB 2201 and SB 1207.

The final piece of legislation passed and awaiting the Governor’s signature is [HB 2269 \(Heretick\)](#). This proposal amends the local option for an energy tax of up to \$1,400 per MW by allowing localities to increase this amount by up to 10 percent every 5 years starting July 1, 2026. For example, in 2026, the \$1,400 could be adjusted up to \$1,540 per MW and similarly in subsequent 5-year intervals as follows:

Year	Tax per MW
2026	\$1,540
2031	\$1,694
2036	\$1,863
2041	\$2,050
2046	\$2,255
2051	\$2,480
2056	\$2,728
2061	\$3,001

The purpose of the escalator is to address the diminishing value of the dollar due to inflation thereby providing an added incentive to adopting the energy tax versus M&T.

The sum of all these bills should once they become law indicate that the legislature seeks to grant counties greater authority in the siting of these facilities, particularly through expansion of the host-siting agreement to all projects greater than 5 MW in generating and storage capacity, while at the same time providing enhanced revenue options for local consideration.

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

Open-container area bills pass the General Assembly

After a tedious journey through the General Assembly, legislation authorizing local governments to create outdoor refreshment areas – in other words, open-container areas – in their localities has passed the House and Senate and will now be sent to Governor Ralph Northam for action.

After the House and Senate struggled to find consensus on the issue, [HB 2266 \(Ayala\)](#) and [SB 1472 \(Dunnavant\)](#) were sent to conference for further analysis and work. In the end, an agreement was reached to allow local governments to seek state approval for these outdoor refreshment areas, rather than simply grant them the power to establish up to three outdoor refreshment areas, as the bills initially proposed.

Effectively, the final legislation renames the Virginia Alcoholic Beverage Control Authority's (ABC's) "Local Special Events" license to the "Designated Outdoor Refreshment Area" license. Current law allows for these licenses, but localities are limited to holding 16 events per year under such license, with no event lasting more than three days (notwithstanding the current COVID-19 related loosening of restrictions). This legislation permits the ABC board to increase the frequency and duration of events held under this license if a locality adopts an ordinance requesting such an increase. Per the legislation, such an ordinance must include the size and scope of the area within which such events will be held, a public safety plan, and any other considerations that the ABC Board may deem necessary.

In its final form, this outdoor refreshment area legislation passed the House 92-3 and the Senate 39-0. The bills will now be sent to the Governor for analysis and eventual signing.

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

School construction and maintenance financing legislation put off for another year

The General Assembly adjourned Sine Die without final consideration of two remaining school construction financing bills. As previously [reported](#), several pieces of legislation seeking to address K-12 school construction and maintenance needs were making their way through the General Assembly.

[SB 1106 \(Stanley\)](#) would create 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 was left in the House Appropriations Committee, meeting a similar fate to [HB 2093 \(O'Quinn\)](#). VACo staff has spoken in support of this initiative as it represented progress on this issue, even though the Fund proposed by the legislation did not have a dedicated source of funding.

[SB 1109 \(Stanley\)](#) would provide for a statewide referendum in November 2022 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 to demonstrate the preference of Virginia citizens on the issuance of such bonds. The bill was also left in the House Appropriations Committee without a final vote.

In the General Assembly's budget [compromise](#), \$20.1 million General Funds (GF) in FY 2021 and \$9.9 million GF in FY 2022 are [provided](#) to ensure 40 percent of Lottery Proceeds are dedicated to Infrastructure and Operations Per Pupil Payments, formerly known as Supplemental Lottery Per Pupil Allocations. Though helpful and appreciated, given the estimated total need for school modernization across the Commonwealth, this represents a small fraction of the funding needed to successfully address this issue.

VACo will continue to advocate on this issue and encourages frank conversations with legislators on the need for either additional state support and/or local revenue raising authority for county governments to provide a quality physical learning environment for children across Virginia.

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

Bill requiring localities consider environmental justice in comprehensive plans fails

Legislation to require inclusion of an environmental justice strategy in reviews and updates to comprehensive land use plans failed to pass on the final day of the legislative session. [HB 2074 \(Simonds\)](#) as adopted by the House would require that *"... each locality shall, during each review of its comprehensive plan, consider..."*

- Identifying each environmental justice community and fenceline community within the locality;
- Identifying 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;

- Identifying objectives and policies to promote public involvement by residents of each environmental justice community or fence-line community in the public decision-making process; and
- Identifying objectives and policies that prioritize improvements and programs that address the needs of environmental justice communities and fence-line communities.

As referenced by the patron of the bill, the proposal was a recommendation included in an [October 2020 Environmental Justice Study](#) prepared for the Virginia Department of Environmental Quality. Specifically, *“The Commonwealth should seek legislation requiring Virginia municipalities to consider environmental justice in their comprehensive plans and zoning ordinances in alignment with DEQ permitting responsibilities.”*

The Senate amended the bill to remove the requirement thereby leaving it up to a handful of legislators from each chamber to craft a compromise. However, the clock ran out before an agreement could be reached.

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

Landmark Chesapeake Bay cleanup investment ready for Governor’s approval

Landmark Chesapeake Bay legislation that will save localities money, provide greater certainty to wastewater treatment plants, and provide a clear roadmap for achieving the goals and obligations of the Phase III Watershed Implementation Plan (WIP III) have now passed the General Assembly and await action by Governor Ralph Northam.

[HB 2129 \(Lopez\)](#) and [SB 1354 \(Hanger\)](#) establish 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.

In their final forms, SB 1354 passed the House, 65-35, and the Senate, 39-0, while HB 2129 passed the House, 63-34, and the Senate, 38-1. The bills are now before Governor Northam, who has until March 31 to act on the legislation.

VACo supported HB 2129 and SB 1354 and was pleased to speak in favor of these bills numerous times throughout the legislative session.

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

SWaM bill stalls on Senate floor

[HB 5002 \(Ward\)](#) would have established the Small Business Procurement Enhancement Program with a statewide goal of 42 percent of certified small business utilization in all discretionary spending by state agencies and covered institutions in procurement orders, prime contracts, and subcontracts, as well as a target goal of 50 percent subcontracting to certified small businesses in instances where the prime contractor is not a small business for all new capital outlay construction solicitations that are issued.

This bill was requested by the Administration and passed the House by a 51-45 vote but hit some snags in the Senate where it was heavily amended in the Senate General Laws and Technology committee. Although the bulk of the bill seems to apply only to state entities, there was language buried in the bill that brought in local government. The bill died on the Senate floor the last day of session, but we expect similar legislation to return in future sessions.

The bill creates the Division of Procurement Enhancement within the Department of Small Business and Supplier Diversity (DSBSD) for purposes of collaborating with the Department of General Services, the Virginia Information Technologies Agency, the Department of Transportation, and covered institutions to further the Commonwealth's efforts to meet the goals established under the Small Business Procurement Enhancement Program and the Women-owned and Minority-owned Business Procurement Enhancement Program, as well as implementing initiatives to enhance the development of small businesses, microbusinesses, women-owned businesses, and minority-owned businesses in the Commonwealth.

HB 5002 establishes the Small Business Procurement Enhancement Program with a statewide goal of 42 percent of certified small business utilization in all discretionary spending by state agencies and covered institutions in procurement orders, prime contracts, and subcontracts, as well as a target goal of 50 percent subcontracting to certified small businesses for all new capital outlay construction solicitations that are issued, in instances where the prime contractor is not a small business. In addition, the bill provides for a small business set-aside for the purchase of goods, services, and

construction by state agencies and covered institutions, with purchases up to \$100,000 set aside for award to certified small businesses and purchases up to \$10,000 set aside for award to microbusinesses.

The bill also establishes the Women-owned and Minority-owned Business Procurement Enhancement Program with a statewide goal of 23.1 percent of certified women-owned and minority-owned business utilization in all discretionary spending by state agencies and covered institutions in procurement orders, prime contracts, and subcontracts. The bill further requires that state agencies and covered institutions require certain proposals or bids to include a small, women-owned, and minority-owned (SWaM) business subcontracting plan detailing intended subcontractor participation. Each state agency and covered institution is required to submit to DSBSD its SWaM business procurement plan on or before September 30, 2021, and to designate an existing employee as a SWaM business procurement enhancement liaison. Each state agency and covered institution is required to certify to DSBSD annually by September 30 of each subsequent year that it has reviewed and updated as necessary its SWaM business procurement plan. DSBSD is to issue a report to the Governor and the General Assembly on the implementation and effectiveness of both procurement enhancement programs.

Finally, the bill amends the Virginia Public Procurement Act to permit public bodies to establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for the purchase or lease of goods, or for the purchase of services, insurance, or construction, if the aggregate or the sum of all phases is not expected to exceed \$200,000. Under current law, such purchase procedures may only be established for (i) goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$200,000; (ii) transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000; and (iii) professional services, provided the aggregate or the sum of all phases is not expected to exceed \$80,000. The Women-owned and Minority owned Business Procurement Enhancement Program established by this bill expires July 1, 2028.

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