

# Capitol Contact

## Virginia General Assembly

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## General Assembly Approves Plan for Federal Relief Dollars



The General Assembly approved a package of amendments to the 2021 Appropriations Act on August 9 to appropriate federal relief funding that is being provided to the state through the American Rescue Plan Act. The Governor signed the budget bill on August 10, so the revisions are now in effect. The revised budget appropriates approximately \$3.2 billion in flexible State Fiscal Recovery Fund dollars in FY 2022, leaving approximately \$1.1 billion available for future use (the budget proposes to set aside approximately \$354 million for the 2022-2024 biennium, although this planned spending may be revisited in the 2022 legislative session). In addition, the budget

appropriates approximately \$5.7 billion in grant funding that is targeted for certain specific purposes (for example, Emergency Rental Assistance funding).

The spending package makes major investments in areas of importance to counties that were requests of VACo, including broadband, wastewater improvements, school capital needs, and replenishment of the Unemployment Trust Fund. It also includes an important clarification with respect to public employers' longstanding ability to offer compensatory time for overtime work, which was also requested by VACo.

Differences between the House and Senate versions were worked out in a conference committee and an agreement was released late Friday, August 6. The House had approved the budget in the form originally proposed by the Governor, while the Senate had adopted several amendments. Ultimately, the conference committee agreed to a handful of amendments, notably an increase to the proposed bonus for state-supported sworn officers of sheriffs' departments and regional jails from \$1000 (as proposed by the Governor) to \$3000. Other amendments included a directive to the Department of Motor Vehicles to submit a plan for serving walk-in customers, and a six-month extension to the introduced budget's proposed rate increase for certain home and community-based services funded through Medicaid.

VACo provided [an overview of key provisions of the proposed budget](#) of importance to counties In the August 6 County Connections; following is an update based on the approved budget:

### **Broadband**

- Provides \$479 million in Fiscal Recovery Funds and the entire \$221.7 million Capital Projects Fund allocation for broadband access through the Virginia Telecommunication Initiative in FY 2022, for a total investment of \$700.7 million. Language authorizes the Department of Housing and Community Development (DHCD) to adjust program criteria to reflect rules and regulations established by the U.S. Department of the Treasury. Language requires an annual performance report and specifies elements to be included in the report, to include an evaluation of any projects at risk of incompleteness or underperformance. The Department is also directed to develop a public-facing dashboard to be updated quarterly with information on key performance indicators.
- Provides \$8 million to DHCD in FY 2022 to support the extension of existing broadband networks to low- to moderate-income residents and sets aside \$8 million for the same purpose in the 2022-2024 biennium budget.

- Provides \$500,000 in FY 2022 and sets aside \$1.5 million for the 2022-2024 biennium for legal and real estate transaction support through the Department of General Services for broadband expansion.

### **Unemployment Trust Fund**

- Deposits \$862 million in the Unemployment Trust Fund in FY 2022, and includes language directing the Virginia Employment Commission to compute tax rates for employers for 2022 by excluding pandemic-related claim activity, and limiting employer tax rates for 2022 to rates imposed in 2021. Also provides \$73.6 million to VEC in FY 2022 for information technology improvements and sets aside \$17.6 million in the 2022-2024 biennium budget for the same purpose.

### **Wastewater and Drinking Water Improvements**

- Provides \$100 million in Fiscal Recovery Fund dollars in FY 2022 to the Department of Environmental Quality for reimbursements to eligible entities for capital costs incurred for the design and installation of nutrient removal technology in accordance with the Enhanced Nutrient Removal Certainty program, and to reimburse the Town of Pound and the City of Peterburg for certain water facility infrastructure costs.
- Provides \$5.75 million in Fiscal Recovery Fund dollars in FY 2022 to the Virginia Department of Health to fund improvements to well and septic systems for homeowners at or below 200 percent of the federal poverty level and sets aside the same amount for the same purpose in the 2022-2024 biennium budget.
- Provides \$75 million in Fiscal Recovery Fund dollars in FY 2022 to DEQ for septic, straight pipe, and sewer collection system repair, replacement, and upgrades.
- Provides \$125 million in Fiscal Recovery Fund dollars in FY 2022 for grants to the Cities of Alexandria, Lynchburg, and Richmond for Combined Sewer Overflow projects (\$50 million for Alexandria, \$25 million for Lynchburg, and \$50 million for Richmond); requires a 100 percent local match.
- Provides \$50 million in Fiscal Recovery Funds to the Virginia Department of Health in FY 2022 to support equal access to drinking water at small and disadvantaged community waterworks; also sets aside \$50 million for the same purpose in the 2022-2024 biennium budget.

### **Compensatory Time for Public Employees**

- Clarifies that public agencies may continue to offer compensatory time in lieu of wages for overtime pay.
- **UPDATE:** Clarifies that individuals who volunteer to perform services for a public agency are not considered employees under VOWA if such services are not the same type of services for which the individual is employed to perform for such public agency. Additional language clarified that an employer may exert an

exemption to the overtime requirements of VOWA for employees who meet the exemptions set forth in certain provisions of the FLSA.

### **Ventilation improvements for schools**

- Dedicates \$250 million in Fiscal Recovery Funds in FY 2022 to qualifying ventilation improvement projects in public schools, with funds to be allocated to local school divisions based on FY 2022 projected March 31 Average Daily Membership, with a minimum allocation of \$200,000 per division, to be paid to school divisions on a reimbursement basis. A local match is required.

### **Other Education Funding**

- Appropriates the \$1.9 billion in Elementary and Secondary School Emergency Relief (ESSER) funding that is provided to school divisions, as well as the \$211.1 million in ESSER funding retained by the state Department of Education.
- From the portion of ESSER funds that is retained by the state Department of Education, provides \$3.5 million for private special education day school costs for students with disabilities who received these services during the 2020-2021 school year and opt for an extension to attend school during the 2021-2022 school year.
- From the portion of ESSER funds that is retained by the state Department of Education, provides \$11.5 million for incentive payments for individuals hired to fill instructional positions between August 15, 2021, and November 15, 2021.
- Appropriates \$67.5 million in Individuals with Disabilities Education Act (IDEA) Grants to States funding and \$4.9 million in IDEA Preschool funding.

### **Public Safety**

- As introduced, the budget would provide \$11.1 million in Fiscal Recovery Fund dollars in FY 2022 to the Compensation Board for a one-time hazard pay bonus of \$1000 for state-supported sworn officers of sheriffs' departments and regional jails.
- **UPDATE:** The adopted compromise increases this amount to \$33.2 million to provide a \$3000 bonus for state-supported sworn officers of sheriffs' departments and regional jails, and includes language directing the Governor to convene a workgroup to address compensation for correctional officers at the Department of Corrections, deputy sheriffs, and regional jail officers. Recommendations are due to the Governor and General Assembly by October 15, 2021.

### **Housing**

- Appropriates \$465 million in Emergency Rental Assistance funding.
- Appropriates \$39.7 million in HOME Investment Partnerships Program funding

- Includes language limiting landlords from taking action to obtain possession of a rental unit for nonpayment of rent, unless certain conditions are met.

**Assistance to businesses, tourism promotion, and economic development**

- Provides \$250 million in Fiscal Recovery Funds in FY 2022 for the Rebuild VA program, a grant program assisting small businesses and nonprofits. Priority is to be given to qualifying applications received on or before June 30, 2021, for which a grant was not awarded. The Department of Small Business and Supplier Diversity is directed to solicit new applications to allocate remaining funds, with priority given to businesses in the hospitality and tourism industry; when awarding funds to restaurants, funds are to be reserved for restaurants that have not received assistance through the Small Business Administration’s Restaurant Revitalization Fund or Paycheck Protection Program.
- Provides \$22.5 million in Fiscal Recovery Funds in FY 2022 to DHCD for the Virginia Removal or Rehabilitation of Derelict Structures Fund program, which makes grants to local governments for acquisition, demolition, removal, rehabilitation, or repair of specific derelict structures. Funds are to be awarded through the Industrial Revitalization Fund process, which leverages local and private resources to achieve market-driven redevelopment of vacant and deteriorated industrial and commercial properties; criteria may be adjusted to reflect Treasury’s rules and regulations for the Fiscal Recovery Fund. Sets aside \$22.5 million in the 2022-2024 biennium budget for the same purpose.
- Provides \$4 million in Fiscal Recovery Funds in FY 2022 to DHCD for the Virginia Main Street Program to provide assistance to businesses recovering from the pandemic, and sets aside the same amount in the biennium budget as well.
- Provides \$50 million in Fiscal Recovery Funds in FY 2022 to the Virginia Tourism Authority to support local domestic marketing organizations, as well as the Authority’s marketing and incentive programs.

**Behavioral Health**

- Provides \$45 million in Fiscal Recovery Funds in FY 2022 for bonuses for direct care staff at state hospitals and training centers. Sets aside \$76.9 million for the 2022-2024 biennium for salary adjustments for direct care staff at state hospitals and training centers.
- Provides \$10 million in Fiscal Recovery Funds in FY 2022 to the Department of Behavioral Health and Developmental Services (DBHDS) for continued expansion of community-based crisis services, which may include mobile crisis services and crisis receiving facilities. Sets aside \$20 million in the 2022-2024 biennium for the continued expansion of these services.
- Provides \$1.2 million in Fiscal Recovery Funds in FY 2022 for personal protective equipment at state facilities; sets aside \$1.2 million in the 2022-2024 biennium

for the same purpose. Provides \$50 million in Fiscal Recovery Funds in FY 2022 for ventilation and water and sewer improvements at state facilities.

- Provides \$5 million in Fiscal Recovery Funds in FY 2022 for permanent supportive housing in Northern Virginia.
- Provides \$1.65 million in Fiscal Recovery Funds in FY 2022 and sets aside a like amount in FY 2023 to expand a pilot program serving individuals with dementia who are ready for discharge from the state hospitals and who need nursing facility care.
- Provides \$1 million to the Department of Criminal Justice Services for crisis intervention team training for law enforcement offices and dispatchers, and one position to provide technical assistance for the Marcus Alert system. Sets aside \$3 million in the 2022-2024 biennium for the same purpose.
- Provides \$5 million in Fiscal Recovery Funds in FY 2022 to the Virginia Department of Health for substance misuse and suicide prevention efforts, and \$5 million to DBHDS to expand community-based substance use disorder treatment services. Sets aside like amounts in the 2022-2024 biennium. Provides \$10 million to DBHDS in Fiscal Recovery Funds in FY 2022 to make grants to members of the Virginia Association of Recovery Residences for recovery support services.
- Appropriates \$35.8 million in Mental Health Block Grant funding and \$34 million in Substance Abuse Block Grant funding. Appropriates \$750,000 in federal funding for community-based overdose prevention programs, syringe services programs, and other harm reduction programs. Appropriates \$1.25 million in federal funding for community-based local behavioral health needs.

### **Elections**

- Provides \$1.5 million in Fiscal Recovery Funds in FY 2022 to the Department of Elections for voter education efforts.
- Provides \$3 million in Fiscal Recovery Funds in FY 2022 to the Department of Elections to support local efforts to expand early voting to include the adoption of Sunday voting.
- **UPDATE:** The conferees did not include a proposed Senate amendment that would require absentee ballots to be reported by precinct rather than being reported in the Central Absentee Precinct. This concept was considered during the 2021 Session and the General Assembly directed the convening of a workgroup on the issue to address cost and logistical concerns raised during discussions on the legislation; a report is due November 15.

### **Electronic meetings**

- Authorizes legislative committees (other than a standing General Assembly committee to which bills are referred during a legislative session) and executive

branch advisory boards or councils to hold electronic meetings if the meeting is being held solely for information purposes.

### **Utility assistance**

- Provides \$120 million in Fiscal Recovery Funds in FY 2022 for utility assistance to provide direct assistance to residential utility customers with accounts over 60 days in arrears (as of August 31, 2021), including the cost to administer the program. (This \$120 million is in addition to the previously allocated \$100 million from the CARES Act.)
- The State Corporation Commission is directed to establish an application process to distribute funds directly to utilities to provide assistance to customers. The Department of Planning and Budget is directed to transfer funds to DHCD to address arrearages of customers of utilities that are not subject to State Corporation Commission jurisdiction (including municipal utilities).
- Utilities are required to keep separate ARPA COVID-19 Utility Assistance Funds and record direct assistance payments to customers. Utilities may require an attestation of financial hardship, but it is not required, and may not use funds for new deposits, down payments, fees, late fees, interest charges, or penalties.
- DHCD is directed to survey municipal utilities to determine the amount of unspent utility assistance funds previously provided under the CARES Act, as well as the level of outstanding arrearages from March 12, 2020, as of August 31, 2021. If funds provided are insufficient to cover aggregate outstanding jurisdictional and municipal customer arrearages, additional funds may be considered during the 2022 session.
- Does not include Phase II utilities, which are subject to separate language establishing a moratorium on disconnections of electric service for certain residential customers.
- Appropriates \$9.9 million in Low-Income Household Water Assistance Program funds to the Department of Social Services.
- Appropriates \$90.2 million in Low-Income Home Energy Assistance Program funds to the Department of Social Services

### **Parks**

- Provides \$25 million in Fiscal Recovery Funds in FY 2022 to the Department of Conservation and Recreation for outdoor recreation area maintenance and construction.

**VACo Contact:** [VACo Legislative Team](#)

# General Assembly Adopts Governor's Amended Budget Language Addressing Primary Overtime Compensation Concerns

The General Assembly approved language and added additional language to Governor Ralph Northam's budget amendments addressing the Department of Labor and Industry's (DOLI) interpretation of Delegate Mike Mullins' [HB 2063](#), which was passed earlier this year. The DOLI interpretation overturned the longstanding provision of the Fair Labor Stands Act that allowed public agencies to offer compensatory time in lieu of pay for overtime. This budget amendment language addresses the multi-million-dollar fiscal impact that the DOLI interpretation would have on local governments and thousands of public employees.

The Governor's budget included language in his introduced [amendments](#) suggested by VACo that specifically states the terms "Wages" and "Pay" shall also mean overtime compensatory time in lieu of wages for overtime pay by public agencies as provided by certain provisions the FLSA. This language was further [amended](#) by the budget conference to clarify that individuals who volunteer to perform services for a public agency are not considered employees under VOWA if such services are not the same type of services for which the individual is employed to perform for such public agency. Additional language clarified that an employer may exert an exemption to the overtime requirements of VOWA for employees who meet the exemptions set forth in certain provisions of the FLSA.

Governor Northam signed the provisions of the amended budget on August 10, and they take effect immediately. However, amendments to Virginia Overtime Wage Act will be necessary in the 2022 General Assembly session to provide a long-term solution to this issue beyond the conclusion of Fiscal Year 2022, when the budget language will expire. VACo thanks our members for the information and advocacy efforts made in response to our June 25 [Capitol Contact Alert](#).

VACo appreciates the efforts of Governor Northam, Delegate Mullin, and the General Assembly for diligently working to correct an unintended consequence of legislation from the 2021 regular session, and we look forward to working with everyone to ensure a successful outcome for local governments in the 2022 session.

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