

# Capitol Contact

## Virginia General Assembly

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

Thursday, February 10, 2022

## Oppose Statewide Expanded Disclosure Requirements in Land Use Proceedings Bill that would Prevent Local Elected Officials from Voting in Certain Situations

[HB 626 \(Roem\)](#) creates new and more stringent land use disclosure requirements for local government officials. These requirements apply to the governing body, the planning commission, and the board of zoning appeals in any proceeding before each such body involving an application for a special exception or variance or involving an application for amendment of a zoning ordinance map, which does not constitute the adoption of a comprehensive zoning plan, an ordinance applicable throughout the locality, or an application filed by the governing body that involves more than 10 parcels that are owned by different individuals, trusts, corporations, or other entities.

If at the time of the hearing in any such case, such member has a business or financial interest with the applicant, that member shall, prior to any hearing on the matter or at such hearing, make a full public disclosure of such a business or financial interest or employee-employer, agent-principal, or attorney-client relationship and shall be **ineligible** to vote or participate in any way in such case or in any hearing thereon.

**Business or financial relationship is defined** in the bill and includes the receipt by the member, or by any person, firm, corporation, or committee in his behalf, from the applicant in the case or from the title owner, contract purchaser, or lessee of the subject land, except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10 percent or more of the units in the condominium, or from any of the other persons above specified, during the 12-month period prior to the hearing in such case, of

**any gift or donation having a value of more than \$100, singularly or in the aggregate.**

Current law found in the State and Local Conflict of Interests Act has a broader definition of financial interest (\$5,000) and allows voting after disclosure in many cases. This bill was recommended for reporting by the House General Laws Committee's Subcommittee #3 by a vote of 6-3 and is scheduled to be heard in the [Counties, Cities and Towns Committee](#) on Friday, February 11.

**ACTION REQUIRED – Please contact your Delegate on the Counties, Cities and Towns Committee and urge them to oppose HB 626.**

### **KEY POINTS**

- The existing provisions of the State and Local Government Conflict of Interests Act in state law are adequate and uniformly apply in all localities except Loudoun and Fairfax County. This bill, which currently only applies in Loudoun, is not needed statewide.
- In localities with smaller boards, there may be situations where no members can vote.

### **KEY CONTACTS**

**[Counties, Cities and Towns Committee:](#)** [Hodges \(Chair\)](#), [Morefield \(Vice Chair\)](#), [McNamara](#), [LaRock](#), [Wyatt](#), [Avoli](#), [Ballard](#), [Cherry](#), [Scott, P.A.](#), [Cordoza](#), [March](#), [Wachsmann](#), [Mullin](#), [Roem](#), [Gooditis](#), [Kory](#), [Subramanyam](#), [Jenkins](#), [Williams Graves](#), [Sewell](#), [Bennett-Parker](#), [Shin](#)

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

## **VACo Opposes Bill Limiting Authority of Counties to Regulate Short-Term Rentals**

[HB 1362 \(Wiley\)](#) would make operation of short rentals, which is defined as the “... provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy,” a by-right use unless a locality adopts an ordinance regulating the use.

The text of the relevant change to Virginia Code [15.2-983](#) is as follows: “*If the governing body of any locality has not by ordinance, pursuant to its general land use and zoning authority, restricted the operation of short-term rentals, an operator may operate a short-term rental in the locality, subject to applicable law.*”

2017 legislation provided localities with the ability to regulate short-term rentals on a local level. This enabled localities to make decisions regulating their use in several ways including ordinances, adopting a registry and through special use permits. This bill would effectively take away this land use authority. The bill passed the House Counties, Cities and Towns Committee' Subcommittee #2 on a vote of 7-2, and will be heard by the full House Counties, Cities and Towns Committee on Friday February 11, 2022.

**ACTION REQUIRED – Contact members of the [House Counties, Cities and Towns Committee](#) to vote “NO” on HB 1362.**

### **KEY POINTS**

- VACo supports maintaining and expanding local authority to plan and regulate land use and opposes any legislation that weakens these key local responsibilities.
- VACo opposes any legislation that limits or restricts local authority to regulate home-based businesses, including short-term rentals regardless of whether services or goods are purchased through an online hosting platform.

### **KEY CONTACTS**

**[Counties, Cities and Towns Committee:](#) [Hodges \(Chair\)](#), [Morefield \(Vice Chair\)](#), [McNamara](#), [LaRock](#), [Wyatt](#), [Avoli](#), [Ballard](#), [Cherry](#), [Scott, P.A.](#), [Cordoza](#), [March](#), [Wachsmann](#), [Mullin](#), [Roem](#), [Gooditis](#), [Kory](#), [Subramanyam](#), [Jenkins](#), [Williams Graves](#), [Sewell](#), [Bennett-Parker](#), [Shin](#)**

**VACo Contacts:** [Joe Lerch, AICP](#) and [Phyllis Errico, Esq., CAE](#)

## **Legislation on Assessment Increases Amended Significantly in Committee**

[HB 1010 \(Durant\)](#), as introduced, would have imposed new restrictions on the local budget process by requiring a referendum if growth in real estate assessments would generate more than 101 percent of the previous year's collections and the locality did not reduce the tax rate accordingly. VACo opposed the original version of the bill.

As amended in the House Finance Committee, the bill now addresses only the notice for the public hearing that is required to be held if the governing body does not reduce the tax rate to generate no more than 101 percent of the previous year's real property tax levies. The substitute version (which may be viewed at [this link](#)) would require those localities that conduct reassessments more than once every four years to publish the notice of this hearing on a different day than

the notice of the annual budget public hearing, and in a separate notice from the notice of the annual budget hearing. Proponents of the bill argue that this separate notice would provide more clarity to taxpayers regarding the process of setting the tax rate.

VACo would appreciate members' feedback on the amended version of this bill.

**VACo Contact:** [Katie Boyle](#)

## An Overview of Charter School Legislation

Legislation that would erode local school board authority in regard to the creation of public charter schools is meeting different outcomes in the House of Delegates and the Senate. Charter schools are meant to provide options for parents and students while allowing communities and educators to create innovative instructional programs that can be replicated elsewhere in the public school system. Under current Code, the establishment and operation of public charter schools must involve the consent and approval of the local school board of the school division in which a charter school applicant wishes to operate. According to the Virginia Department of Education ([VDOE](#)), there are currently seven public charter schools operating in Virginia. VACo does not oppose charter schools or innovative approaches to education, but does have a long-held legislative position that opposes legislation that removes authority from local school boards and divisions to establish charter schools.

[SB 608 \(Suetterlein\)](#) and [SB 635 \(Chase\)](#), as originally drafted would have permitted the Board of Education to receive, review, and rule upon applications for public charter schools and enter into agreements for the establishment of public charter schools, among other provisions. This would remove the requirement for local school board authority in this measure. Both bills were passed by indefinitely by the Senate Education and Health Committee, 9-6, on February 10. VACo opposed these bills. The House companion, [HB 344 \(Davis\)](#), has been referred to the House Education Committee. A potential substitute for the bill, which would address local school board authority concerns has been posted, however, the bill was taken by for the day at the February 9 meeting of the committee.

[HB 356 \(Tata\)](#) would authorize the Board of Education to establish regional charter school divisions consisting of at least two but not more than three existing school divisions in regions in which each underlying school division has (i) an enrollment of more than 3,000 students and (ii) at least two such local school divisions have grades three through eight math and English reading Standards of Learning assessment performance in the bottom quartile of the Commonwealth, among other provisions. This bill would also remove the requirement for local school board authority. VACo testified in opposition to the

bill when it was heard in subcommittee, however the House Education Committee voted 12-10 on February 9 to report the bill. An identical bill as introduced to HB 356, [SB 125 \(Obenshain\)](#), failed to report from the Senate Education and Health Committee on a vote of 7-8.

In addition to bills specifically addressing public charter schools, two bills seek to modify the existing provisions of code that relate to laboratory schools.

[Laboratory schools](#) are public schools established by contract between the governing board of a college partnership laboratory school and the Board of Education. Under current code, eligible college partnership laboratory schools are limited to public, nonsectarian, nonreligious schools in the Commonwealth established by a public institution of higher education, or a private institution of higher education that operates a teacher education program approved by the Board of Education. For a variety of reasons, laboratory schools have been underutilized by institutions of higher education.

[SB 598 \(Pillion\)](#) would allow laboratory schools to enter into a memorandum of understanding with any individual or entity to provide apprenticeships, career training, faculty training and support, and equipment, resource, and curriculum support. It would expand eligible institutions of higher education to include any institution of higher education. In reviewing and ruling on applications to form a laboratory school, the Board of Education would be required to give preference to any application from a historically black college or university, any application establishing a laboratory school in an underserved community, and any joint application submitted by an institute of higher education in partnership with one or more local school boards. It would also consider any students enrolled in a laboratory school to be students at the local school division for the purposes of calculating average daily membership (ADM), an important factor in state basic aid funding to local school divisions. The bill was reported and referred to the Senate Finance and Appropriations Committee on February 10 by the Senate Education and Health Committee on a vote of 15-0. Though similar to SB 598, [HB 346 \(Davis\)](#), is not a specific in its prescriptions for the Board of Education approval process or funding of the laboratory schools and impacts on ADM calculations. HB 346 was reported by the House Education Committee on a vote of 12-10 on February 9.

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

## **Legislation Expanding County Government Authority to Reduce Speed Limits Pulled Over**

[HB 633 \(Carr\)](#) would have expanded the current authority of any locality to reduce the speed limit to less than 25 miles per hour, but not less than 15 miles per hour, on highways within its boundaries that are located in a business district

or residence district, provided that such reduced speed limit is indicated by lawfully placed signs, to include highways within the state highway system. This legislation was filed by Delegate Betsy Carr at VACo's request in response to an [interpretation](#) by the Virginia Department of Transportation (VDOT) of legislation from 2020 also filed by Delegate Carr, which was intended to extend this authority to all localities. The interpretation ruled that the authority to reduce the speed limit under these provisions applied only to roads not under the Commissioner of Highway's jurisdiction. In this case, roads owned and maintained by cities, towns, and the counties of Henrico and Arlington. HB 633 would overrule this interpretation and expand that authority to all other counties.

On February 1, HB 633 was heard in the House Transportation Committee's Subcommittee #2. VACo and several transportation safety groups testified in support of the bill. Unfortunately, the subcommittee voted 5-3 to recommend laying the bill on the table. Similar legislation, [HB 261 \(Wyatt\)](#), was also laid on the table at the patrons request after testimony stressing the importance of improved communication between VDOT and local governments, and improved responsiveness by the former to the latter's concerns regarding speed reductions. Similar legislation in the Senate, [SB 333 \(Bell\)](#), was struck at the request of patron.

VACo is thankful to the patrons, particular Delegate Carr, for their efforts and attention to the concerns of local governments to improve the ability of boards of supervisors to respond to constituent concerns regarding transportation safety.

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

## Advocacy Needed for County Budget Priorities

Budget proposals are being considered by the House Appropriations Committee and Senate Finance and Appropriations Committee; both are scheduled to report their respective budgets on Sunday, February 20. **Now is the time to advocate for county priorities!**

Please thank the patrons of these amendments and encourage your legislators to support these proposals, particularly if your General Assembly members serve on the House Appropriations Committee or the Senate Finance and Appropriations Committee.

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**Instructional aides:** [Item 137 #17h \(Plum\)](#)/[Item 137 #12s \(McClellan\)](#) provide \$160.2 million General Funds (GF) in FY 2023 and \$167.4 million GF in FY 2024 for the state's share of funding for instructional aides based on the ratio of total kindergarten through grade seven instructional aides to total kindergarten through grade seven teachers.



Currently, instructional aides are only funded for kindergarten and special education. [Item 137 #18h \(Keam\)](#) is intended to be the same.

### KEY POINTS

- Teacher aides play important roles in supporting teachers in the classroom by providing extra help to students one-on-one or in small groups, assisting teachers with tracking assignments and attendance, or providing additional assistance in specific areas of a school, such as a computer lab.
- Currently, only a small number (2,800) of kindergarten and special education teacher aides are covered under the Standards of Quality (SOQs). Meanwhile, school divisions employ more than 21,000 teacher aides. This amendment is intended to provide additional state support for positions that are currently funded only with local dollars.

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**Flexibility in teacher compensation increase:** [Item 137 #10h \(Watts\)](#), [Item 137 #2s \(Marsden\)](#), and [Item 137 #8s \(Ebbin\)](#) remove the requirement in the introduced budget for school divisions to provide at least an average 2.5 percent salary increase in each year of the biennium in order to access the state share of the 5 percent compensation supplement that is proposed for each year of the biennium.

### KEY POINTS

- Due to the large number of locally-funded positions in school divisions that are not recognized by the Standards of Quality, localities fund an estimated 56 percent of salary increases.
- This amendment would allow school divisions to provide the local share of up to a 5 percent salary increase in each year of the biennium without having to meet a minimum threshold to access the state share.

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**Recordation tax distribution to localities:** [Item 266 #1h \(Durant\)](#) eliminates budget language that directs \$20 million each year in recordation tax revenue to the Hampton Roads Regional Transit Fund and instead provides \$20 million in general fund appropriations each year for deposit to the Hampton Roads Regional Transit Fund. This amendment is meant to coincide with HB 978 and SB 363/SB 512.

### KEY POINTS

- This amendment would reverse the 2020 General Assembly's action to dedicate \$20 million in state recordation tax revenue (which would otherwise have been distributed to localities outside of Northern Virginia) to Hampton Roads Transit.

It would hold harmless funding to Hampton Roads Transit with an appropriation of General Fund dollars.

- Prior to the 2020 General Assembly session, a portion of recordation tax revenues had been distributed to counties and cities since 1993. Funding was distributed quarterly and could be used for transportation or public education purposes.
- Restoration of these funds will help localities 1) more effectively respond to the transportation and education needs of their communities, which as a result of COVID-19 are greater than ever, and 2) readdress long-term needs disrupted by the redirection of these revenues and the holes created in their budgets as a result.

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**Support for local Children’s Services Act programs:** [Item 284 #1h \(Plum\)](#), [Item 284 #2h \(Plum\)](#)/[Item 284 #1s \(Hanger\)](#) and [Item 285 #2s \(Hanger\)](#) provide funding for two proposals from a 2021 report on the implementation of legislation directing the Office of Children’s Services to provide additional oversight of local Children’s Services Act (CSA) programs. The funding would support four regional consultants at the Office of Children’s Service to provide additional assistance to local CSA programs, as well as additional administrative funds to ensure that each local CSA program receives at least \$50,000 per year in administrative funding, including local matching dollars.

## **KEY POINTS**

- Legislation in 2021 directed the Office of Children’s Services (OCS) to provide additional oversight of local CSA programs. A workgroup convened to consult on OCS’s plan to implement this new authority recommended the addition of the four regional consultants as well as the additional local administrative funding.
- The regional consultants are intended to provide additional support to local programs, such as training for local coordinators, helping to address regional service delivery gaps, and assisting with the implementation of quality improvement plans.
- The workgroup also recommended additional administrative funding, noting the program’s complexity and the relatively limited support provided for the program’s administrative infrastructure.
  - State administrative funds provided to local programs have not been increased since FY 2017; the current state appropriation is \$2.1 million statewide, which is subject to a local match.
  - Under the Appropriation Act, each locality currently receives the larger of \$12,500 or an amount equal to two percent of the total state pool



allocation. For FY 2022, 95 localities received a total of less than \$20,000 (including the local matching funds), and 114 of 130 local programs received a state and local total of less than \$50,000. The workgroup report notes that in a recent survey, localities reported providing a total of \$8.8 million in personnel costs and an additional \$1.1 million in non-personnel costs to support their local programs.

- The amendment would provide state funding sufficient such that all localities would receive at least \$50,000 per year in administrative funds (inclusive of the local match).

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**Deputy sheriffs' staffing:** [Item 72 #2h \(Wyatt\)](#), [Item 72 #4h \(LaRock\)](#), and [Item 72 #1s \(Boysko\)](#) would provide \$11.5 million GF in FY 2023 and \$14.4 million GF in FY 2024 to allocate 259 additional deputy positions in FY 2023 and 16 more positions in FY 2024, for a total of 275 positions over the biennium.

#### **KEY POINT**

- State Code requires the Compensation Board to fund one law-enforcement deputy for each 1,500 people in a jurisdiction in which the sheriff bears primary law enforcement responsibilities. This staffing ratio has not been fully funded since FY 2008, leaving localities to step in to fund positions necessary to support the operations of sheriffs' offices.

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**Jail per diems:** [Item 73 #1h \(Brewer\)](#), [Item 73 #4s \(Deeds\)](#) and [Item 73 #3s \(Petersen\)](#) would restore the local-responsible per diem rate from \$4 to its pre-FY 2011 level of \$8.

#### **KEY POINTS**

- Per diem rates have not been adjusted since FY 2011, while the costs of caring for incarcerated individuals have increased. According to the most recent state data, the average daily cost to house a jail inmate is now \$100.32 (of which localities contribute \$55.30).
- Virginia localities make a substantial contribution to the housing and care of inmates in local and regional jails. According to the Compensation Board, in FY 2020, localities contributed \$605.1 million to local and regional jails and jail farms (including debt service obligations), and an additional \$15.6 million to house inmates at other jurisdictions. The Compensation Board provided funding of \$362.1 million, with other state agencies providing an additional \$2.6 million, primarily in grant funding.

Related amendment [Item 404 #22h \(Runion\)](#) provides \$5 million GF per year for the Department of Corrections to reimburse local and regional jails for the costs of incarcerating state-responsible inmates; this amendment is a placeholder for related legislation that would provide for compensation at a rate of \$12 per inmate per day for the first 60 days, at the rate of \$40 per inmate per day during the period of more than 60 but not more than 90 days, and for the actual cost of incarceration as calculated in the jail report prepared annually by the Compensation Board for more than 90 days.

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**Aid to localities with police departments (“HB 599”):** [Item 408 #2h \(Brewer\)](#), [Item 408 #1s \(Edwards\)](#), and [Item 408 #2s \(Lucas\)](#) provide \$38.4 million in FY 2022 in HB 599 funding to reflect the general fund revenue growth rate of 14.4 percent in FY 2021 and 4.9 percent in FY 2022, in accordance with statute. [Item 408 #3s \(Reeves\)](#) would provide \$50.5 million GF in FY 2022, \$12 million which is to be allocated to local police departments to assist with pay compression, recruitment, and retention of officers. [Item 410 #2h \(Brewer\)](#), [Item 410 #1s \(Reeves\)](#), [Item 410 #2s \(Edwards\)](#), [Item 410 #3s \(Lucas\)](#), and [Item 420 #4s \(Newman\)](#) all provide \$108.8 million over the biennium to reflect GF revenue growth in the previous biennium, as well as the projected GF growth of 4.8 percent in FY 2023 and 4.2 percent in FY 2024.

#### **KEY POINTS**

- The introduced budget level-funds HB 599 appropriations at FY 2020 levels of \$191.7 million per year, despite General Fund growth in FY 2021 and FY 2022 and expected growth in the upcoming biennium. If HB 599 appropriations had kept pace with General Fund growth over time, FY 2022 funding would total \$359.1 million.
- Counties that receive HB 599 funding contribute significant local funds to their local police departments. In FY 2022, counties that receive HB 599 funds received \$67.9 million from this funding source and contributed \$898.1 million in local funds.

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**Reimbursement for general registrar and electoral board member compensation:** [Item 90 #1h \(Sickles\)](#) and [Item 90 #1s \(Deeds\)](#) provide \$2.7 million GF each year in additional funding to fully reimburse localities for general registrars' and electoral board members' salaries.

#### **KEY POINTS**

- The growing complexity of election administration has required significant investments of local funds. In FY 2020, counties and cities reported spending approximately \$57 million on elections administration, of which \$10.5 million was provided by the state.

- Full reimbursement for general registrar and electoral board member compensation was included in the budget approved in March 2020, but this funding was unallotted as a result of the pandemic and not restored in subsequent budgets.

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**Clarification of public agencies' ability to offer compensatory time in lieu of paid overtime:** [Item 4-14 #1h \(Byron\)](#) and [Item 4-14 #1s \(Stuart\)](#) incorporate language from the caboose into the biennium budget that clarifies that public agencies can continue to offer compensatory time in lieu of wages for overtime pay; this language would expire when a permanent statutory clarification took effect.

### **KEY POINTS**

- This language addresses an issue that arose last year after the Virginia Department of Labor and Industry interpreted the 2021 Virginia Overtime Wage Act to eliminate public employers' long-standing ability to offer compensatory time in lieu of overtime pay to employees under the Fair Labor Standards Act.
- To address the major financial and logistical implications of such a significant departure from long-standing practice, language was incorporated into the budget during 2021 Special Session II to clarify that public employers may continue to provide compensatory time. This clarifying language was included in the "caboose" budget for the current biennium.
- The budget amendment would include the language in the biennium budget (so that the clarification would extend beyond the expiration of the caboose budget on June 30, 2022), with a provision that it would expire upon the effective date of a statutory fix to this issue.

**VACo Contact:** [Katie Boyle](#)

## **Key Dates for the 2022 General Assembly**

As part of its organizational work on the first day of the 2022 session, the General Assembly adopted a procedural resolution on January 12 that sets out important dates and deadlines for the 2022 legislative session.

### **Key dates for the 2022 Session**

- **January 12:** General Assembly convened at noon. Bills that were “prefiled” were due to be submitted by 10 a.m. All bills and regulations affecting the Virginia Retirement System or creating or continuing a study were required to be filed before adjournment. Governor Northam delivered the State of the Commonwealth address at 7 p.m.
- **January 14:** Deadline for submission of budget amendments
- **January 15:** Joint Assembly for inaugural ceremonies
- **January 17:** Joint Assembly for address by Governor Youngkin
- **January 21:** Deadline for all bills or joint resolutions to be filed by 3 p.m. (with some exceptions, such as legislation introduced at the request of the Governor or legislation allowed to be introduced after deadlines by unanimous consent)
- **February 15:** “Crossover” deadline for each chamber to complete work on legislation originating in that chamber (except for the budget bill)
- **February 20:** Money committees report budgets by midnight
- **February 22:** Money committee budget proposals available by noon
- **February 24:** Houses of introduction must complete work on budget
- **March 2:** Deadline for each chamber to complete work on other chamber’s budget proposal and revenue bills and appoint conferees
- **March 7:** Deadline for committee action on legislation by midnight
- **March 12:** Scheduled adjournment *sine die*
- **April 27:** Reconvened session for consideration of Governor’s amendments and vetoes

VACo Contact: [Katie Boyle](#)