

# Capitol Contact

## Virginia General Assembly

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# The Status of School Construction Legislation Post Crossover

Numerous bills have been filed seeking to address the issue of School Construction and Modernization, and on the whole, most have passed the Senate while only one bill has made it through the House of Delegates. In 2021, the Commission on School Construction and Modernization examined the state of K-12 school infrastructure across the Commonwealth. They discovered that more than half of Virginia's school buildings are 50 years old or older and that the cost to replace these buildings is estimated to be \$24.8 billion. As previously [reported](#), VACo supports additional state resources and additional funding options for localities for capital and school construction costs, including expanding dedicated local sales and use tax authority first given to select counties by the General Assembly in 2019.

The following is the status of bills meant to address this issue:

[HB 563 \(O'Quinn\)](#), as originally drafted, would establish the School Construction Matching Grant Fund and Program for the purpose of awarding matching grants on a competitive basis to local school boards that demonstrate poor school building conditions, commitment, and need, based on certain enumerated factors, in order for such local school boards to fund the construction of new public school buildings in the local school division. This bill was amended to require the Department of Education in collaboration with the Department of General Services to adopt and maintain a data collection tool to determine the age of school buildings across the Commonwealth and the amount of maintenance reserve funds needed to restore each building. The Construction Fund language was also altered to require unobligated state gaming proceeds be directed to the Construction Fund for the purpose of awarding grants to

local school boards for school construction or renovation. Out of the numerous school construction bills mainly stemming from the recommendations from the Commission on School Construction and Modernization, this bill is the only school construction legislation to have passed the House of Delegates and it did so by a unanimous vote of 100-0. VACo supports this bill.

[SB 472 \(McClellan\)](#) would allow any county or city to levy a local general retail sales tax and a local use tax at a rate not to exceed 1 percent as determined by its governing body to provide revenues solely for capital projects for the construction or renovation of schools if such levy is approved in a voter referendum. Under current law, the power to levy such local sales and use taxes for the construction or renovation of schools is limited to the qualifying localities of Charlotte, Gloucester, Halifax, Henry, Mecklenburg, Northampton, Patrick, and Pittsylvania Counties and the City of Danville. This measure is a bipartisan unanimous recommendation of the Commission on School Construction and Modernization and passed the Senate 28-12. Additional bills expanding this authority to single localities include [SB 37 \(Norment\)](#) and [SB 298 \(Deeds\)](#), which would grant this authority to Isle of Wight County and the City of Charlottesville, respectively. VACo strongly supports these measures. A identical measure to SB 472, [HB 531 \(Hudson\)](#), was narrowly defeated in the House Finance Committee's Subcommittee #3 by a vote of 5-3, along with [HB 545 \(Hudson\)](#) which would have granted this authority to the City of Charlottesville, as well as [HB 63 \(Edmunds\)](#), which would have done the same for Prince Edward County. An identical bill to HB 531, [HB 1099 \(LaRock\)](#) was struck at the request of the patron.

[HB 252 \(Simonds\)](#) and [SB 238 \(McPike\)](#) would require the Department of Education, in consultation with the Department of General Services, to develop or adopt and maintain a data collection tool to assist each school board to determine the relative age of each public school building in the local school division and the amount of maintenance reserve funds that are necessary to restore each such building. HB 252 was recommended to be lain on the table by the House Appropriations Committee's Elementary and Secondary Education Subcommittee by a vote of 5-3. SB 238 passed the Senate unanimously on a 40-0 vote.

[HB 253 \(Simonds\)](#) and [SB 471 \(McClellan\)](#), as originally drafted, would make several changes to the Literary Fund recommended by the Department of Education and the Department of Treasury. The Literary Fund provides low-interest loans for school construction, grants under the interest rate subsidy program, debt service for technology funding, and support for the state's share of teacher retirement required by the Standards of Quality. These bills would increase to \$25 million the maximum Literary Fund loan amount, and permits the Board of Education to increase such maximum to up to \$35 million for loans on any school construction or renovation project that facilitates the consolidation of schools. The bills would also require the Board of Education to fix the interest rate on all loans made from the Literary Fund at not less than 1 percent per year, not more than 3 percent per year, and at increments of one half of 1 percent per year between such minimum and maximum rates, payable annually, and to utilize a sliding scale based on the local school division's composite index of local ability to pay to determine the interest rate on each such loan. HB 253 was

recommended to be lain on the table by the House Appropriations Committee's Elementary and Secondary Education Subcommittee by a vote of 5-3. SB 471 was amended to conform to budget language in the introduced biennial budget, reducing the scope of the legislation to reform loan closing cost subsidies of the Literary Fund and prioritize applications based on composite index of local ability to-pay (LCI), among other provisions. SB 471 passed the Senate unanimously on a vote of 40-0.

[HB 254 \(Simonds\)](#) and [SB 473 \(McClellan\)](#), as originally drafted, would establish the School Construction Fund as a special nonreverting fund in the state treasury for the purpose of providing grants from the Fund, subject to certain conditions, to school boards that leverage federal, state, and local programs and resources to finance the design and construction of new school buildings and facilities or the modernization and maintenance of existing school buildings and facilities. The bill provides that 3 percent of any fiscal year's budget surplus shall be appropriated to the School Construction Fund and Program. The bill also provides that any remaining revenues not appropriated by the Gaming Proceeds Fund shall be appropriated to the School Construction Fund and Program. HB 254 was recommended to be lain on the table by the House Appropriations Elementary and Secondary Education Subcommittee by a vote of 5-3. SB 473 was amended to require unobligated state gaming proceeds be directed to the Construction Fund for the purpose of awarding grants to local school boards for school construction or renovation that leverage federal, state, and local programs and resources, meet certain other loan conditions. SB 473 passed the Senate on a vote of 37-3. VACo supports SB 473.

[HB 1000 \(LaRock\)](#) and [SB 603 \(Stanley\)](#), as originally drafted, would have required the Board of Education (the Board) to make recommendations to the General Assembly by December 1, 2022 for amendments to the Standards of Quality to establish standards for the maintenance and operations, renovation, and new construction of public elementary and secondary school buildings. The bills would have required such recommendations to include standards for the percentage of the current replacement value of a public school building that a school board should budget for the maintenance and operations of the building and such other standards as the Board deems appropriate. HB 1100 was recommended to be lain on the table by the House Appropriations Elementary and Secondary Education Subcommittee by a unanimous vote of 8-0. SB 603 was carried over to 2023 by the Senate Finance and Appropriations Committee on a vote of 8-8.

[HB 559 \(O'Quinn\)](#), as originally drafted, would have provided that in any case in which a local school board enters into a comprehensive agreement with a private entity pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 whereby the private entity finances the construction of a new public school building in the local school division through the issuance of bonds; leases the building to the local school board in an arrangement such as a certificate of participation, a double net lease, or a triple net lease; and expects the local school board to make lease payments in an annual amount that approximates or is equal to the annual debt service on such bonds, the Department of Education shall not consider 50 percent of such lease payments as capital outlay and debt service and therefore shall not subtract such payments in the

biennial calculation of net local expenditures for operations or required local effort for the purpose of determining such local school division's composite index of local ability-to-pay, if so requested by the local school board. The bill was recommended to be lain on the table by the House Appropriations Elementary and Secondary Education Subcommittee by a unanimous vote of 8-0.

Lastly, several bills dealing with school board reversion of unexpended funds have been defeated in the House or amended by the Senate to address VACo's concerns. As previously [reported](#), four bills were introduced that in their original form were problematic for local governments, would permit any school board to finance school capital projects with any funds appropriated to it by the local governing body that are unexpended by the school board in any year or strongly disincentivize not doing so. [SB 276 \(Stanley\)](#) was amended to address VACo concerns and incorporated into [SB 481 \(McClellan\)](#), which was also amended to address VACo concerns by encouraging, but not mandating agreements between local governing bodies and school boards on the use of such funds. VACo is grateful to the patrons for their responsiveness and collaboration. SB 481 passed the Senate on a unanimous vote of 40-0. [HB 251 \(Simonds\)](#) was also amended to address VACo concerns, however, it was recommended to be lain on the table by the House Education Committee's Early Childhood/Innovation Subcommittee on a 5-3 vote. VACo is grateful to the patrons for their responsiveness and collaboration. [HB 608 \(Bourne\)](#) was not amended to address VACo's concerns, and VACo staff testified in opposition to the bill, which was also recommended to be lain on the table by the House Education Committee's Early Childhood/Innovation Subcommittee on a vote of 5-3.

In conclusion, as it stands at Crossover, there is one viable legislative proposal coming from the House and numerous bills coming from the Senate, though more efforts might be contained in the House and Senate budget proposals. The House bill (HB 563) contains similar content to two viable Senate bills (SB 238 and SB 473). Funding for school construction and renovation is one of the biggest concerns and responsibilities of local governments in the Commonwealth, but many localities face significant challenges in raising sufficient funds to undertake these projects. VACo encourages its members to engage with their legislators to stress the importance of meaningful legislative actions to address this \$25 billion issue.

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

## Update on Jail Bills

Two bills that would have provided additional state support to jails for the care of state-responsible inmates failed to survive hearings in the money committees prior to crossover. [HB 989 \(Runion\)](#) would have required the Department of Corrections to compensate local jails for housing state-responsible offenders at a tiered rate that would increase with the duration of the state-responsible offender's time in the local or regional jail (\$12 per day for the first 60 days

following the transmission of the sentencing order to the Department of Corrections, \$40 per day for the next 30 days, and the actual cost of incarceration as calculated in the annual jail cost report after the 90<sup>th</sup> day). HB 989 was reported from the House Public Safety Committee but tabled in House Appropriations. [SB 165 \(Peake\)](#) would have required the Department to compensate local jails for the cost of incarceration as calculated in the jail cost report beginning on the 61<sup>st</sup> day following transmission of the sentencing order. SB 165 was similarly reported from the Senate Rehabilitation and Social Services Committee but continued to 2023 in Senate Finance and Appropriations. Members of that committee did express a willingness to consider an increase in per diem rates as part of budget discussions. VACo spoke in support of these measures and continues to encourage members of the money committees to support additional resources for local and regional jails in the budget proposals that will be advanced on Sunday.

Two related bills dealing with the needs of individuals in local and regional jails who have mental illnesses or developmental disabilities were consolidated into one, significantly revised in the House Courts Committee, and then tabled in House Appropriations with a letter from the Chair referring the issues to the Behavioral Health Commission. As introduced, [HB 147 \(Wiley\)](#) and [HB 1341 \(Brewer\)](#) required the establishment of standards for the identification and care of individuals with developmental disabilities in local correctional facilities, including requirements for screening, the provision of services within the facility, or potential admission to a facility in which developmental services are provided. The bills also required transfer of certain individuals in need of behavioral health services (as in HB 147) or individuals determined to have severe mental illness (as in HB 1341) to an appropriate facility within 72 hours. Working with advocacy partners with the Virginia Association of Regional Jails and the Virginia Municipal League, VACo expressed concerns about the ability of local and regional jails to comply with these requirements. HB 147 was incorporated into HB 1341 in House Courts; as amended, the bill would have directed Community Services Boards to arrange for the admission of an individual determined to have severe mental illness to a mental health facility within 72 hours of notification by the jail. This bill was tabled in House Appropriations and referred to the Behavioral Health Commission.

As introduced, [HB 1053 \(Shin\)](#) and [SB 581 \(Morrissey\)](#) would have eliminated or capped certain fees charged to inmates within local correctional facilities. As amended, both bills now direct the establishment of a workgroup by the Board of Local and Regional Jails to make recommendations regarding the reduction or elimination of costs or fees charged to individuals incarcerated in local correctional facilities (a similar workgroup is directed to be convened by the Department of Corrections by [SB 441 \(Boysko\)](#)).

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

# Bill Expanding Farm Building Exemption from Building Code Passes Senate

[SB 400 \(Hanger\)](#), in its current form, would greatly expand the farm building code exemption to include existing, as well as new buildings, that are primarily used to host events. Specifically, the legislation defines an “agritourism event building” to mean ... *a building or structure located on property where farming operations or agritourism takes place, which is primarily used for holding events and entertainment gatherings open to the public of 300 people or less.* This would allow entertainment spaces that would otherwise have to be built to Building Code standards for the safety of the public to be exempt like farm structures.

Buildings used primarily for farm operations are exempt from building code. Some of these farm buildings have been used for other purposes including farm and agritourism activities such as wine tastings, live music events and other types of gathering of the public. One concern is that these buildings do not need to be built to the building code and the general public attending these events may not be aware of this. There are public safety concerns that may not be addressed. This issue has been considered by farm and agritourism groups as well as building, fire, and other local government groups to determine whether minimum standards should apply to these farm buildings with other non-farm uses.

The study portion of this bill would address those issues by creating a technical advisory committee to promulgate regulations through the Department of Housing and Community Development (DHCD) that limits application of building and fire safety standards to the following items:

- Requirements for outward swinging doors with panic hardware, emergency lights, and exit signs on designated emergency exits;
- Emergency vehicle access to the agritourism event structure;
- At least one restroom with handwashing facilities;
- Portable fire extinguishers for the purpose of fire suppression;
- A manual unmonitored fire alarm system with pull stations; and
- A fire evacuation plan.

While the study considerations above may be appropriate measures for farm structures, they fall short of critical component for suppressing fire, and other structural concerns that would be required under the building code for an assembly or entertainment space with more than 50 persons.

SB 400 has passed the senate and will now be taken up by the House for further consideration.

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

## VACo Supports Helpful FOIA, Public Notice and Conflict of Interests Bills

### FOIA

**[HB 444 \(Bennett-Parker\) FOIA; meetings conducted by electronic communication means; situations other than declared states of emergency.](#)** Sets out the parameters for public bodies to hold electronic meetings outside of the state of emergency when following the rules written in the bill. VACo, VML, the Press Association and the Coalition for Open Government worked with the patron and supported this consensus bill. HB 444 amends existing provisions concerning electronic meetings by keeping the provisions for electronic meetings held in response to declared states of emergency, repealing the provisions that are specific to regional and state public bodies, and allowing public bodies to conduct all-virtual public meetings where all of the members who participate do so remotely and that the public may access through electronic communications means. Please contact your Senator on the [Senate General Laws and Technology Committee](#) to express your support of HB 444.

**[SB 152 \(Locke\) Definitions.](#) This bill, which is a recommendation of the FOIA Council, defines “official government website” to be an internet site controlled by the public body and used to publish notices and other content required by the Freedom of Information Act (FOIA) on behalf of the public body.**

### Public Notice

**[HB 167 \(Ransone\) Publication of notice by localities.](#) This helpful bill provides that in any instance in which a locality has submitted a correct and timely notice request to such newspaper and the newspaper fails to publish the notice, or publishes the notice incorrectly, such locality shall be deemed to have met the appropriate notice requirements so long as the notice was published in the next available edition of a newspaper having general circulation in the locality. Please contact your Senator on the [Senate Local Government Committee](#) to express your support of HB 167.**

### Public Notice Provision Study

**[HB 1131 \(Williams\) / \[SB 417 \\(Stanley\\) Virginia Code Commission; work group to review public notices required to be published by localities.\]\(#\)](#)** VACo supports these bills along with VML and the Virginia Press Association. Directs the Virginia Code Commission to convene a work group to

review requirements throughout the Code of Virginia for localities to provide public notice for intended actions and events, including (i) the varying frequency for publishing notices in newspapers and other print media, (ii) the number of days required to elapse between the publications of notices, and (iii) the amount of information required to be contained in each notice, and make recommendations for uniformity and efficiency. The bills require the Commission to submit a report to the Chairs of the House General Laws Committee and the Senate General Laws and Technology Committee summarizing the work and submitting any recommendations of the work group by November 1, 2022.

## **Conflict of Interests**

[HB 216 \(Simonds\)](#) / [SB 57 \(Locke\)](#) **State and Local Government Conflict of Interests Act; definition of gift; certain tickets and registration or admission fees.** Exempt from the definition of gifts tickets and registration or admission fees that are provided to a locality's own officers or employees.

## **General Government Bills to Watch**

[HB 307 \(Freitas\)](#) **Virginia Freedom of Information Act; estimated charges for records.** Now states that before searching for records a public body must notify the requestor in writing that there could be a cost and offer at their request to create an estimate. Currently the requestor can request an estimate.

[HB 150 \(March\)](#) **Virginia Freedom of Information Act; local public bodies to post meeting minutes on its website.** Requires localities to post minutes of its minutes on its website if they have a website within seven working days of finance approval of the minutes. If there is no website, copies must be available at a prominent location.

[HB 384 \(Davis\)](#) **State and local employees; freedoms of conscience and expression.** Protects state and local government employees of the Commonwealth, defined in the bill, from being penalized by their employer for expressing their opinion regarding a current or proposed regulation, rule, policy, position, or other action or purpose of a unit of state or local government at a hearing of a public body during the time designated for public comment when such employees are speaking on their own behalf as members of the public.

## **Eminent Domain Bills**

[SB 666 \(Petersen\)](#) has some areas of concern for local governments including removing safeguard language in the existing law that prohibits a court from awarding damages for lost profits and lost access *twice* to same landowner, requiring a court to separate the trial over lost profits or lost access from the main condemnation trial at the request of the landowner.

[SB 694 \(Obenshain\)](#) requires the condemning locality to include an end-date for any temporary construction easement. That could be difficult for a locality with large projects.

### **Bills that didn't Survive Crossover**

Several Freedom of Information Act (FOIA) are no longer on the active docket. [HB 599 \(Roem\)](#), which would have required 8 free hours of FOIA requests per requester, per month did not make it out of a House General Laws Subcommittee.

[HB 331 \(Krizek\)](#), which added a requirement that a request for public records made pursuant to the Virginia Freedom of Information Act shall be made in writing and sent by the requester to the public body by registered mail, certified mail, or any other similar first-class mail tracking method used or approved by the United States Postal Service, was stricken from the docket by the patron.

[HB 687 \(Kory\)](#), which would have changed the definition of "meeting" for purposes of the Virginia Freedom of Information Act to mean an assemblage of at least a quorum of the members of a public body. Under current law, a meeting is defined as an assemblage of as many as three members or a quorum, if less than three members of a public body. This bill was stricken from the docket.

[HB 722 \(Gooditis\)](#), which would allow a local public body that serves in an advisory capacity to gather through electronic communication means without a quorum of the public body physically assembled at one primary or central meeting location, did not advance from a House General Laws Subcommittee.

### **Conflict of Interest/Disclosure Bills No Longer on Active Docket**

Disclosure bills, [SB 224 \(McPike\)](#) and [HB 626 \(Roem\)](#), required more stringent disclosures of relationships between local governing bodies and persons who may attempt to influence the governing body or government officials than currently provided in the State and Local Conflict of Interests Act. Both bills did not survive crossover and are gone for this session.

### **Standing Bills Gone for the Session**

[SB 206 \(Petersen\)](#) and [SB 208 \(Petersen\)](#) dealt with the issue of legal standing in a lawsuit. Both would have likely increased litigation for localities.

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

# 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](#)