Capitol Contact
Virginia General Assembly
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Tuesday, February 8, 2022

Grocery Tax Legislation to be Considered in Senate Finance and Appropriations Again This Week – Contact Legislators TODAY!

The Senate Finance and Appropriations Committee again considered a partial repeal of the sales tax on groceries this morning. The proposed bill failed to report, and members agreed to reconsider the bill at a meeting later this week – **which could be as soon as tomorrow morning**.

The proposal that was considered this morning is a substitute for SB 451 (Boysko). As introduced, that bill would provide a sales tax exemption for essential personal hygiene products. The substitute, which may be found at this link, would eliminate the 1.5 percent state portion of the sales tax on all groceries (food for human consumption and essential personal hygiene products), effective January 1, 2023. The 1 percent local option would be left intact. Although committee members indicated an expectation that the 1 percent of the state sales tax on groceries that is distributed to localities based on school-age population would be replaced in the budget, **the substitute does not explicitly provide for this replacement in statute**.

ACTION REQUIRED – Please contact members of the Senate Finance and Appropriations Committee as soon as possible.

KEY POINTS

- VACo takes no position on the policy question of elimination of the sales tax on groceries; **however**, if the state pursues this policy option, **localities must be made whole for any lost revenue associated with the 1 percent local option as well as the K-12 school-age population distribution.**

- Revenue must be replaced on an ongoing basis, via a direct distribution to localities in statute as well as in the budget.

- Addressing the lost revenue solely through a promised appropriation in the budget each year is not an adequate replacement for these dollars, as it will be vulnerable to caps or reductions in future years.

- We strongly encourage an approach that is minimally disruptive to current distribution mechanisms.

An option VACo has suggested to patrons and members would compensate for lost revenues associated with the local option and the school-age population distributions by adjusting the distribution percentages within the overall sales tax rate (which would be held the same). If it is assumed that eliminating the sales tax on groceries reduces the taxable sales base by an estimated 20 percent (to use a round number for ease of calculation), localities could be made whole by increasing the local option sales tax percentage by 20 percent (from 1 percent to 1.2 percent), increasing the school age population distribution by 20 percent (from 1.125 percent to 1.35 percent), and reducing the unrestricted state General Fund portion accordingly (from 2.025 percent to 1.6 percent). This approach would distribute funds through the same methods currently used, rather than creating a new formula, and would avoid the potential distortions created by replacing the school-age population distribution through an increase in basic aid (since that funding would flow through the Local Composite Index).

KEY CONTACTS

Senate Finance and Appropriations Committee: Howell (Chair), Saslaw, Norment, Hanger, Lucas, Newman, Ruff, Vogel, Barker, Edwards, Deeds, Locke, Petersen, Marsden, Ebbin, McClellan

VACo Contact: Katie Boyle

Overtime Wage Legislation Fixing Comp Time Advances

Legislation enacted by the 2021 General Assembly created the Virginia Overtime Wage Act, which was intended to allow workers to pursue overtime claims against their employers in state court, as opposed to having to go through the time and expense of seeking restitution in federal court. However, post-session, the Virginia Department of Labor and Industry (DOLI) interpreted the legislation to eliminate the long standing FLSA provision that allows state and local public employers the flexibility to provide "comp time" in lieu of overtime pay to employees and instead require payment of cash wages pursuant to the Fair Labor

Standards Act. This would have major fiscal and scheduling implications for both state and local governments. The fallout from not being able to provide compensatory time may cause local governments and the state to adopt major overhauls of their use of overtime that will impact their ability to deliver vital services and provide flexibility to their employees. During the 2021 Special Session II, VACo introduced budget language to fix this issue for the remainder of FY 2023.

Several bills and budget amendments have been filed this session that address this issue going forward. At VACo's request, HB 1143 (Byron) and SB 365 (Stuart), were introduced to specify in the Code of Virginia that public agencies, as defined under the Fair Labor Standards Act (FLSA) may provide an employee compensatory time in lieu of overtime compensation in accordance with the relevant provisions of FLSA. Delegate Byron and Senator Stuart also introduced budget amendments at VACo's request as a "belts and suspenders" approach should the legislation run into difficulty or fail to be enacted.

HB 1173 (Ware) and SB 631 (Barker), are similar bills that amend to the code to remove the provisions of the Virginia Overtime Wage Act that led to the DOLI interpretation eliminating the ability of public agencies to provide comp time in lieu of wages time by public agencies. VACo supports these bills as well. HB 1173 passed the House by a vote of 59-40. The Senate Commerce and Labor Committee met February 7 and voted to incorporate SB 365 into SB 631 and to report the later unanimously, 15-0. VACo is thankful to the patrons for their efforts and urges its members to support these bills.

VACo Contact: Jeremy R. Bennett

VITA Bill Amended to Address VACo Concerns

SB 764 (Barker) and HB 1290 (Hayes) as originally drafted would require every public body, including local governments, to report to the Chief Information Officer (CIO) of the Commonwealth all known incidents that threaten the security of the Commonwealth's data or communications or result in exposure of data protected by federal or state laws and all other incidents compromising the security of the public body's information technology systems with the potential to cause major disruption to normal activities of the public body or other public bodies. As previously reported, VACo had concerns with the legislation and testified against the House version when it was heard in the House Communications, Technology, and Innovations Committee on Monday, January 31. The Committee reported the bill on a vote of 19-2.

Since that time, VACo engaged the patrons of both bills, our risk insurance partners, and VITA to seek amendments to the bill language. VACo is thankful for substitute language introduced and adopted on both bills that would require such reporting be made to the [Virginia Fusion Intelligence Center] and for the inclusion of an enactment clause to convene a workgroup to review current cybersecurity reporting and information sharing practices and make recommendations on best practices for the reporting of cybersecurity incidents, as well as the scope and implementation of the required incident reporting. This workgroup will include representatives from the Virginia Data Advisory Commission, the Office of Data Governance and Analytics, the Virginia State Police, the Virginia Department of Emergency Management, the Virginia Information Technologies Agency, the Virginia Municipal League, the Virginia Association of Counties, and other relevant state or local entities. VACo is thankful to the patrons and to VITA for these changes to address our concerns.

HB 1290 passed the House on February 7 by a vote of 93-7. SB 764 reported from Senate General Laws and Technology on February 2 by a vote of 13-0, with one abstention.

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.

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.

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.

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.

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).

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.

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.

<u>Aid to localities with police departments ("HB 599"):</u> 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.

<u>Reimbursement for general registrar and electoral board member compensation:</u> 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.

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

Bill Defining "Certified Recovery Residence" Overrides Local Zoning Ordinances Passes in House Committee; Senate Version does not

HB 277 (Coyner) amends the standards for credentialing of a "certified recovery residence" to require disclosure to "each prospective resident whether the recovery residence is a certified recovery residence" adhering to the credentialing standards of the National Alliance for Recovery Residences or that of Oxford House, Inc. The proposal also provides that such residences shall constitute residential occupancy by a single family for zoning purposes, regardless of the number of persons residing in the certified recovery residence. Specifically, this provision states:

Zoning ordinances for all purposes shall consider a certified recovery residence, as defined in § 37.2-431.1, in which individuals with substance abuse disorder reside, either with or without one or more resident or nonresident staff persons, and in which a certifying entity verifies 50 square feet per bed per sleeping *room as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such certified recovery residence.*

VACo is concerned that this provision severely limits the ability of counties to address the associated land use impacts of an unlimited number of residents in a proposed facility. The bill passed in the Counties, Cities and Towns Committee and is now headed to the house floor for further consideration.

It is important to note that the senate version this bill, SB 622 (Favola), does not include this language overriding local zoning authority. SB 622 passed Rehabilitation and Social Services Committee and now on the senate floor.

VACo Contact: Joe Lerch, AICP

Mandatory School Resource Officer Bill Advances

HB 873 (Greenhalgh) as originally drafted would require every local school board to enter into a collaborative agreement with their corresponding local law-enforcement agency to employ at least one school resource officer in each public elementary and secondary school in the local school division. This bill is identical to SB 415 (DeSteph). Though not opposed to the policy intent of these bills VACo voiced concerns over these proposals based on the potential local fiscal impact. According to the Commission on Local Government's local fiscal impact statement, most localities reported a large negative fiscal impact equivalent to the cost of hiring and training the additional full time employee (FTE) needed to meet the staffing ratios.

The bills would represent a recurring cost increase to these localities. Additionally, localities noted that the bills do not indicate if the staffing requirements would extend to all alternative and program sites that serve students; as such, some estimates include the costs of staffing those sites while others do not. Including these sites in the bill's requirements would increase the fiscal impact on affected localities. For one locality, the estimated fiscal impact could range as high as $19 million.

SB 415 failed to report from the Senate Education and Health Committee by a vote of 4-11. However, when HB 873 was heard in the House Education Committee's K-12 Subcommittee on February 7, the subcommittee recommend reporting the bill on a vote of 5-3. During testimony, the patron indicated that a substitute for the bill as it is currently written would be introduced. No written copy of the substitute was available for analysis or posted online. VACo staff spoke in opposition. Despite this, HB 873 was heard in the House Education Committee that same day and reported from committee and referred to the House Appropriations Committee by a vote of 12-10. As of this posting, the substitute language for this bill has not been posted.

VACo encourages members to oppose HB 873 in its current form, which would impose an unfunded mandate on localities not currently complying with the School Resource Officer staffing levels that would be required by this legislation. VACo will provide additional updates and the substitute language for the bill as it advances and becomes available.

VACo Contact: Jeremy R. Bennett

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