

Update on Key Legislation and Budget Actions on Finance Committee Priorities

VACO FINANCE STEERING COMMITTEE

AUGUST 18, 2022

Grocery tax

Current law (until January 1, 2023):

- Food purchased for human consumption and essential hygiene products are taxed at 2.5 percent, a reduced rate relative to the general sales tax applied to other purchases.
- The 2.5 percent is composed of a 1.5 percent state sales tax and a 1 percent local option sales tax.
- From the 1.5 percent state portion:
 - 1 percent is distributed to localities, based on school-age population, for school funding needs
 - 0.5 percent is allocated to the Commonwealth Transportation Fund.

The Governor's introduced budget (December 2021) included language eliminating the state portion of the sales and use tax on food for human consumption, effective January 1, 2023. The budget included funding to hold localities harmless for the revenue loss associated with the school age population distribution, but there was no proposed statutory language embedded in the budget to suggest that localities would be held harmless on an ongoing basis – a significant concern to VACo.

Grocery tax

Several bills were introduced in both chambers, with HB 90 (McNamara) and SB 451 (Boysko) ultimately emerging as the legislative vehicles.

House approach (represented by the House's amendments to SB 451):

- Elimination of the state and local portions of the tax, effective July 1, 2022
- Replacement of the losses associated with removing the tax on food for the school-age population distribution via an increase to the statutory distribution percentage (1.182 percent instead of 1 percent)
- Replacement of the losses associated with removing the tax on food from the 1 percent local option with a "Supplemental School Payment" distribution to cities and counties that would be derived from 0.182 percent of the unrestricted General Fund portion of state sales and use tax.
 - This figure was derived from the Department of Taxation's estimate of the amount of funding needed to cover local losses associated with the removal of sales taxes on groceries.
- No replacement of transportation revenues.

Senate approach

- Elimination of the state portion only, effective January 1, 2023
- Replacement of the losses associated with removing the tax on food for the school-age population distribution by a distribution of an amount equal to what would have been distributed to localities had the state portion not been eliminated. Distribution would be based on school-age population.
- No replacement of transportation revenues

Grocery tax

Compromise in budget conference report:

- Elimination of the state portion only, effective January 1, 2023.
- Statutory language embedded in the budget provides for replacement of the losses associated with removing the tax on food for the school-age population distribution by a distribution of an amount equal to what would have been distributed to localities had the state portion not been eliminated. Distribution would be based on school-age population.
- No replacement of transportation revenues

HB 90/SB 451 conference reports mirror budget language.

Moving forward:

- Issue of exempting food for home consumption/essential personal hygiene products from 1 percent local option likely to be revisited.

State-mandated positions

Committee position:

- The Commonwealth must meet its obligations to fund appropriate staffing for the state's system of justice, to include clerks, magistrates, Commonwealth's Attorneys, public defenders, district court employees, and probation office employees. In the absence of adequate state support for this critical function of government, localities are frequently placed in the untenable position of supplementing the justice system with local dollars in order to ensure its continued functioning.
- VACo urges the Commonwealth to meet its full funding obligations, to include realistic levels of staffing to enable constitutional offices to meet their responsibilities and limit the need for localities to provide additional locally-funded positions. VACo supports flexibility in the use of state funds for compensation of constitutional officers and state-supported local employees.

State mandated positions – budget outcomes

- Overall compensation increase: Salary increases for state employees of 5 percent per year (except employees who are receiving targeted salary increase at or above 7.5 percent in FY 2023, who will receive increases of 2.5 percent in FY 2023 and 5 percent in FY 2024); similar salary increases for Constitutional officers and state-supported local employees, beginning August 1, 2022.
- \$66.5 million GF in FY 2023 for a \$1000 bonus for state employees on December 1, 2022.
- Targeted compensation actions:
 - Increases the entry-level salary of sworn deputy sheriffs and regional jail officers to \$42,000. Provides \$15.6 million over the biennium for a compression adjustment for sworn personnel with three or more years of service.
 - Increases salaries for general district court and juvenile and domestic relations court clerks by \$2000. Provides \$7.8 million per year for additional general district court clerk positions, salary increases for general district court clerks, or a combination of the two.
 - Provides \$3.9 million GF in FY 2023 and \$4.1 million GF in FY 2024 to implement the Office of the Executive Secretary of the Supreme Court’s magistrate retention plan; directs the Executive Secretary to report on the allocation of these funds and their effectiveness at addressing workforce challenges by October 15, 2023.
 - Includes a \$1250 salary increase for all circuit court clerk employees.
 - Provides a \$3000 salary increase for probation and parole officers; directs the Department of Corrections to conduct a review of staffing levels, employee compensation, and employment conditions, and report by October 1, 2022.

State mandated positions – budget outcomes

Public defenders:

- Provides \$859,920 GF per year to the Indigent Defense Commission to address workload increases.
- Provides \$100,000 GF in FY 2023 for JLARC to contract for a study of the feasibility and costs of a statewide system of public defender officers and the staffing and pay associated with court-appointed legal counsel and defense. Legislation that would have required localities to provide pay supplements to public defenders' offices commensurate with supplements for Commonwealth's Attorneys' offices was incorporated in the bill sent to JLARC to study.

Other budget actions of note for Constitutional offices:

- Provides additional \$978,476 GF per year for Clerks' operating budgets to replace the Technology Trust Funds that had been used to support operating costs.
- Restores \$673,767 GF in FY 2023 and \$735,018 GF in FY 2024 in state funding for 33 percent of Compensation Board-allocated positions in Commissioners' offices that were previously de-funded.
- Restores \$165,667 GF in FY 2023 and \$180,728 GF in FY 2024 in state funding for 120 underfunded deputy treasurer positions.

Jails – per diems

Committee request:

- VACo requests that jail per diem funding in the 2022-2024 biennial state budget be increased to levels that better represent the costs of housing inmates and be adjusted for inflation in the future so that payments keep pace with rising costs.

Two bills were introduced in the 2022 session to improve state reimbursement for state-responsible inmates:

- HB 989 (Runion) would have provided for a tiered reimbursement rate to localities by increasing payments for state-responsible inmates who remain in local and regional jails for longer periods of time.
- SB 165 (Peake) would have provided for local jails to be compensated for the actual costs of incarceration as calculated by the Compensation Board in its annual jail cost report beginning on the sixty-first day after transmission of the sentencing order.
- Neither bill passed, but during their hearings, legislators expressed an interest in addressing the issue in the budget.

Both the House and Senate budgets included an increase to per diem payments, although they took different approaches (the House proposed a \$4 increase for the state-responsible, while the Senate would have increased local-responsible by \$1 and state-responsible by \$2).

Budget outcome: As enacted, the budget increases the per diem rate for state-responsible inmates by \$3/day (provides \$4.6 million in FY 2023 and \$7 million in FY 2024 for this purpose).

Jails – behavioral health standards

Committee request:

The state must provide sufficient funding to enable local and regional jails to meet any new standards for the provision of health care, including behavioral health care, for individuals incarcerated in these facilities. A report recently issued by the Department of Criminal Justice Service and the Compensation Board estimating compliance costs for proposed behavioral health standards suggests that jails will need certain baseline staffing to comply with the standards, to include 24/7 coverage, either on-site or on-call, by a registered nurse; on-call and regularly scheduled services from a psychiatric provider; a qualified mental health professional to provide group and individual therapy services; and behavioral health case management services, to include discharge planning.

Budget outcome:

- Provides \$7.3 million in FY 2023 and \$9.9 million in FY 2024 for 125 new behavioral health case manager positions and 127 partially-funded medical/treatment positions.
- Language directs the Compensation Board to report on the implementation of these positions.

Upcoming/ongoing issues related to jails

Jail fees/costs: Workgroup has been convened at the direction of legislation passed in 2022 and charged with making recommendations regarding the reduction or elimination of certain fees/costs charged to individuals incarcerated in local/regional jails. Report is due December 1, 2022.

Housing of state-responsible inmates in local and regional jails: Implementation of earned sentence credit policy, which was passed in 2020 and takes effect July 1, 2022, is expected to enable the Department of Corrections to accept more state-responsible inmates from local and regional jails. VACo has encouraged DOC to prioritize accepting inmates from local and regional jails that are overcrowded.

Behavioral health standards: Need to continue to monitor deliberations of the Board of Local and Regional Jails as the standards are promulgated. Several bills were introduced this session to expand the standards to encompass developmental disabilities; the legislation was tabled in Appropriations but may be revisited in the future.

Appendix

Key Finance-Related Studies and Other Updates

JLARC studies of interest

Progressivity of Virginia's income tax: Directed by legislation enacted in 2021. Study is examining the progressivity of Virginia's income tax relative to other states and to the federal income tax, as well as how changes to the state income tax would affect progressivity and state revenues. Resolution directing the study requires JLARC to consider the effects of changes to tax brackets, tax rates, credits, deductions, and exemptions in looking at the state's individual income tax system.

Community Services Boards system: Study is reviewing the efficiency and effectiveness of the current structure of delivering public community-based behavioral health, substance use disorder, and developmental disability services, to include whether mandated services reflect the greatest behavioral health needs, and whether staffing and funding levels are adequate.

K-12 Standards of Quality funding formula: Directed by the General Assembly in 2021; JLARC was directed to estimate the true costs of implementing the SOQs based on actual prevailing practice, determine if the SOQs accurately reflect actual standards of practice, and analyze changes in the funding formula since 2009 and their effect on how accurately the funding formula reflects actual costs.

Indigent defense: The 2022 Appropriation Act provides \$100,000 in FY 2023 for JLARC to contract for a study of the feasibility and costs of a statewide system of public defender officers and the staffing and pay associated with court-appointed legal counsel and defense. Legislation that would have required localities to provide pay supplements to public defenders' offices commensurate with supplements for Commonwealth's Attorneys' offices was incorporated in the bill sent to JLARC to study. JLARC is expected to consider this study and how it can be incorporated into its plan of work at an upcoming meeting of its Studies Subcommittee.

Other Finance-Related Studies

Transient occupancy tax collection process An enactment clause in HB 518 (Head)/SB 651 (Vogel) directs the Department of Taxation to convene a stakeholder work group to make recommendations for improving the efficiency and uniformity of the processes used to collect transient occupancy taxes.

BPOL: Legislation was introduced in 2022 at the request of certain physician-owned specialty medical practices that would have authorized localities to exempt any class of taxpayers from license taxes and fees, with discretion to localities to determine the classes of taxpayers that would be exempted. This legislation was carried over in committee. Representatives of these practices have approached VACo and VML to discuss the effect of BPOL taxes on their business model.

Certification for local property tax assessors: Budget language directs the Department of Taxation to develop a proposal to require that all individuals who conduct local property tax assessments receive state certification and ongoing recertification.

HHR-related studies with implications for local budgets

Local health department structure and financing: The Joint Commission on Health Care is conducting this study, which is reviewing how programs and services compare across the state; whether the organization of local health departments is effective; and whether staffing and funding levels are commensurate with staff workload and community needs. Staff will be comparing Virginia's structure to those of other states and assessing whether services provided are aligned with recognized public health standards. VACo met with Commission staff and assisted in the preparation of a survey to local governments to capture local perspectives on the operation of local health departments.

Juvenile detention centers: The Virginia Commission on Youth is conducting this study, the purpose of which is to evaluate the effectiveness and efficiency of the state's juvenile detention system and identify potential changes to the operation of juvenile detention centers to accommodate for the declining population of youth served in these centers. Dean Lynch serves on the advisory committee for this study.

Workgroup on alternative custody: The Secretary of Health and Human Resources and the Secretary of Public Safety and Homeland Security are leading a workgroup, as directed by legislation passed in 2022, to study options to increase the use of alternative custody arrangements for individuals who are subject to an emergency custody order (ECO) or a temporary detention order (TDO). The study is intended to reduce the pressures on local law enforcement created by overcrowding at the state hospitals and the associated delays in admissions.

HHR-related studies with implications for local budgets (continued)

Marcus Alert barriers to implementation: An enactment clause in legislation passed in 2022 providing an opt-out for smaller localities from certain requirements of the Marcus Alert legislation directs the Department of Behavioral Health and Developmental Services and the Department of Criminal Justice Services to convene a workgroup with representatives of each locality with a population of less than or equal to 40,000 to identify barriers to establishment and implementation of Marcus Alert protocols. A report is due by December 1, 2022.

Children's Services Act special education workgroup: The group was created by legislation that passed in 2021 and is charged with developing a detailed plan for the transfer of CSA private day school and residential placement funding to the Department of Education. The 2021 legislation also directed the group to make recommendations on the use of CSA funding to support students with special educational needs within public schools, to include the use of CSA funds to avoid out-of-school placements, as well as the most effective use of CSA funds to transition students from out-of-school placements back to public schools.

Task Force on Medicaid Eligibility Redetermination: Budget language requires the Secretary of HHR to convene a task force to evaluate the current plan, including the timeline, of the Department of Medical Assistance Services and the local departments of social services to redetermine Medicaid eligibility in the most efficient manner after the expiration of the maintenance of eligibility requirement and to assess the resources and capabilities of the agencies to handle the increased workload.

Virginia Retirement System Update

VRS generated a 12.3 percent return for the one-year period ending March 2022. However, through April 30, the return was 3.1 percent on a fiscal year-to-date basis.

VRS staff indicated that the exceptional return generated in FY 2021 (27.5 percent) is expected to cushion the effects of market volatility in 2022.

The funded status of the teacher plan is improving (projected funded status in 2022 is 87.1 percent, using market value of assets).

Virginia Retirement System – 2022 Session Update

The caboose budget included a deposit of \$750 million to VRS in FY 2022 (\$442 million for the teacher plan) to improve the funded status of the retirement plans. The biennium budget includes an additional deposit of \$250 million by the end of FY 2023 from undesignated surplus FY 2022 revenues.

In another effort to reduce unfunded liabilities, the General Assembly also retained employer contribution rates from the previous biennium for 2022-2024 biennium budget, rather than using lower rates certified by VRS Board.

- JLARC staff reported in their July presentation that this action is projected to result in estimated savings of \$500 million for the teacher plan over the next 15 years (assuming the trust fund meets its long-term investment return assumption of 6.75 percent).