

Capitol Contact

Virginia General Assembly

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Tuesday, January 17, 2023

Grocery Tax Legislation Returns

[HB 1484 \(McNamara\)](#) and [SB 850 \(Suetterlein\)](#) propose to eliminate the 1 percent local option sales and use tax on groceries and essential personal hygiene products, effective July 1, 2023. Under the bills, the state would backfill lost revenue in the form of a supplemental school payment. Beginning July 1, 2023, and until July 1, 2025, this revenue would be distributed based on each city and county's estimated average share of monthly sales and use tax distributions attributable to sales of food for human consumption and essential personal hygiene products. After July 1, 2025, funding would be distributed based on each city and county's pro rata share of sales and use tax collections.

HB 1484 has been referred to the House Finance Committee and SB 850 has been referred to the Senate Finance and Appropriations Committee.

Sales and use taxes on groceries were the focus of extensive discussions during the 2022 legislative session and the subsequent special session, culminating in a compromise proposal finalized in June 2022. This compromise, which took effect January 1, eliminated the state portion of the sales and use tax on groceries and committed to replacing the portion that is distributed based on school-age population out of state General Fund revenues. VACo encourages legislators to take no further action to eliminate this important local revenue source. Although VACo appreciates the legislation's provisions for revenue replacement, localities would be reliant on the state to continue to appropriate these funds in addition to the school-age population distribution.

Several related measures have also been introduced dealing with sales and use taxes on food for human consumption and essential personal hygiene products.

- [HB 1686 \(Greenhalgh\)](#) and [SB 1008 \(DeSteph\)](#) would authorize local governing bodies of cities and counties to provide an exemption from the 1 percent local option sales and use tax for food for human consumption and essential personal hygiene products. HB 1686 has been referred to the House Finance Committee; SB 1008 has been referred to Senate Finance and Appropriations Committee.
- [HB 2196 \(Byron\)](#) would exempt essential personal hygiene products and infant formula from the local option sales and use tax.

VACo Contact: [Katie Boyle](#)

School construction financing bills to be heard in Senate Finance and Appropriations tomorrow

On Wednesday, January 17, the Senate Finance and Appropriations Committee intends to [meet](#) at 9 a.m. and take up two bills supported by VACo pertaining to school construction financing. [SB 1408 \(McClellan & McPike\)](#) would permit any county or city to impose an additional local sales and use tax of up to 1 percent, if initiated by a resolution of the local governing body and approved by voters at a local referendum. The revenues of such a local tax would be used solely for capital projects for the construction or renovation of schools. Any tax imposed shall expire when the costs for capital projects are to be repaid and shall not be more than 20 years after the date of the resolution passed.

Currently, this authority is limited to the qualifying localities of Charlotte, Gloucester, Halifax, Henry, Mecklenburg, Northampton, Patrick, and Pittsylvania Counties and the City of Danville. This bill is a [recommendation](#) of the Commission on School Construction and Modernization and an identical bill passed the Senate last year with bipartisan support. [SB 1287 \(Deeds\)](#) would expand this authority to Albemarle County and the City of Charlottesville.

VACo supports both bills and intends to testify to that effect tomorrow.

The House companion of SB 1408, [HB 2316 \(Bourne\)](#), as well as a standalone bill expanding this authority for Prince Edward County, [HB 1605 \(Edmunds\)](#), are supported by VACo and have been referred to the House Finance Committee.

Despite historic investments last session, the [issue](#) of school construction and modernization remains an approximately \$25 billion issue that many localities struggle to address. These bills would provide one more tool in the toolbox to local governments. VACo encourages its members to support these bills as they make their way through the General Assembly.

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

Legislation proposes significant change to valuation of business personal property and machinery and tools

[HB 1402 \(March\)](#) proposes a major departure from longstanding tax policy by requiring tangible personal property that is employed in a trade or business, and machinery and tools, to be valued according to the federal Modified Accelerated Cost Recovery System (MACRS), which is a method of recovering the costs of business or income-producing property through deductions for depreciation on federal income taxes. **VACo opposes this legislation.**

The Virginia Constitution requires real and personal property to be assessed at fair market value (Article X, Section 2). Under Virginia Code § 58.1-3503, tangible personal property must be valued by a method that “may reasonably be expected to determine actual fair market value as determined by the commissioner of the revenue or other assessing official.” A commissioner shall, upon request, take into account the condition of the property, which includes technological obsolescence, where technological obsolescence is an appropriate factor for valuing such property. Tangible personal property used in business is required to be valued as a percentage of original cost, unless the property valuation methodology is otherwise specified in § 58.1-3503 (for example, trucks of less than two tons may be valued by means of a recognized pricing guide, if the model and year are listed in the guide).

Virginia Code § 58.1-3507 requires machinery and tools to be valued by means of depreciated cost or a percentage or percentages of original total capitalized cost excluding capitalized interest. The commissioner of the revenue must consider any bona fide, independent appraisal presented by the taxpayer upon written request.

Under MACRS, there are two systems for the calculation of depreciation deductions: the General Depreciation System and the Alternative Depreciation System. The General Depreciation System (GDS) is usually required unless a taxpayer is required to use the Alternative Depreciation System (ADS) (a taxpayer may also elect to use ADS).

Under GDS, property is broken into nine classifications, with different depreciation timeframes for each class. Three depreciation methods are allowed under GDS, depending on the type of property being depreciated; two of these methods record larger depreciation during the earlier years of an asset’s useful life and smaller depreciation during the asset’s later years, and the third assumes depreciation at a steady rate over the asset’s useful life.

HB 1402 has been referred to the [House Finance Committee](#).

Key Points

- Changing to MACRS from the current locally-administered system would tie Virginia's local tax structure to future decisions made at the federal level regarding the treatment of depreciation under the Internal Revenue Code.
- Under MACRS, once property is fully depreciated, it is considered to have no value. Current assessment practices recognize that older property retains residual fair market value. If that value is no longer considered part of the local tax base, localities will have to turn to other sources to raise revenue, thus shifting the tax burden from businesses to other taxpayers.
- Some businesses will have larger amounts of property that qualifies for expedited depreciation under MACRS (by qualifying for the General Depreciation System) than others. As HB 1402 recognizes, not all machinery and tools and business personal property qualify for MACRS depreciation, in which case some property would still be valued under current rules for determining fair market value.
- Changing to MACRS will be administratively complex. Businesses would have to separate their property by the IRS's year classification system. Several localities participating in the Commission on Local Government's fiscal impact statement process identified a need for additional staff or IT improvements to administer tax collections under this methodology.

VACo Contact: [Katie Boyle](#)

VACo supports bills extending annexation moratorium

[HB 1676 \(Hodges\)](#) and [SB 1185 \(Lewis\)](#) extend the moratorium on city annexations until 2032.

Counties provide the same type of urban services (such as police, transit, water, and sewer services) that independent cities do. This makes city annexation of county land problematic, particularly because it results in the erosion of the necessary tax base counties rely on to provide such services. For this, and other controversial circumstances created by city annexation, the legislature implemented the first moratorium on annexation in 1971. The version of the moratorium extended by these bills was implemented in 1987.

In 2016 the General Assembly extended the current moratorium until 2024 and directed the Commission on Local Government (COLG) “... *to evaluate the structure of cities and counties in the Commonwealth and the impact of annexation upon*

localities ... consider alternatives to the current moratorium on annexation by cities.”

That [report](#), which VACo and VML assisted in drafting, concluded that “... *granting cities the ability to annex in the future to be a very low probability and an ineffective solution*” to addressing changes in the economy, population growth, development, and service demands.

For these reasons, **VACo supports HB 1676 and SB 1185.**

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

Several Constitutional Amendments under consideration, including proposed elimination of “Car Tax”

Several Constitutional amendments have been introduced this session, as this year is the traditional beginning of the two-year Constitutional amendment process. Any Constitutional amendments that pass this year would need to pass in identical form again in 2024 before being placed on the ballot in November 2024.

[HJ 462 \(Anderson\)](#) is a Constitutional amendment that would exempt motor vehicles (defined as automobiles, motorcycles, and pickup trucks) owned by an individual for personal, noncommercial use from taxation. The amendment does not address reimbursement to localities for lost revenue, and localities participating in the Commission on Local Government’s fiscal impact statement process identified significant potential revenue impacts from the elimination of this revenue source (as well as the assumed elimination of the current \$950 million provided by the state each year for personal property tax relief reimbursement to localities). The *2021 Comparative Report of Local Government Revenues and Expenditures* documents counties deriving \$2.2 billion in personal property tax revenues, the bulk of which are attributable to personally owned, noncommercial vehicles.

Elimination of a portion of the “car tax” has been attempted in the past, with 1998 legislation setting out a five-year phased approach for elimination of taxes on the first \$20,000 of value for each qualifying vehicle, beginning with 12.5 percent relief in 1998, and reaching 100 percent in 2002, with the state reimbursing localities for lost revenue, contingent on certain state revenue triggers being met.

Due to rising costs to the state to administer the program, the state capped the reimbursement rate at 70 percent in 2001, and in 2004, the reimbursement amount was capped at a fixed \$950 million, where it has remained. Since Tax Year 2006, localities have received a pro rata share of the fixed \$950 million amount based on their respective proportions of the Tax Year 2004 reimbursement amount.

HJ 462 has not yet been referred to a committee but will likely be heard in the [House Privileges and Elections Committee](#). **VACo opposes this proposal.**

Key Points

- Local governments would be forced to turn to other sources of revenue to compensate for the significant losses associated with eliminating this revenue stream.
- Full state reimbursement to localities for lost revenue on a sustained basis is unlikely given Virginia's previous experience with the Personal Property Tax Relief Act of 1998.

[HJ 533 \(Tran\)/SJ 231 \(McPike\)](#) would extend the current real property tax exemption for the surviving spouse of any member of the armed forces of the United States who was killed in action to surviving spouses of servicemembers who die in the line of duty with a Line of Duty determination from the Department of Defense. Legislation enacted in 2022 authorizes localities to declare property owned by these surviving spouses as a separate class of property and impose a different rate of taxation than that imposed on the general class of real property (this rate can be lower than the general real property tax rate but cannot be zero).

[HJ 485 \(Price\)](#) would enable the General Assembly to authorize the governing body of any county, city, or town to provide for an exemption from local property taxes for property owned by a low-income taxpayer, within such restrictions and upon such conditions as may be prescribed. [HJ 498 \(Carr\)](#) and [SJ 247 \(Hashmi\)](#) would authorize local governing bodies to provide for an exemption, or partial exemption, from real estate taxes for property owned and occupied by persons of low income or low financial worth; localities would be authorized to establish income or financial worth limitations.

[HJ 517 \(Leftwich\)](#) would enable the General Assembly to authorize localities to provide for full or partial exemption from real property taxation of real estate on which housing is to be constructed.

[HJ 458 \(Anderson\)](#) would impose term limits on state legislators and local and Constitutional officers. Individuals would be limited to three consecutive terms in the Senate or six consecutive terms in the House of Delegates, beginning with the 2026 Regular Session of the General Assembly. Individuals would be limited to three consecutive terms for any county, city, town, or constitutional office (or two consecutive terms as clerk of the court), beginning January 1, 2026. [SJ 224 \(Chase\)](#) is similar but applies only to state legislators and would take effect beginning with the 2024 General Assembly.

VACo Contact: [Katie Boyle](#)

Emergency medical services bills with liability concerns tabled or altered to address VACo concerns

On January 13, the House Counties, Cities, and Towns Committee's Subcommittee #1 voted to table [HB 1472 \(Fowler\)](#) by a vote of 6-4. This bill would deem emergency medical services "essential," but it would also change existing code language that currently requires local governments to "seek to" provide emergency medical services to a mandate that they "shall" provide those services. These seemingly innocuous change in language potentially could result in local governments directly assuming liability for various medical emergencies incurred if there were ever to be a break in service either with a contract emergency medical service provider or one directly employed by the local government. As such, VACo staff voiced their concerns over the bill language.

A similar bill, [SB 1246 \(Obenshain\)](#), had the same the troubling language. However, the patron accepted a proposed amendment to the bill to address this concern, per VACo's request. The Senate Local Government Committee which reported the bill on a vote of 14-0.

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

VACo supports local regulation of speed limits bill

[HB 1939 \(Plum\)](#) would allow the governing body of any locality to reduce to less than 25 miles per hour, but not less than 15 miles per hour, the speed limit of highways that are part of the primary and secondary state highway systems. The bill further states that these roads must be in a business district or residence district within the locality's boundaries and the reduced speed limit must be designated with lawfully placed signs.

VACo supports HB 1939.

HB 1939 also seeks to achieve a [long sought-after transportation safety policy goal](#) of localities across the Commonwealth. In the 2021 Session, legislation was passed allowing localities to lower their speed limits in these types of districts. The Virginia Department of Transportation (VDOT) interpreted the bill to mean 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. To try and remediate this, Delegate Carr introduced [HB 633 in the 2022 Session](#) with language specifically stating localities could reduce the speed limit even if the road in

question is in the state highway system. Unfortunately, HB 633 did not get signed in to law. The current bill, HB 1939, would have the intended effect of the initial legislation filed years ago. This bill will improve the ability of Boards of Supervisors to respond to constituent concerns regarding transportation safety. VACo would like to thank Delegate Plum and his staff for putting this bill forward, and VACo looks forward to speaking in support of this bill.

VACo Contact: [James Hutzler](#)

Helpful legislation on jail funding introduced

[SB 966 \(Peake\)](#) provides that the state must compensate local jails for the actual cost of incarcerating state-responsible offenders, as calculated in the Compensation Board's annual Jail Cost Report. **VACo supports this legislation.**

Currently, in addition to state support for jail staffing provided through the Compensation Board, the state provides a per-diem payment to assist with the costs of housing incarcerated individuals. These rates are differentiated by whether an individual is classified as a local-responsible or state-responsible inmate. A state-responsible inmate is an individual who has been convicted of one or more felony offenses and sentenced to one year or more. A local-responsible inmate is an individual arrested on a state warrant and incarcerated in a local correctional facility prior to trial, convicted of a misdemeanor offense and sentenced to a term in a local correctional facility, or convicted of a felony offense and given an effective sentence of one year or less.

During the 2022 General Assembly session, the state-responsible rate was increased from \$12 to \$15 – the first increase since FY 2011. VACo strongly supported this additional funding and is grateful for the increase, which is a vital step toward more robust state support for jail operations. Additional state support remains important, however, as the 2021 Jail Cost Report shows an average local expenditure per inmate per day of \$59.03. While the numbers of state-responsible offenders in local jails have declined significantly in recent months, it is important for the state to compensate local jails for the costs of housing and caring for these individuals.

SB 966 has been referred to the [Senate Rehabilitation and Social Services Committee](#) and has not yet been heard.

[HB 1524 \(Coyner\)](#) and [SB 820 \(Favola\)](#) would create the Virginia Opioid Use Reduction and Jail-Based Substance Use Disorder Treatment and Transition Fund, which would provide grants to local and regional jails for planning and implementation of locally administered jail-based addiction recovery and substance use disorder treatment and transition programs. HB 1524 has not yet been assigned to a committee. SB 820 was heard by the Senate Rehabilitation and Social Services Committee on January 13 and reported and referred to the Senate Finance and

Appropriations Committee. VACo spoke in support of the bill, pointing out that requirements for substance use disorder screening and treatment are components of the behavioral health standards that are currently under consideration by the Board of Local and Regional Jails, and that additional state support will help local and regional jails to comply with these standards when they are put in place.

VACo appreciates the work of the patrons of these bills and their support for additional resources for local and regional jails.

VACo Contact: [Katie Boyle](#)

Key Dates for the 2023 General Assembly

As part of its organizational work on the first day of the 2023 session, the General Assembly adopted a procedural resolution on January 11 that sets out important dates and deadlines for the [2023 legislative session](#).

January 11: 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 Youngkin delivered the State of the Commonwealth address at 4 p.m.

January 13: Deadline for submission of budget amendments

January 20: 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 5: Money committees report budgets by midnight

February 7: Money committee budget proposals available by noon; “crossover” deadline for each chamber to complete work on legislation originating in that chamber (except for the budget bill)

February 9: Houses of introduction must complete work on budget

February 15: Deadline for each chamber to complete work on other chamber’s budget proposal and revenue bills and appoint conferees

February 20: Deadline for committee action on legislation by midnight

February 25: Scheduled adjournment *sine die*

April 12: Reconvened session for consideration of Governor's amendments and vetoes

VACo Contact: [Katie Boyle](#)