

# Capitol Contact

## Virginia General Assembly

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Tuesday, January 31, 2023

## Virginia Department of Education Miscalculates Basic Aid Distribution by \$200 Million

On January 27, Superintendent of Public Instruction Jillian Balow emailed school superintendents across the Commonwealth that due to human error at the Virginia Department of Education (VDOE), the Basic Aid Calculation Tool released in mid-December did not include recognition of the grocery tax hold harmless payment, which [began](#) in FY 2023 as part of the offset in the Basic Aid formula. This means that VDOE overestimated Basic Aid payments to local school divisions during the FY 2023 – FY 2024 biennium by approximately \$200 million, including \$58 million during the current K-12 school year. Most funding for the Standards of Quality is distributed as Basic Aid, which accounts for the costs of general instruction, support services, transportation, and some fringe costs, including health care.

This information has not yet been posted publicly on the usual VDOE [website](#) for Superintendent's Memos, however an [article](#) in the Richmond Times-Dispatch published last night goes into greater detail about the impact of this miscalculation to local school divisions. Superintendent Balow has promised to provide corrected estimates of Basic Aid once the House and Senate adopt their amended versions of Governor Youngkin's introduced budget on February 9. If these amended versions of the budget do not provide an offset to cover this unexpected shortfall in Basic Aid, local school divisions will likely have to make substantial revisions to their budgets, both for the current fiscal year, and for the following fiscal year, which will then be presented to their local governing bodies for review.

VACo will continue to monitor the situation and provide updates as they become available.

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

## Problematic Bill Related to Local Enforcement to be Heard Tomorrow in Committee

[SB 1495 \(Surovell\)](#) provides that any person aggrieved by an enforcement action by a locality, where the enforcement action was based upon a willful disregard for applicable law, regulation, or ordinance, shall be entitled to an award of compensatory damages and to an order remanding the matter to the locality with a direction to terminate such enforcement and may be entitled to reasonable attorney fees and court costs. The bill will be heard in the [Senate Judiciary Committee](#) on February 1.

SB 1495 would likely increase the number of legal claims brought against a local government and would have a chilling effect on the ability of local governments to pursue enforcement actions for violation of ordinances.

Contact members of the [Senate Judiciary Committee](#) to vote “NO” on SB 1495.

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

## House Bill to Limit Data Center Development Fails; Senate Version to be Considered

[HB 1986 \(Roem\)](#), as introduced, would have required more stringent stormwater management practices to be undertaken for land disturbances regarding the operation or construction of data centers across the Commonwealth within a certain distance from protected lands. During the [House Commerce and Energy Committee’s Subcommittee #4](#) meeting, HB 1986 was amended to include a more limited approach to where these stormwater regulations would need to be undertaken. **VACo spoke in opposition**, noting that it identified a particular land use category to comply with a more onerous standard, to effectively hamstring local land use authority. The bill was laid on the table in subcommittee by a 6-1 vote.

[SB 1078 \(Peterson\)](#) takes a more direct approach in limiting local land use authority. Specifically, the bill prohibits the location of a data center within one mile of a national park or state park or other historically significant site, as designated by the Department of Historic Resources. SB 1078 was referred to the [Senate Rules Committee](#) so that it could be heard in conjunction with [SJ 240 \(Peterson\)](#), which directs the Virginia Department of Energy to study the impacts of data center development on Virginia's environment, economy, energy resources, and ability to meet carbon-reduction goals. **VACo opposes SB 1078.**

**VACo Contacts:** [James Hutzler](#) and [Joe Lerch, AICP](#)

# License Reciprocity Bills for Waterworks Move Forward

[SB 999 \(Mason\)](#) and its companion bill, [HB 1940 \(Runion\)](#), would allow for waterworks employees licensed in other states to be issued the equivalent license in Virginia. These bills would help localities recruit and retain these necessary public works employees as staffing issues continue at the local level.

**VACo spoke in support of SB 999** while both bills passed through their respective subcommittees unanimously. VACo appreciates Senator Mason and Delegate Runion for introducing this legislation and hopes to see the bills pass each chamber. VACo will continue to support and report on SB 999 and HB 1940 as they move through the process.

**VACo Contact:** [James Hutzler](#)

## Resources for Jails under Discussion

Two bills that would cap or eliminate certain fees charged to individuals incarcerated in local and regional jails and require the provision of telephone service at no charge were filed this session. [HB 2039 \(Shin\)](#) was heard in a subcommittee of the House Public Safety Committee on January 19 and tabled, but the subcommittee Chair will be sending a letter to the Compensation Board with a request to develop more detailed cost estimates for the replacement of fees with public funds. [SB 889 \(Morrissey\)](#) was heard in the Senate Rehabilitation and Social Services Committee the following day, and reported and referred to the Senate Finance and Appropriations Committee.

Similar bills were filed in 2022. Due to the complexity of the issues involved and the potential financial impact on jail operations, the legislation was converted to a study directive, with a workgroup charged with making recommendations regarding the reduction or elimination of certain fees. VACo was not an official participant in the workgroup but monitored its proceedings as an interested party. The workgroup failed to reach consensus or to develop detailed data on fee revenue or expenditures. With dissent from the workgroup members representing sheriffs and regional jails, the workgroup recommended reintroducing the 2022 legislation.

Discussion in both the House and Senate committees during the 2023 session has focused on the need to provide more state support to jails so that programming can be funded through public dollars rather than fee revenue. VACo spoke to this issue during the subcommittee's consideration of HB 2039 and encouraged the compilation of better data so that a request for necessary state resources could be developed. During the Senate Rehabilitation and Social Services meeting, members cited the proposed budget amendment to restore local-responsible per diem

payments to pre-2011 levels, which is being carried by Senator Reeves, with Senator Stuart as a co-patron, at the request of VACo, VML, and partner organizations; Delegate Krizek is carrying the request in the House. Senators also cited [SB 966 \(Peake\)](#), which would provide compensation to local and regional jails for the actual costs of housing state-responsible inmates; VACo has historically supported this legislation. SB 966 was heard the following week in Rehabilitation and Social Services and has been reported and referred to Senate Finance and Appropriations. Additional helpful bills to provide resources for substance use disorder treatment in jails also are advancing; [HB 1524 \(Coyner\)](#) has been reported from House Public Safety to House Appropriations, and the companion bill, [SB 820 \(Favola\)](#), is on the Senate floor. **VACo supports both measures.**

VACo thanks members for their advocacy on jail funding and encourages continued discussion with legislators about the importance of this issue.

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

## VACo Opposes Bills that Remove Valuable Tools from the Procurement Toolbox

[HB 1957 \(Leftwich\)](#) and [SB 954 \(Petersen\)](#) would remove the authority of localities to use design-build or construction management at risk contracts for construction projects costing under \$125 million. Current law allows their use for projects over \$26 million and for complex projects below that amount. **VACo opposes these bills** as a limitation on the ability of localities to make the decision as to which construction method is best suited to an individual project and requests that the bills be referred to the Procurement Study Group for a more complete study of the issues.

HB 1957 will be heard in [House General Laws](#) on January 31, and SB 954 will be heard in [Senate General Laws and Technology](#) on February 1.

Please contact your legislators on these committees and ask them to vote no.

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

## Bill Making Changes to the Information Technology Access Act Advances with Changes

On January 30, the House Communications, Technology, and Innovations Committee heard [HB 2207 \(Tran\)](#), which makes changes to the Information Technology Access Act (ITAA). The changes included broadening the definition of

digital accessibility and technology procurement requirements, as well as requiring all state agencies, public institutions of higher education, school divisions, and political subdivisions of the Commonwealth to designate an employee to serve as digital access coordinator, responsible for developing and implementing a digital accessibility policy and report. VACo expressed concerns to the patron prior to the committee meeting regarding the potential impact to local governments and as a result, the patron introduced a substitute version of the bill.

The substitute version made the digital access coordinator position optional, applies only to future procurements effective January 1, 2024, and exempts localities with populations less than 50,000 from the procurement requirements. The Committee subsequently reported and referred the bill to the House Appropriations Committee by a vote of 16-6.

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

## **Bank Franchise Tax Legislation Significantly Revised**

An amended version of [HB 1896 \(Byron\)](#) was recommended for reporting by the House Finance Committee's subcommittee #3, which met on Monday, January 30. As introduced, the bill would have allowed banks with \$40 billion or greater in Virginia deposits to choose to pay their bank franchise taxes directly to the state, which would allocate the local portion to a separate fund and distribute those revenues statewide, based on the latest yearly estimate of population provided by the Weldon Cooper Center for Public Service at the University of Virginia. Given the difficulty in determining the impact on each locality and working through other technical details within the constraints of a short legislative session, the industry proposed removing these provisions and instead convening a workgroup on the issue. The substitute version approved by the subcommittee on Monday does the following:

- Requires electronic filing of bank franchise tax returns and directs the Department of Taxation to maintain a secure online portal to receive returns and other required submissions for use by commissioners of the revenue (or other local assessing officers) in accepting returns and certifying and transmitting returns to the Department of Taxation. The Department of Taxation has estimated initial implementation costs of \$844,280 in FY 2024, \$233,970 in FY 2025, and \$156,000 per year thereafter.
- Allows banks to elect a 60-day extension to file the tax return (although payment would still be due in June).
- Requires localities to provide electronic access to real estate assessment records to banks.
- Takes effect January 1, 2025.

- Directs the Department of Taxation to convene a work group to assess potential alternative methods for the filing and allocation of bank franchise tax revenues for consideration in the 2024 Session of the General Assembly. The enactment clause directs the work group to evaluate proposals to allow banks to submit their bank franchise tax payments to the Commonwealth, the formula used to redistribute funds to local governments, the impact of the new method of collecting and distributing funds on counties, cities, and towns, the timeline for implementation of any proposed changes, and the cost to the Commonwealth and local governments of implementing these changes.

VACo views the substitute as an improvement in that it provides time for a more thorough vetting of any proposal to change filing and allocation methods and requires the state to develop the online filing system. VACo appreciates the discussion with the proponents of the legislation and has indicated that it does not object to the bill in its current form.

[SB 1182 \(Ruff\)](#), the companion bill, was reported from Senate Finance and Appropriations on Tuesday morning with the same provisions.

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

## Charging Up in Support of Rural Electric Vehicle Infrastructure

VACo spoke in support of [SB 1466 \(Marsden\)](#) and [HB 1588 \(Sullivan\)](#), which would create the Electric Vehicle Rural Infrastructure Program and Fund. This Fund would make available up to \$25 million each fiscal year and assist developers by offsetting up to 70 percent of the cost of electric vehicle charging stations. According to the provisions outlined in the bill, smaller and more rural localities across the Commonwealth would benefit from the passage of these bills. SB 1466 was reported out of the Senate Transportation Committee and referred to [Senate Finance and Appropriations Committee](#) by a vote of 14-1. The House version was reported out of subcommittee unanimously and referred to the House Appropriations Committee where it has yet to be assigned to a docket or subcommittee.

In 2022, VACo for the first time added a position to its legislative platform supporting funding that provides for the availability and installation of electric vehicle charging stations. VACo staff was excited to stand in support of SB 1466 and HB 1588 and wants to thank the patrons for introducing the legislation. We will continue to update you as these bills are heard.

**VACo Contact:** [James Hutzler](#)



# VACo Opposes Bill to Make Accessory Dwelling Units (ADU) a By-Right Use

[HB 2100 \(Hudson\)](#) mandates that any single-family dwelling (SFD), or property that is zoned for SFD, be permitted to include an accessory dwelling unit (ADU). Additionally, the bill mandates the following provisions a locality must make a part of their local ordinances related to ADUs:

- Shall allow ADUs to be built before, after, or concurrently with the primary dwelling;
- Shall not enact an owner occupancy requirement on a lot with a primary dwelling and an ADU. An owner may occupy either the primary dwelling or the ADU and may rent either the primary dwelling or the ADU, or both;
- Shall not require parking for ADUs, although localities may require that a property owner replace parking required for the principal dwelling unit if the ADU construction eliminates preexisting parking;
- Shall not require a minimum lot size for an ADU that is larger than the minimum lot size required for a single-family house in a given district;
- Shall not require side or rear setbacks for ADUs larger than five feet;
- Shall not prevent a homeowner from converting an existing structure to an ADU by requiring setbacks larger than the current structure's setbacks; and
- Shall not set limits on the square footage of ADUs other than preventing them from being larger than the primary dwelling unit, provided that other limitations on massing are met.

HB 2100 will be heard in House Counties, Cities and Towns Committee's Subcommittee #2 on Thursday morning.

**Action Required** – Contact members of [House Counties Cities and Town Committee's Subcommittee #2](#) to vote “NO” on HB 2100.

## **Key Points**

- Local governments have the authority to allow for the inclusion of ADUs within their zoning ordinances and determine the context of where ADUs can be reasonably accommodated to meet the needs of residents and homeowners.

- A mandate to authorize an ADU wherever a single-family dwelling exists excludes input from citizens and communities on whether, and how, ADUs can fit within existing and proposed residential developments.

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

## **BPOL Legislation Advances from Subcommittee**

[HB 2200 \(Robinson\)](#) deals with BPOL taxes for oncology practices and would require a deduction from gross receipts for any amount paid for anti-cancer drugs that are purchased by a medical practice and administered to patients whose treatment is paid for by Medicare, Medicaid, or TRICARE. **VACo is opposed** to a mandatory approach to tax relief for these businesses.

Although the proponents of the legislation intend to address a specific type of business and provide for a narrow carveout, the legislation sets a precedent for other types of businesses seeking similar exemptions in the future. VACo has encouraged proponents of the legislation to explore existing regulatory authority available to localities to establish subclassifications within the existing BPOL business categories and impose taxes at lower rates on businesses within such subclassifications.

The legislation was heard in subcommittee on Monday afternoon and recommended to be reported. The full House Finance Committee will likely take up the measure on Wednesday, February 1.

Please encourage members of the [House Finance Committee](#) to amend this legislation to provide for a local option or to vote against the bill in its current form.

**Members of House Finance:** [Robinson \(Chair\)](#), [Fowler \(Vice Chair\)](#), [Orrock](#), [Ware](#), [Byron](#), [Freitas](#), [McNamara](#), [Walker](#), [Runion](#), [Wiley](#), [Durant](#), [Greenhalgh](#), [Watts](#), [Sullivan](#), [Murphy](#), [Hudson](#), [Willet](#), [Scott, D.L.](#), [Mundon King](#), [Simon](#), [Bennett-Parker](#), [Convirs-Fowler](#)

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

## **Center for Rural Virginia Budget Amendments to Support**

The Center for Rural Virginia (CFRV) was created in 2004 to ensure that Virginia's rural communities are successful, productive, and prosperous as a vital part of the Commonwealth. General Assembly members have requested various budget amendments during the 2023 Session that seek to increase funding to the CFRV.



[Delegate Brewer](#), along with [Senator Ruff](#), (co-patroned by Senator Hanger) are pursuing a state budget increase for The Center for Rural Virginia. Their budget amendments are identical and will provide \$183,750 to CFRV in FY2023, an increase of \$88,750, and \$450,000 to CFRV in FY2024, an increase of \$355,000. These budget amendments seek to support additional programming, including additional funding needed for the Virginia Rural Leadership Institute (tuition assistance, programmatic expenses). Additionally, Senator Marsden has submitted a [budget amendment](#) to increase funding for the Center as well. Senator Marsden's budget amendment provides an increase of \$350,000 in FY2024.

VACo enjoys working and partnering with the Center for Rural Virginia and supports the proposed budget amendments.

**VACo Contact:** [James Hutzler](#)

## **Bill to Require Minimum Safety Standards for Farm Buildings Open to the Public Passes in Committee**

[SB 1305 \(Hanger\)](#) requires farm buildings and structures where the public is invited to enter and that are used for storage, handling, production, display, sampling, or sale of agricultural, horticultural, floricultural, or silvicultural products produced on the farm and that are exempt from the Uniform Statewide Building Code (the building code) to have (i) portable fire extinguishers, (ii) a simple written plan in case of an emergency, and (iii) a sign posted in a conspicuous place upon entry that states that the building is exempt from the provisions of the building code. The bill also directs the Agritourism Event Structure Technical Advisory Committee (which VACo serves on) to meet at least four times between the 2023 and 2024 Regular Sessions of the General Assembly and provides guidance to the Committee for topics on fire safety and the welfare of the public to consider.

While SB 1305 seeks to address safe evacuation of a building in case of emergency, it does not require any minimum construction standards for buildings that are open to the public. The bill passed in Senate General Laws and is on the floor for final consideration.

VACo asks counties to review these proposed minimum requirements and provide any feedback on how this impacts administration of the building code.

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

## Highway and Mileage Based Fee Elimination Proposal Struck from Consideration

[SB 862 Newman](#) would eliminate the highway use fee and mileage-based user fee program that was created during the 2022 Session. The funds collected from the highway use fee programs support the Commonwealth Transportation Fund, which helps maintain, construct and support transportation projects in the Commonwealth. The bill was struck during its initial hearing at the request of the patron by a 15-0 vote.

VACo Contact: [James Hutzler](#)

## Delegate Terry Kilgore talks Southwest Virginia and the General Assembly Session on the next episode of Commonwealth Conversations



[Watch the Interview](#) | [Watch the Mobile Video Short](#)

## 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](#)