



Tuesday, February 21, 2023

The Status of School Construction Legislation

On February 17, the [members](#) of House Finance Subcommittee #3 voted 5-2 to lay [SB 1408 \(McClellan\)](#) on the table, effectively ending the chances of passage. As previously [reported](#), SB 1408 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 was a [recommendation](#) of the Commission on School Construction and Modernization.

[SB 1287 \(Deeds\)](#), which expand this authority solely to Albemarle County and the City of Charlottesville, was also tabled on an identical vote to SB 1408.

VACo testified in support of both bills.

Though the legislation pertaining to this authority has been tabled in subcommittee, the effort to grant this authority to localities is not yet fully over. The Senate version of the budget contains [Item 4-14 #2s](#), which if adopted by the budget conferees and enacted, would establish the provisions of SB 1408 for the remainder of the biennium. VACo encourages its members to continue to advocate to your legislators on this effort.

Additionally, several other bills and budget items pertaining to school construction financing are still making their way through the legislature. [SB 1124 \(Stanley\)](#) would

require the Virginia Board of Education (VBOE) to make recommendations to the General Assembly for amendments to the Standards of Quality (SOQ) to establish standards for the maintenance and operations, renovation, and new construction of public elementary and secondary school buildings. Such recommendations shall 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. In developing such recommendations, the Board shall solicit the input of relevant stakeholders and the public. The Board shall submit its recommendations to the Chairs of the House Education Committee and the Senate Education and Health Committee no later than December 1, 2023. This bill was also the [recommendation](#) of the Commission on School Construction and Modernization and has passed both the House and Senate by wide margins. The bill now heads to Governor Youngkin's desk.

If VBOE were to recommend and the General Assembly were to add in Code, school building maintenance, renovation, and construction to the SOQs, this would require a determined yearly financial contribution by both state and local governments as currently exists for any other standard contained in the SOQs. Given how JLARC is [scheduled](#) to release its report on the SOQ Funding Formula and make recommendations to the General Assembly in June on how to reform the existing system, it will be interesting to see if and how any VBOE recommendations will be included should this bill be enacted.

Lastly, [Item 137 #3h](#), [Item 137 #16s](#), and [Item 137 #17s](#) are budget amendments that would modify provisions of the School Construction Assistance Program by adding the principal portion of debt service payments on projects that have not yet been completed as an eligible use; clarify that any project that began construction after July 1, 2022, may qualify for grant funds; allowing the most favorable year among three years of fiscal stress index data to be used to determine the grant award amounts; and require the program guidelines to address joint grant applications for regional school construction projects. Contingent on FY 2023 revenues, the School Construction Assistance Program would also receive an additional \$100 in unobligated FY 2023 balances if [Item 485 #1s](#) was also included in the final budget. These amendments were requested by VACo and partner organizations to provide additional flexibility in the use of funds.

VACo thanks its members for their continued advocacy on the issue of school construction and modernization. VACo will continue to advocate for this legislation and for other efforts to provide additional tools and financing for school construction and modernization.

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

BPOL Legislation Significantly Revised in Senate

[HB 2200 \(Robinson\)](#), as introduced, would mandate a deduction from gross receipts that would otherwise be subject to BPOL taxes for the amounts paid for anti-cancer drugs that are purchased by a medical practice and administered to patients whose treatment costs are paid for by Medicare, Medicaid, or TRICARE. VACo was opposed to the original legislation, as it required this carveout, and set a precedent for other businesses seeking similar favorable tax treatment in the future. The Senate Finance and Appropriations Committee heard the bill on February 16, and recommended a substitute that would instead require a workgroup to be convened to analyze and review current reimbursement and operational challenges for medical practices that administer anti-cancer drugs in an in-office setting to patients covered by Medicare, Medicaid, or TRICARE. This bill is now on the Senate floor. VACo appreciates members' advocacy on this legislation.

[HB 1470 \(Watts\)](#) was also heard by the Senate Finance and Appropriations Committee last week. The bill would provide that taxpayers who are eligible for the real property tax exemptions for disabled veterans and their surviving spouses and for the surviving spouses of servicemembers killed in action are entitled to refunds of taxes paid retroactive to their date of eligibility, potentially extending back to the date the exemptions were first enacted (2011 for the disabled veterans and surviving spouse exemption and 2015 for the exemption for surviving spouses of servicemembers killed in action). Refunds for most local taxes extend back to the current and three prior years. The bill seeks to clarify some ambiguity between the statutes enacting the property tax exemptions and the general statute governing tax refunds. VACo had several conversations with the patron over the course of the session in hopes of establishing a reasonable lookback period that does not expose localities to potentially large, unanticipated refunds while also affording taxpayers a fair opportunity to apply for exemptions, but was unable to reach a compromise. The bill was referred to the Joint Subcommittee on Tax Policy.

VACo Contact: [Katie Boyle](#)

Bill Gutting Localities Ability to Regulate Solid Waste Laid on Table

[SB 1365 \(Lewis\)](#) would exempt Material Recovery Facilities (MRFs) from local flow control ordinance by State law. MRFs are facilities that separate recyclable materials such as metals or other recyclable products from solid waste. The definition of a MRF, as set out [in the bill](#), does not require these facilities to meet any standards for materials actually recovered. Thus, the bill offers no distinction between MRFs and transfer stations except that MRFs are exempt from local flow control ordinances while transfer stations are not.

VACo spoke in opposition to SB 1365 on multiple occasions throughout its many hearings. SB 1365 passed out of the Senate by a vote of 30-7-1 and was heard in the House Subcommittee on Natural Resources post crossover. The bill reported out of that subcommittee 4-2 but was re-referred to the House Counties, Cities and Towns Committee where it was docketed by Subcommittee #2. SB 1365 then reported out of Subcommittee #2 to be heard by the full committee. SB 1365 met its ultimate fate when the House Counties, Cities and Towns Committee voted to table the legislation by a vote of 13-6 with a letter to the Waste diversion and Recycling Task Force to study the matter.

VACo thanks our members for their continued advocacy and for responding swiftly to our [capitol contact alert](#) on the issue. VACo will continue to advocate for local authority as it relates to solid waste disposal.

VACo Contact: [James Hutzler](#)

License Reciprocity Bills for Waterworks Pass the General Assembly

[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. The bills help localities recruit and retain these necessary public works employees as staffing issues continue at the local level.

[As previously reported](#), VACo supports the passage of the bills and was delighted to see both pass their original chambers unanimously and then pass the other chamber unanimously after crossover. The bills are nearing the end of their journey through the legislative process and will head to the Governor's desk where we await his executive decision.

VACo appreciates Senator Mason and Delegate Runion for introducing this legislation and hopes to see the Governor sign the bills into law. VACo will continue to support and report on SB 999 and HB 1940 as updates become available.

VACo Contact: [James Hutzler](#)

House and Senate Differ on Bill to Create a State Economic Development Acquisition Fund

The Senate Finance and Appropriations Committee significantly altered legislation to create a state acquisition and development fund for economic development for sites of at least 250 acres. [HB 1842 \(Knight\)](#), which creates the Virginia Business

Ready Sites Acquisition Fund and Program, was changed into a study directing the Virginia Economic Development Partnership (VEDP) to convene a work group to assess and develop recommendations for such a program.

The patron acknowledged concerns raised about potential conflicts with local economic development initiatives. However, he stated that it is his intention for the state to be a “purchaser of last resort” and for localities to be consulted and given a right of first refusal prior to state acquisition.

If the amended bill passes the full Senate, it is expected that the House will reject the amendments thereby leaving it to a committee of conference to reconcile the differences. It is important to note that the language of the bill that passed the House is also included in the House approved version of the budget.

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

Modified PFAs Bill Addressing VACo’s Concerns Dies in House Sub

[SB 1013 \(Edwards\)](#), as introduced, would have required a public waterworks owner to notify customers via mailings and newspaper publication when a water quality analysis reveals that PFAS chemicals are present in a water supply or when a PFAS contaminant exceeds maximum contaminant levels. VACo opposed the initial iteration of the bill because of the extensive public notification requirement as well as on the belief that this requirement would deter voluntary monitoring by water utilities.

[As previously reported](#), SB 1013 was significantly [amended](#) to address VACo member concerns. While SB 1013 passed through the Senate unanimously, it was recommended to be laid on the table in the House Agriculture, Chesapeake and Natural Resources Committee’s Chesapeake Subcommittee by a vote of [6-4](#).

VACo thanks Senator Edwards for working with stakeholders and hearing our concerns.

VACo Contact: [James Hutzler](#)

Freedom of Information Act Bills of Note Advancing and Retreating

[HB 1569 \(Walker\)](#) **Virginia Freedom of Information Act; disclosure of personnel records.** Clarifies that personnel records excluded from disclosure

under the Virginia Freedom of Information Act include those of persons employed by (i) a public body engaged in emergency medical services or fire protection services, (ii) a law-enforcement agency, or (iii) an emergency 911 system or any other equivalent reporting system. This bill was passed by both houses and will be on its way to the Governor's desk.

[HB 2006 \(Roem\)](#) **Virginia Freedom of Information Act; public records charges; electronic payment method.** Provides that any local public body that charges to produce public records pursuant to the Virginia Freedom of Information Act may provide an electronic method of payment through which all payments to produce such records to such locality may be made. This bill was originally a mandate, but VACo expressed concerns and it was amended to be optional. This bill has passed both houses.

[HB 2007 \(Roem\)](#) **Virginia Freedom of Information Act; posting of fee policy.** Requires a public body to make available upon request and post on its website or otherwise publish a written policy (i) explaining how the public body assesses charges for accessing or searching for requested records and (ii) noting the current fee charged, if any, by the public body for accessing and searching for the requested records. This bill has passed both chambers.

[HB 2498 \(Kory\)](#) **Virginia Freedom of Information Act; training for local officials; members of park authorities' boards.** Adds members of any boards governing any authority established pursuant to the Park Authorities Act to the list of persons to whom the Virginia Freedom of Information Advisory Council or the local government attorney is required to provide training. The bill requires such members to complete such training sessions within two months after assuming the local elected office and requires the clerk of each governing body or school board to maintain records indicating the names of such members and the dates of training completion. This bill has passed both chambers.

Failed Freedom of Information Act Bills

[HB 1878 \(Williams-Graves\)](#) **Virginia Freedom of Information Act; exclusions to application of chapter; local administrative investigations; disclosure.** Clarifies that personal contact information, to include a home or business (i) address, (ii) email address, or (iii) telephone number or comparable number assigned to any other electronic communication device, when furnished in confidence to a local governing body with respect to complainants in local investigations, is exempt from disclosure under the Virginia Freedom of Information Act. The bill expands the applicability of the exemption to zoning enforcement complaints to all such complaints, not just individual enforcement complaints. The bill also provides that information in completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. This bill was left in House General Laws meaning it is dead for this session. VACo supported this bill which modernizes and existing provision of the law.

[HB 1965 \(Mullin\)](#) **Virginia Freedom of Information Act; required release of law-enforcement disciplinary records; exceptions.** Requires the release of law-enforcement disciplinary records related to completed disciplinary investigations. The bill defines "law-enforcement disciplinary records" as any record created in furtherance of a law-enforcement disciplinary proceeding or any other administrative or judicial proceeding arising from the law-enforcement officer's conduct, whether such proceeding takes place in the Commonwealth or in another jurisdiction. The bill requires the redaction of (i) certain personal contact information of the law-enforcement officer, complainant, and witness and of their families; (ii) social security numbers; (iii) certain medical and identifying information of the law-enforcement officer and complainant; and (iv) any technical infraction, as defined in the bill, by the law-enforcement officer. This bill was left in House General Laws meaning it is dead.

[HB 2050 \(Bennett-Parker\)](#) **Virginia Freedom of Information Act; electronic meetings; local and regional public bodies.** Allows, with certain exceptions, local and regional public bodies to convene as many all-virtual public meetings as each such public body deems acceptable in its individual remote participation meeting policy, to be adopted at least once annually by recorded vote at a public meeting. Current law limits all-virtual public meetings to no more than two times per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, and prohibits any such meeting from being held consecutively with another all-virtual public meeting. This Bill was left in House General Laws .

[SB 813 \(Surovell\)](#) **Virginia Freedom of Information Act; record exclusions; State Comptroller records.** Provides that the exclusions of the Virginia Freedom of Information Act related to the internal controls of the State Comptroller do not authorize the withholding of the name of any officer, official, or employee of a public body as it appears on a purchase card statement or other payment record or the description of an individual purchase appearing on any such purchase card statement or payment record. This bill was passed by indefinitely by House General Laws.

[SB 1309 \(Deeds\)](#) **Virginia Freedom of Information Act; allow local public bodies to hold virtual meetings.** Allows local public bodies, except for boards with the authority to deny, revoke, or suspend a professional or occupational license, to hold all-virtual public meetings in accordance with the other provisions of the Virginia Freedom of Information Act. The bill limits the requirement that public bodies do not convene all-virtual public meetings consecutively or more than twice per year to state public bodies. This bill would give local public bodies such as Boards of Supervisors similar authority to operate virtually as allowed for other public bodies. The bill failed in Senate General Laws.

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

Conflict of Interest Act Bills Advancing and Vanquishing

[HB 2122 \(Watts\)](#) **State and Local Government Conflict of Interests Act; Virginia Conflict of Interest and Ethics Advisory Council; training for members of appointed school boards.** Adds members of appointed school boards to the list of persons for whom the Virginia Conflict of Interest and Ethics Advisory Council is required to provide certain training sessions. The bill also changes from January 15 to February 1 the annual date for certain employees to file a disclosure statement with the Virginia Conflict of Interest and Ethics Advisory Council. This bill has passed both chambers.

Failed

[HB 1911 \(Batten\)](#) **State and Local Government Conflict of Interests Act; certain gifts prohibited; foreign countries of concern.** Prohibits officers and employees of state and local governments from receiving a gift with a value exceeding \$100 for which the fair market value or a gift of greater or equal value has not been provided or exchanged from foreign countries of concern, defined in the bill. This bill passed the House but was done in by the Senate.

[HB 2281 \(Shin\)](#) **Virginia Conflict of Interest and Ethics Advisory Council; powers and duties; complaints; penalties.** Authorizes the Virginia Conflict of Interest and Ethics Advisory Council to investigate alleged violations of the State and Local Government Conflict of Interests Act and the General Assembly Conflicts of Interests Act (the Acts). The Council may initiate an investigation upon its own motion or in response to a complaint filed by a resident of the Commonwealth who has firsthand knowledge of an alleged violation. The bill directs the Council to review the disclosure forms filed by members of the General Assembly for compliance with applicable disclosure requirements and limitations on gifts and the accuracy of all information disclosed and authorizes the Council to initiate an investigation based on the findings of this review. The bill increases from a Class 1 misdemeanor to a Class 6 felony the penalty for any knowing violation of the General Assembly Conflicts of Interests Act. This bill was left in House General Laws and is dead.

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

Fire Services Needs Work Group Bill Advances

On February 17, the Senate Committee on Rules voted unanimously (15-0) to report [HB 2175 \(Sickles\)](#), which directs the Secretary of Public Safety and Homeland Security to establish a work group composed of representatives from the Department of Fire Programs, the Department of Planning and Budget, the Office of

Emergency Medical Services, the Virginia Fire Services Council, Virginia's Regional EMS Councils, the Virginia Fire Chiefs Association, the Senate Committee on Finance and Appropriations, the House Committee on Appropriations, and such other stakeholders as the Secretary deems appropriate to study existing fire service needs, analyze sustainability of current funding, and review alternative funding models from other states.

In conducting its study, the work group may hire an outside consultant and shall create a needs assessment survey that analyzes existing fire service needs, the sustainability of current funding, any gaps in current funding, how other states fund fire and EMS services, and best practices from other states. The Secretary shall report the work group's findings and any recommendations to the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology on or before October 1, 2023. The House Budget contains an [amendment](#), which VACo supports, that provides \$125,000 in General Fund in FY 2024 for the consultant costs of this study.

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

Update on Elections Bills

Although a significant number of bills dealing with elections were considered this session, only a handful have met with approval in both chambers. Among the bills that are expected to pass this session are the following:

[HB 1948 \(Bloxom\)](#) eliminates the requirement for a witness to sign an absentee ballot's return envelope. Instead, the voter must provide his or her date of birth and the last four digits of his or her Social Security number (or unique identifier assigned by the voter registration system). This bill has passed both chambers.

[HB 1683 \(Ransone\)](#) provides some flexibility to localities in the required notice of the last day of voter registration by providing that this notice must be published at least once in a newspaper of general circulation in the county or city, if one is available, in addition to being posted on the official website of the county or city. Current law requires newspaper publication, as well as posting on the website (if applicable). This bill has passed both chambers.

[HB 2266 \(Ransone\)](#) directs the State Board of Elections to adopt a policy regarding the counting and reporting of absentee ballots in a central absentee voter precinct. Language directs the policy to ensure that the results of absentee ballots cast early in person are reported separately from mailed absentee ballots and posted promptly on the State Board website, and that absentee ballots are reported by precinct (in accordance with legislation enacted last year) and posted on the State Board website no later than noon on the seventh calendar day following the election. This bill is on the Senate floor.

[HB 2324 \(Cordoza\)](#) directs the State Board of Elections to promulgate standards and instructions for the conduct of recounts in elections for any office to which more than one candidate can be elected. This bill has passed both chambers.

[HB 2443 \(Bloxom\)](#) provides that in an election for a local office in a locality with a population of no more than 4,000 persons, if the person having the highest number of votes for the office is elected by write-in votes and is not qualified to hold such office or declines to assume such office, the person having the second highest number of votes is deemed to have been elected to such office. If the person having the second highest number of votes is not qualified to hold such office or declines to assume such office, the person having the next highest number of votes shall be deemed to have been elected to such office and shall receive the certificate of election. If the person having the next highest number of votes is not qualified to hold such office or declines to assume such office, a vacancy would then be declared and filled by special election. This bill has passed both chambers.

[HB 2471 \(Batten\)](#) and [SB 1514 \(Mason\)](#) deal with removal of a general registrar. Under the bills, a registrar may be removed by the circuit court upon a petition signed by a majority of members of the State Board of Elections or a majority of the members of the local electoral board. The bills provide that a general registrar or member of a local electoral board may apply to the Virginia Division of Risk Management to assign counsel for his or her defense. Under current law, a general registrar may be removed by the local electoral board with a simple majority vote; the State Board of Elections may petition a circuit court to remove the registrar, but only if the State Board first petitioned the local electoral board, the local electoral board refused to remove the registrar, and the State Board found that the failure to remove the general registrar has a material adverse effect upon the conduct of either the registrar's office or any election. HB 2471 has passed both chambers; SB 1514 is on the House floor.

[SB 944 \(Suetterlein\)](#) requires the writ of election to fill a vacancy in the membership of the General Assembly to be issued within 30 days of the vacancy or receipt of notification of the vacancy, whichever comes first. If the vacancy occurs or will occur between December 10 and March 1, the writ must order that the special election take place no more than 30 days from the date of such vacancy. This bill is on the House floor.

Bills dealing with ranked-choice voting were not successful this session.

[HB 1751 \(Davis\)](#), as introduced, would have allowed ranked choice voting to be used in any state-run primary election at the option of the political party, and also extended the authority to conduct elections by ranked choice voting to members of a local governing body or school board (currently this option is only available for elections of members of boards of supervisors or city councils). In response to concerns expressed by VACo and others that some localities are not equipped to conduct elections via ranked choice voting with their current voting systems, the

patron removed provisions dealing with ranked choice voting in primaries. Additional language proposed in subcommittee that would allow ranked choice voting to be used only in cases where both the governing body and school board agreed was more controversial, and the bill was tabled. A similar fate befell [HB 2436 \(Hudson\)](#), which was similar to the introduced version of HB 1751, and [HB 2118 \(Hudson\)](#), which would have allowed ranked choice voting for any local or constitutional office. [SB 1380 \(Deeds\)](#), which would have allowed ranked choice voting in Presidential primaries, was passed by indefinitely in Senate Privileges and Elections at the request of the patron, with the understanding that a letter would be sent to the Department of Elections requesting assistance in working through implementation challenges. A companion bill in the House, [HB 2301 \(Bloxom\)](#), was not heard.

VACo Contact: [Katie Boyle](#)

Delegate Keith Hodges | Commonwealth Conversations



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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](#)