Capitol Contact
Virginia General Assembly
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Tuesday, February 13, 2024

School Construction Financing Bill Passes House of Delegates

On Tuesday, February 13, the full House of Delegates passed HB 805 (Rasoul) by a vote of 69-28. As previously reported, this bill permits 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.

The bill now incorporates various "standalone" bills before the committee, including HB 60 (Wright) and HB 193 (Cole) for Prince Edward County and Stafford County respectively. The substitute also allows localities that choose to exercise this authority, if approved by voter referendum, to use the revenues from such authority for school capital debt payments.

VACo and numerous other local government and K-12 advocates have testified in favor of the bill. VACo thanks its members and those who advocated for the bill.

The Senate version of the bill, SB 14 (McPike), passed the Senate on a bipartisan vote of 27-13 and now awaits assignment to committee in the House. Both versions of the bill will need to be conformed before passage.

VACo Contact: Jeremy R. Bennett

VACo Requests Feedback on Concerning Revenue Sharing Program Budget Amendment

Item 438 #1h (McQuinn) and Item 438 #2s (Marsden) are budget amendments that seek to rewrite the current Revenue Sharing Program prioritization process that would adversely affect county governments.

VACo seeks member feedback on how the proposed budget amendments may affect your locality and the impacts this could have on county-wide infrastructure.

The Revenue Sharing Program provides additional funding for use by a county, city, or town to construct, reconstruct, improve or maintain the highway systems within such county, city, or town and for eligible rural additions in certain counties of the Commonwealth. Locality funds are matched, dollar for dollar, with state funds, with statutory and Commonwealth Transportation Board (CTB) policy limitations on the amount of state funds authorized per locality.

An annual allocation of funds for this program is designated by the CTB, which is usually $100M yearly. Funds are approved by the CTB in even numbered years for a two-year cycle and are typically programmed in fiscal years three and four of the Six-Year Improvement Program. Revenue Sharing Program funding decisions follow a prioritization process, and per VA Code is as follows:

- **Priority 1 –** Construction Projects that have previously received Revenue Sharing funding as part of the Program application process.
- **Priority 2 –** Construction Projects that meet a transportation need identified in VTRANS or when funding will accelerate advertisement of a project in a locality's capital improvement plan.
- **Priority 3 –** Projects that address deficient pavement resurfacing and bridge rehabilitation.

What budget amendments Item 438 #1h and Item 438 #2s would do is place the highest priority for funding on applications addressing primary extensions and National Bridge Inventory (NBI) bridge pavement resurfacing projects in cities that receive maintenance funding. Please share your feedback to James Hutzler at jhutzler@vaco.org.

VACo Contact: James Hutzler

Senate Approves Bill Preempting Local Authority on Siting Solar and Battery Storage Facilities

By a vote of 21-18, the Senate of Virginia passed **SB 697 (Van Valkenburg)**. The legislation mandates that any local ordinance adopted pursuant § 15.2-2288.7 of the Code of Virginia (local regulation of solar facilities) shall not "… include limits on the total amount, density, or size of any ground mounted solar facility or energy facility unless the total panel area exceeds 4% of the total area within the county."

SB 697 is now headed to the House of Delegates for further consideration. **VACo strongly opposes the legislation.**

Action required – Contact members of the House of Delegates (2-Part Email List – **Delegates 1** | **Delegates 2**) to vote "NO" on SB 697.

KEY POINTS

- Utility-scale solar and battery storage are in effect largescale power plants, many of which may have oversized footprints. For example, a solar facility with a generating capacity of 100 MW can occupy 1,000 acres or more of land.
- According to data collected by the Virginia Department of Energy, 68 counties, 8 cities and 6 towns have approved 259 utility-scale solar projects totaling 11,635 megawatts (MW) of power capacity. This represents approximately 180 square miles approved for solar energy production.
- The state should not place limits on local ordinances to permit these facilities, regardless of the total amount, density, or size of such projects.

VACo Contact: Joe Lerch, AICP

Senate Passes Bill to Make ADUs a By-Right Use

The Senate of Virginia passed **SB 304 (Salim)** by a vote of 22 to 18. The legislation mandates all localities permit accessory dwelling units (ADUs) as an accessory use in residential zoning districts. The legislation also prohibits a locality from requiring rear or side setbacks for the ADU that are greater than the setback required for the primary dwelling, or four feet, whichever is less.

SB 304 is now headed to the House of Delegates for further consideration. **VACo opposes SB 304.**

Action required – Contact members of the House of Delegates (2-Part Email List – **Delegates 1** | **Delegates 2**) to vote "NO" on SB 304.

Additionally, the legislation limits what a locality may require to the following:

- No more than one ADU to be located on a lot;
- A rental period for such ADU of at least 30 days;
- Replacement of a primary dwelling's required parking if the construction of the ADU eliminates such parking;
- Dedicated parking for the ADU;
- Square footage of the ADU not to exceed 1,500 square feet or 50 percent of the primary dwelling's square footage, whichever is less; and
- Compliance with (i) building codes; (ii) water, sewer, septic, and stormwater requirements; and (iii) historic and architectural districts and corridor protection restrictions.

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 in all single-family zoning districts excludes input from citizens and communities on whether, and how, ADUs can fit within existing and proposed residential developments.

VACo Contact: Joe Lerch, AICP

Bill to Make Short-Term Rentals a By-Right Use Passes Senate

The Senate of Virginia passed **SB 544 (Bagby)** by a vote of 25-15. The legislation prohibits a locality from adopting a local ordinance that requires a special exception, special use, or conditional use permit be obtained for the use of a residential dwelling as a short-term rental where the dwelling unit is also legally occupied by the property owner as his or her primary residence.

SB 544 is now headed to the House of Delegates for further consideration. **VACo opposes SB 544. Action required** – Contact members of the House of Delegates (2-Part Email List – **Delegates 1** | **Delegates 2**) to vote "NO" on SB 544.

KEY POINTS

- Local governments have the authority to regulate and address any potential impacts from the operation of short-term rentals within their community.

- Mandated changes to this authority that make short-term rentals a "by right" use erodes the ability of local elected officials to address impacts from their operation.

VACo Contact: Joe Lerch, AICP

VACo has Concerns over Sovereign Immunity Provisions of Bill Amending the Virginia Human Rights Act

SB 570 (Ebbin) proposes several changes to Code, including expanding the definition of "employer" under the Virginia Human Rights Act, to include any government or political subdivision, or agent of such government or political subdivision, employing more than five employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The bill also reduces the number of employees from 15 to 6 for the act to apply to employers. Of specific concern to VACo, SB 570 contains a provision that waives sovereign immunity for all government agencies and political subdivisions under the definition of "person" in the legislation.

VACo's legislative program opposes any substantive change in local governments' present defense of sovereign immunity.

VACo Contacts: Jeremy R. Bennett and Phyllis Errico, Esq., CAE

Legislation Addressing Local Fiscal Distress Moves Forward in the Senate, Fails in House

HB 655 (Coyner) and **SB 645 (Aird)** build on existing budget language that creates a process for state review of local fiscal distress, but also go beyond this language in enabling the state to appoint an emergency fiscal manager in situations where a locality is "unwilling or unable to comply with the conditions necessary to address its fiscal distress." The bills were precipitated by challenges experienced by one city and have undergone significant reworking since they were introduced. SB 645 passed the Senate on Monday, but HB 655 failed on the House floor.

In its current form, SB 645 contains the following provisions:

- The Auditor of Public Accounts is directed to develop criteria for a preliminary determination that a locality may be in fiscal distress. The criteria must be based on information regularly collected by the

Commonwealth or otherwise regularly made public by the locality and the locality's annual audited financial reporting. Similar provisions are currently in budget language.

- The Auditor is required to establish a prioritized early warning system based on these criteria and to set up a regular process for review of audited financial data and other relevant factors and qualitative information to make a preliminary determination that a locality may meet the criteria for fiscal distress. Similar provisions are currently in budget language.

- If a locality has not submitted its audited annual financial report within 18 months of its deadline or provided a plan to do so, the Auditor must notify the Governor, the Secretary of Finance, and the Chairs of key legislative committees; this delay automatically triggers the provisions whereby the Auditor makes a preliminary determination that the locality may meet the criteria for fiscal distress. This language is not currently in the budget.

- For a locality where the Auditor has made a preliminary determination of fiscal distress, the Auditor must notify the local governing body; in coordination with the local governing body or chief executive officer, the Auditor may conduct a review and request documents and data from the locality. The locality must acknowledge such a request and ensure that a response is provided within reasonable timeframes. The bill adds new language not currently in the budget to stipulate that if the locality is unresponsive, the Auditor must notify the Governor, the Secretary of Finance, and legislative committee chairs.

- After the review, if the local governing body or chief executive officer requests assistance or if the Auditor is of the opinion that state assistance, oversight, or targeted intervention is needed, the Auditor must notify the Governor, Secretary of Finance, and legislative committee chairs (this language is similar to the existing budget provisions, but adds a provision, at the suggestion of local governments, to create a pathway for localities to request assistance). After receiving this notification, the Governor must consult with the money committee chairs about a plan for state assistance, oversight, or intervention, which may be funded with up to $750,000 from certain unexpended balances. The governing body and the local constitutional officers are required to assist state-appointed staff conducting assistance, oversight, or intervention efforts. These provisions largely mimic existing budget language.

- New language in the bill provides that the Commission on Local Government will act in an oversight capacity to determine whether a locality has taken appropriate action to address its fiscal distress and will report its findings to the Governor and appropriate legislative committee chairs. If the Commission concludes that a locality is unwilling or unable to address its fiscal distress, the Commission must appoint an emergency fiscal manager and implement a remediation plan (as introduced, the bill allowed the

Governor to make this appointment and included sweeping language, to which VACo and other local government advocates objected, allowing the Governor to "use all powers available to him to intervene for the purpose of addressing such fiscal distress"). During the duration of state remediation, the local governing body and chief executive officer may not exercise powers related to local finances, except as spelled out in the remediation plan, which would be adopted by the Commission after public notice and comment. At the request of VACo and other local government advocates, language was added to the bill to require that the plan specify the purpose of remediation efforts, the roles and responsibilities of the governing body and chief executive officer, and the benchmarks that will allow a locality to exit the remediation plan; language was also added at the request of VACo and other advocates to require that the Commission (rather than the emergency fiscal manager) determine when the locality has met the benchmarks approved in the remediation plan.

HB 655 was tabled in a subcommittee of House Counties, Cities, and Towns on February 1, but resurrected in full committee and reported to the House floor on February 9 before failing to pass on Tuesday, February 13. SB 645 was heard in both Senate Local Government and Senate Finance and Appropriations and passed the Senate on February 12.

Given the amendments made to the bill and VACo's expectation that these interventions would be made in rare, dire circumstances, **VACo now has no position on the bill.**

VACo Contacts: Katie Boyle and Joe Lerch, AICP

Local Speed Limit Authority Bill Passes House

HB 1071 (Carr) seeks to achieve a long sought-after transportation safety policy goal of localities across the Commonwealth. This bill 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 state highway system. 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.

HB 1071 if successful, would allow localities the ability to reduce speed limits in certain areas even if the road in question is in the state highway system. **VACo testified in support** of the bill when it was heard in the House Transportation Infrastructure and Funding Subcommittee where it reported out favorably by a vote of 6-2. HB 1071 then reported favorably from the full House Transportation Committee by a vote of 14-8 and then completed its journey through the House of Delegates by passing its floor vote, 53-46.

This bill would improve the ability of Boards of Supervisors to respond to constituent concerns regarding transportation safety and clarify that this authority applies to roads within the state highway system. VACo would like to thank Delegate Carr for putting the bill forward. HB 1071 has been referred to the Senate Transportation Committee where VACo will be happy to speak in support when testimony is heard on the bill.

VACo Contact: James Hutzler

Elections Roundup

HB 1149 (Cordoza) would have made a significant change to the process of removing an elected officer or officer who has been appointed to fill an elective office. Under current law, the removal process for most elected officials begins with a petition to a circuit court signed by registered voters within the jurisdiction equating to 10 percent of the total number of votes cast at the last election for the office that the officer holds. HB 1149 would have created an alternative process that would allow the Governor, instead of the voters, to petition the court. **VACo spoke against this measure** when it was heard in House Privileges and Elections, pointing out that it would substitute one person's judgment for the will of a subset of the voters in a jurisdiction in initiating the removal process; the committee passed the bill by indefinitely.

HB 1530 (Cordoza) was supported by the Voter Registrars Association of Virginia and would have required all localities to have a chief deputy registrar; for localities with populations of greater than 10,000, the chief deputy registrar would serve full-time, and for smaller localities, the general registrar would determine whether the chief deputy registrar served on a part-time or full-time basis. The bill required that full-time chief deputy registrars be paid not less than 60 percent of the general registrar's salary. **VACo spoke against the bill** in committee; while counties support the work of staff in registrars' offices and recognize the need for additional state support for election administration, a top-down staffing and salary mandate is not the solution. The bill was passed by indefinitely in House Privileges and Elections.

HB 998 (Anthony), a helpful bill to provide local electoral boards with three additional days to certify election results and submit the abstract of results to the State Board of Elections, was reported by House Privileges and Elections, incorporating a similar bill from Delegate Sickles that was introduced at the request of Fairfax County**. VACo spoke in support** of the measure.

HB 623 (Price) makes several revisions to the state-level preclearance process established in 2021:

- Allows any organization whose membership includes voters who are members of a protected class or any organization whose mission includes voting access to initiate a cause of action for violations of voting rights laws or to challenge a "covered practice" (changes to certain aspects of elections, such as changes to election district boundaries or certain changes to polling places).

- Adds to the definition of "covered practice" any reduction in the number of voter satellite offices in the locality or reduction in the number of days or the hours of operation of a voter satellite office in the locality.

- Requires the Circuit Court of the City of Richmond to be the venue for causes of action.

VACo raised concerns in subcommittee about the latter two provisions of the bill. Voter satellite locations may be increased or decreased based on the expected turnout of an election and are already subject to notice provisions and a bar on making changes within 60 days of a general election. Requiring these changes to go through the preclearance process (a 45-day notice period, which includes 30 days for public comment, then an additional 30-day waiting period, during which time the covered practice may be challenged, or the alternative route of seeking a certification of no objection from the Attorney General) will limit flexibility to adjust these locations based on local needs. Requiring causes of action to be heard in Richmond will place a burden on jurisdictions that are far from the capital, particularly if cases must be defended in the period leading up to an election. The bill is on the House floor.

HB 417 (Convirs-Fowler), which would have required a special election to fill a vacancy in an office that is subject to a ward-based or district-based residency requirement to be held within 365 days of the vacancy occurring, failed to report from House Privileges and Elections on a tie vote. Under current law, more time might elapse in a situation in which a vacancy occurred within 90 days of the next general election. In that case, the special election would be held on the date of the second such general election (unless the governing body requested a special election sooner).

The fate of ranked-choice voting legislation is uncertain, as the House has carried over for the year legislation allowing ranked-choice voting in primaries and has not docketed **HB 841 (Hope)**, which would allow elections for all local and constitutional offices to be conducted via ranked-choice voting if approved by the local governing body. The Senate companion bill, **SB 428 (VanValkenburg)**, is on the Senate floor. **SB 270 (Subramanyam)**, which would allow for presidential primaries to be conducted via ranked-choice voting, at the option of the political party, subject to a feasibility determination by the state, has been amended to place a reenactment clause on the bill due to concerns about what software and equipment enhancements might be needed at the state and local level to implement the bill's provisions.

Legislation that would have identified candidates for local or constitutional office by party on the ballot if they were nominated by a political party or at a primary election will not move forward this session; **HB 254 (Sullivan)**, which dealt with all local candidates, was stricken, and **HB 176 (Gardner)**, which was limited to Constitutional officers, failed to report on Friday.

VACo Contact: Katie Boyle

Enhanced Retirement Benefits Bills for 911 Dispatchers and Others Continued to 2025

Legislation that would allow have local governments to provide enhanced retirement benefits for hazardous duty service to full-time salaried 911 dispatchers will be continued to 2025, thus ending any chances for the enactment of this legislation for the year. **HB 38 (Clark)**, **HB 300 (Ballard)**, and **HB 630 (Cherry)** would have provided that such enhanced retirement benefits apply only to service earned as a full-time salaried 911 dispatcher on or after July 1, 2025, but would have allowed an employer, as that term is defined in relevant law, to provide such enhanced retirement benefits for service earned as a full-time salaried 911 dispatcher before July 1, 2025, in addition to service earned on or after that date. The bills had a delayed effective date of July 1, 2025.

SB 328 (Jordan) and **SB 472 (Obenshain)**, which were the Senate versions of the House bills were also continued to 2025 on February 6th, by the Senate Finance and Appropriations Committee on a vote of 12-3.

A separate set of bills for other employee groups were also continued to 2025. **HB 231 (Campbell)** would have added animal control officers to the list of local employees eligible to receive enhanced retirement benefits for hazardous duty service. Under current law, localities may provide such benefits to first responders, including firefighters and emergency medical technicians, and certain other hazardous duty positions.

HB 1438 (Wiley) would have required each political subdivision participating in the Virginia Retirement System and each county or city participating in the Virginia Retirement System to provide retirement benefits comparable to the benefits provided to state police officers to juvenile detention specialists.

VACo staff worked with 911 dispatch employee group representatives prior to the session and testified to thank those groups and the bill patrons who ensured that these bills remained a local option and not an unfunded mandate.

VACo Contact: Jeremy R. Bennett

Electric Vehicle Charging Bills Update

As previously reported, VACo supports **HB 107 (Sullivan)** as this bill would create the Electric Vehicle Rural Infrastructure Program and Fund. The Program and Fund would make available up to $25 million each fiscal year and assist developers by offsetting up to 70 percent of the non-utility cost of electric vehicle charging stations. According to the provisions outlined in HB 107, rural Virginia localities would benefit from the passage of this bill.

VACo testified in support during its initial hearing in the House Natural Resources Subcommittee, and HB 107 reported out favorably. The bill then reported out favorably in the full House Agriculture, Chesapeake and Natural Resources Committee and the House Appropriations Committee. HB 107 would then pass the House of Delegates by a vote of 71-27. It will be heard in the Senate after crossover and a committee is not assigned as of this writing.

SB 457 (Marsden) is similar legislation that would create the Driving Decarbonization Program and Fund. The bill provides that a private developer is eligible to receive grants of 70 percent of such non-utility costs for electric vehicle charging stations installed in a historically poor community or a rural community, and 50 percent of such non-utility costs for electric vehicle charging stations installed in any other area of the Commonwealth. The bill caps the total amount of grants awarded yearly at $20 million.

VACo testified in support of SB 457, which reported out of the Senate Agriculture, Conservation and Natural Resources Committee, 15-0, and was subsequently referred to Senate Finance and Appropriations. Unfortunately, the bill would be continued to 2025 during its Senate Finance and Appropriations Committee hearing.

VACo thanks Senator Marsden for bringing forth and advocating for this legislation. VACo will continue to support HB 107 and is excited to testify in favor of the bill as it is heard.

VACo Contact: James Hutzler

Key Dates for the 2024 General Assembly

As part of its organizational work on the first day of the 2024 session, the General Assembly adopted a procedural resolution on January 10 that sets out important dates and deadlines for the 2024 legislative session.

- **January 10:** General Assembly convened at noon. Bills that were "prefiled" were due to be submitted by 10:00 a.m. Bills affecting the Virginia Retirement System, or creating or continuing a study, were required to be

filed by adjournment of the floor session.

- **January 12:** Deadline for submission of member budget amendments.
- **January 19:** 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 13:** "Crossover" deadline for each chamber to complete work on legislation originating in that chamber (except for the budget bill).
- **February 18:** "Budget Sunday," the deadline for the "money committees" to report their respective budgets by midnight.
- **February 22:** Deadline for each chamber to complete consideration of its budget bill.
- **February 28:** Deadline for each chamber to complete consideration of the other chamber's budget bill and revenue bills.
- **March 4:** Deadline for committee consideration of legislation, by midnight.
- **March 9:** Scheduled adjournment *sine die*.
- **April 17:** Reconvened session for consideration of Governor's amendments and vetoes.

VACo Contact: Katie Boyle