

**VMI**

February 6, 2009

# Legislative Bulletin

A digest of legislative news from the General Assembly affecting local governments.

## Find it fast

➤ *Indicates active link*

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## Upcoming

The [House Appropriations](#) and [Senate Finance](#) committees will release their respective versions of the budget Sunday afternoon. And Tuesday is Crossover Day – the day on which each house must complete work on legislation – except for the budget – that its members originated.

## State prepares to lower revenue forecast ... again

\$2.9 billion shortfall number likely to grow

GOV. TIM KAINE told about 500 local officials attending VML/VACo Legislative Day on Thursday that state revenue forecasts are likely to be lowered yet again soon.

“We are definitely seeing a continual revenue challenge at the state level,” Kaine told those gathered for the annual event in Richmond.

In a letter Thursday to two senior legislators who will play important roles in ultimately crafting a budget compromise – Sen. Charles Colgan and Del. Lacey Putney – Secretary of Finance Richard D. Brown said that the next monthly revenue report will be discouraging, possibly requiring more cuts to keep the budget balanced. The official budget shortfall stands at \$2.9 billion. The revenue report and the updated revenue projection should be released around Feb. 16.

*Continues on next page*

### Inside ...

- 2 CSA bills amended, reported in Senate
- Gun bill that awards attorneys’ fees reported
- Senate panel votes to spend stimulus money

## Legislative links

- [Find a bill \(state LIS\)](#)
- [State budget Web site](#)

## Dialogue



- Kaine -

*“I know how important support positions are, but they are not more important than teachers.”*

Gov. Tim Kaine, speaking at VML-VACo Legislative Day, urging elected officials who will be forced to cut spending for education to do so in central offices by invoking a state law that gives them discretion to allocate money for K-12 based on categories.

## Cover story continued ...

This not-unexpected news complicates the work of the House Appropriations and Senate Finance committees, which are scheduled to release their proposed budgets Sunday afternoon.

Colgan, the chair of the Senate Finance Committee, and Sen. William Wampler, the ranking Republican on the committee, suggested on the Senate floor Thursday that the General Assembly concentrate on adopting amendments to the current year budget – FY09 – and postpone adopting amendments to the FY10 budget until additional state revenue information is available and the effects of the federal economic stimulus package are better understood. The General Assembly could then adopt changes for 2010 at the reconvened session, scheduled for April 8.

Putney, chairman of the House Appropriations Committee, is quoted in newspaper stories as saying that he would check with his House colleagues, but that he didn't know that the General Assembly had any choice but to produce a budget on Sunday for both the remainder of this fiscal year and FY10.

While a delay in passing the state budget would throw a wrench into the local budget process, it may be better for local officials than having the General Assembly make decisions without critical information.

VML will produce an analysis next week of the budgets that will be presented by the money committees on Sunday.

## Eminent Domain

### House panel OKs constitutional amendment

The House Privileges & Elections Committee voted today to report [HJR 725](#) (Bell), which restricts the use of eminent domain. The Senate Privileges & Elections Committee voted 8-7 to defeat a similar amendment earlier this week.

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## Environment

### Threat to existing local stormwater funding programs is removed

An innovative program to develop stormwater nutrient offsets – [HB 2168](#) (Abbitt) – would authorize local governments to allow stormwater permit holders to comply with nonpoint nutrient runoff water quality criteria by either (A) acquiring offsite nonpoint nutrient offsets as set out in the [Virginia Nutrient Credit Exchange Law of 2005](#) or (B) through a local fee-in-lieu-of program that funds municipal water quality improvements projects. Such programs exist in several localities across the state.

While VML supports the offset program, the bill as originally drafted would have given priority to private offsets, thereby eliminating funding for innovative initiatives such as Henrico County's [Stream Assessment Watershed Program](#). That program involves the capitalization and construction of stream restoration, channel protection, buffer establishment, urban stormwater retrofits, and regional stormwater controls.

At the request of VML and the [Virginia Municipal Stormwater Association \(VAMSA\)](#), the bill was amended to restore priority for funding local programs. VML thanks the bill's patron, Del. Watkins Abbitt, as well as Del. David Bulova, for their work in drafting the substitute bill that passed the [House Agriculture, Chesapeake and Natural Resources Committee](#) unanimously.

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## Defeated

[HB 2591](#) (Caputo) would have changed the current [DEQ Biosolids Permit Program](#) by mandating sampling and testing during site visits and at the request of any health complaint accompanied by the recommendation of licensed medical professional.

## FOIA

### Building code complaint exemption heads to Senate floor

A bill that will allow a locality to exempt the name, address and telephone number of a person who files a complaint about a building code or fire prevention code violation will be debated on the Senate floor Monday (Feb. 9) or Tuesday (Feb. 10).

The purpose of [SB 1478](#) (Locke) is to encourage citizens to file complaints so that the building department or fire marshal can investigate dangerous situations.

Please call your senator to support the legislation. In 2002, the Senate *unanimously* approved nearly identical legislation for zoning complaints. Anyone who voted for the 2002 bill should vote for SB 1478.

## Human Services

### 2 CSA bills amended, reported by Senate panel

The two remaining Comprehensive Services Act (CSA) bills in the Senate Rehabilitation and Social Services Committee were reported with amendments on Feb. 6.

[SB 1506](#) (Hanger), which deals with judicial assignment of children within the CSA system and the responsibility of a local government to fund such services, was amended to say that if there is a difference between the services or treatment that a local CSA team recommends and what a judge wants for a child, the judge can ask the local team to come back with an alternative plan for services. This would allow the team to address the type of treatment or services the judge is requesting in a more cost-effective or less restrictive manner. It would not allow a local team to overrule a judge's opinion, nor would it require the judge to accept the alternate plan. It does offer another opportunity to come to agreement on a treatment plan that may be less costly overall while serving the needs of the child and family. VML supports the bill.

The second bill reported was [SB 1179](#) (Hanger) regarding the membership on the State Executive Council (SEC) of CSA. The SEC serves as the policy-making body governing CSA. The original bill solely increased the local government seats on the council

from two to four. The amended bill still increases the local government representation by two members, but also adds two additional private service providers, a public service provider, and the special assistant to the Secretary of Health & Human Resources for children's issues. VML supports the bill.

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## Land Use

### Moving along ...

The [House Counties, Cities and Towns Committee](#) reported [HB1788](#) (Hull) that limits a locality's ability to regulate septic systems by restricting localities from prohibiting the use of alternative on-site sewage systems.

[HB 2077](#) (Oder), which increases from five to 10 years the period of validity for certain preliminary and recorded plats and final site plans, was reported by the [House Counties, Cities and Towns Committee](#). VML and others have worked out amendments with the patron that make this bill apply in an acceptable manner to special exceptions, special use permits, conditional use permits and proffers, in addition to site plans and subdivisions. The extension will expire July 2014 unless agreed to by the locality.

The [House Counties, Cities and Towns Subcommittee 2](#) has recommended [HB 2138](#) (Miller) be referred to the Virginia Housing Commission. The bill allows a locality to bill a landowner for its actual costs of removing graffiti in certain cases. The property must be unoccupied and notice must be sent to the landowner prior to imposing the fees.

The [House Counties, Cities and Towns Subcommittee 2](#) has recommended reporting [HB 2322](#) (Athey). The bill originally would have required cities and towns to which the urban development area provisions of Va. Code § 15.2-2223.1 (high growth rate localities) to amend their comprehensive plans by 2011 to create the urban development areas. The patron has agreed to an amendment to impose the UDA provision by 2012.

The [House Counties, Cities and Towns Subcommittee 2](#) has recommended reporting [HB 2326](#) (Athey). The bill amends the variance rules that

boards of zoning appeals employ. The original bill changed the standards completely. The bill has been heavily amended, so that in its current form, it simply removes “approaching confiscation” from “clearly demonstrable hardship approaching confiscation”. The effect is to slightly relax the standard for variances without completely undoing the rules.

## Defeated

**HB 2613** (Hall) would have required localities to phase out the acceptance of cash proffers by July 1, 2014.

## Local Authority

### Arts and cultural district legislation passes House

The House voted unanimously to pass a bill that allows any locality to create an arts and cultural district.

**HB 1735** (Valentine) will be taken up next by the **Senate Local Government Committee**. Alternative legislation that adds only Staunton, Lynchburg and Fredericksburg to the short list of localities with this authority is also moving along. Since statewide authority is a legislative priority for VML this year, the league prefers **HB 1735**, which needs your support.

If your locality has a senator on the Local Government Committee, or if you know a senator who is on the committee, please call or e-mail them.

An arts and cultural district allows a locality to waive license taxes, permit fees and allows relaxation of zoning and related ordinances as a way to encourage arts and cultural activities and businesses.

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## Personnel

### Most workers' compensation bills fail in committee

Only a handful of bills dealing with workers' compensation-related issues are still in play as Cross-over Day approaches.

**HB 1756** (Hargrove) and **SB 1372** (Ruff) permit a local government workers' compensation pool to merge with a local government property and liability pool. The House version of this bill has passed that

chamber. The Senate version of this bill is on the Senate floor for final passage today.

**SB 1107** (Northam), **SB 1152** (McDougle) and **HB 2452** (Sickles) are all bills that would require an individual to be tested for HIV, Hepatitis B and Hepatitis C if a public safety officer were exposed to their bodily fluids. **SB 1152** was merged into **SB 1107**, which has passed the Senate. **HB 2452** has passed the House.

## Defeated

**HB 1959** (Mathieson) would have required localities to save the jobs of public safety employees for up to two years.

**HB 2252** (Barlow) would have expanded the statute of limitations for public safety employees who are exposed to a covered infectious disease on the job to up to two years from diagnosis.

**HB 1749** (Pogge) would have extended the workers' compensation infectious disease presumption to sewage workers.

**HB 2478** (Hugo) and **HB 1958** (Mathieson) would have expanded the workers' compensation infectious disease presumption law to cover any public safety employee for any disease contracted by a public safety employee for a disease declared by the governor to be a public health emergency.

**SB 821** (Stuart) would have presumed that an accident would be compensable under the workers' compensation act if a worker were found dead or had a serious brain injury.

**HB 2272** (Poindexter) would have relieved general contractors of the responsibility to ensure that sub contractors were providing workers compensation coverage to employees.

## Moving along ...

**HB 1674** (Purkey) and **SB 1158** (Saslaw) require pharmacies to use generic drugs in filling workers' compensation prescriptions unless the treating physician marks the prescription “brand medically necessary” or if a generic is not available. The bills should reduce drug costs for both public and private employers. **HB 1674** has passed the House and **SB 1158** is on the Senate floor.

## Public Safety

### Help: Bill mandating award of attorneys' fees in firearms cases reported

A Senate Courts of Justice subcommittee voted 4-2 to report a bill that will require a court to award reasonable attorneys' fees, expenses and court costs to any entity that successfully challenges an ordinance, resolution or motion as being in conflict with a locality's authority to control firearms. The bill would also apply to the actions of an administrator if the action is found to have been taken in bad faith.

[SB 1513](#) (Smith) is scheduled to be taken up by the Senate Courts of Justice Committee when it meets on Monday (Feb. 9) at 9 a.m. Please contact senators on the committee and ask them to oppose the bill.

**Talking points:** The bill removes any flexibility for the court as to whether attorney fees would be awarded; almost all other laws that allow the awarding of attorney fees are discretionary; the bill implies bad faith on the part of the locality; and sets a bad precedent in that other special interests will request mandatory attorney fees to challenges of local ordinances.

[HB 1655](#) (Carrico), which is the House companion to [SB 1513](#), was reported from the Militia, Police and Public Safety Committee. The two bills are identical.

### Moving along ...

[HB 1919](#) (Crockett-Stark), which was amended and would increase from \$1 to \$5 the amount a locality may charge an inmate to defray the costs associated with the inmate's keep, was reported out of Militia, Police and Public Safety committee. [HB 2493](#) (Miller) was rolled into [HB 1919](#).

## Taxes/Revenues

### House, Senate act on local tax bills as 'crossover' approaches

The legislative pace is picking up as House and Senate committees push legislation to their respective floors to beat next week's crossover deadline.

The House passed all of the following bills on Thursday. Their next stop is the Senate Finance Committee.

[HB 1730](#) (Cole) passed 55-43. The measure mandates that no new state or local tax or any increase to an existing state or local tax could be enacted by the General Assembly without a sunset date of four-years. A floor substitute amended the bill to allow new taxes or tax increases dedicated for debt service to stay in place until the debt is retired. The Senate Rules Committee passed by indefinitely the companion bill, [SB 1272](#) (Vogel).

[HB 2084](#) (Purkey) passed unanimously. The bill exempts all certified pollution control equipment and facilities from state and local property taxation.

[HB 2135](#) (J. Miller) passed 98-1. [SB 1157](#) (Saslaw) is on its final reading on the Senate floor. The House bill requires the recordation tax and the grantor's tax on deeds to be based solely on stated consideration, even when it is less than the actual value of the conveyed property. The amended Senate bill increases the penalty for knowingly misrepresenting information on the deed from a class 2 misdemeanor to a class 1 misdemeanor.

[HB 2472](#) (Hugo) passed unanimously. [SB 1419](#) (Watkins) was reported out of Senate Finance Committee Thursday 8-7. The bills deem rental contracts authorizing the lessor and the lessee the right to terminate at any time, regardless of whether the equipment is rented for a period that exceeds 92 days, to be short-term rental contracts subject to the daily rental tax rather than the tangible personal property tax. The bills are similar with one important difference. [SB 1419](#) includes a re-enactment clause requiring the 2010 legislative session to approve the bill again before the measure can take effect.

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## Senate panel OKs new spending with yet-to-be minted stimulus money

The Senate Finance Committee approved two new tax-credit bills and one new spending bill that would draw down on Virginia's portion of one-time federal stimulus dollars. The bills are [SB 906](#) (Stosch), [SB 1430](#) (Stosch) and [SB 1141](#) (Lucas).

The legislation would be triggered when President Obama signs into law a federal economic stimulus bill, and assumes the stimulus package permits such expenditure. Although the federal stimulus program would be temporary, the new spending programs would be ongoing, relying on general fund dollars in future years.

SB 906 provides a homebuyer tax credit, for taxable years beginning on or after Jan. 1, 2009, but before Jan. 1, 2011. Under the bill, any eligible taxpayer who makes a qualified purchase during the taxable year will receive a tax credit equal to \$2,500 for eligible taxpayers filing as single or as married filing separately and \$5,000 for eligible taxpayers who are married filing jointly.

SB 1430 authorizes the issuance of \$50 million in bonds to fund grants to individuals who purchase a principal residence in the Commonwealth that was first issued a certificate of occupancy on or after Jan. 1, 2007, but before July 1, 2009. Individuals who had no present ownership in a principal residence within the last three years would be eligible.

If both bills passed, the state would be offering tax credits and grants for home buyers. The bills do not disqualify people from participating in both programs.

SB 1141 creates an income tax credit for individuals and corporations that purchase qualifying renewable energy systems and place them in service during the taxable year. The credit would not exceed \$2,000 for each kilowatt of a solar photovoltaic system; \$1,500 for each kilowatt of a wind-powered electrical generator; and \$1,000 for each kilowatt equivalent of a solar thermal system. In addition, the credits would be capped. For individuals, the specified dollar amounts would be \$8,000 for a solar photovoltaic system; \$6,000 for a wind-powered electrical generator; and \$4,000 for a solar thermal system. For corporations, the specified dollar amounts would be \$20,000 for a solar photovoltaic system; \$15,000 for a wind-powered electrical generator; and \$10,000 for a solar thermal system. The aggregate of all eligible

tax credits would be set at \$2 million per taxable year, with \$1 million allocated to individual taxpayers and the remaining \$1 million allocated to corporate taxpayers.

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## Bills changing sales tax distribution for education advance, fail

[HB 2063](#) (Hamilton) and [SB 1342](#) (Reynolds) remove the requirement for school divisions to conduct the triennial census (the sales tax dedicated to education is distributed on the basis of school age population as determined by the census).

The bills then distribute the sales tax on the basis of average daily membership instead of school age population. There would be winners and losers as a result.

HB 2063 makes the change effective in 2011; a House subcommittee recommended the bill for reporting at a Feb. 4 meeting.

SB 1342 failed to be reported by the Senate Finance Committee.

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## Disabled vets tax exemption moves ahead in House

The House Privileges & Elections Committee unanimously reported a constitutional amendment today that exempts from taxation real property that is the principal residence of a veteran (or surviving spouse) who has a 100 percent service-related, permanent and total disability.

VML and VACo opposed [HJR 648](#) (O'Bannon) in subcommittee on grounds that the state could provide this tax relief, using state resources, instead of dictating local tax policy. The Senate passed its version of the amendment, [SJR 275](#) (Puller), on Feb. 2.

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## Tax exemption, limitation amendments progress

The House Privileges & Elections Committee reported two amendments today affecting state and local taxes, including:

[HJR 688](#) (Cole), which would allow localities to either waive or establish their own income or net worth

limitations for purposes of granting real property tax relief for the elderly or disabled. Del. Mark Cole said Stafford County had requested the amendment in order that the county could establish a circuit breaker type of tax relief program.

[HJR 789](#) (Loupassi) limits state appropriations in a year to the preceding year's total adjusted by inflation and population growth.

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## Moving along ...

[HJR 640](#) (Saxman) would amend the constitution by putting "right to work" in the state constitution. The House Privileges & Elections Committee reported the amendment today.

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## Transportation

### Moving along ...

[HJR 620](#) (Oder) has become the House vehicle for segregating transportation funding through the creation of separate Transportation Funds.

The constitutional amendment would require that all revenues dedicated to transportation on Jan. 1, 2011 by general law, other than a general appropriation law, would be deposited in the Transportation Fund. Furthermore, money dedicated to construction could not be shifted to pay for maintenance without an extraordinary vote by the General Assembly. The House Privileges & Elections Committee reported the amendment today. [HJR 720](#) (R. Marshall) was merged into [HJR 620](#).

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## Miscellaneous

### Compromise could clear way for bill to regulate smoking

A compromise between Gov. Tim Kaine and House Speaker Bill Howell could pave the way for passage of a bill to prohibit smoking in most restaurants.

[HB 1703](#) (Cosgrove) passed the House General Laws Committee 16-6. The bill prohibits any person to smoke in any establishment built and operated after July 1, 2010. A substitute to the original bill was ad-

opted that excludes private clubs and restaurants with a physically separate and independently ventilated designated smoking area apart from non-smoking dining area, outdoor patio areas of restaurants, sections of restaurants used for private functions and mobile food stands along the street.

### Local government investment pool mandate on House floor

A bill that requires that at least 10 percent of the assets of the Local Government Investment Pool (LGIP) be invested in time, demand, or savings deposits in Virginia banks was reported from the House Appropriations Committee on Wednesday.

[HB 2583](#) (Merricks) applies only to local government investments, not state investments. Ten percent of the pool equals about \$340 million.

The LGIP is used by local governments of all sizes for short-term investments. It is not a long-term investment fund, so liquidity is a prime consideration for users. This bill could affect the liquidity of funds by requiring the Treasury to put some funds into non-negotiable CDs. If users needed their funds and non-negotiable CDs had to be redeemed, there would be financial penalties.

The LGIP is currently AAAM rated by Standard and Poor's. If the pool were required to invest in unrated institutions, the rating would fall. Local governments are required to report on their annual financial statements whether their investments are rated or not. Unrated investments could negatively affect their own bond ratings.

VML and VACo oppose this bill, as does the Treasurers' Association of Virginia.

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### More ...

See next page for a listing of VML legislative staff, contact information and responsibilities.

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