



VMI

February 19, 2009

# Legislative Bulletin

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

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## Upcoming

The [House Privileges and Elections Committee](#) will hear [SJR 332](#), a constitutional amendment that authorizes tax exemptions for buildings constructed or designed to conserve energy Friday at 9:30 a.m. in the 9th Floor Appropriation Room of the General Assembly Building.

## Senate committee rejects constitutional amendment

THE SENATE PRIVILEGES & Elections Committee voted 10-5 Tuesday to pass by indefinitely [HJR 725](#) (Bell), which proposed a constitutional amendment to restrict eminent

### Eminent domain

domain authority for state and local governments and other agencies having condemnation authority. Despite vigorous opposition from local governments and other interested constituencies, the resolution passed the House of Delegates earlier this session 69-31.

A similar measure, [SJR 290](#) (Obenshain), was killed earlier this session in the same Senate committee by a single vote. The senators were persuaded that it would be premature and inappropriate to amend the constitution in light of the comprehensive statutory reform enacted in 2007.

These votes represented an important victory for all local governments and others who recognized the importance of preserving reasonable eminent domain authority.

*Continues on next page*

### Inside ...

- Senate approves budget package
- LGIP bill heads to Senate floor
- Daily Rental Property Tax measure debated

## Legislative links

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## Dialogue

*“I cannot stand here and join the Hallelujah chorus. We have one-time stimulus money that has been dropped in our laps by the federal government. We’ll feel better for a couple of months, but we’re not going to feel better in June, July and August.”*

... Sen. Mark Obenshain explaining his vote against the proposed Senate budget. From the Feb. 19 edition of the Norfolk *Virginian-Pilot*.

## Cover story continued ...

Please thank your senators and delegates who voted with local government for holding solid in light of intense political pressure from the Farm Bureau and other property rights organizations. And thanks to the local elected officials who worked so persistently in contacting their General Assembly members to ensure that these constitutional amendments were defeated. Good work!

Be sure to thank these senators who voted to pass by HJR 725: Howell, Deeds, Whipple, Puckett, Edwards, Blevins, McEachin, Petersen, Barker and Northam. Voting in support of the amendment were senators Martin, Stolle, Obenshain, Smith and Vogel. Also thank these delegates who voted against HJR 725 on the House floor: Alexander, Amundson, Brink, Bulova, Caputo, Ebbin, Eisenberg, Englin, Hall, Herring, Hull, Marsden, Mathieson, McClellan, McQuinn, Melvin, Morrissey, Nichols, Plum, Pollard, Rust, J.M. Scott, Shannon, Sickles, Spruill, Toscano, Tyler, Valentine, Vanderhye, Ward and Watts.

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## Budget

### Senate OKs budget package with bipartisan support

Despite the crushing news from Gov. Tim Kaine pulling down revenue projections another \$822 million and the uncertainty surrounding the amounts and eligible uses of federal stimulus funds, Democrats and Republicans on the Senate Finance Committee found common ground and unanimously reported out a new budget amendment package on Wednesday.

Just 10 days earlier, the committee approved a budget package along partisan lines. But, those budget amendments were pulled from the Senate floor, and the senators decided to develop a new package based on the governor's revised revenue estimates and the imminent signing of the federal American Recovery and Reinvestment Act. It was that new package the Senate overwhelmingly approved 36-4 on Wednesday.

After receiving the Senate's version of the budget bill (HB 1600), the House rejected the Senate amendments by a vote of 22-66. The measure is now in conference with Speaker of the House Bill Howell appointing delegates Putney, Hamilton, Sherwood, Cox, Hogan and Joannou to represent the House. Senators

Colgan, Howell, Houck, Stosch and Wampler will represent the Senate.

VML will send out a review with details of the Senate-approved budget package today, focusing on the changes made by the Senate to the amendments reported out of the Senate Finance Committee on Feb. 8.

## Education

### Moving on ...

HB 2166 (Lohr) delays implementation of any statutes or regulations prescribing additional requirements for graduation or accreditation of schools until July 1, 2010 (fiscal year 2011), unless such statutes or regulations are required by federal code, federal regulation, or court action. By delaying implementation of any new statutes or regulations, any costs associated with them would not be realized until the 2010-2012 biennium.

**Action:** Senate Education and Health Committee reported the bill on Thursday (Feb. 19).

## Land Use

### House committee prepares to hear assortment of bills

The [House Counties, Cities and Towns Sub-Committee 2](#) reported out the following bills that will be heard in [House Counties, Cities & Towns Committee](#) Friday at 8 a.m.:

SB 1335 (Stuart), which provides that a local governing body may waive the requirement for a public hearing where an amendment to proffered conditions is requested by the profferrer, and where such amendment does not affect conditions of use or density.

SB 1369 (Barker), which defines "defacement" and permits localities to charge a property owner for the cost of removing defacement that occurs on a public or private building structure located on an unoccupied property. Charges that remain unpaid shall constitute a lien against such property, but no lien shall be chargeable to the owners unless the locality has given a minimum of 15 days notice to the property owner prior to the removal of the defacement.

SB 1416 (Blevins), which provides that local governing bodies may include in ordinances establishing areas of known historical or archaeological significance, that any applicant must submit documentation

that any development in such will preserve or accommodate the historical or archaeological resources. This act shall not affect any locality that has adopted an ordinance imposing archaeological requirements as of Jan. 1, 2009.

**SB 1487** (Vogel), which requires urban development areas to provide for a mix of residential housing types, including affordable housing, to meet projected family income distributions of future residential growth.

## Senate committee defeats disclosure requirement bill

The [Senate General Laws and Technology Committee](#) passed by indefinitely **HB 1616** (Marshall), which would have required non-salaried citizen members of any board, commission, or council that advises on land use policies within the locality to file a disclosure form of their personal interests and to have made annual disclosures of their interests in real estate located in the county, city, or town in which they are appointed.

Such individuals would also have had to disqualify themselves from participating in any transaction involving their real estate interests.

There is a slight chance that this bill will be brought up again with amendments that are favorable to local governments.

## Local Authority

### Defeated

**HB 2628** (Griffith), by the [Senate General Laws and Technology Committee](#), which would have provided that no local public body shall purchase construction in excess of \$200,000 from another public body's contract that is more than 75 miles from the local public body procuring the construction.

## Moving along ...

The [House Counties, Cities and Towns Sub-Committee 1](#) reported **SB 1469** (Quayle); the [Senate Local Government Committee](#) reported **HB1697** (Lohr) and the House passed **SB 1287** (Newman). These identical bills extend, from 2010 to 2018, the temporary restriction on city annexation authority, the granting of city charters, and county immunity proceedings.

## Public Safety

### Defeated

**SB 1386** (Stolle), which as amended, would have suspended state support for local and regional jail construction.

## Taxes/Revenues

### Daily rental tax bills move to chamber floors

Two bills affecting how the Daily Rental Property Tax component of the Merchants' Capital Tax is applied to short-term rentals have moved to the floors of the House and Senate.

**HB 2472** (Hugo) and **SB 1419** (Watkins) would deem that contracts for the rental of tangible personal property that allow both the lessor and the lessee to terminate the contract at any time to be short-term rental contracts for purposes of determining whether the lessor is engaged in a short-term rental business subject to the Daily Rental Property Tax.

VML, VACo and the Commissioners of Revenue have worked with the rental industry to hammer out a compromise proposal, which:

- establishes a new class of heavy rental equipment subject to a 1.5 percent daily tax;
- extends the length of a rental contract from up to 92 days to up to 270 days;
- eases the test companies must meet to qualify for the daily rental tax in place of the business personal property tax; and
- makes explicit that cities and counties imposing BPOL rather than Merchants' Capital taxes can also impose daily rental taxes.

The Senate Finance Committee unanimously adopted the compromise as a substitute for **HB 2472** on Tuesday. The substitute is on the Senate floor, and could be passed before week's end.

The House Finance Committee voted 17-4 to report **SB 1419** with the provisions of Del. Timothy D. Hugo's original bill. The delegate's original legislation contains none of the compromise provisions.

If both bills pass, a conference committee will iron out the differences. A conference could be avoided if a floor amendment incorporating the compromise proposal is adopted or if **SB 1419** is defeated on the House floor. VML urges members to request their delegates to oppose **SB 1419** or to approve a floor

amendment, which includes the compromise.

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## Make calls on usurpation of local tax authority

Please contact members of the [House Privileges & Elections Committee](#) before 9 a.m. Friday (Feb. 20) in opposition to [SJR 332](#) (Petersen).

This proposed constitutional amendment would allow the General Assembly or local governments to exempt from taxation any property constructed or designed to conserve energy and natural resources.

As the amendment passed the Senate, it applied only to green buildings, but a House Privileges & Elections subcommittee has proposed an amendment to broaden the exemption to cover “property, including real or personal property, equipment, facilities, or devices” that meet these green criteria. The subcommittee vote to recommend reporting the amendment was 5-4 (Yes: Janis, Frederick, Cole, Alexander and Morrissey; No: Putney, Hargrove, Cosgrove and Phillips).

VML opposes expanding the authority of the General Assembly to exempt taxable property. In future years, there will be a steadily increasing numbers of properties that would fit the criteria to be exempt from real and personal property taxes. This amendment would allow the General Assembly to make that determination. These are decisions that should be left to the local governing body.

The committee meets Friday at 9:30 a.m. Its members are: [Cole](#), [Putney](#), [Ingram](#), [Hargrove](#), [Jones](#), [Albo](#), [Cosgrove](#), [Frederick](#), [O’Bannon](#), [Bell](#), [J. Miller](#), [Landes](#), [Janis](#), [Phillips](#), [J. Scott](#), [Brink](#), [Alexander](#), [Joannou](#), [Sickles](#), [Dance](#), [Englin](#), [Morrissey](#).

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## Moving on ...

[HJR 688](#) (Cole), which would amend the Constitution to authorize the General Assembly to allow local governments 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. Senate Privileges & Elections reported the amendment on Feb. 17.

[HJR 647](#) (O’Bannon), which increases the size of the Revenue Stabilization Fund by 50 percent (from 10 percent to 15 percent of the state’s average annual tax revenues derived from income and sales taxes for the last three years). Senate Privileges & Elections

reported the amendment on Feb. 17.

[HJR 648](#) (O’Bannon), which exempts veterans who have a 100 percent permanent, service-connected disability from paying property taxes. Senate Privileges & Elections reported the amendment on Feb. 17. [SJR 275](#) (Puller), which is identical, was recommended for reporting by a House Privileges & Elections subcommittee, and will undoubtedly sail out of committee on Feb. 20.

## Defeated

[HJR 789](#) (Loupassi), which would have limited state appropriations in a year to the preceding year’s total adjusted by inflation and population growth.

## Transportation

### Senate panel kills (twice) House funding bill

The Senate Finance Committee voted down [HB 1579](#) (Oder), a bill providing transportation funding in Hampton Roads, Northern Virginia, the Richmond Highway Construction District, the Staunton Highway Construction District, and the Salem Highway Construction District. The committee voted 12-4 on Tuesday to kill the measure. After a motion to reconsider the vote passed Wednesday morning, the committee voted 10-6 to kill it again.

The bill would have pitted education, transportation, public safety and health care against one another for funding by authorizing the transfer of up to \$1 billion a year from the general fund to pay for transportation projects in Northern Virginia, Hampton Roads, and the Richmond, Staunton and Salem highway construction districts. [HB 1579](#) was the only transportation funding bill to pass the House this session.

Congress, however, did include funding under the federal stimulus package for transportation infrastructure (\$29 billion) and transit (\$8.4 billion). Virginia could receive in excess of \$800 million for these purposes.

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## Transportation secretary briefs House committee on stimulus funding

Appearing before the House Appropriations Committee on Wednesday, Transportation Secretary Pierce Homer explained the [transportation provisions](#) of the federal stimulus package.

He told the committee that the Federal Highway Administration must inform states of their funding levels by Feb. 28. States will have to obligate at least 50 percent of the funds within 120 days. If a state fails to do, so a portion of its funding will revert. Also, 3 percent of the highway funds will be taken “off the top” for enhancement projects.

Under the federal act, half the funds will be distributed through the surface transportation program (STP) formula and the other half based on each state’s overall share of 2008 transportation funding. The priority for project selection would be projects that can be completed within three years and are in economically distressed areas.

The secretary said the Commonwealth expects to receive \$650 million to \$700 million for highways:

- enhancement projects -- \$19.5 million to \$21 million;
- STP population formula -- \$195 million to \$210 million; and
- statewide projects -- \$435.5 million to \$469 million.

Secretary Homer said that VDOT would have to obligate \$325 million to \$350 million within 120 days. MPO concurrence will be required in 13 urban areas along with the Federal Highway Administration’s approval. And, projects must meet all federal requirements.

Secretary Homer said the administration’s priority is maintenance. He identified up to \$300 million in immediate pavement needs, which he indicated paving contracts could be let to meet the federal 120-day deadline. Homer also identified up to \$60 million in immediate bridge repair and replacement contracts that can be let to meet the deadline.

Both the House and Senate are interested in appropriating the federal stimulus dollars rather than ceding the decision to the governor. The House budget package includes an [amendment](#), preventing the governor from administratively appropriating these federal dollars. Given the likelihood that all the rules for the federal recovery act will not be known before the General Assembly adjourns at the end of February, this policy issue could delay putting the money to work.

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## Miscellaneous

### LGIP bill heads to Senate floor

The Senate Finance Committee approved a bill Wednesday that would require at least 10 percent of the assets of the Virginia Local Government Investment Pool (LGIP) to be invested in Virginia banks – almost all of which are unrated.

By voice vote, the committee approved [HB 2583](#) (Merricks) after it was amended to include a re-enactment clause pushed by Sen. Mary Margaret Whipple.

The investment pool is rated “AAAm” by Standard & Poor’s. The rating is based on S&P’s analysis of the fund’s credit quality, market price exposure and management skill. The rating signifies an extremely strong capacity to maintain principal stability and to limit exposure to principal losses due to credit, market, and/or liquidity risks. S&P rates only eight of the 118 qualified public depositories in Virginia as A-1 or higher.

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### STP population formula: \$210 million

Construction district	% of total	Amount
Bristol	5 %	\$10.5 million
Culpeper	4.4 %	\$9.3 million
Fredericksburg / MPO	5.9 %	\$12.4/\$1.4 million
Hampton Roads / MPO	23 %	\$48.3/\$41.4 million
Lynchburg	5.3 %	\$11.1 million
Northern Virginia / MPO	25.6 %	\$53.8/\$51.6 million
Richmond / MPO	15.3 %	\$32.1/\$24.2 million
Salem	9 %	\$18.9 million
Staunton	6.5 %	\$13.7 million

## Special elections bill hits speed bump (briefly)

The Senate Privileges & Elections Committee returned [HB 1780](#) to its original form on Tuesday, a move that throws the bill into a conference committee and allows its patron to work out a problem brought up by at least one school board. It is expected that the conference report will produce a bill that mirrors the version as it passed the House, except for language that specifies that school boards have the authority to petition for a special election to fill a vacancy.

As the bill passed the House, it allowed local governing bodies within 45 days to either appoint a person to fill a vacancy or to petition for a special election. The bill also requires that a person appointed to fill a vacancy can only serve until a special election is held at the next election in November or May. The bill overrides local charters that allow appointees to serve for a longer time and removes the current exemption for towns with populations under 3,500 that allows appointees to serve out the entire term. The Attorney General opined in December that individuals appointed to serve unexpired term are not elected members of council as that term is used in Title 15.2.

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## Special election requirements for some constitutional officers eased

[HB 1771](#) (Pollard) provides that the special election to fill a constitutional office vacancy in localities with populations of 15,000 or less shall be held at the next November General Election instead of an expedited special date. The measure, which has an emergency enactment clause, would spare localities the cost of conducting a special election in the event of a constitutional office vacancy. The bill is on the Senate floor.

## Election residency requirements debated

[HB 1878](#) (Cosgrove) and [SB 1188](#) (Blevins) define residence in terms of qualifying to vote. Both bills state residence requires both domicile and a place of abode. To establish domicile, a person must live in a particular locality with the intention to remain. An abode is the physical place where a person lives. The bills also require the State Board of Elections to produce guidelines to ensure the uniform application of residency

requirements. Over the last several elections, there have been a number of incidences and at least one court case focusing on whether students could qualify to vote in the locality in which they were attending college.

The bills also allow a closing official to be hired to help at the end of the day of election. As originally introduced, the bills contained a number of mandates that would have required additional staff and training, but the registrars, VML and VACo worked to lessen the financial impact on cities and counties.

[HB 1878](#) is on the Senate floor; House Privileges & Elections will take up [SB 1188](#) on Friday (Feb. 20).

[SB 848](#) (Edwards) contains identical language defining residency. That bill also will be heard by House P&E on Friday.

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## Moving on ...

[HB 2422](#) (May) and [SB 988](#) (Colgan), which will allow localities to acquire touch screen electronic voting machines on a temporary basis to conduct a special election. Localities currently are prohibited from acquiring new touch screen machines. [HB 2422](#) is on the Senate floor; [SB 988](#) has been recommended for approval and will be heard in House Privileges & Elections on Friday (Feb. 20).

[HB 1832](#) (Toscano) provides that the electoral board of a city that is wholly contained within one county may appoint a qualified voter of that county to serve as city general registrar. Cities in this category include Bedford, Buena Vista, Charlottesville, Covington, Danville, Emporia, Fairfax, Harrisonburg, Lexington, Manassas, Martinsville, Norton, Roanoke, Salem, Staunton, Waynesboro and Winchester. The Senate Privileges & Elections Committee reported the bill on Tuesday.

[SB 1451](#) (Colgan) increases the debt ceiling for bonds issued by and local obligations guaranteed by the Virginia Resources Authority, from \$900 million to \$1.5 billion without prior approval of the General Assembly. The VRA assists localities in financing infrastructure projects.

**Action:** A House Appropriations subcommittee recommended reporting the bill today (Feb. 19).

## Defeated

[HJR 640](#) (Saxman), which would have placed the state's right to work act in the constitution. The Senate Privileges & Elections Committee passed the amendment by indefinitely on Tuesday.

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