



VMI

February 20, 2009

Legislative Bulletin

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

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Upcoming

HB 2528 (Cole), which would effectively put an end to most local gun buy-back programs, will be voted on in the Senate next week. Please urge your Senators to vote against this latest unnecessary assault on local authority.

State adopts costly new education requirements

DESPITE A TANKING economy and evaporating state and local revenues, the State Board of Education has toughened the requirements for schools to be accredited. In addition, the board mandated that *every* 7th grader in a public school must have a customized academic plan.

Both mandates are expensive. They will require additional staff time and resources. Because the amendments are to the Standards of Accreditation, local taxpayers will foot the bill. The state would share in these additional costs only if the Standards of Quality were amended to reflect the increased staffing costs associated with the implementation of these regulations. Standards of Quality establish minimum staffing ratios and other requirements. They are used to determine the state and local shares of the cost of public education.

The only recognition the board gave to the ongoing economic meltdown is that the changes would not take place until the 2010-2011 school year.

School accreditation now will be tied to a graduation and completion index that is based on points given for the number of diploma graduates, GED recipients, students not graduating but remaining in school, and

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- DEQ to disburse \$80 million in stimulus aid
- Statewide restaurant smoking ban approved
- Attorney fees gun bill headed to conference

Legislative links ➤ [Find a bill \(state LIS\)](#)
➤ [State budget Web site](#)

Dialogue

“It will be signed quite promptly in the quickest drying ink I can get my hands on.”

... Gov. Tim Kaine commenting on the passage of legislation that bans smoking in most restaurants. From the Feb. 20 *Daily Press* of Newport News.

Cover story continued ...

students awarded a certificate of achievement. Tests will first be administered in academic year 2010-2011, for accreditation ratings awarded for the next school year (2011-2012). The tie-in to school accreditation will be phased in over a five-year period beginning in the 2010-2011 school year.

Current SOA requirements that link student achievement on standardized tests remain in place. Schools will now have to meet both costly criteria.

The second of the new requirements also will begin in 2010-2011. It requires all schools to begin development of a personal academic and career plan for every 7th grade student. The individualized plan must specify each student's program of study for high school graduation and post graduation, based on the student's academic and career interests. The plans will have to be reviewed and updated if necessary before the student enters the 9th and 11th grades as well.

At a time when the state has proposed reducing funding for 13,000 support positions, many local government officials will be incredulous that the State Board of Education would move forward with such expensive changes.

"The board is sensitive to the budgetary challenges school divisions are facing," said Dr. Mark Emblidge, president of the Virginia Board of Education. "Delaying the implementation of new accountability measures gives school divisions additional time to develop plans and strategies for implementing new instructional requirements and meeting higher benchmarks."

Unfortunately, it is problematic whether the state will pony up the money to cover the cost of these new mandates.

Staff contact: Mary Jo Fields (mfields@vml.org)

Education

Defeated

HB 2063 (Hamilton), which would have eliminated the requirement that school divisions conduct a triennial census of school-age children and would have based the distribution of the sales tax for public education on average daily membership instead of school age people. The bill was left in the Senate Finance Committee.

Environment

DEQ to disburse \$80 million in stimulus aid for water quality improvements

The federal American Recovery and Reinvestment Act (2009) signed into law this week includes \$80 million in direct funding to be administered through the Virginia Clean Water Revolving Loan Fund (VCWRLF). [VCWRLF federal stimulus](#) applications are being solicited for projects that involve improvements to publicly-owned wastewater collection and treatment facilities.

Certain aspects of this special funding differ from the normal VCWRLF program, including the following: (1) At least 50 percent of the funds must be distributed in the form of principal forgiveness, negative interest loans, and/or grants; (2) Priority will be given to those projects that are in an advanced stage of readiness to proceed; (3) Approximately \$16 million of these funds must go to projects that address water or energy efficiency and other green infrastructure objectives. The application form provides an opportunity to identify those aspects of a project. In particular, DEQ is promoting water reuse through these projects; and (4) In addition to the regular requirements of the VCWRLF, stimulus projects must also comply with the requirements of the Davis-Bacon Act and Buy American Iron, Steel, and Manufactured Goods.

In order to be eligible for this special funding a [VCWRLF Stimulus Application](#) (four copies) must be *overnight delivery* postmarked no later than Monday, March 9 or hand delivered by 5 p.m. on March 9 and submitted to:

Mr. Walter Gills, Program Director
Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218
(804) 698-4133
wagills@deq.virginia.gov

(For hand delivery)

Mr. Walter Gills, Program Director
Department of Environmental Quality
629 E. Main St.
Richmond, VA 23219

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FOIA

House panel OKs bill clarifying writing of minutes

A bill clarifying that minutes of public meetings must be in writing was reported from the House General Laws Committee.

The terms “include” and “in writing” that appear in of [SB 1319](#) (Houck) are defined in Title 1 to mean, respectively, “include, but are not limited to,” and “any representation of words, letters, symbols, numbers, or figures, whether (i) printed or inscribed on a tangible medium or (ii) stored in an electronic or other medium and retrievable in a perceivable form and whether an electronic signature authorized by Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 is or is not affixed.”

This bill is a recommendation of the Freedom of Information Advisory Council.

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Land Use

Moving along ...

The [House Counties, Cities & Towns Committee](#) reported [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. The bill was amended to change the word shall to may. Passage of the bill would not require any change in the manner of enacting urban development areas related to affordable housing.

The [House Counties, Cities & Towns Committee](#) reported [SB 1416](#) (Blevins), which provides that local governing bodies may include in ordinances establishing areas of known historical or archaeological significance, a requirement 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.

The [House Counties, Cities & Towns Committee](#) reported [SB 1524](#), which broadens the zoning administrator’s authority to determine vested rights in certain circumstances.

Defeated

The [House Rules Subcommittee on Studies](#) passed by indefinitely [SJ 346](#) (Vogel), which would have established a nine-member joint subcommittee to recommend methods for modernizing local government structure and organization.

Public Safety

Amended attorney fee gun bill headed to conference

[SB 1513](#) (Smith) was amended in the House Militia, Police and Public Safety Committee back to its original language, which makes a court award reasonable attorney fees, expenses, and court costs to any entity that prevails in an action challenging an ordinance, resolution or motion as being in conflict with a locality’s authority to control firearms pursuant to § 15.2-915.

Attorney fees may also be awarded to the prevailing party in an action challenging an administrative action taken in bad faith as being in conflict with the section. The bill was reported 18-4. It is similar to [HB 1655](#) (Carrico), which states that attorney fees *may* be awarded. The two bills will now go to a conference committee that will seek to iron out the differences.

Moving along ...

The [House Counties, Cities & Towns Committee](#) reported [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 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 1199](#) (Puckett), which increases from \$1 to \$5 the amount a locality may charge an inmate to defray the costs associated with the inmate’s keep, was reported from the House Militia, Police and Public Safety Committee. The bill is identical to [HB 1919](#).

Defeated

SB 887 (McEachin) was passed by indefinitely by a Militia, Police and Public Safety subcommittee. The bill would have provided that firefighters or emergency medical technicians may have a witness of their choice present during an interrogation, as long as the interview is not unduly delayed. The bill specified that the observer cannot participate or represent the employee. In addition, the bill provided that all interrogations should be conducted with at least 24 hours' notice, unless the matters being investigated are of such a nature that immediate action is required.

SB 1541 (Stolle) was tabled by a Militia, Police and Public Safety subcommittee. The bill would have provided that an officer must be given reasonable notice before being questioned in an administrative investigation as long as the notice will not jeopardize the investigation or public safety. The bill also provided that if any procedural guarantees are intentionally denied an officer during the investigative process or if the allegation is determined to be unfounded, the information derived could not be used or considered in imposing any disciplinary action. However, evidence of misconduct other than that originally alleged could be used in a disciplinary action.

Taxes/Revenues

Green property exemption improved

The House Privileges & Elections Committee on Feb. 20 amended SJR 332 (Petersen) to allow the General Assembly the optional authority to allow local governments to grant tax exemptions for green buildings, but not to allow the General Assembly to grant those exemptions.

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Moving on ...

SB 1387 (Stolle) increases the assessment that may be levied for courthouse construction, renovation or maintenance from \$2 to \$5. The fee may be applied to civil actions and to criminal or traffic cases in district or circuit courts. A House Appropriations subcommittee recommended reporting the bill on Thursday.

Defeated

HB 1730 (Cole), which would have required a sunset clause on all new or increased taxes and fees. The Senate Rules Committee killed the measure today. Earlier this session, an identical Senate measure died in the same committee.

Miscellaneous

Statewide restaurant smoking ban approved

Final agreement to ban smoking in restaurants moved forward on Thursday when the Senate Education and Health Committee reported **HB 1703** (Cosgrove).

Identical legislation - **SB 1105** (Northam) - has already passed both houses. The legislation prohibits smoking in all indoor restaurants and bar and lounge areas. Exceptions are provided for private clubs or for portions of restaurants used for private functions, if the area has a separate ventilation system and is structurally separated from the rest of the restaurant. Smoking also is permitted in outdoor patios.

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Study of sovereign immunity is likely

The House Rules Committee tabled **SJR 277** (Edwards), which would have asked JLARC to study sovereign immunity for the state and localities. JLARC, however, is likely to put the issue on its research agenda when the commission decides on its work plan in May.

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Defeated

SJR 346 (Vogel), which would have created a committee to study the organization and structure of local governments.

SB 1320 (Northam), encouraging the use of electronic transactions in election administration.

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