

**VMI**

January 16, 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

Scrutiny of the budget will accelerate next week. House Appropriations and Senate Finance subcommittees will begin digging into proposed amendments and offering some of their own. Feb. 8 is the deadline for each house to adopt a budget.

Short session translates into a fast, furious pace

43 days left to deal with budget, legislation

THE RACE TO DEAL with a massive legislative docket and a proposed budget based on a minimum \$2.9 billion shortfall will speed up considerably in Richmond next week.

Already, 1,807 pieces of legislation have been introduced, and more is on the way. Crossover – the day by which each chamber has to complete work on its own legislation – is Feb. 10.

Here's one example of the logistical difficulties facing the two bodies: Both the Senate Privileges & Elections Committee and the Senate Local Government Committee have only three regularly scheduled meetings in which to complete their dockets before crossover. Senate P&E already has 50 items before it, including 16 constitutional amendments. Senate Local Government has at least 50 bills to consider as well.

The House Appropriations and Senate Finance committees are incredibly pressed for time, too. The subcommittees of these two committees will only be able to hold three or so meetings each. Subcommittee members dig into the particulars of each of their areas, leading up to the presentation of the House Appropriations and Senate Finance budgets on Feb. 8.

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Inside ...

- Stormwater reg delay would benefit localities
- Tax bills abound in both houses
- Transportation secretary paints grim picture

Legislative links

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Dialogue

“We hit a few bumps last year, we want to be as inclusive as we can, we’ve got a lot to do, and the sooner we start on it, the better.”

... Senate Majority Leader Richard Saslaw, referring to the upcoming budget debate and the Democratic agenda in his chamber. From the Jan. 16 *Richmond Times-Dispatch*.

Cover story continued ...

In short, the General Assembly is working under an incredibly compressed time frame and actions are often swift. Local officials need to keep this schedule in mind. In the days and weeks ahead, VML's legislative staff will solicit the help of local officials in opposing and supporting specific legislation. Please respond as quickly as possible to these requests, which often will come in the form of *Action Calls*. Time really is of the essence!

Environment

Delay in stormwater regulations will help local governments

A bill has been introduced that would delay the effective date of new stormwater regulations and extend the period of time that localities have to adopt a local stormwater management program. Under current law affected local governments (those covered by the Chesapeake Bay Preservation Act and/or required to have a municipal separate storm sewer system permit – aka MS4) are required to adopt a program no sooner than 12 months and no later than 18 months after state regulations have become effective.

HB 1991 (Bulova) would extend the time for adoption from no sooner than 15 months to no later than 21 months. It also allows for extensions beyond the deadline of up to 12 months if the Soil and Water Conservation Board deems that a local government has made substantive progress in adopting a program. While the timetable to adopt the regulations is by December of 2009, this bill would delay the effective date of these regulations to no sooner than July 1, 2010. The bill has been referred [House Agriculture, Chesapeake and Natural Resources](#).

A delayed effective date for the regulations, coupled with an extension for program adoption, should allow adequate time for local governments to establish workable programs that meet Virginia's water quality goals.

Staff contact: Joe Lerch (jlerch@vml.org).

Land Use

Comp plan amendment deadline proposed for cities, towns subject to UDAs

HB 2322 (Athey) would require cities and towns that are subject to the urban development area provision (UDA) of 2007's HB 3202 to amend the comprehensive plan to set up the UDAs by July 1, 2011. HB 3202 enacted Va. Code § 15.2-2223.1. The section requires any locality with a population of more than 20,000 and a decennial growth rate of 5 percent or more, or any locality with a growth rate of more than 15 percent, to set up UDAs in the comprehensive plan.

An enactment clause in the 2007 bill required counties to which the section applies to amend their plans by 2011. HB 2322 applies the enactment clause to cities and towns. The bill has not yet been referred to a committee.

Other bills ...

Graffiti abatement - **SB 1369** (Barker)

Summary: Permits localities to charge a property owner for the cost or expenses of abating graffiti that occurs on his vacant property, and to collect such charges as taxes are collected. If the charges remain unpaid, they shall constitute a lien and become enforceable in the same manner as unpaid local taxes.

Action: Referred to [Senate Committee on Local Government](#).

Subdivision ordinances - **SB 1423** (Martin)

Summary: Provides that such ordinances shall include a requirement that each locality provide a checklist to potential developers that specifies what shall be shown on the development plans along with the legal authority for such requirement.

Action: Referred to [Senate Committee on Local Government](#).

Local Authority

Could Senate bills spell beginning of the end for independent cities?

Sen. John Watkins has introduced two measures that would end independent status for cities.

SJR 335 (Watkins) removes the requirement in the [Virginia Constitution](#) (Article VII, Section 1) that cities be established as an entity independent of other local governments. The amendment is simple; it simply deletes the word “independent” from the definition of city. If enacted, the Constitution would define a city as “an incorporated community which became a city as provided by law before noon on the first day of July, nineteen hundred seventy-one, or which has within defined boundaries a population of 5,000 or more and which has become a city as provided by law.” The amendment is in [Senate Privileges & Elections](#), which meets Tuesdays at 4 p.m. The constitutional amendments subcommittee meets at 9:15 a.m. on the same day.

Companion legislation – **SB 1178** (Watkins) – deletes the word “independent” from references to cities in provisions in Title 15.2. As an example, in § 15.2-102, the definitions for the title, city is defined to be “any ~~independent~~ incorporated community that became a city...”. The bill applies the same scalpel in the annexation laws and in the rules for transitioning from town to city status.

This would be the first step of taking Virginia to the form of government that the 49 other states have: city residents would also be residents of the county or counties the city sits on.

The bill will be heard by the Senate Local Government Committee. No hearing date has been set.

Staff contacts: Mary Jo Fields (mfields@vml.org) and Mark Flynn (mflynn@vml.org).

Arts and cultural district authority may be spread statewide

Del. Shannon Valentine has introduced [HB 1735](#) to allow any locality to create an arts and cultural district. The current authority is restricted to a handful of cities and towns. The idea of the districts is to increase “awareness and support for the arts and culture in the locality.” Under the arts and cultural district the locality may reduce permit and user fees and may reduce the business license tax. In addition, the law allows expedited land use permits for a project and other incentives.

VML has identified the expansion of arts and cultural districts to all local governments as a legislative priority for the year. Therefore, the league fully supports the legislation and encourages its members to talk-up the bill with their delegates. The bill will be heard in the Counties, Cities and Towns committee.

Staff contact: Mark Flynn (mflynn@vml.org).

Other bills ...

Local government; publication of notices for charter changes, referenda, and public hearings, etc - [HB 2355](#) (Landes)

Summary: Gives localities alternatives to publication in a newspaper of general circulation in the locality for legal ads and other notices of proposed action. These alternatives include publication in at least two of the following forms of publication: (i) in a newspaper of general circulation in the locality, including such newspaper’s online publication, if any, (ii) on the locality’s website, (iii) on any public access channel operated by the locality, to be aired during prime time programming and at least two other times during the day, or (iv) using any automated voice or text alert systems used by the locality. In addition, the bill provides that any resident of the locality annually filing a written request for notification with the locality shall be provided notice by the locality in a manner mutually agreed upon by the locality and such individual. The request shall include the resident’s name, address, zip code, daytime telephone number, and electronic mail address, if available. In selecting the methods of publication, the bill requires the locality to publish/advertise in a manner gauged to ensure that the maximum number of persons within the locality is likely to be informed of the existence and content

of the proposed action. The bill contains technical amendments.

Action: The bill is likely to be referred to the [House Counties, Cities and Towns Committee](#).

Annexation - SB 1287 (Newman)

Summary: Extends the current annexation moratorium to 2018.

Action: Referred to [Senate Committee on Local Government](#).

Public Safety

Other bills ...

Powers of local governments; loitering on grounds of public libraries - HB 2473 (Hugo)

Summary: Clarifies that the term “public place” also includes public libraries for the purposes of any ordinance adopted to prohibit loitering on the grounds of a public place.

Action: The bill is likely to be referred to the [House Counties, Cities and Towns Committee](#).

Personnel

Other bills...

Right to work Constitutional amendment - HJR 640 (Saxman) and SJR 347 (McDougle)

Summary: Amends Article 1, Section 11-A of the Bill of Rights to establish the “right to work” without becoming a member of a labor union. The amendments state that agreements that require union membership in order to work, or where union membership is a condition of employment are against public policy and an illegal combination or conspiracy.

Action: HJR 640 is in [House Privileges & Elections](#); SJR 347 is in [Senate Privileges & Elections](#)

Infectious disease; deemed consent for testing - SB 1152 (McDougle)

Summary: Eliminates requirement that, in other than emergency situations, a law-enforcement officer give notice that a person shall be deemed to have consented to testing and disclosure of test results for HIV and hepatitis B or C, when the officer is directly exposed to body fluids of a person in a manner that may transmit HIV or hepatitis B or C.

Action: Referred to [Senate Education and Health](#).

Taxes/Revenues

Assessment limitation, Rainy Day fund amendments introduced

Localities would have the authority to enact local ordinances that cap the annual increase in assessed values of real estate at no more than 25 percent or a greater percentage set by the ordinance under [SJR 349](#) (Newman). The constitutional amendment also states that the real estate would be reassessed at fair market value in the year in which it is sold, improved, or otherwise changed hands. The resolution is in [Senate Privileges & Elections](#) and may be heard in the constitutional amendments subcommittee as early as Tuesday, Jan. 20, and by the full committee the same day. Currently the [Virginia Constitution](#) (Article X, Section 2) requires that property be assessed at fair market value.

In the House, HJR 647 (O’Bannon) would amend Article X, Section 8 of the [Constitution](#) to increase the size of the Revenue Stabilization Fund (rainy day fund) from 10 percent to 15 percent of the Commonwealth’s average annual tax revenues derived from income and sales taxes for the preceding three fiscal years. The resolution is in the House Privileges & Elections constitutional amendments subcommittee, which meets Wednesdays at 5 p.m.

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

Tax measures introduced that could have statewide significance

A handful of tax measures have been introduced that apply to specific localities. The bills, however, touch on issues that are of statewide significance or affect other local governments. They are summarized below.

Staff contact: Neal Menkes (nmenkes@vml.org).

Other bills ...

Business, professional & occupational license tax; limitation of authority – HB 2153 (Rust)

Summary: Allows the Towns of Herndon and Leesburg to levy the BPOL tax on any person, firm,

or corporation engaging in the business of renting real property. The General Assembly has not allowed local governments to impose this tax unless the tax was already in place as of January 1, 1974.

Action: Not yet referred to committee.

Communications sales and use tax; distributions to Bath County and Town of Port Royal – SB 891 (McDougle)

Summary: Clarifies the amount of communications sales and use tax revenues that Bath County and the Town of Port Royal are to receive annually. The communications and sales and use tax consolidates a number of taxes that were imposed by local governments. In order to determine each locality's share, state law required affected local governments to submit certain information documenting which taxes were imposed and the amounts collected in FY06. Port Royal did not submit the information, and did not receive its share of the new tax revenue. The measure would ensure that the two localities receive the money their citizens pay.

Action: Referred to House Finance.

Sales and use tax; entitlement to revenues; City of Virginia Beach – HB 2411 (Bouchard) and HB 1691 (Tata)

Summary: These bills add the City of Virginia Beach to the localities that are entitled to all sales tax revenues generated by transactions taking place at events in certain public facilities. This tax policy has been used by the cities of Hampton, Newport News, Norfolk, Portsmouth, Roanoke, Salem, Staunton, and Suffolk for a number of development projects such as auditoriums, coliseums, convention centers, and conference centers.

Action: HB 2411 has not yet been referred to committee. HB 1691 was referred to House Finance.

Retail Sales & Use Tax; expands definition of public facility for purpose of using certain revenues – SB 868 (Edwards)

Summary: Expands the definition of a "public facility" for the purpose of using certain sales tax revenues to pay off bonds used to build or *expand* the public facility on or after July 1, 2009, but before July 1, 2011.

Action: Referred to Senate Finance.

Transportation

Cabinet secretary describes barren transportation landscape in Virginia

Speaking to the House Transportation Committee Thursday, Secretary of Transportation [Pierce Homer](#) painted a grim picture of Virginia's transportation future.

Homer pointed out in comparing statistics from October 2008 with a year earlier that: (1) container traffic in the state ports is down 5.4 percent; (2) diesel tax collections are down 14.4 percent; (3) motor vehicle sales tax collections have fallen 33 percent; and (4) original vehicle registrations have dropped 20 percent. All are telling signs of the recession's impact on transportation revenues.

The gap in the six-year transportation program adopted last June is \$2.6 billion. The adopted program assumed \$10 billion would be available for new construction. The draft program, which will be subject to a public hearing in Richmond on February 5 and final adoption by the Commonwealth Transportation Board on Feb. 15, assumes a program of under \$8 billion.

Referring to the \$3 billion bond package approved by the General Assembly in 2007, Secretary Homer noted that the current financial model projects that there is only sufficient debt service capacity to fund \$2.2 billion and that the first sale would not occur until calendar year 2011. He stressed that long-term sustainability of the bond program in an emerging issue.

Concerning the condition of the state's roads, the secretary pointed out that 20.5 percent of the interstate pavement is rated deficient, an increase from the 17.1 percent reported in 2006. He went on to say that the average rate of increase for maintenance services would be reduced from 4 percent to 3 percent. This will result in *less local maintenance payments*. Regarding bridges, 1,730 or 8.3 percent are structurally deficient, and up to 300 bridge structure replacement projects may be cancelled in the draft six-year improvement program.

As for agency budget reductions, the secretary said that the Departments of Aviation, Motor Vehicles, and Rail and Public Transportation as well as VDOT will also be cut this year and again in FY10. The VDOT cuts are roughly \$285 million each year.

VDOT is also undergoing a major re-organization that will: (1) reduce full-time staff from 8,400 to 7,500;

(2) reduce residency offices by 30 percent; (3) reduce central office divisions by 30 percent; and (4) reduce equipment repair shops by 40 percent. The downsizing will affect every function and service VDOT provides.

But, the administration is committed to fund transit operations at FY08 levels with \$4.3 billion in transit funds over the next six years.

Homer warned that there is a high degree of uncertainty in federal revenues. The federal Highway Trust Fund's cash balance is teetering; the federal transportation act needs to be re-authorized; and the federal economic stimulus package has yet to pass Congress.

Staff contact: Neal Menkes (nmenkes@vml.org).

Bill gives localities final authority to decide location of red light monitoring

A House bill would remove the requirement that the list of proposed intersections for a traffic light signal violation monitoring system that a locality submits to the Virginia Department of Transportation be submitted for the Department's final approval. [HB 2416](#) (Bouchard and Mathieson) has not yet been referred to committee.

Staff contact: Neal Menkes (nmenkes@vml.org).

Bill permits localities to take over roads, bridges and streets from state

A bill introduced in the House would provide for the transfer of roads, bridges and streets from the Commonwealth Transportation Board-controlled primary system of state highways to a local system of roads operated by certain localities. Such localities are either counties who have withdrawn from the state's secondary road system or are cities and towns receiving road maintenance money from VDOT. [HB 2425](#) (May) also declares that any county choosing to resume responsibility over the secondary roads within its boundaries shall be deemed to have withdrawn from the secondary system of state highways. The bill has not yet been referred to committee.

Staff contact: Neal Menkes (nmenkes@vml.org).

Legislation would provide additional money for transportation

The two bills would change how the state taxes motor fuels. The first, [SB 1283](#) (Newman) proposes to convert the tax on gasoline, diesel and other fuels from an excise tax (i.e., 17 ½ cent per gallon) to a hybrid tax that includes elements of retail tax based on the price per gallon.

Under SB 1283, the excise tax would be reduced to 12 ½ cents per gallon and an additional cents-per-gallon rate equal to five percent of the statewide average wholesale price of a gallon of self-serve unleaded regular gasoline would be imposed. The wholesale price would be adjusted every three months. However, the new scheme would not be put into effect until the statewide weekly average wholesale price of a gallon of self-serve unleaded regular gasoline, excluding federal and state excise taxes, is less than \$0.99 per gallon. The bill has been referred to Senate Finance.

The second bill, [HB 1661](#) (Scott, J.) converts the rates of taxation on motor fuels from cents per gallon to percentage rates. The DMV Commissioner would calculate the percentage rates in an amount that most closely yields the amount of cents per gallon being charged on the applicable motor fuel prior to the bill's effective date of July 1, 2009. Thereafter, the percentage rates would not change, but would be applied against the average price per gallon of the fuel, less federal and state taxes, as determined by the Commissioner of the Division of Motor Vehicles over rolling six-month periods, to determine the cents per gallon to be charged. The bill was referred to House Finance.

Staff contact: Neal Menkes (nmenkes@vml.org).

Bills would alter allocation of highway construction funds

Two bills have been introduced in the House that would affect the allocation of highway construction funds. They are:

[HB 2230](#) (Marsden) directs the Commonwealth Transportation Board to allocate to highway construction projects in the Northern Virginia highway construction district or the Hampton Roads highway construction district at least as much as was allocated for highway construction in each respective district in FY09. Assuming that new construction dollars either

stagnate or decline in the future, the bill's effect would be to transfer construction money from the remaining construction districts to Northern Virginia and Hampton Roads. The bill has not yet been referred.

HB 2194 (Watts) allocates primary system highway construction funds among the nine highway construction districts on the basis of the ratio of vehicle miles traveled on primary highways divided by the lane miles of primary highways in each highway construction district, weighted 90 percent, and a need factor, weighted 10 percent. The current formula is based on vehicle-miles traveled on the primary system, primary road lane mileage, and a primary road need factor. The vehicle miles traveled is weighted at 70 percent, primary road lane mileage is weighted at 25 percent, and need is weighted at five percent. The proposed formula would skew construction dollars to Northern Virginia.

The bill, however, does provide additional resources. **HB 2194** increases the motor fuels tax by 10 cents per gallon, minus 1 cent for each 20 cents that the average price of gasoline exceeds \$3. The tax would be indexed every two years beginning July 1, 2010, by an amount equal to the percentage change in the U.S. Department of Labor's Producer Price Index for Highway and Street Construction. The bill has not yet been referred to committee.

Staff contact: Neal Menkes (nmenkes@vml.org).

Cities, towns could be given more flexibility in use of urban system highway funds

A House bill provides that not more than two-thirds (instead of the present one-third) of the annual urban system highway funds apportioned to a city or town may be used to reimburse the locality for debt service for bonds or eligible project costs incurred on approved projects included in the Six-Year Improvement Program of the Commonwealth Transportation Board and the city's or town's capital improvement program. **HB 1645** (Marshall D. and Merricks) was referred to House Appropriations.

Staff contact: Neal Menkes (nmenkes@vml.org).

Other bills...

Fuel fee; allows authorities to pass an ordinance to impose a fee on motor vehicle violations - **SB 979** (Stuart)

Summary: Allows authorities to pass an ordinance that would impose a fee, not to exceed \$10, on all motor vehicle violations. Such fee shall go to the locality for the purpose of purchasing fuel for local law-enforcement vehicles.

Action: On Jan. 15 the [Senate Transportation Committee](#) unanimously referred the bill to [Senate Local Government Committee](#).

Northern Virginia Transportation District Fund; dedication of state matching funds to the Washington Metropolitan Transit Authority - **HB 2470** (Hugo)

Summary: Dedicates, through the year 2019, any additional funds that may be distributed to the Northern Virginia Transportation District Fund as a result of the 2009 session of the General Assembly increasing the recordation tax revenue distributed to localities pursuant to § 58.1-816, to the Washington Metropolitan Area Transit Authority (WMATA) to provide funds to the authority as may be required under federal law for capital improvements for WMATA's transit service (Metro). The bill expires June 30, 2010, if such federal law is not in effect by June 30, 2010.

Action: The bill has not yet been referred to committee.

Retail Sales and Use Tax; additional tax authorized in City of Charlottesville & Albemarle County - **HB 2161** (Toscano)

Summary: Permits the City of Charlottesville and Albemarle County to impose an additional sales and use tax at a rate not exceeding 1 percent, provided that all revenue generated from the additional tax is used solely for transit or other transportation projects. The tax would not be applied to food purchased for human consumption.

Action: Not yet referred to committee.

Real property tax rate; commercial property in Northern Virginia - **HB 2479** (Hugo)

Summary: Reduces the rate of the additional real property tax that may be imposed on commercial property by localities embraced by the Northern Vir-

ginia Transportation Authority from \$0.25 per \$100 to \$0.125 per \$100.

Action: The bill has not yet been referred to committee.

Real property tax; commercial property in Northern Virginia and Hampton Roads – HB 2480 (Hugo)

Summary: Requires localities to use the revenue from the special real property tax on commercial property in localities embraced by the Northern Virginia Transportation Authority or the Hampton Roads Transportation Authority solely for new road construction and new public transit construction. Under current law, the localities must use the revenue for transportation purposes that benefit the special regional transportation tax district to which the locality belongs.

Action: The bill has not yet been referred to committee.

Fuel fee; allows authorities to pass an ordinance to impose a fee on motor vehicle violations – SB 979 (Stuart)

Summary: Allows authorities to pass an ordinance that would impose a fee, not to exceed \$10, on all motor vehicle violations. The fee would go to the locality for the purpose of purchasing fuel for local law-enforcement vehicles.

Action: The bill was re-referred from the Senate Transportation Committee to the Senate Local Government Committee by a unanimous vote.

More ...

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

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