



VML

February 9, 2010



# Legislative Bulletin

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

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## Upcoming

Don't forget to register to attend VML-VACO Legislative Day Feb. 11 at the Richmond Marriott in downtown. [Registration information](#) is on the VML Web site. Questions: Contact Sherall Dementi at 804/523-8533 or [sdementi@vml.org](mailto:sdementi@vml.org).

## Report card: Legislature risks an 'F' on local midterm exam

**ANALYSIS** LET'S ASSUME that the General Assembly is a public institution, funded by taxpayers, and responsible for carrying out the people's business. Let's also assume that the General Assembly's performance can be measured. And, for the sake of this analysis, let's measure that performance so far this session against the six principles that VML sent to legislators as they arrived in Richmond – principles that local governments believe will best preserve the investments and progress Virginia has made over the past 50 years.

**Principle 1: The General Assembly should strengthen the stability of the state general fund through significant tax reforms.**

The House crushed [HB 1155](#) by a vote of 97-0-1. Not a single delegate voted for the proposal, which would have imposed a state income surtax and allocated the revenue to localities willing to eliminate the personal property tax on personal-use vehicles. The bill, in effect, would have provided a dedicated revenue stream to pay for the Car Tax Relief Program, thereby relieving the state general fund.

*Continues on next page*

### Inside ...

- McDonnell voices support for unfreezing composite indexes
- Disability board mandate likely to be scuttled

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

## Dialogue

*“This is far worse than the Great Depression. During the Depression, people took care of one another ... the government is the safety net now.”*

... Del. Harvey Morgan, discussing [HB 148](#) (O'Bannon), which would have added state-approved beds for a Richmond area nonprofit nursing home. The bill was tabled by a House Appropriations Health and Human Resources subcommittee on Monday.

## Cover story continued ...

The Senate companion bill, [SB 543](#), remains tucked away in the Senate Finance Committee. The news media report that Senate leadership already has decided to refrain from any action to increase state revenues. Instead, the Senate will cut spending even deeper for public education, health care and public safety to reinstate the Car Tax Relief Program in the next biennium.

Other measures to increase state revenues have received only scant attention by committees in either chamber.

### **Principle 2: The General assembly should not place additional restrictions on local revenue sources.**

The House of Delegates passed [HB 57](#), a bill to prohibit any locality from imposing the BPOL tax if the locality did not impose it as of Jan. 1, 2010, or from increasing the BPOL tax rates after Jan. 1, 2010. In FY08, \$661.8 million was raised by the tax by the 39 cities, 46 counties and 127 towns who depend on this revenue source. The bill was referred to the Senate Finance Committee.

The House Finance Committee will pass [HB 613](#), which will reclassify all machinery and tools used in manufacturing, mining, water well drilling, processing or reprocessing, and television broadcasting, except those used by farm wineries, placed in service on or after July 1, 2010, as intangible personal property. The legal effect of the bill exempts this type of property from state and local taxation. For 39 cities, 93 counties and 96 towns who collected \$200.3 million in FY08 from machinery and tools taxes, this bill puts more pressure on real estate taxes.

The House has also passed [HB 570](#), which changes the burden of proof from the taxpayer to the assessor when a taxpayer appeals the assessment of real property to a board of equalization or to a circuit court. If this bill becomes law, local governments can count on an increase in assessment appeals and litigation costs.

### **Principle 3: If the state chooses not to make up spending reductions or reduce mandates, local governments should be granted additional authority to alleviate escalating pressures on real estate and personal property taxes.**

A House Finance Subcommittee voted to pass by indefinitely [HB 1150](#), a bill to authorize any county

or city to levy additional local sales and use taxes at a rate of one-half percent with all the revenue to be used for education purposes. No comparable version of the bill was even introduced in the Senate.

### **Principle 4: If the state chooses to reduce state general fund support for K-12 education to a level less than the amounts provided in the 2006-08 biennium, then the standards of learning and accreditation that drive education spending since that date should be suspended or deferred.**

Individual delegates and senators have submitted budget amendments to provide localities with limited flexibility regarding matching requirements and use of lottery proceeds. No one in either chamber, however, introduced legislation to roll back unfunded mandates in public education or to defer new requirements from taking effect.

### **Principle 5: If state requirements are not sufficiently compelling to receive state funding, then there is no rational reason to require local governments to pay those costs. Rather, the mandate, assuming it is not federally-required, should be suspended or deferred.**

The House of Delegates passed [HB 385](#), which allows the governor, upon application by a locality with documentation of fiscal stress, to suspend any mandate for up to two years. The bill, however, does *not* affect mandates promulgated by the Department of Education. Under existing law, the governor may suspend such mandates for up to one year. The bill, as originally introduced, would have *required* rather than authorized the governor to suspend a mandate for two years. There is no comparable Senate bill. [HB 385](#) was referred to the Senate Committee on General Laws and Technology.

[SB 316](#) changes the funding source for money to cover costs associated with the purchase and distribution of end-user equipment from the state general fund to communications sales and use tax funds. In essence, the bill authorizes the supplanting of general fund dollars for the Technology Assistance Program managed by the Department for the Deaf and Hard-of-Hearing with money from the Communications Sales and Use Fund, which is predominately a local revenue fund.

**Principle 6: If the income tax surcharge or some other approach is not approved to pay for the Car Tax Relief Program, all owners of personal use vehicles will have to pay a greater personal property tax beginning in the 2010 tax year.**

Both the House and Senate, as well as Gov. Bob McDonnell, have made clear their intentions to reinstate the program. The question is whether or not the General Assembly can find a way to fund the program without cutting the education and public safety programs delivered by local governments even deeper.

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Using these principles as a yardstick by which to assess the legislature's performance so far, it appears that the General Assembly is bent on dumping the effects of its fiscal problems into the laps of local elected officials.

Absent meaningful tax reform, the state could at the very least establish a link between what it requires under the Standards of Accreditation and Standards of Learning and what it funds under the Standards of Quality. If the legislature insists on renegeing on the state's funding commitments for education, it should roll-back the numerous costly requirements included in the SOA and SOL and that are not funded in the SOQ. Local governments cannot continue propping up this system on the backs of local real estate taxpayers.

## Budget

### McDonnell voices support for unfreezing composite indexes

Gov. Bob McDonnell wants updated figures that determine state and local shares for education funding to be used in both years of the biennial budget.

The budget submitted by former Gov. Tim Kaine deferred the use of these updated figures, called composite indexes of local ability to pay, for one year, until FY12.

Deferring the use of the updated composite indexes is controversial. Deferring their use for one year helps the 97 localities that saw their indexes increase, but hurts the 31 that had their indexes decrease. The deferral also saves the state about \$29 million in FY11.

If McDonnell's proposal is approved, the 97

localities that would have gained state funding under the deferral would receive \$114 million less in state funding. The 31 localities that would have lost state funding under the freeze, however, would now receive \$143 million more in state funding than would have occurred had the updated figures been used. A number of these localities are in Northern Virginia.

Earlier this session, the Virginia Department of Education produced [locality-specific information on the effect of deferring the composite index](#). If updated composite indexes are used instead, localities that would have received less state funding (as shown in red on the above link) would receive more funding. Localities that would have received more state funding (as shown in black on the above link) would receive less state funding. (Red numbers flip to black; black numbers flip to red.)

A press release issued by the governor states: "The Local Composite Index must be applied to all localities, at all times, in the same objective and fair manner by which it has always been utilized ... Ensuring that we have a fair formula that is implemented without regard to temporary or political considerations is the best means by which to appropriate education funding in the Commonwealth. Every time the index is readjusted some school systems gain funding, while others receive less. This has occurred for nearly 40 years, and local officials understand the routine and objective biennial implementation of the index."

McDonnell also identified specific budget savings to account for the additional \$29 million in state spending required. McDonnell's press release said that he will recommend to the General Assembly the transfer of an additional \$13 million from Literary Fund balances; \$8 million through the use of available balances in the Health Insurance Fund to reduce state health insurance premiums; \$5.2 million in savings from a federally-required DMV identity program; and \$3 million will come from additional non-general fund balances.

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## Environment

### Bill to raise waste permit fees moving forward

**SB 235** (Watkins), which directs the Waste Management Board to adjust waste permit fees to recover at least 75 percent (and no more than 100 percent) of the direct costs of permit applications and inspections, was reported 10-3 by the [Senate, Agriculture, Conservation & Natural Resources Committee](#) on Monday. The bill was re-referred to the [Senate Finance Committee](#), which is scheduled to hear it on Thursday at 4 p.m.

Currently, permit fees paid by operators of solid waste facilities, which include many local governments, defray about one-third of DEQ's direct costs for administering its solid waste permitting program. The remainder of the direct costs for the program is supplied through general fund appropriations. If the bill were to become law, the regulatory process for adjusting the fees will take at a minimum 18 months.

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## Finance / Taxes

### LGIP bill carried over

The bill that would require at least 10 percent of funds in the Local Government Investment Pool to be invested in banks located in Virginia will be carried over to 2011.

**HB 246** (Merricks) came before the House Appropriations Subcommittee on Technology Oversight and Governmental Activities on Tuesday morning. The patron asked that the bill be carried over because the Joint Legislative Audit and Review Commission (JLARC) is conducting a study of state and local investments. The patron said that the JLARC study likely would be completed by summer. This means that further action on this bill could take place for the 2011 session.

The 2009 General Assembly approved this bill with a re-enactment clause. If the bill is carried over, the approved bill from 2009 would not become law.

A companion bill in the Senate, **SB 484** (Hurt) was carried over to 2011 in Senate General Laws.

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## Human Services

### Disability board mandate likely to be scuttled

The House Appropriations Health & Human Resources Subcommittee unanimously approved **HB 945** (Landes), which would remove from state law the requirement that local governments establish local disability services boards, and instead makes it an option for local governments.

The patron said that this bill puts the law in line with what the General Assembly did through the budget last year, which was to strip all state funds that went towards funding these boards.

The bill will likely be approved by the full committee on Wednesday.

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### CSA match rate, TANF funding pool bills go down

The same House Appropriations subcommittee also voted unanimously to table two bills, one dealing with TANF funds and one with CSA match rates.

**HB 80** (Englin) would create a statewide Temporary Assistance for Needy Families (TANF) funding pool to be administered by the state Department of Social Services. This pool would include all "excess" TANF funds that, when available, are programmed by the General Assembly. The bill would give the Department the authority to create a grant program and distribute funds to non-profits who applied for grants. The McDonnell Administration supported the bill. The subcommittee did not agree that it was a good idea, and recommended tabling it.

**HB 1086** (Crockett-Stark) would have changed the Comprehensive Services Act for At-Risk Youth and Families (CSA) match rate to one level, in which local governments would pay for all services (residential, regional and community) at the current community-based services level, which is the lowest match level. The patron made a good effort to convince the subcommittee that it would not necessarily have a state impact, but the subcommittee was not in a buying mood. The full committee will probably feel the same way.

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## Public Safety

### Other bills ...

#### **Correctional facilities, local; use of state funds for local alternative incarceration programs - HB 838 (Carr)**

**Summary:** Allows the use of state funds appropriated for financial assistance for the confinement of people in local facilities for local alternative incarceration programs, codifying item 418 of the introduced budget.

**Action:** Reported by House [Militia, Police and Public Safety Committee](#) and referred to [House Appropriations](#).

### Defeated

The House [Militia, Police and Public Safety Subcommittee #3](#) defeated [HB 72](#) (Carrico) that would have changed the penalty for possession of a firearm on school property from a Class 6 felony to a less severe Class 1 misdemeanor.

### Moving along ...

The House [Militia, Police and Public Safety Committee](#) reported [HB 361](#) (Ware), which allows regional jails to retain fees collected for prisoners' keep instead of crediting those fees to the locality that incarcerated the inmate.

## Transportation

### Other bills ...

#### **Pedestrian safety SB 228 - (Barker)**

**Summary:** Requires drivers to stop for pedestrians in marked crosswalks.

**Action:** Passed the Senate 27-13 Feb. 8 and referred to the House Transportation Committee.

### More ...

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

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Link to General Assembly Web site listing all members of the House of Delegates and their contact information.

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### [Legislative Meeting Schedule >](#)

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