



VML

January 20, 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.

Income tax surcharge sent to House for consideration

THE HOUSE RULES Committee voted without making a recommendation on Tuesday to send legislation to the House that would add a 1 percent surcharge on the personal income tax. By reporting the bill to the floor without recommendation, the committee forces the entire House to take a position on the bill.

HB 1155 (Brink) would distribute the proceeds, based on the current percentage of car tax reimbursements received, to local governments that set a nominal tax rate on personal use vehicles. The introduced budget does not include funding for the \$950 million a year car tax reimbursement program. HB 1155 is the mechanism by which localities would receive funds to replace the lost reimbursement.

The bill is unlikely to pass. Even if it did, Gov. Bob McDonnell has said that he would veto it.

Restoring state funding for the \$950 million a year car tax reimbursement program will require that additional cuts of that magnitude will need to be found elsewhere in the budget.

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Inside ...

- Could this be the beginning of the end of BPOL?
- Bill would revamp retirement benefits

Legislative links ➤ [Find a bill \(state LIS\)](#)
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Dialogue

“Some of these cuts were bad choices, but others were worse.”

... Cindi Jones, deputy director of the Department of Medical Assistance Services, explaining the agency's budget reductions to the members of the House Appropriations Committee's HHR subcommittee.

Cover story continued ...

If the state does not restore the funding, local governments would face the prospect of billing taxpayers for the entire tax bill for their personal use vehicles. Local governments who bill in the spring are in a particularly precarious situation, as reimbursements for the current tax year for the vehicles in their jurisdictions would be paid in next year's budget.

Budget

Finance secretary delivers 'good' financial news

Speaking to the Senate Finance Committee today, Secretary of Finance Ric Brown informed the members that total general fund revenue collections grew 5.5 percent in December. This is the first positive monthly change in 16 months. However, the good news is somewhat undermined by the \$102.1 million collected as part of the state's tax amnesty program. If the one-time amnesty dollars are removed from the calculations, then revenues actually declined 1.8 percent in December. And, on a year-to-date basis, total revenues fell 4.4 percent, trailing the revised annual forecast of a 2.7 percent decline.

Brown told the members that indicators suggest that economic output is expanding, although growth is likely to remain weak for some time. In November, payroll employment in Virginia fell 2.0 percent, marking the fifteenth consecutive monthly decline. But, the pace has slowed since peaking last summer. The unemployment rate remains unchanged at 6.4 percent, which is almost a point lower than the June high of 7.3 percent.

The Virginia Leading Index rose 0.2 percent in November for the seventh consecutive time with initial unemployment claims, building permits, and vehicle registrations contributing positively to the index. Consumer confidence is also on the rise.

Payroll withholding taxes increased by 0.7 percent in December. But, achieving the anemic forecast of 0.2 percent growth for this revenue source will be difficult because year-to-date withholding is a negative 2.3 percent. There is also concern that nonwithholding collections may not make the forecast. Individual income tax refunds have blown past the annual estimate of 2.6 percent, growing to 24.1 percent year-to-date. Sales tax collections and forecast are, however, reasonably close.

The bottom line is that the administration does not expect a surge of general fund revenue to reverse the spending cuts proposed in the budget bills.

Education

Composite index possible subject of study

A number of measures have been introduced to revise the factors included in the composite index of local ability to pay.

The House Education Committee was first out of the chute, passing by a substitute to [HB 225](#) (Watts), which revised the revenue components of the index. At the urging of Del. Scott Lingamfelter, the committee will send a letter to the House Appropriations Committee asking that the index and issues related to it be studied.

Other bills dealing with the composite index include [HB 130](#) (Pollard), [HB 1128](#) (Keam) and [HB 1141](#) (Morgan).

Other bills ...

Delayed implementation of standards - [HB 111](#) (Lohr)

Summary: Delays implementation of accreditation standards adopted since 2008 to July 1, 2011.

Action: House Education reported on Jan. 20.

Eminent domain

Constitutional amendment carried over; others to follow

The Senate Privileges and Elections Committee carried over [SJR 27](#) (Obenshain), a constitutional amendment restricting eminent domain authority, as well as all other "first year reference" constitutional amendments at its Jan. 19 meeting.

Sen. Janet Howell said that Del. Mark Cole, chair of the House Committee on Privileges and Elections, planned to have similar action taken on the first year reference bills in his committee.

Constitutional amendments have to be passed in identical form in two different years, separated by a general election.

Finance/Taxes

Could this be the beginning of the end of BPOL?

If Del. Mark Cole gets his way localities will no longer have the authority to raise the rates for business, professional and occupational licenses effective Jan. 1, 2010. Also, for those counties and towns interested in enacting the BPOL tax, the delegate's proposal (HB 57) would prohibit any local government from doing so if the tax was not already in effect as of January 1, 2010. Indeed his long-range plan is to abolish the BPOL tax. As his first step, a House Finance Subcommittee recommended that the bill go forward to the full committee.

BPOL accounts for 6.4 percent of the tax revenue for cities (\$283.8 million in FY08), 4.0 percent for counties (\$350.1 million in FY08), and 12.2 percent for large towns. All of Virginia's cities rely on the tax as do 47 counties and 124 towns, according to Virginia Local Tax Rates (2008) published by the Weldon Cooper Center for Public Service.

Del. Chris Jones is pushing HB 985 to exclude the commission paid on any sale or purchase of a security paid to an independent registered representative from the Business, Professional, and Occupational License ("BPOL") Tax. The security broker or dealer would have to identify on his license application each independent registered representative to whom the excluded receipts have been paid and, if applicable, the jurisdictions where the independent registered representative is subject to the BPOL Tax.

The Department of Taxation noted that passage of the bill would have a negative impact on local revenue collections, but could not provide an estimate. In Fiscal Year 2008, the BPOL tax generated more than \$661.8 million for the counties, cities, and towns that imposed the tax. The BPOL tax is imposed in all 39 cities, 47 of the 95 counties, and many of Virginia's towns.

Del. Christopher K. Peace is the patron of a bill (HB 713) requiring the Commissioners of the Revenue to verify that every taxpayer who is subject to the state licensing requirements of the Department of Professional and Occupational Regulation and is seeking a local Business, Professional, and Occupational License to obtain the necessary state regulatory license. Commissioners could not issue a BPOL license without the applicant proving he has the required

state regulatory license. The delegate presented an amended version of his bill today to a House Finance subcommittee. The subcommittee instructed Peace to re-work the bill. The Commissioners do not want to enforce DPOR regulations. Also, Fairfax County is concerned that a large number of BPOL licensees do not require state licensure.

Senate committee says 'yes' to county meals tax

Sen. Fred Quayle is the patron of a measure (SB 280) providing counties the same powers on the meals tax now reserved for cities and towns. The Senator's bill removes the current cap of four percent for the county meals tax, and allows counties to impose an uncapped rate. The bill would also allow counties to adopt or increase a meals tax by a majority vote of the elected members of the governing body. The Quayle bill was reported January 20 from the Senate Finance Committee by voice vote with two of the 15 Senators voting against the proposal.

Del. Harvey Morgan has introduced a similar bill (HB1138), allowing all counties to impose the local food and beverage tax without a referendum, IF the revenues are used to reduce the county's real property tax rate. The bill's provisions apply to those counties that impose the tax for the first time or increase the meals tax rate on or after July 1, 2010. The bill was referred to the House Finance Committee.

The law now caps a meals tax imposed by a county at four percent. Also, in general, the tax must be approved by referendum.

Changes to Transient Occupancy Tax will be considered

Sen. Mary Margaret Whipple and Dels. Robert Brink and William K. Barlow have introduced measures to close a loophole in hotel and motel rooms booked through an on-line travel company. SB 452, HB 791, and HB 893 provide that retail sales and hotel taxes on transient room rentals are to be computed based upon the total charges or the total price paid for the use or possession of the room. For those cases in which a hotel or similar establishment contracts with an agent or other party to collect the retail sales and hotel taxes, the bill would require the agent or other party to separately state the taxes on the bill or invoice

and to collect the taxes based upon the total charges or the total price paid for the use or possession of the room. The legislation adds a new definition in the Code to include on-line travel companies like Expedia and Hotel.com as well as other third parties to clarify their responsibility to collect and remit the sales tax and the transient occupancy tax.

SB 452 was referred to the Senate Finance Committee. The two House bills are in the House Finance Committee.

Sen. Emmett Hanger is the patron of SB 342, a bill to allow any county, by duly adopted ordinance, to levy a transient occupancy tax on single-family residences rented out for continuous occupancy for fewer than 30 consecutive days. The bill defines single-family residence as one that is advertised for rental to the general public. The bill was referred to the Senate Finance Committee.

Del. Tom Rust introduced HB 972, a bill provide that any additional transient occupancy tax or any increase in the rate of an existing transient occupancy tax in Fairfax County does not apply within the limits of any town located in Fairfax County, unless the governing body of the town consents. The bill affects the Towns of Herndon, Clifton and Vienna. In the Senate, the Finance Committee unanimously approved Jan. 20 SB 218 patroned by Sen. Janet Howell.

Senate Finance OKs bill to shorten public hearing notice

Sen. Chap Petersen successfully revived an idea from last session that would shorten the notice requirements to fourteen days for the public hearing every locality must hold prior to increasing its real property tax when that locality's assessment of real property results in an increase in real property tax revenue of greater than one percent over the prior year's revenue. The Senate Finance Committee unanimously approved SB 121.

Under current law, when any annual assessment, biennial assessment or general reassessment of real property by a locality would result in an increase of one percent or more in the total real property levied, the locality is required to reduce its rate of levy for the forthcoming tax year. If the governing body desires to increase the rate above the reduced rate, it must first hold a public hearing, and must provide notice of this hearing at least thirty days prior to the public hearing. The law currently shortens the notice requirement to

14 days for hearings that occur in a year in which neither a general appropriation act nor amendments to a general appropriation act providing appropriations for the immediately following fiscal year have been enacted by April 30 of that year.

Senate panel tinkers with communications sales and use tax

The Senate Finance Committee unanimously reported January 20 a bill (SB 381) offered by Sen. Phillip Puckett. The measure provides Tazewell County additional revenue from the communications sales and use tax revenues based on the revenues the county would have collected if the cable franchise company in the county had not gone bankrupt in the 2005-2006 fiscal year. FY06 is the base year used by the Department of Taxation to determine local allocations. The committee amended the bill to change the base year from FY06 to FY10 for determining the distributions for cities, towns and counties. The amendment also permits the state agency to adjust the percentage share of the distributions provided that the adjustment does not result in more than \$100,000 being redistributed from all other localities.

LGIP bill may be headed for study by JLARC

VML has heard indirectly, but has not confirmed, that the bill to require that 10 percent of funds in the Local Government Investment Pool (LGIP) be invested in certain banks with a presence in Virginia -- [HB 246](#) (Merrick) -- may be referred to the Joint Legislative Audit and Review Commission (JLARC) for study.

JLARC is in the midst of a study of state and local investment policy that was requested last spring by Republican leaders on that commission. For now, the bill remains on the House Appropriations Committee docket.

The patron of HB 246 has introduced another bill, [HB 284](#), that removes the requirement that public funds invested through any federally insured bank or savings institution selected by the public body must be invested in certificates of deposit. The funds must still be deposited with a federally insured bank or savings institution qualified by the Virginia Treasury Board, and the full amount of the principal and interest must still be covered by federal deposit insurance.

This bill has been referred to the House Appropriations Committee.

Bills affecting budget process, surplus introduced

HB 135 (Pollard) would move the state from a two-year budget to a single-year budget. If a budget were not adopted within the timeframe of a regular session of the General Assembly, the members would no longer receive a per diem until such time as it passes a general Appropriation Act.

HB 594 (Massie) would require that once the state reaches the maximum size of its Revenue Stabilization Fund, all excess funds equaling at least \$50 million would be set aside as a Taxpayer Surplus Relief Fund and used in the next session to provide tax relief to low- and middle-income taxpayers (these terms are not defined in the bill).

These bills are in the House Appropriations Committee.

Deposit of local fines to Literary Fund proposed

Fines imposed for violations of local ordinances under [§46.2-1300](#) (moving violations) and [§46.2-1304](#) (local regulation of trucks) would be deposited into the Literary Fund instead of local treasuries under [HB 839](#) (Carr).

VML requested that the Commission on Local Government evaluate the fiscal impact of the bill. That process is under way.

The bill has been assigned to the [Criminal subcommittee](#) of the House Courts of Justice Committee.

Here are talking points:

- Fines collected by local police for violations rightfully should be deposited in local treasuries.
- The state depends on local police officers to enforce these violations, as there are not enough state police officers to do so.
- The loss of funds would be substantial at a time when other funding sources are declining.
- It makes no sense, for example, for fines from a jurisdiction such as Alexandria to be sent to the state so other localities can borrow money from the Literary Fund. Localities with composite indexes over 0.6000 are unlikely to ever be able to borrow money through the Literary Fund.

Other bills ...

Public schools; financing - [HB 351](#) (Rust) / [SB 364](#) (Barker)

Summary: Creates the Virginia School Construction / Revolving Fund for financing elementary, secondary, or vocational education school projects.

Action: In House Appropriations Elementary and Secondary Education Subcommittee and Senate Finance, respectively.

Human Services

CSA match rate bill introduced in House

A bill to end the residential / community-based match differential in the Comprehensive Services Act for At-Risk Youth and Families program (CSA) has been introduced and referred to the House General Laws Committee.

[HB 1086](#) (Crockett-Stark) would require consistent local match rates for the purchase of services by local Community Policy and Management Teams.

Bill ends mandate for local disability services boards

A bill to eliminate the requirement that local governments maintain a local disability services board and instead make it an option to do so is in the House Appropriations Committee.

[HB 945](#) (Landes) would codify what was done in budget action last year, which was to remove state funding for the boards and remove the requirement for such boards.

VML supports the option to maintain such boards (we opposed the original mandate several years ago).

Local authority

Bill would require web postings of citizen requests

[HB 478](#) (Carrico) would require every locality to develop a database of all citizen-reported issues and requests for information and publish the information on the Internet.

VML opposes the bill as unnecessary and extremely expensive to comply with. The House Science and

Technology Committee will likely take up the bill next Wednesday. Please contact your delegate who serves on the committee to let him or her know the financial impact the bill would have on your locality.

Public safety

Bill would cap civil penalties for noise ordinance violations

When [SB 120](#) and [SB 246](#) were presented to the Senate Local Government Committee Tuesday, the committee amended the identical noise ordinance bills to put caps on the amount of penalties.

VML worked with the patrons to suggest caps of \$250 for the first offense and \$500 for subsequent offenses. The committee accepted that proposal. VML is of the opinion that the caps balance protection of persons charged with the ability to threaten or impose a meaningful penalty. Two, identical house bills are to be heard by a subcommittee of Counties, Cities and Towns Thursday morning – [HB 159](#) and [HB 297](#).

Retirement/benefits

Bill would revamp retirement benefits

A wide-ranging series of changes to benefits, required employee contributions and retirement age for employees commencing service after July 1, 2010 is included in [HB 1189](#) (Putney).

This bill modifies for *new employees of all the defined benefit retirement plans* administered by VRS, as follows:

- requires new state employee to contribute 5 percent of creditable compensation;
- reduces the portion of the increase in the Consumer Price Index used for determining annual retirement allowance supplements (COLA) from 3 percent plus one-half percent of the additional increase up to 7 percent, to 2 percent plus one-half percent of the additional increase up to 6 percent.

The bill makes similar reductions in retirement benefits for *new employees other than judges or public safety officials receiving enhanced retirement benefits*, including:

- reduces the average final compensation multiplier from 1.70 percent to 1.65 percent;
- increases the number of months used to calculate

average final compensation from 36 to 60; and

- changes the condition for unreduced early retirement benefits from 50 years of age and 30 years of creditable service, to one whereby the sum of age plus years of service equals 90.

The bill is in House Appropriations Compensation & Retirement subcommittee.

[HB 1189](#) takes a substantially different approach from the changes in retirement included in former Gov. Tim Kaine's proposed budget for 2010-2012. The bill that would implement *some* of the changes in the proposed budget is [HB 511](#) (Brink). This bill does the following:

- Permits any employer to pay any portion of the 5 percent required employee contribution (under current law employers must pay all or none of such contributions), *but* in other sections of the bill specifies that state employees pay 1 percent of their retirement contributions in FY11 and 2 percent in FY12. The bill also specifies that school boards may require their employees to do the same.

- Increases, for *new* state and local employees, the minimum age for unreduced retirement allowance from 50 to 55, and

- Reduces the maximum annual cost of living adjustments to retirement allowances for *new* state and local employees to 6 percent.

The bill is in House Appropriations Compensation & Retirement subcommittee.

Other bills

Disability retirement for local employees - [HB 118](#) (Purkey)

Summary: Provides that a local employee shall not be retired due to disability if he refuses his employer's offer of employment in any position whose salary and benefits are at least equal to those of the position from which he is separated.

Action: In House Appropriations Compensation subcommittee

Unreduced retirement for general registrars - [HB 316](#) (McClellan)

Summary: Permits a general registrar who (i) is involuntarily separated and (ii) has 20 or more years of creditable service to retire with an unreduced allowance upon attaining age 50.

Action: In House Appropriations Compensation subcommittee

VRS authority to manage local OPEB trust funds - [HB 289](#) (Griffith)

Summary: Authorizes VRS to manage trust funds for local governments established to fund post employment benefits such as health insurance and other benefits for retirees.

Action: In House Appropriations Compensation subcommittee

Defined contribution retirement plan - [HB 610](#) (Purkey)

Summary: Creates a new defined contribution retirement plan for all new employees (who begin employment on or after July 1, 2010), in lieu of participating in any other retirement plan administered by VRS. All other employees may elect to participate in the plan in lieu of participating in any other retirement plan administered by VRS.

Action: In House Appropriations Compensation subcommittee

Defined contribution plans; localities and school divisions - [HB 727](#) (Purkey)

Summary: Permits any county, city or town with a population of 5,000 or more, or school board to establish a defined contribution retirement plan in lieu of any other retirement plan, for employees hired after such plan is established.

Action: In House Appropriations Compensation subcommittee

Health insurance credits for constitutional officers - [HB 1055](#) (Armstrong)

Summary: Increases the amount of monthly health insurance credits from \$1.50 per year to \$4 per year of creditable service for retired Constitutional officers and their employees, general registrars and their employees, and employees of local social services boards. The bill is not in force any time that the entire cost of the health insurance credits is not paid by the Commonwealth. These costs currently are paid by localities.

Action: In House Appropriations Compensation subcommittee

Early and normal retirement age - [SB 232](#) (Watkins)

Summary: Changes the early and normal retirement ages for a person who first commences employment on or after July 1, 2010, to the person's early and

normal retirement ages for Social Security.

Action: In Senate Finance.

Transportation

Pedestrian safety bill fails in house subcommittee

In what is becoming an annual occurrence, legislation that sets out the responsibilities of pedestrians and drivers at marked and unmarked crosswalks was defeated.

[HB 459](#) (Herring) that would require drivers to stop at marked and unmarked crosswalks for pedestrians failed in [House Transportation Sub-committee #2](#) this morning by a 3-2 vote. Committee members opposed to the bill maintained that "yield" (current state law) means "stop," so no change is necessary. They also were concerned about delaying traffic if cars have to wait for pedestrians to cross the entire half of the roadway.

[Sen. George Barker](#) has introduced similar legislation ([SB 228](#)) that would require drivers to stop for pedestrians in marked crosswalks only. Barker's bill is scheduled to be heard in [Senate Transportation](#) on Thursday at 2 p.m.

VML continues to support amendments to state code that require drivers to stop, not just yield, for pedestrians in all marked and unmarked crosswalks.

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

Bill authorizing study of privatizing rest areas to be considered

In response to the recent closing of 19 interstate rest areas, [Sen. Mark Herring](#) has submitted a study resolution ([SJR 99](#)) that directs the Joint Legislative Audit and Review Commission ([JLARC](#)) to study all aspects of the privatization of all or portions of the Commonwealth's rest areas.

In testimony before the [Studies Sub-Committee of Senate Rules](#) on Tuesday morning, JLARC Director Phillip Leone said that it was a "good study" but recommended that the Virginia Transportation Research Council ([VTRC](#)), a partnership between VDOT and the University of Virginia, would be better positioned to perform the study in a timely manner with the use of federal funds. The resolution was passed by for the

week to allow the patron to explore the possibility of VRTC performing the study.

The Virginia Chamber of Commerce and the Virginia Transportation and Hospitality Association support authorizing study. The Virginia Petroleum, Convenience and Grocery Association spoke in opposition to the study resolution citing concerns regarding competition and choice for retailers and consumers traveling on the interstates.

Even if the study is authorized and concludes that privatization of rest areas should be pursued, current federal law prohibits privatization of rest areas along interstates. One possible concern for local governments is that the privatization of certain rest areas could result in loss of local revenue collected from sales and meal taxes at existing interstate exits.

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

Miscellaneous

ABC bills introduced

A number of bills related to Alcohol Beverage Control (ABC) have been introduced this session. They are scattered in different committees.

HB 509 (Brink) would eliminate the state code section regarding the distribution a certain portion of ABC net profits to local governments (yes, the language still exists but is being overridden by Appropriations Act language). The bill would create two new funds, 1) the Alcohol Abuse Treatment and Prevention Fund, and 2) the Law-Enforcement Expenditure Fund.

Under this bill, the alcohol abuse fund would receive two-thirds of net profits from ABC sales, and the law enforcement fund would receive the other one-third of net profits. The alcohol abuse fund would go to the Department of Behavioral Health and Developmental Services for substance abuse programs, while the law enforcement fund would go towards the law enforcement expenditures of local governments. As such, towns that in the past received ABC profits but do not have police departments may not get any of funding from this bill. The bill has been referred to the House Appropriations Committee.

Twos bills have been introduced so far to revamp the current ABC system and move towards privately-operated stores.

SB 443 (Obenshain) has been referred to the Senate Rehabilitation and Social Services Committee.

HB 342 (Marshall, R.G.) has been referred to House General Laws. They are *not* identical bills.

Of greatest interest to local governments, Obenshain's bill allows local governments with package stores to establish an annual licensing tax (not to exceed 50 percent of the state licensing tax). Marshall's bill does not. Also, Marshall's bill would require all profits to go into the transportation trust fund. Obenshain's bill would funnel all profits to the state general fund.

More ...

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

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