



VMI

January 22, 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.

Teacher status issue used to duck funding obligations

ARE TEACHERS LOCAL or state employees? Most people would quickly say that teachers are employees of the local school board.

The more important question, though, is whether the state has a role in funding the salaries and benefits for those teachers. The answer is a resounding “yes.”

Some legislators appear to be trying to find a way to wiggle out of funding commitments for K-12 education by emphasizing “teachers are local employees.”

This refrain is not new. House Appropriations Committee Chairman Lacey Putney has questioned why the state paid “hundreds of millions” of dollars of employer costs by paying a portion of teacher retirement. Similar remarks by other legislators have been made this session. And Del. Johnny Joannou has been heard to say that the state pays all of the costs for teacher retirement. (If this were only true, local finances would improve dramatically! Statewide, local governments pay at least 60 percent of these costs.)

So why does the state have any responsibility for funding salaries or benefits for teachers, since they are local employees?

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Inside ...

- Solid waste tipping fee bill proposed
- Bill limits local authority over dangerous dogs
- Transportation funding proposals abound

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

“I’m sorry that some of you all are embarrassed. It’s real easy not to be embarrassed. Just vote no.”

... House Majority Leader Morgan Griffith speaking prior to Thursday’s 97-0-1 House vote that defeated a bill that would have increased the state income tax 1 percent and eliminated the personal property tax on vehicles.

Cover story continued ...

First and foremost, the General Assembly has the constitutional obligation “to seek to ensure that an educational program of high quality is established and continually maintained.” It’s hard to imagine how teachers are not an essential ingredient of that educational program. Education is a labor-intensive business and personnel costs account for a large part of any school division’s budget. As for school construction, the state has virtually ended its funding role. If the Commonwealth abdicates from its responsibility for sharing the costs of teacher salaries and benefits, then what’s left for the governor and General Assembly other than piling on new mandates?

Second, the state either through statutes or regulations sets staffing standards for divisions. Many of these standards are in the Standards of Quality, which include staffing standards and pupil-teacher ratios for a variety of positions. Others are in the Standards of Accreditation. Many staff positions are required covertly; whenever a regulation or statute requires that something be done, someone has to do it. State laws are crammed with requirements imposed on school divisions, ranging from what has to be posted on Web sites to reports that have to be made to meetings that have to be held. Yet the Standards of Quality and the state Appropriation Act do not even acknowledge the increases in staff resulting from these state mandates. Even this year, a year in which education funding (especially for support personnel) is being slashed, numerous bills have been introduced to place extra reporting and other duties on schools.

Third, the state mandates that retirement and fringe benefits be offered to teachers. The state prescribes participation in the VRS retirement program, and sets the benefit levels. It requires that group life insurance be offered, requires that retired teachers receive health insurance credits, and sets the amounts of the credit. The General Assembly prescribes how often teachers are to be paid, how much they can be reimbursed for using their own cars for school business, and personnel policies regarding leave without pay.

Local officials can make a difference in this debate on the status of teachers. They need to collar their local delegations and emphasize that the state indeed has a responsibility for paying for salaries and benefits for teachers and other school personnel.

Education

Bill threatens local control over school surplus property

Local school boards would be authorized to convey the title to surplus real property to a Virginia nonprofit charitable organization under [HB 1245](#) (Kory).

The bill also allows school boards to donate obsolete personal property to the charity. The bill does *not* require the approval of the local governing body before this transfer.

Local governing bodies should retain this control since they paid for the property to begin with. The bill is in the [House Education Committee](#), which meets Mondays at 9 a.m. and Wednesdays at 8:30 a.m.

Other bills ...

Triennial census of school population; sales and use tax distribution. [SB 557](#) (Herring)

Summary: Eliminates the requirement that every three years a census of all school-age persons residing within each school division takes place. Also, eliminates all related requirements regarding appointment and compensation of persons taking census, agents, and census results. Amends the procedure regarding sales and use tax distribution to localities so that distribution is based on the average daily membership of the school division rather than the school-age population of a school division. This bill has a delayed effective date of July 1, 2011.

Action: In the Senate Education & Health Committee. Identical bills -- [HB 669](#) (May) and [SB 413](#) (Vogel) are in the House Education Committee, as reported in the Jan. 19 Legislative Bulletin.

Environment

Solid waste tipping fee proposed to fund land conservation

[SB 235](#) (Watkins) assesses a \$2 per ton fee on solid waste treated or deposited in waste management facilities, many of which are owned and operated by local governments either individually or as part of a regional authority.

It is estimated that about \$44 million in annual rev-

enue would be generated by the fee. The bill directs \$5 million to improve DEQ administration of the program. The remainder would be divided between the grant programs of the [Office of Farmland Preservation](#) and the [Virginia Land Conservation Foundation](#) for the purpose of land conservation.

Local governments operating these facilities will be faced with several challenges should such a fee be imposed. Most waste disposal fees at the local level are set by statute. So the jurisdiction must decide whether to pay through already shrinking general fund revenue or to revise their statutes to impose the fee upon residents. The 2010 VML Legislative Program opposes state fees, taxes or surcharges on local government services.

The bill is scheduled to be heard in the [Senate Agriculture, Conservation and Natural Resources Committee](#) on Monday at 9 a.m.

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

Finance / Taxes

Bill tabled that would send local fines to Literary Fund

Legislation that would have deposited fines for local moving violations into the state Literary Fund was tabled by the House Courts of Justice Criminal Subcommittee on Wednesday.

Unless a committee members makes a motion to take up the bill again, [HB 839](#) (Carr) should remain on the table.

VML thanks all those who contributed fiscal impact information on this bill.

Human Services

Blueprint bill on aging reported by House panel

A bill to codify current budget language that requires the Secretary of Health and Human Resources to coordinate the development of a blueprint for livable communities and long-term services and supports for older individuals and individuals with disabilities was unanimously reported by the House Committee on Health, Welfare and Institutions on Jan. 21.

[HB 514](#) (Rust) would include input from a number of state and local services agencies, not just those in the health and human resources arena. Advocates and

other entities, such as universities, would be involved in the process. The blueprint would focus on community integration and involvement, availability and accessibility of services and supports, and integration and participation in the economic mainstream.

Emergency plans would require local response

A bill to require that nursing homes, assisted living facilities, adult day care centers and child day centers submit an emergency plan to their local emergency management agency (where such an agency exists) before they can be licensed is in the House Committee on Health, Welfare and Institutions.

Under [HB 698](#) (Bulova), no license would be granted until and unless the applicant provides evidence that they submitted an emergency plan to their local emergency management agency and that agency 1) reviewed and accepted the plan; 2) declined in writing to review the plan; or 3) failed to respond to a request for review within 30 days of receiving the request via certified mail. The bill is in Subcommittee #2.

Record retention bill could prove costly

A bill to require that local departments of social services retain all records, information and statistical registries of the local board and department for at least 25 years has been referred to the House Committee on Health, Welfare and Institutions.

[HB 921](#) (Bell) was introduced at the suggestion of a former employee of a local department in one of his localities. Local government representatives have spoken with the patron, and an amendment may be possible.

Land use

Bill would delay payment of cash proffers

[HB 374](#) (Cosgrove) delays the obligation to pay cash proffers on residential units from the time the building permit is issued to the time the final inspection is done and a certificate of occupancy is available. The bill's goal is to save builders and developers money by not having to pay the proffers until the sale of the house, when funds are more available.

Local governments are concerned that the bill-- in essence -- rewrites the zoning ordinance of localities that accept cash proffers. A cash proffer, as with any other proffer, is a part of the zoning ordinance once approved by the governing body. The bill, by stating that a cash payment is not due when the proffer states it is due, rewrites the zoning.

The Counties, Cities and Towns Committee was not swayed by this problem and reported the bill this morning.

Bills expand vested rights and allow replacement of failed septic system

[HB 552](#) (D. Marshall) would allow three new vested rights for developers of real estate. It, along with [HB 1250](#) (Knight), states that if a zoning administrator issues a zoning determination letter, and the requestor relies on the letter, diligently pursues the project that the determination addresses and incurs significant expense in that pursuit, the determination letter is a significant government act that can create a vested right to complete the project even if the zoning is changed on the property.

HB 552 also gives a landowner the right to replace a failed septic system with a new one, even if the health laws prohibit a septic system on the property. This part of the bill could present a problem where the language allows a septic system and the ground will not perk.

Bill would allow citizens to sue local zoning administrators

[HB 1062](#) (Athey) shortens the time that a zoning administrator has to issue a zoning determination letter from 90 days to 60 days. If the zoning administrator misses the time, the person asking for the letter may sue and is to be awarded attorneys fees.

Local authority

Patron of bill leaving localities on hook for unpaid utility bills acknowledges local concerns

The sponsor of a bill that would prohibit charging property owners for water bills left unpaid by tenants has agreed not to actively pursue the legislation.

VML and other local government representatives have assured Del. Matt Lohr that unpaid water bills typically do not involve large sums and that a landlord can protect himself by requiring a sufficient security deposit.

The General Assembly amended the law on the subject a few years ago to require a locality or water authority to obtain a judgment against the tenant before placing a lien on the landlord's property. That legislation gives landlords a high degree of protection, already. Lohr's bill is [HB 396](#). VML appreciates the delegate's cooperation and understanding.

House committee approves sewer line laterals bill

The House Commerce & Labor committee has unanimously endorsed [HB 1230](#) (R.L. Ware), which rewrites the rules for protecting sewer system laterals as part of the Miss Utilities law. The new rules will apply to local governments, as well as to utilities and the companies that utilities hire to place gas lines.

The legislation is the cooperative effort of VML, VACo, water authorities and wastewater authorities groups, major utilities and excavators to draft a workable system for locating sewer line laterals located in public property.

Public safety

Bill limits local authority to deal with dangerous dogs

[HB 429](#) (Griffith) would prohibit local animal shelters from euthanizing, or prohibiting the adoption of any dog based solely on breed.

Breed identification, however, is a subjective matter. The only way to positively identify a breed is through DNA testing – a costly expenditure for already constrained local budgets.

Without the resources and time to conduct such testing local shelters will be open to accusations of limiting adoptions and euthanizing based on breed. This could result in local shelters housing a dangerous dog an excessive amount of time instead of euthanizing them. The bill is scheduled to be heard in [House Agriculture Sub-committee #1](#) Monday at 5 p.m.

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

Bill expands where prisoners can remove graffiti

A bill expanding where jail prisoners can remove graffiti within localities has cleared a Militia, Police and Public Safety subcommittee.

[HB 757](#) (Stolle) allows prisoners to remove graffiti on private property that is visible from any public right-of-way within localities that have adopted an ordinance undertaking such projects. Currently, prisoners are able to remove graffiti from public property and private property that is part of a community improvement project or has structures found to be a public nuisance.

VML supports this bill as a cost savings measure. The full committee meets at 9 a.m. on Fridays.

Committee OKs bill changing civil penalties for noise ordinance violations

The Counties, Cities & Towns Committee has reported the bill dealing with civil penalties for noise ordinance violations.

[HB 297](#) (Cosgrove) now has an exemption so that it will not apply to railroads. A railroad lobbyist argued that trains are covered by federal law, which would trump a local ordinance.

The Senate Local Government Committee reported the Senate version, [SB 246](#) (Watkins), with upper limits on the penalties -- \$250 for a first offense and a \$500 maximum for subsequent offenses. The House bill has no upper limits on penalties.

Secretary of Public Safety reports on priorities

The issues of gangs and terrorism are among the public safety priorities of the new McDonnell administration, according to newly-installed Public Safety Secretary Marla Graff Decker. Decker made her com-

ments before the House Appropriations Public Safety Subcommittee on Jan. 20. She also addressed the Senate Finance Public Safety Subcommittee on Jan. 22.

Decker said that she wanted Virginia to remain a leader on the priority issues she named. Other issues of importance to her secretariat are prisoner re-entry issues and doing things for inmates during the course of their incarceration that will discourage recidivism. She envisioned using faith-based groups and volunteer organizations to help with these issues.

Transportation

Funding proposals reflect different approaches; political consensus nowhere to be found

A number of proposals have been introduced to address the state's transportation infrastructure needs. Some bills call for more general fund support. Others propose new methods to divvy up the shrinking amount of road construction dollars or promote a greater reliance on debt. Some bills increase taxes. And, some propose to combine elements of all four approaches.

Although the likelihood of the General Assembly tackling the funding issue this session is remote, the proposed legislation shows that there is interest.

Here is a synopsis of some of these funding bills.

House bills ...

[HB 230](#) (Watts) changes the allocation of construction funds for primary roads and interstate highways received by the nine construction districts.

Under the bill, 90 percent of the allocation would be determined by a ratio of vehicle-miles traveled on the primary system divided by the primary road lane mileage. The primary road need factor would be 10 percent. Under current law, the allocation is weighted with 70 percent determined by vehicle miles traveled, 25 percent by primary road mileage, and 5 percent by primary road need factor.

The bill also 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 per gallon. The fuels tax would be indexed every two years beginning July 1, 2011, 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 was referred to a House Finance subcommittee.

HB 269 (Englin) increases the rate of the state sales tax on motor fuels in Northern Virginia from 2.1 percent to 4.2 percent. If enacted, the bill would raise \$122 million in FY11 and \$124 million in FY12 for transit in Northern Virginia. The measure is before a House Finance subcommittee.

HB 756 (Stolle and Oder) requires that at least 80 percent of any revenues and royalties paid to the Commonwealth as a result of offshore natural gas and oil drilling be deposited to the Transportation Trust Fund. The bill was referred to the House Appropriations Committee.

HB 805 (Poindexter) also deals with royalties from offshore natural gas and oil resources. HB 805 requires that 80 percent of any revenues and royalties paid to the Commonwealth as a result of offshore natural gas and oil drilling go to the Transportation Trust Fund. The remaining 20 percent would be used to encourage the use of non-petroleum based transportation fuels. The bill was referred to House Appropriations.

HB 900 (Comstock) is yet another “royalties” bill. It apportions 80 percent of any royalties that the Commonwealth might receive from offshore drilling for natural gas and oil to the Transportation Trust Fund, and 20 percent to programs developed by the Secretary of Natural Resources to clean up the Chesapeake Bay. The bill is before House Appropriations.

HB 970 (Rust) increases from two-thirds to 75 percent the amount of the general fund surplus designated to the Transportation Trust Fund within the Comptroller’s annual report following the close of each fiscal year. The governor would include in his budget bill an amount for deposit into the Transportation Trust Fund equivalent to the amount designated by the Comptroller. This bill is before the House Appropriations Committee.

HB 971 (Rust) is a comprehensive funding bill. The measure provides additional funding for transportation by (i) imposing a transportation infrastructure users fee on motor fuels sold by a distributor to a retail dealer at the rate of one percent, to be used for highway maintenance in the highway construction district in which the fuel is sold; (ii) increasing the state sales tax in Northern Virginia by 0.5 percent for transportation projects in Northern Virginia; and (iii) imposing a regional congestion relief fee on the recordation of deeds in Northern Virginia at a rate of \$0.40 per

\$100. Neither the fees nor the tax increase become effective until the unemployment rate in the Commonwealth is equal to or lower than it was in January 2008 (3.6 percent) for six consecutive months. The bill also requires a performance audit of the Commonwealth’s transportation programs, primarily those operated by VDOT and the Department of Rail and Public Transportation. HB 971 was referred to the House Finance Committee.

HB 1047 (Kory) would change the allocations made from the Transportation Trust Fund. Under the delegate’s bill, the allocation for road construction would be reduced by 4.3 percent and the allocation for transit – Commonwealth Mass Transit Fund – would increase by 4.3 percent. The bill is in the House Appropriations Subcommittee on Transportation.

Del. Robert G. Marshall is pushing two debt bills:

HB 1059 authorizes the Commonwealth Transportation Board to issue bonds in an aggregate amount not to exceed \$4 billion for specific transportation projects throughout the Commonwealth. The bonds will be paid for by the revenues collected for each project through tolls and other fares or fees.

HB 1061 authorizes issuance of general obligation bonds in an amount not to exceed \$4 billion to finance capital transportation projects. The projects in both bills are identical, and both bills have been referred to the House Appropriations Subcommittee on Transportation. In 2007, the General Assembly approved a \$3.0 billion transportation bond package. The first issuance is expected later this year.

Del. Jim Scott wants to convert the 17.5¢ per gallon excise tax on motor fuels to percentage rates. Under **HB 1153**, the percentage rates would be calculated by the Commissioner of the Department of Motor Vehicles in an amount that will most closely yield the amount of cents per gallon being charged on the applicable motor fuel prior to the effective date of the bill. Afterwards, 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 Department of Motor Vehicles over rolling six-month periods, to determine the cents to be charged. The House Finance Committee will consider the measure.

Senate bills ...

SB 114 (Petersen) would tie the fuel tax to the fuel efficiency of motor vehicles. The measure increases or decreases each year the rates of Virginia’s fuels

taxes using a fuel efficiency index.

The bill would define the fuel efficiency index as the quotient that is obtained when using as the numerator the total annual vehicle miles traveled in the Commonwealth for the relevant year and using as the denominator the total gallons of motor fuel consumed for highway use in the Commonwealth for the relevant year. The numerator and denominator would be the corresponding amounts as published by the Federal Highway Administration of the United States Department of Transportation.

The bill would establish 2007 as the base year for the fuel efficiency index. Thus, the percentage change in the fuel efficiency index between the current year and 2007, the base year, would determine the annual percentage increase or decrease in the rates of Virginia's fuels taxes. Each December the Commissioner of the Department of Motor Vehicles would compute the adjusted rates of fuels taxes. The bill was referred to the Senate Finance Committee.

SB 343 (Hanger) also has a fuel efficiency measure. It adjusts fuels taxes each year on April 1 by the percentage increase in the Corporate Average Fuel Economy (sales volume weighted) for the immediately preceding calendar year over the CAFE for calendar year 2009. The first adjustment would occur on April 1, 2011. The Senate Finance Committee will consider the bill.

SB 115 (Petersen) authorizes each city and county to impose a 1 percent surcharge on the retail price of motor fuels sold at retail in the city or county. The Tax Commissioner would collect the surcharge in the same manner that he collects the retail sales and use tax. Revenues from the surcharge would be used solely for funding of roads or highways in the urban or the secondary system of state highways. The bill is in Senate Finance.

SB 132 (Obenshain) would provide more general fund support for transportation. The bill increases the distribution to the Transportation Trust Fund from sales tax revenue from 0.5 percent to 1 percent if the state determines in any fiscal year that (i) the growth in general fund revenues for the most recently completed fiscal year was at least three percent, and (ii) the actual dollar increase in general fund revenues for the most recently completed fiscal year was at least equal to the sales and use tax revenue generated by a one-half percent sales and use tax. This bill is also in Senate Finance.

SB 164 (Edwards) provides additional sources of revenue for transportation by increasing the motor

vehicle sales and use tax by one-half percent and the motor vehicle rental tax by 1 percent, and by imposing a 5 percent tax on the wholesale price of gasoline. The new revenue sources will be directed to the Rail Enhancement Fund, the Transportation Trust Fund, the Highway Maintenance and Operating Fund for transportation projects and certain priority transportation projects, as designated by the Commonwealth Transportation Board, in Northern Virginia and Hampton Roads. The bill would also eliminate the one-half percent sales tax on food currently going to the Transportation Trust Fund, and would raise the allowed credit for low-income taxpayers. The bill was referred to the Senate Finance Committee.

SB 223 (Barker) would replace the current fuels tax of 17.5 cents per gallon on gasoline, gasohol, and diesel fuel with a tax that is a percentage of the wholesale price of a gallon of self-serve unleaded regular gasoline. The percentage would be established by the DMV commissioner by determining the percentage that would most closely yield 17 1/2 cents per gallon, based on the average wholesale price of a gallon of self-serve unleaded regular gasoline for the period beginning Oct. 1, 2009, and ending March 31, 2010. This bill is in Senate Finance.

SB 600 (Wagner) would increase general fund support for transportation. The bill would increase from two-thirds to 75 percent the amount of the general fund surplus designated to the Transportation Trust Fund within the Comptroller's annual report following the close of each fiscal year. The governor would include in his budget bill an amount for deposit into the Transportation Trust Fund equivalent to the amount designated by the Comptroller. The bill is before the Senate Finance Committee.

Sen. Frank W. Wagner also has a measure – **SB 601** – that would require that at least 80 percent of any revenues and royalties paid to the Commonwealth as a result of offshore natural gas and oil drilling be deposited to the Transportation Trust Fund. The Senate Finance Committee will consider the legislation.

Other bills ...

Pedestrian safety **SB 228** (Barker)

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

Action: Reported by Senate Transportation Committee on Wednesday.

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