

2021 General Assembly – Bills of interest that died

The first four bills listed below were heard in the House Counties, Cities and Towns House Committee dealt with the Freedom of Information Act or public notices. Some were kept in the Committee for a workgroup that will include members of the Committee, the Virginia Press Association, the Virginia Municipal League, and the Virginia Association of Counties. Other bills were sent to the Freedom of Information Council for study.

The links below will take you to the page on which that topic appears:

- [Referred to the FOIA Council](#)
- [Counties, Cities and Towns House Committee Work Group](#)
- [Qualified Immunity](#)
- [Conflict of Interest Act](#)
- [Labor](#)
- [Procurements](#)
- [Land Use / Local Government Authority](#)
- [Workers' Compensation](#)



Referred to the FOIA Council

[HB2000 \(Roem\) Virginia Freedom of Information Act; charges for production of public records.](#) Prohibits a public body from charging a requester for any costs incurred during the first two hours spent accessing or searching for requested records when such requester has made four or fewer individual records requests to such public body within 31 consecutive days. The bill provides that for any additional time spent accessing or searching for such records, or when such requester makes five or more individual records requests to such public body within any 31-consecutive-day period, the public body shall not charge an hourly rate for accessing or searching for the records exceeding the lesser of the hourly rate of pay of the lowest-paid individual capable of fulfilling the request or \$33 per hour. The bill also requires public bodies to post on their website or otherwise publish a written policy (a) explaining how the public body assesses charges for accessing or searching for requested records and (b) noting the current fee charged, if any, by the public body for accessing and searching for the requested records.

[HB1997 \(Murphy\) Virginia Freedom of Information Act; definition of “meeting.”](#) Increases from three to four the number of members of a public body meeting as an informal assemblage that constitutes a meeting under the Virginia Freedom of Information Act.

Counties, Cities and Towns House Committee Work Group

[HB1917 \(Mugler\) Publication of certain notices on locality’s website.](#) Provides that in any instance in which a locality is required to publish certain notices related to local planning and zoning in a newspaper having general circulation in the locality, the locality may instead choose to meet such requirement by publishing the notice on the locality’s website.

[HB2114 \(Ransone\) Hearing notice by localities.](#) Expands from only localities in Planning District 23 to all localities a provision that provides that in any instance in which a locality has submitted a timely notice of public hearing to a newspaper published or having general circulation in the locality and the newspaper fails to publish the notice, such locality shall be deemed to have met certain notice requirements so long as the notice was published in the next available edition. Under current law, this provision that was created by the 2020 Regular Session and only applies to localities in Planning District 23 will expire on July 1, 2022. The provision in the bill as it applies to all localities will also expire on July 1, 2022.



Qualified Immunity

The qualified immunity bills were extremely controversial and VML opposed these bills. The bills were both sent to be studied, but in different places. The House bill as listed below will be vetted through the Virginia Crime Commission and while no meetings are currently scheduled they [can be found here](#). On the Senate side, the bill was heard in the Judiciary Committee and there was a motion that passed to pass the bill by indefinitely. The understanding of the Senate Committee was that the concept of qualified immunity will be reviewed by the Judiciary Committee Civil Subcommittee over the summer.

There was a lot of discussion in the Senate Committee about the House bill being referred to the wrong place and whether there should be a joint committee to look at both bills. The [discussion](#) provided no clarity on whether there would be a joint committee or not so stay tuned!

[HB2045 \(Bourne\) Civil action for deprivation of rights; duties and liabilities of certain employers in employing or contracting for the services of law-enforcement officers.](#) Creates a civil action for the deprivation of a person's rights by a law-enforcement officer and provides that a plaintiff may be awarded compensatory damages, punitive damages, and equitable relief as well as reasonable attorney fees and costs. The bill provides that sovereign immunity and limitations on liability or damages shall not apply to such actions and that qualified immunity is not a defense to liability for such deprivation of rights. Finally, the bill provides that any public or private entity that employs or contracts for the services of a law-enforcement officer owes a duty of reasonable care to third parties in its hiring, supervision, training, retention, and use of such officers under its employment or contract.

[SB1440 \(Surovell\) Civil action for unlawful acts of force or failure to intervene by a law-enforcement officer or correctional officer.](#) Creates a civil action for the use of unlawful acts of force, including deadly force, or failure to intervene as required by law, by a law-enforcement officer or correctional officer while performing his duties for a public entity or private police department. The bill also provides that a public entity or private police department employing such officer is liable for any injuries sustained by the injured party as a result of the officer's actions if they occurred in the ordinary course of the employer's business. Sovereign immunity would not apply to such claims.

Conflict of Interest Act

[SB1171 \(Norment\) State and Local Government Conflict of Interests Act; disclosure requirements; industrial development authorities and economic development authorities.](#) Requires the executive director and members of each industrial development authority and economic development authority, as created by the Industrial Development and Revenue Bond Act, in a locality with a population in excess of 25,000 or in a region serving more than one locality that, in the aggregate, has a population in excess of 25,000 to file a Statement of Economic Interests (SOEI) with the clerk of the local governing body as a condition to assuming office and thereafter annually on or before February 1. Current law requires all executive directors and members of industrial development authorities and economic development authorities, as created by the Industrial Development and Revenue Bond Act, to file a SOEI.

Labor

[HB1794 \(Davis\) Collective bargaining; prohibited considerations during negotiations.](#) Prohibits any local ordinance or resolution granting or permitting collective bargaining from permitting consideration during collective bargaining negotiations of any action or discussion regarding the hiring, firing, or disciplining of a local employee. All such actions and discussions shall be exempt from all collective bargaining negotiations.

[SB1419 \(Marsden\) Project labor agreements; public interest.](#) Requires that for contracts requiring the design or construction of a road, highway, bridge, or similar transportation improvement, a public body wishing to enter into a project labor agreement shall first determine by written finding that participation in such project labor agreement advances the public interest, based on objective criteria established by the public body by regulation, ordinance, or resolution that may include cost, efficiency, quality, safety, timeliness, maintenance of a skilled labor force, labor stability, or advancing minority-owned or women-owned business participation in the project.

[HB1785 \(Ward\) Employment health and safety standards; heat illness prevention.](#) Requires the Safety and Health Codes Board to adopt regulations establishing standards designed to protect employees from heat illness, defined in the bill. The measure authorizes an employee to bring an action based on a violation of such standards in which injunctive relief and monetary damages may be sought.



Procurements

[HB5002 \(Ward\)](#) Department of Small Business and Supplier Diversity; Small Business Procurement Enhancement Program, and Women-owned and Minority-owned Business Procurement Enhancement Program established; report. Establishes the Small Business Procurement Enhancement Program with a statewide goal of 42 percent of certified small business utilization in all discretionary spending by state agencies and covered institutions in procurement orders, prime contracts, and subcontracts, as well as a target goal of 50 percent subcontracting to certified small businesses in instances where the prime contractor is not a small business for all new capital outlay construction solicitations that are issued. In addition, the bill provides for a small business set-aside for state agency and covered institution purchases of goods, services, and construction, requiring that purchases up to \$100,000 be set aside for award to certified small businesses and that purchases up to \$10,000 be set aside for award to microbusinesses. The bill also establishes the Women-owned and Minority-owned Business Procurement Enhancement Program with a statewide goal of 23.1 percent of certified women-owned and minority-owned business utilization in all discretionary spending by state agencies and covered institutions in procurement orders, prime contracts, and subcontracts. The bill creates the Division of Procurement Enhancement within the Department of Small Business and Supplier Diversity for purposes of collaborating with the Department of General Services, the Virginia Information Technologies Agency, the Department of Transportation, and covered institutions to further the Commonwealth's efforts to meet the goals established under the Small Business Procurement Enhancement Program and the Women-owned and Minority-owned Business Procurement Enhancement Program, as well as implementing initiatives to enhance the development of small businesses, microbusinesses, women-owned businesses, and minority-owned businesses in the Commonwealth. Finally, the bill amends the Virginia Public Procurement Act to permit public bodies to establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for the purchase or lease of goods, or for the purchase of services, insurance, or construction, if the aggregate or the sum of all phases is not expected to exceed \$200,000. Under current law, such purchase procedures may only be established for (i) goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$200,000; (ii) transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000; and (iii) professional services, provided the aggregate or the sum of all phases is not expected to exceed \$80,000. The bill has a delayed effective date of July 1, 2023 for certain university hospitals and medical centers. The provisions of the bill creating the Women-owned and Minority-owned Business Procurement Enhancement Program sunset on July 1, 2028.

[HB1996 \(Murphy\)](#) Virginia Public Procurement Act; determination of responsibility; local option to include criteria in Invitation to Bid. Allows localities to include in the Invitation to Bid criteria that may be used in determining whether any bidder, not just any bidder who is not prequalified by the Virginia Department of Transportation as under current law, is a responsible bidder.

[HB2237 \(McQuinn\)](#) Virginia Public Procurement Act; project labor agreements; transportation projects. Requires every public body, prior to requiring bidders, offerors, contractors, subcontractors, or operators on contracts for the design or construction of a road, highway, bridge, or similar transportation improvement to enter into, become or remain signatories to, or adhere to project labor agreements, to make a written determination that requiring such bidders, offerors, contractors, subcontractors, or operators to enter into, become or remain signatories to, or adhere to such project labor agreements advances the public's interests based on objective criteria established by the public body by regulation or ordinance, such as cost, efficiency, quality, safety, timeliness, maintenance of a skilled labor force, labor stability, or advancing minority-owned and women-owned business participation in the project.

[HB2288 \(Graves\)](#) Virginia Public Procurement Act; construction contracts; requirement to submit list of subcontractors. Requires bidders or offerors on contracts for construction of \$250,000 or more to submit along with their bid or proposal a list of all subcontractors, regardless of tier, that the bidder or offeror intends at the time of submitting the bid or proposal to use on the contract to perform work valued at \$50,000 or more, including labor and materials.

[SB1305 \(McPike\)](#) Virginia Public Procurement Act; construction contracts; subcontractor workforce requirements. Requires all public bodies in a locality with a population in excess of 25,000 and covered institutions, defined in the bill, to include in every construction contract of more than \$500,000 certain provisions related to the outsourcing of subcontracted work, which a contractor shall agree to during the performance of such contract. Such provisions mandate that a contractor shall only utilize subcontractors that certify in writing to the contract that they will outsource no more than 10 percent of the cost of the work subcontracted for, excluding the provision of materials, with specified exceptions.

[SB1384 \(Surovell\) Virginia Public Procurement Act; local arbitration agreements.](#) Allows a participating locality, for any procurement solicitation or contract exceeding \$10,000 for goods and services, to require the bidder or offeror to disclose certain information regarding pre-dispute arbitration clauses, defined in the bill, in employment, civil rights, and consumer disputes, and provides that a locality may consider the policies and practices related to arbitration of each bidder and offeror. The bill also provides that a participating locality shall require the bidder or offeror to provide written or electronic submissions to allow the locality to ascertain (i) whether the bidder or offeror requires persons with whom it is in a work relationship or prospective work relationship to sign or otherwise enter into a contract containing a pre-dispute arbitration clause that would cover an employment or civil rights dispute and (ii) whether the bidder or offeror requires consumers to sign or otherwise enter into a contract containing a pre-dispute arbitration clause that would cover a consumer or civil rights dispute as a condition of purchasing products or services, downloading mobile applications, or using websites. The bill authorizes a participating locality to cancel, terminate, or suspend, in whole or in part, the contract of any contractor that has violated a provision of the bill and to declare the contractor ineligible for further contracts with such locality for up to five years.

Land Use / Local Government Authority

[HB1844 \(Mullin\) Zoning; special exceptions.](#) Grants governing bodies the same authority as boards of zoning appeals with regard to imposition of certain conditions upon permits for special exceptions, including limiting the duration of a permit.

[SB1249 \(Stuart\) Local planning commissions; review deadlines.](#) Adds rezoning or generalized development plans, special use permits, and special exception applications to various review deadlines and requirements for local planning commissions.

[SB1285 \(Locke\) Vacant buildings; registration.](#) Removes the requirement that a building meet the definition of “derelict building,” and instead requires that such building potentially endanger the public health, safety, or welfare in order for the Town of Clifton Forge, the Town of Pulaski, in a conservation and rehabilitation district of the town, the Town of Timberville, and any city to require, by ordinance, the owner or owners of buildings that have been vacant for a continuous period of 12 months or more to register such buildings on an annual basis and pay an annual registration fee not to exceed \$100 to defray the cost of processing such registration.

[HB2023 \(Poindexter\) Solar and wind farms; reporting of acreage by locality.](#) Requires each locality to provide to the Department of Mines, Minerals and Energy information about the amount of land formerly in production agriculture or silviculture that has been approved for development into or has been developed into solar or wind farms. The bill requires the Division of Energy to establish a database to collect and maintain figures on the amount of land formerly in production agriculture or production silviculture that has been approved for development into or has been developed into solar or wind farms. The bill also requires localities, in adopting ordinances for and approving the development of solar and wind farm projects, to consider certain effects of such projects.

[HB2052 \(Samirah\) Land banks; right of first refusal for tax delinquent parcels.](#) Requires localities that have established a land bank to establish a procedure whereby the land bank shall have a right of first refusal for tax delinquent parcels prior to such property being sold at auction. The price for any such purchase by the land bank shall be \$1 and any court and transaction expenses. If a land bank exercises its right of first refusal to purchase a property from the locality and, in the judgment of the locality, fails to begin rehabilitation of the property or fails to take other action to cause reuse of the property within one year, such as transferring the property to a nonprofit entity, ownership of the property shall revert back to the locality. These provisions may be utilized for any parcel with a value that does not exceed 80 percent of the median value of parcels in the locality.

[HB1757 \(McGuire\) Firearm-free zones designated by the Commonwealth or a locality; waiver of sovereign immunity.](#) Provides that if (i) the Commonwealth designates any property owned by it as a firearm-free zone or (ii) any locality designates such locality or any part of such locality as a firearm-free zone, the Commonwealth or such locality waives its sovereign immunity as it relates to any injuries sustained by persons lawfully present in such firearm-free zone.

[SB1198 \(Petersen\) Government Data Collection and Dissemination Practices Act; license plate readers.](#) Prohibits law-enforcement and regulatory agencies from using license plate readers to collect and maintain personal information on individuals without a warrant. The bill provides that license plate data may be collected if intended for prompt evaluation and potential use in investigating suspected criminal activity, civil or regulatory violations, or terrorism, or in support of the Department of Motor Vehicle’s (DMV) emissions inspection program.



Workers' Compensation

[HB2228 \(Guzman\)](#) Workers' compensation; injuries caused by repetitive and sustained physical stressors. Provides that, for the purposes of the Virginia Workers' Compensation Act, "occupational disease" includes injuries from conditions resulting from repetitive and sustained physical stressors, including repetitive and sustained motions, exertions, posture stress, contact stresses, vibration, or noise. The bill provides that such injuries are covered under the Act. Such coverage does not require that the injuries occurred over a particular period, provided that such a period can be reasonably identified and documented and further provided that the employment is shown to have primarily caused the injury, considering all causes.

[HB1754 \(Carter\)](#) Employment; retaliatory discharge of employee; Workers' Compensation. Prohibits an employer or other person from discharging or taking other retaliatory action against an employee if such action is motivated by the knowledge or belief that the employee has filed a claim or taken or intends to take certain actions under the Virginia Workers' Compensation Act. Currently, retaliatory discharges are prohibited only if the employer discharges an employee solely because the employee has taken or intends to take such an action.