

Governor's Proposed Vetoes to Bills Considered by the House Appropriations Committee

HB 1400 / SB 1240 Virginia Virtual School; Board Established

General Assembly Action: Approved legislation that created the Board of the Virginia Virtual School (VVS) as a policy agency in the executive branch, reporting to the Secretary of Education, for the purpose of governing a full-time virtual school program.

The 14-member Board would have the operational control of the VVS with the powers and duties to establish its own separate rules, policies, and regulations for the governance of the school, but would be subject to criteria and conditions prescribed by the General Assembly. In addition, the Board would have authority to establish rules, policies, and regulations that would be subject to the requirements of the Standards of Quality (SOQ), Standards of Learning and the Standards of Accreditation for all multi-division online providers.

Beginning with the 2019-2020 school year, the bill required the School to be open to any school-age person in the Commonwealth and to provide an educational program meeting the SOQ for grades kindergarten through 12, with a maximum enrollment of 5,000 students statewide. The bill requires the average state share of SOQ per pupil funding for each enrolled student to be transferred to the School.

Governor's Action: The Governor vetoed this legislation based on constitutional concerns regarding proper management and oversight by allowing the Board of the Virginia Virtual School to operate outside the jurisdiction of the Board of Education, local school divisions and local school boards.

Further, the legislation would disrupt the current established constitutional framework, the purpose and roles that school divisions and school boards have in safeguarding the appropriate governance of schools, regulatory compliance and ensuring successful student outcomes.

Lastly, the separate Board is unnecessary given the current level of high quality online options availability to students.

HB 1428

Absentee Voting; Photo Identification Required With Application

General Assembly Action: Approved legislation requiring any voter requesting to vote via absentee ballot, who is not submitting their request in person, to send a copy of one of the following forms of identification as part of their request.

1. A valid Virginia driver's license;
2. Valid United States passport, or any other photo identification issued by the Commonwealth, one of its political subdivisions, or the United States;
3. Valid student identification card containing a photograph of the voter and issued by any institution of higher education located in the Commonwealth or any private school located in the Commonwealth;
4. Valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business.

Governor's Action: The Governor vetoed the legislation. The Governor's veto explanation asserts the bill imposes barriers on an eligible voter's ability to obtain and cast an absentee ballot without effectively deterring fraudulent voting since the bill provides no means of verifying the identity of the individual depicted in the submitted photograph.

HB 1605

Virginia Parental Choice Education Savings Accounts

General Assembly Action: Approved legislation that would permit parents of special education student to apply annually to their resident school division for a Parental Choice Education Saving Account (ESA) and tuition funding that the parents could use to educate their child outside of the public school system. The ESA tuition payments would be funded with the state's share of the SOQ program accounts, sales tax and any appropriate related special education per pupil amounts that would be attributable to the student's enrollment in the resident school division and based on the following percentages:

- 100 percent if the family's income is less than or equal to 300% of the FPL guidelines (which equals \$72,900 for a family of four) or if the student receives IEP related special education services; or
- 90 percent if the family's income is more than 300% of the FPL guidelines, and the remaining 10% will be retained by DOE to pay for any administrative related costs.

Parents could use the tuition funding to pay for any educational related expenses for the student, such as: (i) tuition, fees, or required textbooks at a private elementary or secondary school, preschool, or program of home instruction in the state; (ii) educational therapies or services for the student from a practitioner or provider, including paraprofessionals or educational aides; (iii) tutoring services; (iv) curriculum; (v) tuition or fees for a private online learning program; (vi) fees for a nationally standardized norm-referenced achievement test, an Advanced Placement examination, or any examination taken to gain admission to an institution of higher education; and (vii) tuition fees or required textbooks at a public or private two-year or four-year institution of higher education in Virginia.

The adopted legislation also includes a reenactment clause for the 2018 Session of the General Assembly.

Governor's Action: The Governor vetoed this legislation based on a possible constitutional concern, diversion of funds from public schools, and what he believes to be a creation of an unfair system.

First, from a constitutional prospective, the legislation supports the use of public funds for tuition at private sectarian institutions, which would be in conflict with Article VIII, Section 10 of the Constitution.

Second, the legislation would transfer revenues from public schools without reducing a like amount of expenses for teachers and operational costs and would create a financial burden on the residential school division. The funds deposited into an ESA would not necessarily be adequate to cover the related expenses for a student and could vary because the amount transferred would be dependent on the local composite index of the resident school division. Two students with similar special education needs, but living in different localities, would possibly receive different transferred amounts into their ESA accounts and this would create inequity.

Finally, the veto noted that the bill lacks accountability standards for participating schools. Consequently, there are no assurances that state funds would be used to provide students high quality education.

HB 1853 / SB 1300

Victims of Domestic Violence, etc.; Firearms Safety or Training Course

General Assembly Action: Approved legislation requiring courts to provide petitioners for protective orders with a list of firearms safety or training courses or classes; directs the Department of Criminal Justice Services (DCJS) to approve such classes; and authorizes DCJS to reimburse certified providers who offer firearms safety or training courses or classes to petitioners for protective orders at no cost to the individual. The General Assembly also provided \$10,000 in FY 2018 to reimburse providers pursuant to HB 1853 / SB 1300.

Governor's Action: The Governor vetoed the bills based upon the belief that the legislation decreases public safety by encouraging domestic violence victims to arm themselves, therefore bringing firearms into already violent situations of domestic abuse.

HB 2092

Application for Public Assistance; Eligibility; Review of Records

General Assembly Action: Requires entities processing applications for public assistance programs to conduct a review of death records and records relating to incarceration status, employment status, and income of the applicant to determine whether the applicant is eligible for assistance. It also requires review of Virginia Lottery records to determine whether the applicant has received any winnings that may constitute income or resources for purposes of determining eligibility for public assistance. The bill also requires the Department of Social Services to report annually on the types and sources of

information reviewed in verifying eligibility and the number of applications for public assistance approved, denied, or referred for investigation.

Governor's Action: The Governor has vetoed this legislation based on the belief that it adds costly, time-consuming, and unnecessary steps when the Department of Social Services (DSS) evaluates an applicant's eligibility for public assistance.

Notes:

- HB 2092 would change the current eligibility determination process by:
 - requiring checks of earnings information from SSA (now optional);
 - requiring checks of unearned income from IRS records (now optional); and
 - adding a new requirement to check Virginia Lottery records
- A JLARC analysis of the fiscal impact of HB 2092 revealed that the additional workload to local social services department staff would be minimal, requiring less than 1.5 FTE positions, because much of the additional information required to be screened is readily available through electronic means to local DSS staff.
- Adding the Virginia Lottery as a data source to local DSS eligibility reviews would require a modification to the DSS and Lottery data systems, estimated at a total one-time cost of \$40,000 (half of which would be general fund).

HB 2342 / SB 1283

Public Schools; Board of Education Shall Establish Regional Charter School Divisions

General Assembly Action: Approved legislation that provide authorization to the Virginia Board of Education (BOE) to establish Regional Charter School Divisions in areas across the state for those school divisions that have a total enrollment of more than 3,000 students and at least one school in each of the school divisions participating in a public Charter School within a Regional Charter School Division has been in a denied accreditation status for two out of the past three years.

Provisions in the legislation also establish a School Board for each Regional Charter School Division to govern its operations: eight board members would be selected by the BOE and one member selected by each participating school division.

Funding for each Charter School would be based on the state share of the per pupil amounts included in all Standards of Quality (SOQ) program accounts, sales tax, and any applicable special education or federal funds allocated for the students enrolled in the Charter School from each participating school division.

Governor's Action: The Governor vetoed the legislation based on the interpretation that the proposed governance model is in conflict with the Constitution, i.e. that the establishment of regional governing school boards would remove authority from local school boards and their members.

Further, public charter school arrangements are already available to school divisions at the discretion of the local school board, which makes the ultimate decisions about the establishment, renewal and dissolution of charter schools up to the school division.

SB 1253

Voter Identification; Photograph Contained in Electronic Pollbook

General Assembly Action: Adopted legislation requiring the Department of Elections to enter into an agreement with the Department of Motor Vehicles and their vendors to receive an electronic copy of photographs of registered voters and then make the photos available to general registrars to download to electronic pollbooks. The legislation requires the registrars to download the photos and states that if a voter's photo is in the pollbook they do not have to produce a photo ID to vote.

The bill includes a delayed effective date of July 1, 2018.

Governor's Action: The Governor vetoed the legislation. The Governor's veto explanation asserts the legislation would result in a state and local fiscal impact without improving election integrity based on the argument that the current voter ID law is sufficient.

Notes:

- The fiscal impact statement (FIS) for the bill estimates a state fiscal impact of \$106,460 a year starting in FY 2019, due to the delayed effective date, and says that the local fiscal impact is indeterminate. The FIS states that the Department estimates there are approximately 3,672 electronic pollbooks in use throughout the Commonwealth but they do not know how many of them have the capacity to store and display photographs and how many would have to be replaced (at an estimated cost of \$465 per pollbook).

SB 1581

Voter Registration; Verification of Social Security Numbers

General Assembly Action: Adopted legislation requiring general registrars to verify the name, date of birth, and social security number provided on an application to vote and match the information with information on file with the federal Social Security Administration. Furthermore the legislation requires the registrar, by August 1 of each year, to cross-check the information on registered voters with information on file with the Social Security Administration or other database approved by the State Board for the purpose of ensuring the information is up to date.

Governor's Action: The Governor vetoed the legislation. The Governor's veto explanation asserts the legislation would require the automatic denial of voter registration applications from certain eligible Virginians solely due to an error in a federal database or other databases, such as third parties engaged in the credit reporting industry. The explanation states the Voting Rights Act expressly prohibits denying applications for reasons that are not material to determining voter eligibility.

Governor's Proposed Amendments to Bills Considered by the House Appropriations Committee

HB 1691

Department of Conservation and Recreation (DCR) Property Conveyance At Widewater State Park

General Assembly Action: Approved legislation authorizing DCR to convey a certain parcel of property in Stafford County to the Widewater Beach Subdivision Citizens Association. At the time the legislation was adopted, no plan was in place to receive additional property adjacent to the State Park in consideration of the conveyance. Budget language both in DCR's operating budget language in Capital Outlay limits DCR's acquisition of property to locations and projects specifically enumerated in the budget.

Governor's Action: Since adoption of the budget, DCR has received an offer of land adjacent to the Park in exchange for the authorized conveyance. The Governor's proposed amendments to the bill reference to delimiting budget bill provisions and authorize DCR to accept property in exchange for the parcel being conveyed in order to meet federal requirements.

HB 1856

Restitution; Supervised Probation

General Assembly Action: Adopted legislation would require that courts place offenders on an indeterminate term of probation upon conviction for an offense in which restitution is ordered. The legislation requires that no offender be released from probation until all restitution and interest has been paid in full, unless agreed to by the court following a hearing.

The legislation would also require probation agencies to notify the court and Commonwealth's Attorneys of remaining restitution and the offender's payment history at least 30 days before an offender's release from supervision. Finally, the legislation would require the court to schedule a hearing within 90 days after restitution is scheduled to be paid if any restitution amounts remain unpaid.

Governor's Action: The Governor has proposed an amendment in the nature of a substitute adding a second, third, and fourth enactment clause to the bill. The second enactment states that the provisions of the bill shall apply only to cases before the 16th Judicial Circuit, in the form of a pilot program. The third enactment provides that the first and second enactment clauses expire as of July 1, 2019. The fourth enactment directs the Virginia State Crime Commission to monitor the pilot and report its findings to the General Assembly by January 1, 2020.

HB 2245 / SB 1371
Virginia Research Investment Committee

General Assembly Action: Approved legislation comprised some technical amendments and established specific FOIA protections for materials submitted by those seeking grant funds from the Virginia Research Investment Committee (VRIC). Some of the substance of the materials and discussions surrounding the grant proposals may contain proprietary information and should remain confidential.

In addition, the approved legislation transferred responsibility for developing and maintaining the Commonwealth's Research and Technology Strategic Roadmap from the Center for Innovative Technology to the State Council of Higher Education for Virginia (SCHEV) and the VRIC. A process is defined in the approved bill that assigns specific roles to SCHEV and VRIC, including final approval of the Roadmap residing with VRIC, but not before the Roadmap is submitted to the Governor for his review thirty (30) days prior.

Governor's Action: The Governor proposes to afford final approval of the Commonwealth Research and Technology Strategic Roadmap to himself and remove this responsibility from the VRIC.

Notes:

- The process established in the approved legislation creates a multi-step, stakeholder-driven process that includes a broad cross-section of Virginia's research community that is abrogated by the Governor's amendments, leaving one person to define Virginia's research priorities.

HB 2297
Technical - Virginia Marine Resources Commission (VMRC)
Oyster Planting Grounds Lease Application

General Assembly Action: Adopted legislation that requires the Virginia Marine Resources Commission to post notice of an application to lease oyster planting grounds for 30 days on its website and to notify by mail any current holders of adjoining leases, and riparian owners within 200 feet of the selected grounds. Current law requires posting of notice at the local courthouse for 60 days. The bill (i) reduces from four weeks to two weeks the period during which the Commission is required to publish weekly notice of the application in a newspaper and (ii) requires all forms of notice to invite written comments. The bill also provides that the applicant shall bear the cost of notice.

Governor's Action (Technical): The Governor has proposed a technical amendment that clarifies that notice shall be made to the "governing board of an association for" a common interest community.

HB 2367 / SB 1415

Removal of Members, Virginia Port Authority Board of Commissioners

General Assembly Action: Adopted legislation that provides that the 11 members of the Board of Commissioners of the Virginia Port Authority appointed by the Governor no longer serve at the pleasure of the Governor and may be removed prior to the expiration of a five-year term only for cause.

Governor's Action: The Governor has proposed a series of four amendments that make the Board representatives from the Richmond area, who represent the Richmond Port, and from the Warren/Frederick County area, who represent the Virginia Inland Port full members of the Board by eliminating the phrase “nonvoting ex-officio member” in 4 locations in the existing Code language.

HB 2471 / SB 1574

Virginia Economic Development Partnership (VEDP) Authority; Membership, Powers and Duties

General Assembly Action: Adopted legislation eliminates and reconstitutes the Board of the Virginia Economic Development Partnership (VEDP); reduces its size and changes *ex officio* membership; requires it's new members represent the nine GO VA regions and meet new qualifications to serve; establishes Committees to advise it on Business Development, Marketing and Trade activities; creates an Incentives Division and a more clearly defined process for developing and managing incentives packages; creates a new position of Internal Auditor that reports directly to the Board; requires VEDP to create strategic, marketing and operational plans and submit them to the JLARC special subcommittee for economic development; and creates a special committee on the Board to receive and review sensitive information provided by the Virginia Employment Commission, as directed by the approved bill.

Governor's Action: The Governor has proposed some technical changes to the bill, as well as four substantive suggestions. First, he makes the Secretary of Commerce and Trade the permanent Vice Chairman of the new Board. Second, he prioritizes the Governor's citizen appointments, in order to provide successive incoming administrations representation on the Board to ensure the new administration's own appointments, as opposed to those of the previous chief executives. Third, FOIA protections are provided to some of the potentially sensitive material that may be contained within the strategic, marketing and operational plans that are to be submitted to the JLARC special subcommittee on economic development. Last, an emergency enactment clause has been added in order to begin the necessary changes to VEDP as soon as possible. HAC and SFC have worked with the Administration on the details of the changes.

SB 1239

Child Day Programs; Exemptions from Licensure

General Assembly Action: Approved legislation repeals requirements that child day centers operated by religious institutions must comply with in order to be exempt from licensure, including the requirements that such child day centers (i) be inspected by the local health department and fire marshal for basic health and safety requirements; (ii) abide by specified staff-to-child ratios; (iii) are staffed by persons who are at least 16 years of age and are supervised if less than 18 years of age; (iv) require staff members in supervisory positions to be certified by a physician to be free from any disability that would prevent them from caring for children; (v) provide certain disclosures to parents and the general public; and (vi) establish and implement procedures for hand washing, intake and dismissal, daily health screenings and exclusion of sick children, ensuring children are in compliance with immunization requirements, keeping the premises free of obvious injury hazards, and ensuring that all staff members are able to recognize signs of child abuse and neglect. The bill also removes certain programs from the list of child day programs exempt from licensure. It clarifies that such programs are not considered child day programs and therefore are not subject to licensure.

The legislation modifies the terms of certain child day programs that remain listed as exempt from licensure, including religious-exempt programs, and requires that such programs (a) file with the Commissioner of Social Services a statement indicating the intent to operate a child day program, identifying the Code provision relied upon for exemption from licensure, and certifying that the program has disclosed to all the parents the fact that it is exempt from licensure; (b) report all incidents involving serious injury to or death of children attending the program; (c) have a person trained and certified in first aid and cardiopulmonary resuscitation (CPR) present; (d) comply with background check requirements; (e) maintain daily attendance records; (f) have an emergency preparedness plan in place; (g) comply with all applicable laws governing transportation of children; (h) comply with certain safe sleep practices for infants; and (i) post in a visible location notice that the program is exempt from licensure.

The legislation adds to the list of child day programs exempt from licensure programs offered by local school divisions, operated for no more than four hours per day, staffed by local school division employees, and attended by school-age children who are enrolled in public school within such school division. The bill directs the Commissioner to establish a process to inspect child day programs exempt from licensure and a process to gather and track aggregate data regarding child injuries and deaths that occur at such child day programs. The bill has a delayed effective date of July 1, 2018, except for the provisions related to religious-exempt child day programs and certain directives to the Commissioner, which shall become effective July 1, 2017.

Governor's Action: The Governor's amendment in the nature of a substitute, reinstates the Code of Virginia requirements that child day centers operated by religious institutions must comply with in order to be exempt from licensure. By doing so, these child day care centers would be subject to new requirements that applicants, employees and volunteers undergo a fingerprint-based national criminal background check by September 30, 2017, or by the date specified on any federal waiver obtained by the Commonwealth, and every five years thereafter (HB 1568, Chapter 189, Code of Virginia, passed by the 2017 General Assembly). The Governor's amendment also reinstates the staffing ratio for religious exempt child day care centers which was contained in the bill which passed the House, prior to the adoption of the Conference Report.