

Legislation Affecting Local Authority Enacted in the 2018 Session

VML has attempted to identify legislation enacted during the 2018 regular session of the General Assembly that *requires* a locality to take some action (or that prohibits actions), or that *allows* localities the discretion to take action. This report does not provide guidance on the language of these new ordinances or regulations. **Always consult your local government attorney!**

Bills identified that require local governments to take action (or prohibit action)

HB 508/SB 429 Solar facilities; local regulation. Amends the Code of Virginia by adding a section numbered 15.2-2288.7, relating to the local regulation of solar facilities. The bill provides that a property owner may install a facility on the roof of a dwelling or other building for the electrical or thermal needs of that dwelling or building. The facility must comply with requirements of (i) height and setback in the zoning district where the property is located, and (ii) local historic or architectural preservation districts. Unless prohibited by ordinance, the same provisions apply to a ground-mounted solar energy generation facility. Such solar energy generation facilities existing as of January 1, 2018 shall be deemed as legal nonconforming use with certain exceptions. The bill has a delayed effective date of January 1, 2019 for such solar energy generation facilities. The bill also provides that localities can provide by-right authority for the installation of solar facilities in any zoning classification. (*Patrons: Hodges and Stanley*)

HB 509/SB 179 Comprehensive plan; solar facilities. Amends § 15.2-2232 Code of Virginia to require solar facilities, with comprehensive plans approved by the local planning commission, are deemed to be substantially in accordance with the plan if such proposed facility (i) is located in a zoning district that allows the facilities by right, and (ii) is designed to serve the electricity or thermal needs of the property upon which such facility is located or will be owned or operated by an eligible customer-generator or eligible agricultural customer-generator under § 56-594 or by a small agricultural generator under § 56-594.2. All other solar facilities shall be reviewed for substantial accordance with comprehensive plans. A locality may allow for a substantial accordance review for such facilities to be advertised and approved concurrently in a public hearing with a rezoning, special exception, or other approval process. (*Patrons: Hodges, Stanley*)

HB 640 Comprehensive plan, locality's; shall consider broadband infrastructure. Amends §§ 15.2-2223 and 15.2-2224 of the Code of Virginia to provide that local planning commissions shall consider strategies to provide broadband infrastructure sufficient to meet the current and future needs of residents and businesses in the locality. The local planning commission may consult with and receive technical assistance from the Center for Innovative Technology. (*Patron: Boysko*)

HB 760 Virginia Public Procurement Act; exemption for Virginia-grown food products. Requires a public body to accomplish procurement by obtaining written informal solicitation of a minimum of three bidders or offerors if practicable and including a written statement regarding the basis for awarding the contract when purchasing Virginia-grown food products under the current exemption from the Virginia Public Procurement Act for the purchase of Virginia-grown

food products for use by a public body where the annual cost of the product is not expected to exceed \$100,000. (*Patron: Landes*)

HB 796 Zoning; disabilities. Requires a locality to give consideration to the need for reasonable modifications to requirements that are necessary to accommodate persons with disabilities when preparing a zoning ordinance. The bill also alters the standard by which a variance shall be granted by adding the phrases "including the safe and easy use thereof" in regard to property and "or would accommodate persons with disabilities as required under the Americans with Disabilities Act (*Patron: Hope*)

HB 824 Short-term rentals; local ordinances in City of Lexington. Requires the City of Lexington to comply with various statutory provisions related to the short-term rental of property. This bill was amended to add the City of Virginia Beach in an enactment clause. The clause requires that any short-term rental located in the Sandbridge Special Service District be a principal use subject to the short-term rental ordinance. (*Patron: Knight*)

HB 828/SB 268 Personal property tax; computer equipment and peripherals used in data centers. Amends §§ 58.1-3503 and 58.1-3506 of the Code of Virginia by adding a separate classification for computer equipment and peripherals used in data centers when valuing equipment for personal property tax. The valuation must be by a means of percentage or percentage of original cost, or by other reasonable methods for determining fair market value. (*Patrons: Bagby and Dunnivant*)

HB 871 Real property tax; land use valuation. Amends §§ 58.1-3230, 58.1-3231, and 58.1-3234 of the Code of Virginia to expand the definition of real estate devoted to agricultural use and real estate devoted to horticultural use to be used in the special classification of real estate eligible for use value assessment. Definitions include property devoted to the production of goods made from plants, animals, fruits, vegetables, and nursery and floral products. In addition, the bill clarifies that such properties would not lose a designation due to its location in a newly created zoning district not requested by the property owner. The bill also provides that the minimum amount of time property to qualify for the agricultural and horticultural designation includes (i) use of similar property by a lessee and (ii) a shorter period of time for property with no prior qualifying use with a written statement of intent of use from the owner to the Commissioner of Agriculture and Consumer Services. Lastly, the bill extends the time an owner could be required to revalidate the special classification. (*Patron: Orrock*)

HB 1022/SB 314 Personal property tax; definition of agricultural products. Amends § 58.1-3505 of the Code of Virginia to clarify the definition of agricultural products for local personal property tax to include livestock, aquaculture, poultry, horticultural, floricultural, viticulture, silviculture, or other farm crops. (*Patrons: Adams, L.R. and Ruff*)

HB 1148 Economic growth-sharing; review of agreements. Amends § 15.2-1301 of the Code of Virginia to require all economic growth-sharing agreements provide a report at least annually from each locality receiving funds under the agreement to the participating local governing body. The report includes (i) the amount of money transferred among the localities pursuant to the agreement, and (ii) the use of those funds. Parties involved in such an agreement for at least 10

years as of July 1, 2018 and with annual payments exceeding \$5 million shall provide the report and convene an annual meeting to discuss future plans for economic growth in localities.

(Patron: Landes)

HB 1241 Car-washing fundraisers; biodegradable cleaners. Adds § 15.2-2114.1 to prohibit any locality from banning car-washing fundraisers that use biodegradable, phosphate-free, water-based cleaners and provides that no permit issued pursuant to the State Water Control Law shall prohibit the discharge of such noncommercial fundraising activity washwaters from a municipal separate storm sewer system.

HB 1258/ SB 405 Wireless communications infrastructure; zoning. Amends § 15.2-2316.3 of the Code of Virginia and adds sections 15.2-2316.4:1, 15.2-2316.4:2, and 15.2-2316.4:3 to establish parameters for zoning approval by localities for (i) certain new wireless supports structures 50 feet in height or less and (ii) wireless facilities over 50 feet. Exempts 50 feet or less from the special use permit process and puts in place an administrative review, capping the application review cost to \$500. Prohibits localities from disapproving applications due unreasonable discrimination and provides prescriptive items that cannot be considered in the review process. Requires wireless service providers operating within the Commonwealth or serving residents of the Commonwealth to report to DHCD from January 1, 2019 until January 1, 2025 detailing by county, city, or town, enhanced service capacity in previously served areas and expansion of services in unserved areas. It also directs the Secretary of Commerce and Trade and Public Safety and Homeland Security to convene a stakeholder group to develop a plan for expanding access to wireless services in unserved and underserved areas of the Commonwealth with a report due on December 15, 2108. *(Patron: Kilgore)*

HB 1328 Hunting; disabled hunter exempt from local tree stand requirement. Adds § 29.1-528.2 to exempt certain disabled hunters, (i) possessing a valid hunting license and are permanently disabled or (ii) holding a lifetime disabled or disabled veterans license, from any local ordinance requiring hunting from an elevated platform or tree stand. *(Patron: Edmunds)*

HB 1367 Emergency Management, Virginia Department of; local sheltering data. Amends § 44-146.19 of the Code of Virginia to require all political subdivisions provide data relating to emergency shelter capabilities to the State Coordinator of Emergency Management by May 1 of each year. *(Patron: Jones, J.C.)*

HB 1390 Food and beverage tax; counties to enact ordinances providing that bonds shall be paid from revenue. Amends §§ 15.2-2607 and 58.1-3833 of the Code of Virginia to authorize counties to enact an ordinance or resolution providing that bonds shall be repaid from food and beverage tax revenues. If a county enacts such ordinance or resolution, the referendum submitted to the voters shall include as a single question the (i) purpose of the bond issuance, (ii) estimated maximum amount of proposed bonds, (iii) request of approval from voters of a county food and beverage tax, (iv) language currently required for such referendum, and (v) explanation that such bonds will be issued upon referendum approval. *(Patron: Aird)*

SB 993 Local planning commissions; proposed plats. Amends § 15.2-2259 of the Code of Virginia. Prohibits a local planning commission from delaying the official submission of any

proposed plat, site plan, or plan of development by requiring pre-submission conferences, meetings, or reviews. (*Patron: Reeves*)

HJ 6/SJ 76 Constitutional amendment (second resolution); real property tax; exemption for surviving spouse of a disabled veteran. Amends Section 6-A of Article X to provide for a referendum at the Nov. 6, 2018 election to approve or reject an amendment to the real property tax exemption for a primary residence that is currently provided to the surviving spouses of veterans who had a one hundred percent service-connected, permanent, and total disability to allow the surviving spouse to move to a different principal place of residence. Companion ballot legislation (**HB 71/SB 900**) passed. *Note that this bill does not become a “must” unless the referendum is approved in November (which is likely). The General Assembly can pass bills in the 2019 session to implement using either CY 2019 or CY 2020 as the first year in which the exemptions apply.* (*Patrons: Miyares and Stuart*)

Bills identified that both allow and require or prohibit action (*required or prohibited action is shown in italics*)

SB 211 Comprehensive plans; groundwater and surface water. Amends §§ 15.2-2223 and 15.2-2224 of the Code of Virginia to authorize a locality to show in their comprehensive plan long-range recommendations for groundwater and surface water availability, quality, and sustainability. *The bill requires the local planning commission to survey and study such matters in preparation of the plan.* (*Patron: Stuart*)

HB 398 Virginia Public Procurement Act; bid, performance, and payment bonds, waiver by localities, sunset. Amends Chapter 789 of the Acts of Assembly of 2017 by adding a sunset date of July 1, 2021 to the provisions: (i) authorizing a locality to waive the prequalification requirement of a bidder with a current Class A contractor license for nontransportation-related construction contracts between \$100,000 and \$300,000 upon a written determination made in advance by the local governing body, and (ii) *prohibiting localities from entering into more than 10 such contracts per year.* (*Patron: Davis*)

HB 609/SB 391 Housing; installation and maintenance of smoke and carbon monoxide alarms in rental property. Amends §§ 15.2-922, 36-99.3 through 36-99.5:1, 55-225.3, 55-225.4, 55-248.13, 55-248.16, and 55-248.18 of the Code of Virginia to allow a locality to adopt an ordinance that requires the installation of smoke alarms in (i) buildings containing one or more dwelling units, (ii) hotels or motels regularly used, offered for, or intended to provide overnight sleeping accommodations for one or more persons, and (iii) rooming houses regularly used for overnight sleeping accommodations. *Localities that have adopted an ordinance must conform those ordinances to the state standards by July 2019.* (*Patrons: Carr and Barker*)

Bills identified as allowing local governments to take action

HB 97 Virginia Public Procurement Act; methods of procurement, single or term contracts. Amends §§ 2.2-4303 and 2.2-4303.1 of the Code of Virginia to increase the

maximum permissible aggregate or sum of all phases of single or term contracts for professional services procured without requiring competitive negotiation to \$80,000. The bill also increases the maximum total amount of all construction projects that may be performed in a one-year contract term of a contract for architectural or professional engineering services relating to multiple construction projects to \$750,000. (*Patron: Bell, JJ*)

HB 119 Merchants' capital tax; classification. Amends the Code of Virginia by adding a section numbered 58.1-3510.02 to create a separate classification for a local tax for certain merchants' capital reported as inventory and normally located in a structure containing at least 100,000 square feet solely used for inventory. (*Patron: Thomas*)

HB 134 /SB 125. value engineering. Raises the minimum project cost requiring the use of value engineering from \$5 million to \$15 million. The bill exempts projects that are designed utilizing (i) a design-build contract or (ii) the Public-Private Transportation Act of 1995 from the value engineering requirements. (*Patrons: Bell JJ, Black*)

HB 220/SB 371 Parks, local; waterway activities, liability. Amends §§ 15.2-1806, 15.2-1809, and 15.2-1809.1 of the Code of Virginia to authorize a locality or park authority to establish, conduct, and regulate a system of boating, canoeing, kayaking, or tubing activities on waterways and to exercise certain related powers. The bill releases from certain civil liability a locality that establishes such a system or a system of hiking, biking, or horseback riding trails, or the owner of any property leased or licensed for such uses, in the absence of gross negligence or willful misconduct. (*Patrons: Morefield/Chafin*)

HB 228 Virginia Public Records Act; records retained in electronic medium. Virginia Public Records Act; records retained in electronic medium. Provides that notwithstanding any provision of law requiring a public record to be retained in a tangible medium, an agency may retain any public record in an electronic medium, provided that the record remains accessible for the duration of its retention schedule and meets all other requirements of the Virginia Public Records Act (§ 42.1-76 et seq.). (*Patron: Cole*)

HB 431 Enterprise Zone Grant Program; designation of enterprise zone. Amends §§ 59.1-542 and 59.1-544 of the Code of Virginia to codify the minimum and maximum size of enterprise zones under the Enterprise Zone Grant Program. Boundary amendments made by local governments that include the elimination of an area from a zone shall not exceed maximum size provisions and shall be reviewed by the DHCH with the potential impact on affected businesses and property owners given primary consideration. (*Patron: Marshall*)

HB 494 Land development; replacement of trees, locality within Chesapeake Bay watershed. Amends § 15.2-961 of the Code to authorize any locality in the Chesapeake Bay Watershed to adopt an ordinance for planting and replacing trees during the development process. The ordinance shall require that the site plan at 20 years provide a 10 percent tree canopy on the site of any cemetery, and not exceed requirements in the law. (*Patron: Hodges*)

HB 495 Secrecy of tax information; local officials to disclose information to non-governmental entities. Amends § 58.1-3 of the Code of Virginia to allow local officials who

collect or administer taxes for a county, city, or town to disclose information to nongovernmental entities who have entered into a contract with that locality upon obtaining a written acknowledgement of confidentiality. (*Patron: Hodges*)

HB 574/SB 688 Va. Public Procurement Act; cooperative procurement, stream restoration & stormwater management. Amends § 2.2-4304 of the Code of Virginia to exclude from the Virginia Public Procurement Act the prohibition on using cooperative procurement to purchase construction: (i) the installation of artificial turf and track surface, (ii) stream restoration, or (iii) stormwater management practices, and all associated and necessary construction and maintenance. (*Patrons: Hodges and Ruff*)

HB 594/SB 451 Local government; authority to require abatement of criminal blight on real property. Amends § 15.2-907 of the Code of Virginia to authorize any locality to enact an ordinance that requires corrective action to address criminal blight conditions on certain real property. The bill defines criminal blight to include conditions that endanger residents of the community by the (i) regular presence of persons using the property for controlled substance use or sale and other criminal activities, (ii) usage for commercial sex acts, or (iii) repeat acts of the malicious discharge of a firearm within a building or dwelling. (*Patrons: Carr and Dance*)

HB 709 Zoning; violation, penalties. Amends § 15.2-2286 of the Code of Virginia to increase the maximum fine for misdemeanor conviction of a zoning violation from \$1,000 to \$2,000. The bill also increases the maximum fine for failure to remove or abate the zoning violation after conviction from \$1,500 to \$2,000 for succeeding 10-day periods. (*Patron: Bell, J.J.*)

HB 865 Pet shops; local ordinance requiring bond for out-of-state breeder. Amends the Code of Virginia by adding section 3.2-6537.1 to authorize any local governing body to adopt an ordinance that requires any pet shop or dealer in companion animals to furnish a bond of as much as \$5,000 for a pet shop selling an average of 50 or fewer dogs per year, and not more than \$30,000 for a pet shop selling an average of 51 or more dogs per year. The bill also provides conditions by which localities may waive and/or terminate the bond requirement of a pet shop. (*Patron: Orrock*)

HB 922/SB 908 Electric vehicle charging stations; local and public operation. Amends §§ 56-1.2, 56-1.2:1, and 56-232.2:1 of the Code of Virginia and adds 10.1-104.01, 15.2-967.2, 23.1-1301.1, and 23.1-2908.1 to authorize a locality, to locate and operate a retail fee-based electric vehicle charging station on property owned by such entity. (*Patrons: Bulova and McClellan*)

HB 925 Industrial & high-risk programs; locality to adopt, etc., runoff programs. Amends the Code of Virginia by adding section 62.1-44.15:49.1 to authorize any locality that owns or operates a permitted municipal separate storm sewer system (MS4) to adopt and administer an industrial and high-risk runoff program. The bill limits the ability of the State Water Control Board, unless it is required to do so by the federal Clean Water Act, to impose certain regulatory conditions on any locality that administers such a program, and it prohibits the Board from modifying existing MS4 permits to avoid such limitation. The bill authorizes the Board to require a locality to report an industrial or commercial facility if it becomes aware of a violation of an industrial stormwater management requirement. (*Patron: Bulova*)

HB 1163 Fire protection; applicant preemployment information with fire departments.

Amends § 27-6.2 to allow any fire department, pursuant to a local ordinance adopted in accordance with § 19.2-389, to require applicants for employment to submit to fingerprinting and to provide personal descriptive information to be forwarded through the Central Criminal Records Exchange and the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. Under current law, the submission of such information is mandatory, not discretionary, and applies only to applicants for employment with the Arlington County Fire Department.

HB 1179/SB 448 Abandoned schools; creation of revitalization zones. Amends the Code of Virginia by adding section 15.2-941.1 to allow localities to establish by ordinance one or more abandoned school revitalization zones to provide incentives to private entities to purchase or develop real property or to assemble parcels suitable for economic development that include such site. Incentives may include, but not be limited to: (i) reduction of permit fees, (ii) reduction of user fees, (iii) reduction of any type of gross receipts tax or any other type of local tax as permitted by state law, and (iv) waiver of tax liens to facilitate the sale of property, if deemed appropriate. A school located in such a zone shall be eligible for participation in the Virginia Shell Building Initiative. (*Patrons: Pillion and Chafin*)

HB 1307 Stormwater management; rural Tidewater, tiered approach to water quantity technical criteria. Amends §§ 62.1-44.15:24 and 62.1-44.15:27, as they are currently effective and as they shall become effective, of the Code of Virginia and adds a section numbered 62.1-44.15:27.2, relating to stormwater management. The bill allows any rural Tidewater locality to adopt a tiered approach to water quantity management for Chesapeake Bay Preservation Act land-disturbing activities. (*Patron: Hodges*)

HB 1308 Stormwater management; local plan review, acceptance of signed plan in lieu of review. Amends § 62.1-44.15:24, as it is currently effective and as it shall become effective, of the Code of Virginia and adds a section numbered 62.1-44.15:27.2, relating to acceptance of signed plan in lieu of review. The bill authorizes rural Tidewater localities to require a licensed professional to submit a plan and supporting calculations for land-disturbing activities impacting between 2,500 square feet and one acre of land. The bill also directs the Department of Environmental Quality to consider expanding the agreement in lieu of a stormwater management plan to include nonresidential development sites less than one acre. (*Patron: Hodges*)

SB 129 Subdivision ordinance; pro rata share of certain road improvements. Amends § 15.2-2242 of the Code of Virginia to add the Cities of Chesapeake and Portsmouth to those localities that may require payment by a subdivider or developer of land of a pro rata share of the cost of reasonable and necessary road improvements to reimburse an initial subdivider or developer who has advanced such costs or constructed such improvements. (*Patron: Cosgrove*)

SB 149 Smoking in outdoor amphitheater or concert venue; civil penalty. The bill must be reenacted in the 2019 session to go into effect. The bill adds § 15.2-926.4 to authorize any locality, by ordinance, to designate reasonable no-smoking areas within an outdoor amphitheater or concert venue owned by the locality. The bill requires such ordinance to (i) require adequate

signage designating such areas, (ii) provide that a violation of such ordinance is subject to a civil penalty of not more than \$25 to be paid into the treasury of the locality where the offense occurred and expended solely for public health purposes, and (iii) provide that any law-enforcement officer may issue a summons regarding a violation of the ordinance. (*Patron: Edwards*)

SB 228 Real estate taxes; clarifies when amount of taxes deferred pursuant to a local ordinance become due. Amends § 58.1-3216 of the Code of Virginia to provide definitions and rules to clarify when deferred real estate taxes are due. The accumulated amount of deferred taxes shall be paid: (i) upon the selling of the real estate, (ii) upon a nonqualified transfer of the real estate, or (iii) from the estate of the decedent within one year after the death of the last qualified owner. (*Patron: Howell*)

SB 399 Drug overdose fatality review teams, local or regional; localities to establish. Amends §§ 2.2-3705.5 and 2.2-3711 of the Code of Virginia and adds a section 32.1-283.7 to authorize a county, city, or combination thereof to establish a local or regional overdose fatality review team to: (i) conduct reviews of local overdose deaths, (ii) promote coordination between agencies involved in investigation, (iii) develop an understanding of causes of death, (iv) develop plans to address changes in participating team members regarding prevention methods, and (v) advise the Department of Health and other state agencies on formal and informal policy changes related to prevention. Violating confidentiality of the review process is a Class 3 misdemeanor. (*Patron: Lewis*)

SB 677 Local tourism board, etc.; member of a local government authorized to be elected or appointed. Amends § 15.2-1535 of the Code of Virginia to authorize a member of a local governing body to be elected or appointed by that body to be a member of a local convention, visitors, or tourism board, authority, or agency. (*Patron: Deeds*)

SB 902 Property tax; exemption for solar energy equipment and facilities. Amends § 58.1-3660 of the Code of Virginia to limit the property tax exemption for solar equipment and facilities owned and operated by a business, which exemption currently applies to 80 percent of the assessed value of certain projects, to those projects equaling less than 150 megawatts. The 150-megawatt cap applies only to projects for which an initial interconnection request form was filed on or after July 1, 2018. (*Patron: Lucas*)

SJ 21 Constitutional amendment; real property tax exemption for flooding remediation, abatement, etc. (Second year) Amends Section 6 of Article X of the Constitution of Virginia to provide that the General Assembly may authorize a county, city, or town to partially exempt any real estate subject to recurring flooding upon which flooding abatement, mitigation, or resiliency efforts have been undertaken. **Companion ballot legislation resolution, SB 219 passed.** *Note that this bill does not become a “may” unless the referendum is approved in November. The General Assembly can pass bills in the 2019 session to implement using either CY 2019 or CY 2020 as the first year in which the exemptions apply* (*Patron: Lewis*)