

# Capitol Contact

## Virginia General Assembly

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## HB 1347 limits local authority over communications towers

VACo opposed [HB 1347 \(Heretick\)](#), which would severely limit local authority to regulate communications towers. The bill limits fees localities may charge in the permitting process, as well as rents locality may charge for leasing public facilities. HB 1347 mandates the use of public rights of way and limits the ability of localities to require environmental reviews, and other common regulatory requirements, during the permitting process. VACo actively opposed this legislation as both unnecessary and as an overreaching limit to local land use authority. This bill was carried over to 2017 by the [House Commerce and Labor Committee](#) with a commitment to study the issue after the session.

VACo Contact: [Phyllis Errico, CAE](#)

## Bill prohibits local governments from imposing 'fees'

With opposition from VACo, [HB 801 \(Morris\)](#) was killed. The bill prohibited the Commonwealth and localities from imposing a charge and calling it a "fee" unless the charge relates to a direct and immediate specific service, goods or permit received by the person paying the charge. This bill was passed by indefinitely by the House General Laws Committee on February 11.

VACo Contact: [Phyllis Errico, CAE](#)

## Problematic Freedom of Information Act bills gone for the session

In the third and final year of a comprehensive Freedom of Information Act (FOIA) study in which each meeting and record exemption is being examined and discussed, it was surprising to note a very large number of introduced bills.

Because of VACo's opposition and your contacts with legislators, the most troublesome bills failed to advance.

**[HB 61 \(Morris\)](#)** provided for criminal penalties for FOIA violations. The patron amended his bill in committee to provide that violation of FOIA could result in the immediate dismissal of a public employee. The bill provides in addition to the civil enforcement provisions of FOIA, any officer, employee or member of a public body who, without legal excuse or justification, deliberately, willfully and knowingly violates certain FOIA provisions is guilty of a Class 1 misdemeanor. This bill was laid on the table by the [House General Laws Committee](#) and will not be heard again this session.

**[HB 308 \(Morris\)](#)** requires that public officials, appointees and employees shall use only official government-provided email accounts to conduct public business. This bill did not advance from the Committee on general laws.

**[HB 818 \(LeMunyon\)](#)** requires local public bodies to post a FOIA rights and responsibilities document on its website and to designate and publicly identify one or more FOIA officers whose responsibility is to serve as a point of contact for members of the public in requesting public records and to oversee the public body's compliance with the provisions of FOIA. It also requires that any such FOIA officer shall possess specific knowledge of the provisions of this chapter and be trained at least annually by the Virginia Freedom of Information Advisory Council. This bill passed handily and will likely pass through the senate without problem. This will create some new administrative responsibilities for localities.

**[HB 334 \(Pogge\)](#)** provides that in an enforcement action, if the court finds the public body violated certain meeting notice requirements, the court may invalidate any action of the public body taken at such meeting. This is problematic as there are no limits as to the time period or scope of the act which can be invalidated. This bill was struck Thursday in the [House General Laws Committee](#) and will not come up again this session.

**VACo Contact:** [Phyllis Errico, CAE](#)

## **Recording Closed Sessions bill left in House Appropriations**

**[HB 800 \(Morris\)](#)**, which requires all closed sessions be recorded, was amended by the patron to mandate both recordings and that minutes be taken in closed session. These recordings and minutes would be available in any proceeding to enforce the Freedom of Information Act. The bill was referred and left in [House Appropriations](#).

**VACo Contact:** [Phyllis Errico, CAE](#)

## Bill targets union activities and creates liability for local governmental entities

[SB 737 \(Obenshain\)](#) passed out of the [Senate General Laws and Technology Committee](#) on an 8-7 vote. This bill prohibits public employers from paying leave or benefits to any public employee to directly or indirectly work for or on behalf of an employee organization, professional association, labor union or labor organization. A violation is a Class 5 felony.

**VACo Contact:** [Phyllis Errico, CAE](#)

## Bill alters notice provisions

VACo opposes [SB 611 \(Stanley\)](#), which passed the Senate 25-15. This bill amends Va. Code § 15.2-209, a provision that requires anyone making a claim against a county, city or town to give written notice to the locality's attorney or chief administrative officer within six months after the claim arises. Failure to give that notice bars any lawsuit based on the claim. **VACo opposes SB611** because it allows a claim to be pursued if the locality receives actual notice of the claim within 6 months. SB 611 offers no guidance about who would have to know about the claim for the locality to be considered to have notice of it. This would likely become a factual dispute to be litigated in many cases adding to the cost of defending them. The bill is now in House Courts of Justice Committee's [Civil Law Subcommittee](#).

**Please let your Delegates know immediately that your locality opposes this bill.**

### Talking points

- VACo opposes the bill and pointed out the difficulty of determining when a locality could have actual notice of something.
- Actual notice is not defined in the bill.
- The bifurcated time limit of six months for written notice and one year for actual notice will be confusing and subject to much dispute.

**VACo Contact:** [Phyllis Errico, CAE](#)

## Bill makes localities liable when an employee exceeds their authority

VACo opposes [SB 746 \(Wagner\)](#) that makes a state agency or locality liable for damages caused by an employee who intentionally exceeds his or her authority. This creates a problem as localities and their insurers generally reserve the right not to pay damages on behalf of employees who intentionally commit wrongful acts, and the costs created by this bill would be significant. This bill may discourage legitimate enforcement efforts and make it difficult to hire and retain good employees in such jobs. In addition it will increase litigation and the costs associated with it. The bill passed the senate 26-24 and is now in the House Courts of Justice Committee's [Civil Law Subcommittee](#).

### Talking points

- SB 746 attempts to intimidate employees from taking legitimate steps to protect public safety and health.
- The bill makes hiring and retention of good employees in civil enforcement positions very difficult.
- SB 746 creates enormous potential cost for both state and local governments to defend employees sued under its provisions.
- The bill is unnecessary because federal law already provides a remedy (42 U.S. Code Sec. 1983) for state and local employees who act in bad faith to violate a citizen's rights.

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## Local Employee Grievance Procedures being challenged

[HB 1293 \(Hugo\)](#) would make significant changes to local grievance procedures statewide. The bill would require that in the final step of all local grievance procedures, the parties must agree to either a certified hearing officer or three-member panel. This eliminates the opportunity for the jurisdiction to determine and state the final step of the process. This bill was requested by a law enforcement association and it is important to note that they already have the option for a three-member panel hearing under the Law Enforcement Officers Procedural Guarantee Act. In addition, the bill invalidates all existing grievance procedures that have previously been approved by the Department of Human Resource Management. Therefore many jurisdictions would have to completely change their current grievance process. **This bill was opposed by VACo**, and it was laid on the table in [House Counties Cities and Towns Committee](#).

VACo Contact: [Phyllis Errico, CAE](#)

## **Bills provide local governing body greater voice in process to site electric transmission lines**

VACo supports [SB 136 \(Favola\)](#) / [HB 283 \(Minchew\)](#) / [HB 533 \(J. Bell\)](#), which authorize the local governing body to be able to require a State Corporation Commission public hearing in the area of a proposed high voltage transmission line. Currently, 20 or more residents in the affected area can demand such a local hearing and this bill would also allow the local governing body to make the request. This proposal is in the VACo legislative program and was adopted by the Economic Development and Planning Steering Committee. The bills passed the Senate and are now in [House General Laws Committee](#).

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