



Ralph S. Northam  
Governor

R. Brian Ball  
Secretary of  
Commerce and Trade

# COMMONWEALTH of VIRGINIA

Erik C. Johnston  
Director

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

TO: Members of the Commission on Local Government  
FROM: J. David Conmy, Local Government Policy Administrator  
DATE: June 28, 2021  
SUBJECT: Draft Agenda, Materials, and Other Items of Interest

**Please find enclosed the following:**

1. Draft agenda for your regular meeting to be held on Thursday, July 8, 2021, in Room 101 at 11:00 AM at the Main Street Centre (MSC) (600 E. Main Street, Richmond, VA 23219);
2. Information on available parking options near the MSC;
3. Draft minutes for your last regular meeting held on May 13, 2021; and

**Other Items of Interest:**

1. Various newspaper articles of interest.

In addition, recent issues of VACo *County Connections* and VML *eNews* can be accessed on the web at:

- <http://www.vaco.org/newsroom/county-connections/>
- <https://www.vml.org/publications/enews/>

If you have any questions or require additional information, please feel free to contact me at (804) 371-8010 (office), (434) 825-0353 (cellular), or [david.conmy@dhcd.virginia.gov](mailto:david.conmy@dhcd.virginia.gov).

I look forward to seeing you on July 8<sup>th</sup>!

Enclosures

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[www.dhcd.virginia.gov](http://www.dhcd.virginia.gov)



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## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

### AGENDA

#### Regular Meeting

#### Commission on Local Government

11:00 a.m., July 8, 2021

Main Street Centre

Room 101

600 E. Main Street

Richmond, Virginia

#### For the public, Google Meet joining info:

Video call link: <https://meet.google.com/pmq-akhz-kob>

Or dial: (US) +1 617-675-4444 PIN: 214 783 008 1551#

1. Occupancy for the meeting space is limited, so the Commission encourages members of the public to observe the proceedings through the Google Meet link provided above. Please contact Cody Anderson ([cody.anderson@dhcd.virginia.gov](mailto:cody.anderson@dhcd.virginia.gov)) for information on how to connect to the meeting using this method.
2. Members of the public viewing the meeting through the Google Meet option are required to mute themselves during the meeting unless called upon by the Commission Chair to speak.
3. Guests to the Main Street Centre will need to check-in with the security guard at the front desk before proceeding to the meeting space.
4. For the designated public comment period, the Commission will only accept pre-filed testimony, so please email such testimony to Cody Anderson ([cody.anderson@dhcd.virginia.gov](mailto:cody.anderson@dhcd.virginia.gov)).
5. Access to meeting materials for members of the public is available on the corresponding meeting page of the [Virginia Regulatory Town Hall website](#) and on [Commonwealth Calendar](#).

### Call to Order

#### I. Administration

- |   |             |
|---|-------------|
| A. Approval of the Draft Agenda                               | (Dr. Davis) |
| B. Approval of Minutes of the Regular Meeting on May 13, 2021 | (Dr. Davis) |
| C. Public Comment Period                                      | (Dr. Davis) |
| D. Policy Administrator's Report                              | (Mr. Conmy) |

Partners for Better Communities



[www.dhcd.virginia.gov](http://www.dhcd.virginia.gov)

- II. **Notice of City of Martinsville’s Intention to Petition for an Order Granting it Town Status within Henry County**
  - A. Staff Update (Mr. Conmy)
  - B. Comments from the Parties
  - C. Commission Deliberation and Action (if needed) (Dr. Davis)
- III. **Fiscal Stress Report for 2018/2019**
  - A. Staff Update (Ms. Wheaton)
- IV. **2021 General Assembly Special Session II**
  - A. Staff Presentation (Mr. Anderson & Ms. Wheaton)
- V. **CLG Mandatory Property Tax Exemptions Study**
  - A. Staff Update (Mr. Conmy)
- VI. **Other** (Dr. Davis)
- VII. **Schedule of Regular Meetings**
  - A. Staff Presentation (Mr. Anderson)
- VIII. **Upcoming Events of Interest**
  - A. Staff Presentation (Mr. Anderson)
- IX. **Adjournment** (Dr. Davis)



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DEPARTMENT OF  
HOUSING AND COMMUNITY DEVELOPMENT

## Commission on Local Government

May 13, 2021

11:00 A.M.

Digital Meeting Only

**Due to the COVID-19 pandemic and public health emergency and the need to provide social distancing and prohibit large gatherings, the meeting was held electronically in accordance with the State of Emergency Declared by the Governor and the 2020 amendments to the 2020 Appropriations Act. The meeting was held via Google Meet.**

### Members Present

R. Michael Amyx  
Stephanie Davis, PhD, Chair  
Diane M. Linderman, PE, Vice Chair  
Rosemary M. Mahan

### Members Absent

### Call to Order

The Commission on Local Government (CLG) Chair, Dr. Stephanie Davis, called the meeting to order at 11:00 a.m.

Mr. David Conmy, Local Government Policy Administrator for the Department of Housing and Community Development (DHCD) noted that due to the Governor's Declared State of Emergency due to COVID-19, it is impracticable and unsafe for the Commission on Local Government to assemble in a single location, so the Commission meeting is being held electronically, by video conference and telephone options, pursuant to 2020 Amendments to the 2020 Appropriation Act. The purpose of the meeting is to discuss or transact the business statutorily required or necessary to continue operations of the Commission on Local Government and the discharge of its lawful purposes, duties, and responsibilities. The public is welcome to use the link and phone number options made available by staff to attend the meeting electronically. The Commission on Local Government will make available a recording or transcript of the meeting on its website in accordance with the timeframes established in Sections 2.2-3707 and 2.2-3701.1 of the Code of Virginia.

## Administration

After discussion, a motion was made by Ms. Linderman and seconded by Ms. Mahan to amend and approve the draft agenda with a change to allow public comment for the CLG Mandatory Property Tax Exemption Study to take place after the Notice of City of Martinsville's Intention to Petition for an Order Granting it Town Status Within Henry County discussion. The motion passed (Yea: Amyx, Davis, Mahan, Linderman).

A motion was made by Mr. Amyx and seconded by Ms. Linderman to approve the minutes of the Regular Meeting on March 25, 2021. The motion passed (Yea: Amyx, Davis, Linderman; Abstain: Mahan).

Dr. Davis opened the floor to receive comments from the public for any items outside of the CLG Mandatory Property Tax Exemption Study. No one from the public appeared before the Commission. The public comment period was then closed.

Mr. Conmy noted that two positions within CLG staff had been posted and that those postings would be closed on May 16, 2021. The goal is to have those staff positions filled prior to the next Commission meeting.

Mr. Conmy noted that Commissioner Reynolds' term ended at the conclusion of 2020 and that he will keep the Commission up to date on the status of an appointment for this vacancy.

Mr. Conmy briefly presented various news articles of interest to the Commission.

## Notice of City of Martinsville's Intention to Petition for an Order Granting it Town Status Within Henry County

Mr. Conmy provided the Commission with a brief update on the Martinsville Reversion case. Mr. Conmy relayed that representatives of Martinsville and Henry County had met in a closed mediation session on April 28 and April 29, 2021. While it is unknown what the outcome of those discussions exactly entail, the parties provided the following statement for the Commission's record:

“The parties have reached an agreement in principal that they anticipate will be approved at a meeting of the two governing bodies before the end of the month.”

Mr. Conmy noted that due to the evolving circumstances surrounding the proposed reversion, staff recommends either cancelling future meetings specifically pertaining to the proposed reversion or temporarily pausing proceedings until more clarity can be ascertained.

After discussion, a motion was made by Ms. Mahan and seconded by Ms. Linderman to pause Commission proceedings related to Martinsville’s proposed reversion to town status within Henry County. The motion passed (Yea: Amyx, Davis, Linderman, Mahan).

Public Comment: CLG  
Mandatory Property Tax  
Exemption Study

Dr. Davis provided a brief overview of the Mandatory Property Tax Exemptions Study directed to be produced by the Commission by the General Assembly. The Commission is soliciting public comments on the matter with a particular emphasis on the fiscal implications of the exemptions on local governments and other affected parties including certain veterans and their surviving spouses. The second part of the directive of the study is to produce recommendations that can mitigate the fiscal impacts on local governments tied to these state tax exemption initiatives.

Mr. Cody Anderson, Policy Analyst at DHCD, indicated to the Commission that two parties had reached out in advance of the meeting with the intention of providing public comment. Of the two, one was a written public comment and the other was a written comment to supplement verbal comments.

Mr. Anderson read the comments submitted by Mr. Steve Trivett, Mayor of the Town of Ashland. Mr. Trivett expressed gratitude for both those serving our country in the armed forces, as well as for the spirit of the amendments adopted by the General Assembly to reward those who served. Mr. Trivett expressed concern that localities are not adequately brought into policy making decisions

like these and that tax exemption amendments such as these don't take into account the stress on the fiscal situation of localities. Mr. Trivett made the suggestions that any tax exemption should be accompanied by just compensation to localities to offset potential fiscal impacts and that the General Assembly make such exemptions optional for localities so that localities may adapt based on their own individual community needs.

Mr. Scott Mayausky, Commissioner of the Revenue for the County of Stafford expressed concern over the financial burden that mandatory property tax exemptions have had on localities. Specifically, nearly 4% of Stafford County's real estate base falls under these exemptions. Mr. Mayausky noted that these exemptions are causing adverse effects in other areas of the government's ability to provide services and is resulting in rising taxes to compensate. Mr. Mayausky suggested that the General Assembly take on a model of shared responsibility for mandatory tax exemptions and provide just compensation to localities to offset potential fiscal impacts.

Mr. Joe Lerch, representing the Virginia Association of Counties, expressed support for the study and noted that their members had been notified of the study and are aware of the opportunity to provide feedback and context as relates to the study.

The public comment period was closed. Dr. Davis noted that written public comment will be accepted by Commission staff until 5:00 p.m. on Thursday, May 20, 2021.

#### Periodic Review

Mr. Anderson provided a brief overview of the Periodic Review of Commission on Local Government regulations. Mr. Anderson noted that the Periodic Review is done every four years and requires any governing board to review regulations. The first step in the review is to announce the opening of a public input period in the Virginia Register.

A motion was made by Ms. Linderman and seconded by Mr. Amyx to open the Periodic Review public input period. The motion passed (Yea: Amyx, Davis, Linderman, Mahan).

Fiscal Stress Report for 2018/2019

Mr. Conmy provided a brief update on the Fiscal Stress Report for 2018/2019. He noted that Hopewell's fiscal annual financial report from 2019 remains delinquent. Hopewell has indicated that the fiscal 2018 report is ongoing with a targeted completion date of May 31, 2021. The fiscal 2019 report has an estimated completion date of July 30, 2021. The fiscal 2020 report has an estimated completion date of September 30, 2021. Reasons for delay include implementation system issues, staff transition and turnover, and complications as relates to the COVID-19 pandemic.

Staff will continue to monitor the Hopewell situation and is targeting having the draft Fiscal Stress Report ready for the Commission's consideration at the July meeting.

2021 General Assembly – Reconvened and Special Sessions

Mr. Anderson provided the Commission with a brief overview of the Reconvened Session of the General Assembly, including the status of the budget and various initiatives and amendments of interest as relates to the budget.

Mr. Conmy provided the Commission with a brief overview of the Special Session of the General Assembly, which will be convened as a result of amendments to the Appropriations Act. The goal of the special session will be to determine the allocations of flexible funds received from the federal government such as those funds being received from the American Rescue Plan.

Other

There was no other business.

Schedule of Regular Meetings

After discussion, a motion was made by Ms. Linderman and seconded by Ms. Mahan to move the July 22 meeting to July 8 and to strike the August 5 meeting of the Commission from the schedule. The motion passed (Yea: Amyx, Davis, Linderman, Mahan).

Following the July 8, 2021, meeting, the regular schedule of the Commission includes September 9, 2021, and November 4, 2021.

Upcoming Events of Interest

Mr. Anderson noted that the 2021 Virginia Municipal League Annual Conference is scheduled to take place in Leesburg,



Virginia from October 3 through October 5, 2021. It was also noted that the 2021 Virginia Governor's Housing Conference is scheduled to take place in Norfolk, Virginia from November 10 through November 12, 2021.

Adjournment

A motion was made by Ms. Linderman and seconded by Ms. Mahan for adjournment. The motion passed and the Commission adjourned at 12:05 p.m.

[https://www.loudountimes.com/news/loudoun-county-considers-changing-form-of-government-awaits-report-on-establishing-police-department/article\\_f4bfcff4-ac60-11eb-b61f-4b06b92e06d0.html](https://www.loudountimes.com/news/loudoun-county-considers-changing-form-of-government-awaits-report-on-establishing-police-department/article_f4bfcff4-ac60-11eb-b61f-4b06b92e06d0.html)

FEATURED

## Loudoun County considers changing form of government; awaits report on establishing police department

By Nathaniel Cline [ncline@loudountimes.com](mailto:ncline@loudountimes.com)  
May 6, 2021



On July 21, a crowd gathered in front of the Loudoun County Government Center during a rally against establishing a county police department.

Times-Mirror/Nathaniel Cline

After some Loudoun County Supervisors voiced support for establishing a county police department, board members launched an initiative last July to study changing its form of government. If the concept moves forward, a police department would fall under the purview of the board, unlike the Loudoun County Sheriff's Office, which operates independently.

County leaders and residents have expressed mixed reaction to the idea, which could impact county law enforcement among other operations.

On April 20, county staff provided a briefing to the board on its progress and presented options for changing the form of government, including creating a charter and selecting one of five forms of government.

The board did not take any action.

The preliminary report of establishing a county-wide police department will be submitted in November.

## Background

In July, the board directed staff to study changing the Loudoun County form of government and develop a list of governing and law enforcement options — including, specifically, the establishment of a Loudoun County Police Department in all available options.

The board approved the measure 6-3, with supervisors Caleb Kershner (R-Catoctin), Tony Buffington (R-Blue Ridge) and Kristen Umstattd (D-Leesburg) opposing.

Less than 24 hours after the November 2019 election, Randall raised the idea of implementing a county police department. In the wake of winning her second term, Randall said she was concerned with deputies' job security and the office's transparency.

Some members of the board believe the fast-growing county would be better served by a police chief who reports to the county administrator, unlike a sheriff, who is elected and maintains independence.

Sheriff Mike Chapman (R) has been opposed the idea and has pointed to the county's relatively low crime rate and his office's numerous accolades in response.

A county police department would dramatically reduce the reach and scope of the county sheriff's office, though it would not completely eliminate it. Neighboring Fairfax County operates with a police department taking primary law enforcement duties across the county, while the sheriff's office oversees courthouse security and oversight of the jail.

Chairwoman Phyllis Randall (D-At Large) said in an earlier interview Loudoun would operate similarly, with a county police chief hired by the county administrator. The sheriff, in their reduced role, would still be elected.

Two supervisors say 'set aside' changing government structure.

Supervisor Mike Turner (D-Ashburn) and Buffington were on opposite sides of a vote to begin studying the possible establishment a police department and change to the government structure.

On April 20, the two were in agreement in urging their colleagues on the board to drop considering changing the governance structures.

Some of the options available for creating a new form of governance require 20% of all voters from the last presidential election to sign a petition supporting changing the form, the staff report reads Deputy County Administrator Charles Yudd estimated 45,000 voters would be needed.

Other options require 10 percent of voters or a resolution initiated by the board.

If the constitutional offices were abolished, the board would have to consider transferring functions from the Treasurer and Commissioner of Revenue to Finance and Budget and/or an appointed county Assessor.

Turner said collecting even 10 percent of the necessary signatures and launching an education campaign is "daunting and the results are just not worth the effort."

Buffington echoed Turner's remarks.

"That does sound like a very burdensome and a very high bar to me — and it's probably that way for a reason," Buffington said.

If the board want to make minor variations to its form of government, it can initiate a county charter. A charter must be approved by a two-thirds vote of each house of the General Assembly and the governor.

One change the board may consider is assuming direct responsibility for the library system. The Library Board of Trustees, the members of which are appointed by the supervisors, has administered the library system — including its 10 branches — since the 1970s.

The library’s fiscal 2021 adopted budget includes expenditures of more than \$22.3 million, with local tax funding supporting more than \$21.8 million. The system has 223 full-time equivalent (FTE) employees, according to county staff.

#### Report on police department expected early next year

The board will have to wait until November for a preliminary report on establishing a police department, with the final report due Feb. 22, 2022, according to an April 20 staff report.

Sheriff Mike Chapman (R), Randall and Yudd made up the group that unanimously selected the International Association of Chiefs of Police (IACP), as a vendor qualified to provide the requested study, the staff report states.

Randall said on April 20 she understands people wished the process moved faster, but selecting IACP assured the group that the process would be done “right” and kept “confidential.”

Despite the vendor having the name “police” in its name and assumptions the vendor would strongly consider the county establishing a police department, Yudd said the vendor’s response was encouraging.

He said IACP is made up of representatives from both sheriff’s offices and police departments. The scope of the study will include costs, operational impacts and best practices.

#### Concerns raised over ‘599’ funds

While funding for sheriff’s offices comes in part from state funding through the Virginia Compensation Board and in part from local supplements, local police departments are funded through local funds and “599” funds, which are state funds to localities with police departments that meet certain criteria as defined in Virginia Code 9.1-165 through 9.1-172.

Umstattd asked IACP to include the practical effect of the 599 funds in its report “because if the state has consistently been cutting 599 funds for decades, it may not be that much money.”

### An option for the board

Should the board wish to implement a change in form of government by Jan. 1, 2024, staff recommended that the board consider phasing in any needed resources for fiscal 2023, according to the April 20 staff report.

Should a change in the form of government require the creation of new departments, or if major organizational changes occur, and more staff be required, additional managerial staff will be needed to begin to work toward a fiscal 2024 implementation time frame.

These positions would begin establishing needed departments and/or divisions.

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Nathaniel Cline

[https://richmond.com/news/state-and-regional/govt-and-politics/virginia-cities-to-get-double-boost-from-american-rescue-plan-as-money-starts-to-flow/article\\_d39928fc-c8ba-5352-8d87-d55e6fbfb997.html](https://richmond.com/news/state-and-regional/govt-and-politics/virginia-cities-to-get-double-boost-from-american-rescue-plan-as-money-starts-to-flow/article_d39928fc-c8ba-5352-8d87-d55e6fbfb997.html)

EDITOR'S PICK | ALERT | TOP STORY

# Virginia cities to get double boost from American Rescue Plan as money starts to flow

From the Martinsville-region COVID-19/coronavirus daily update from state, nation and world: May 12 series

MICHAEL MARTZ Richmond Times-Dispatch  
May 11, 2021



Broad Street and Church Streets in Uptown Martinsville.

RICK DAWSON/SPECIAL TO THE BULLETIN

MICHAEL MARTZ Richmond Times-Dispatch

**V**irginia will receive \$4.3 billion, or \$500 million more than previously expected, under the American Rescue Plan Act, while Richmond and other cities will get a double financial benefit because of their status as independent cities under guidance released by the U.S. Treasury Department on Monday.

Richmond, for example, will receive \$110 million as a city and almost \$45 million as a county under the act, which President Joe Biden signed into law on March 11 as the first signature legislative achievement of his presidency to jumpstart an economy battered by the COVID-19 pandemic.

Virginia's share of the money will come either in two payments a year apart or all at once if the seasonally adjusted unemployment rate is two percentage points higher than it was in February, 2020, before the pandemic began.

"I would prefer to have the money in our bank," Secretary of Finance Aubrey Layne said Monday.

Virginia is the only state in the U.S. in which all cities are constitutionally independent and provide public services, such as public education and police, which underlying counties deliver in cities in other states. The only other independent cities in the country are Baltimore, Md., St. Louis, Mo., and Carson City, Nev.

Many localities lost substantial amounts of revenue from taxes on meals, lodging, and admissions during the pandemic and state restrictions imposed on businesses, especially in areas dependent on tourism, such as Williamsburg and the rest of the Historic Triangle

"They're slowly coming back as the economy slowly reopens," said Neal Menkes, a fiscal consultant to the Virginia Municipal League.



Sens. Mark Warner and Tim Kaine, D-Va., drove the needs home in a letter with the state's seven Democratic congressional representatives to Treasury Secretary Janet Yellen in mid-April that argued for funding as both city and county: "The treatment of independent cities under the Treasury Department guidance for allocating local relief funds will have a profound impact on our constituents," they wrote.

Virginia cities would have lost almost \$500 million in funding if counted only as cities or towns, and almost \$800 million if designated only as cities, the Democrats said.

The Tri-Cities area will receive the additional benefit, with a total of \$20.9 million for Petersburg; \$10 million for Hopewell; and \$6 million for Colonial Heights. The totals for other Virginia cities include: \$64.6 million for Roanoke; \$34.4 million for Lynchburg; \$29 million for Danville; \$19.6 million for Charlottesville; \$10.7 million for Fredericksburg; \$10.1 million for Bristol; and \$9 million for Waynesboro.

In comparison, counties will receive one allocation under the package—\$68.5 million in Chesterfield; \$64.3 in Henrico; \$20.9 million in Hanover; \$7.5 million in Prince George; \$5.8 million in Powhatan; \$5.5 million in Dinwiddie; \$4.6 million in Goochland; \$4.5 million in New Kent; and \$1.4 million in Charles City.

The letter was not signed by Virginia's Republican congressional representatives, who all voted against the \$1.9 trillion American Rescue Plan Act, partly because of the \$350 billion it included for state and local governments, whether they lost revenue or not. For example, Rep. Robb Wittman, R-1st, said he favored additional relief targeted to the pandemic, but not "massive amounts of spending completely unrelated to COVID-19."

Separately, Virginia will receive almost \$634 million to distribute to towns across the state, based on their population. Leesburg, a town with a population of almost 53,000 in Loudoun County, also will receive more than \$5.9 million as an allocation as a city under the Treasury guidance.

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Updated 23 hrs ago

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EDITOR'S PICK | FEATURED

## Martinsville's reversion process is in a holding pattern

Bill Wyatt  
Jun 20, 2021



Joint meeting of Henry County and Martinsville at NCI.

Bill Wyatt

Bill Wyatt

**M**artinsville's process of reverting from a city to a town is in a holding pattern as far as the Commission on Local Government is concerned.

“Based on actions taken by the CLG during its May 13 regular meeting, the proceedings on this matter have been paused while the CLG awaits further updates from the City and the County after the joint adoption of the Memorandum of Understanding (MOU),” Local Government Policy Administrator David Conmy wrote by email. “I would be unable to provide an expected date when the matter may be concluded.”

The first step of the process begins with Martinsville's filing notice with the CLG and Henry County's filing a response.

Two days of hearings, with a presentation by Martinsville and a cross examination of witnesses, has been replaced with a memorandum of understanding agreed upon by Martinsville City Council and the Henry County Board of Supervisors at a joint meeting last month.

Those hearings were scheduled to conclude with a public hearing on the matter. It is unclear if the MOU cancels the hearing as well.

The first step of the process concludes with the CLG's filing a report of its findings and conclusions to a 3-judge court appointed by the Virginia Supreme Court, but that hasn't occurred.

“The CLG's next regularly scheduled meeting will be held on Thursday, July 8, at 11 a.m., so it's possible the CLG may have an update on this matter at that time,” Conmy wrote.

Although the meeting will be open to the public, Conmy said he didn't know where it would convened.

“Because of the governor's declared state of emergency will be lifted on June 30, this next CLG meeting will be held in-person,” Conmy wrote. “Details on the location are forthcoming, and it's possible a virtual/streaming component for this meeting for members of the public will be provided, but that option is pending.”

The second part of the process begins when the three judges are appointed. Based on the three previous reversions in Virginia, the court would take six to nine months before issuing a ruling.

The third step in the process occurs when the court issues its ruling, with the setting of terms and conditions that will ensure an orderly transition, adjusts for any financial inequities and ensures protection for the best interests of the localities and the residents.

It is unclear if the court will forgo consideration of any adjustments and accept the MOU as agreed upon by the city and the county.

Finally, Martinsville must decide whether to accept the ruling with any additional terms or conditions required by the court.

Martinsville will have a period of 21 days once the town status is presented in the court's ruling to decline to accept it, because there is always the possibility the court will include conditions that will make reversion unacceptable.

If the 21 days pass without rejection by the city, then the city becomes a town, and that new status is permanent. Once a city in Virginia reverts to a town, it may not return to an independent city.

Bill Wyatt is a reporter for the Martinsville Bulletin. He can be reached at 276-638-8801, Ext. 236. Follow him @billdwyatt.

**Bill Wyatt**

Reporter

Bill Wyatt is a reporter for the Martinsville Bulletin. He can be reached at 276-638-8801, Ext. 236. Follow him @billdwyatt.

# Federal funding restrictions could force schools to spend millions improving buildings that should be replaced

By **Kate Masters** - June 4, 2021



*A tour of the construction of the new Highland Springs High School in Henrico, estimated to cost about \$80 million. (Henrico County Public Schools)*

Virginia schools received nearly \$2 billion from the federal government in its latest round of COVID-19 relief funding for public education.

But while current guidance allows that money to pay for pandemic-related improvements — including new HVAC systems, window repairs or replacing carpeted areas with tile — it strongly discourages new school construction, according to James Lane, the state’s superintendent for public instruction. Local administrators are worried those restrictions could lead to millions of dollars in spending on school buildings that should be replaced.

“Outside of teacher pay, I can’t imagine there’s a bigger need for public education in the state than school construction,” said Keith Perrigan, the superintendent for Bristol Public Schools and president of the Coalition for Small and Rural Schools of Virginia. “So the fact that we may be forced into a situation where we put good money into old buildings is very frustrating for us.”



It's an issue that's become especially resonant as state legislators consider how to address years of underfunding in public school infrastructure. School construction is a perennial debate in the state's General Assembly, but the most recent session led to the formation of a commission specifically tasked with studying the issue.

At a Thursday meeting, Lane presented new information on the state's current building inventory — the first time data has been updated since a [2013 study](#) ordered by then-Gov. Bob McDonnell. A survey of nearly every local division found that more than half of all school buildings are more than 50 years old (the state's oldest facility was built 184 years ago, according to the Virginia Department of Education).



State Superintendent James Lane in 2016, when he was named superintendent for Chesterfield Public Schools. (NBC12)

Eight years ago, VDOE estimated it would cost roughly \$18 billion to renovate all schools more than 30 years old. The department's latest survey now estimates it would cost the state more than \$24.7 billion to fully replace every building more than 50 years old.

“When we surveyed school divisions, there were more than 1,000 buildings that met that criteria,” Lane told legislators. Some of those could potentially be renovated rather than fully replaced, he said. But a review of capital spending by local districts over the last decade indicated that renovations and additions were only slightly less expensive — and generally don't last as long as a newly constructed facility.

“I would not assume you’d get the same longevity out of renovation as you would with a brand-new school,” Lane said.

## A legacy of underfunding

Understanding how school construction needs reached such massive proportions in Virginia requires going back decades. In a 1993 report, the Joint Legislative Audit and Review Commission — a watchdog for state agencies — found that Virginia’s government began moving away from school construction in the 1930s. That decade saw the passage of the Byrd Road Act, which tasked the state with funding county road construction and passed the responsibility for new school buildings largely onto localities.

By the 1960s, Virginia had moved almost exclusively to providing loans for school construction through the state’s [Literary Fund](#) — a miscellaneous pot derived from criminal fees, forfeitures and unpaid lottery winnings, among other sources — and a financing program known as the [Virginia Public School Authority](#). The state did provide \$55 million a year for school construction to localities from 1999 to 2002, but slashed that assistance to \$27.5 million annually for the next six years. In 2010, that funding was completely removed from the budget.

Today, Virginia [stands alone among neighboring states](#) — including the much-poorer West Virginia and Kentucky — in not providing any direct funding for school construction. “We’re definitely the anomaly in our region,” said Chad Stewart, manager of education policy and development for The Commonwealth Institute for Fiscal Analysis.

In 2017, the General Assembly did allow schools to resume using up to 40 percent of their lottery funds — [a significant contributor](#) to the state’s education spending — for non-recurring expenses including capital projects. But in many rural and low-income districts, that funding is needed to boost per-pupil spending on things like teacher salaries and basic classroom supplies.

“Bristol spends about \$9,000 annually per student,” Perrigan said. “In some parts of the state, they’re spending \$20,000 per student. So we’d be supplanting money that we really should be spending on our kids.”

In recent years, the disparities between wealthy suburban school districts and low-income divisions — often in rural areas of the state — have become a point of tension in the General Assembly. Rather than invest state money in school construction, some legislators have suggested that localities should raise their tax rates to support new projects.

But the reality isn’t that simple. In Bristol, for example, more than 20 percent of residents are living in poverty and the [median household income](#) is only \$37,500





(the state median is \$74,222, according to the U.S. Census Bureau). “To think we can raise property taxes more than what they are – that just doesn’t make sense,” Perrigan said.

That leaves rural and low-income districts at a significant disadvantage when it comes to new school construction, which wealthier localities are often able to fund independently. Low-interest state loans, including through the Literary Fund, are highly competitive. The maximum award is \$5 million, and for several years – from 2010 to 2015 and again in 2017 – the state eliminated school construction funding within the program.

“Even with funding, it’s a drop in the bucket compared to what’s needed,” Stewart said. Lane also pointed out that many low-income localities have specific policies against taking on new debt. In Bristol – once identified as the [most financially challenged locality](#) in Virginia – it’s virtually illegal.

“We are fully at our debt capacity,” Perrigan said. The only way the city could independently fund a new school building is through what’s known as a triple-net lease, which would require it to lease school property to a financier for the construction and then continue to pay operating expenses on the property.

Those disparities are evident in a statewide review of 117 capital improvement plans – detailed outlines of future projects that are generally developed by local school boards and approved by localities. In Northern Virginia, there are 31 new schools planned over the next several years. In [Western Virginia](#), a superintendent’s region that includes Alleghany, Roanoke and Pittsylvania counties, there are zero.

“So the locality is not even foreseeing the possibility of a new school with their funding structure,” Lane told legislators. In some counties, even basic improvements are difficult to manage.

Greg Mullins, the superintendent for Wise County Public Schools, said a flock of buzzards once developed a serious taste for the rubber membrane roof on St. Paul Elementary School. The state’s Department of Wildlife Resources said the birds were a protected species – making eradication impossible – and the district couldn’t afford a new roof at the time. So for months, Mullins tried out various methods of scaring off the birds, from sound deterrents to the inflatable tube men that usually bedeck used car lots.

“We eventually put together the funding to replace that roof,” Mullins said. “But we had that buzzard problem for at least three years.”





*In Wise County, school administrators used inflatables to scare buzzards away from a school roof they couldn't afford to replace. (Keith Perrigan)*

With the challenges facing many local districts, school construction remains a major problem in Virginia – one that's likely to require a major infusion of cash. Henrico's new Highland Springs High, for example, is expected to cost \$80 million. Estimates for new elementary schools in Roanoke County range from \$20 to \$40 million.

Unlike in previous years, though, the discussion is coinciding with an unprecedented influx of federal funding. Zack Robbins, a fiscal analyst for the



House of Delegates, said there's more than \$1 billion remaining for schools from two previous federal aid packages in addition to the \$1.9 billion allocated through the Elementary and Secondary School Emergency Relief Fund (more commonly referred to as ESSER) in the American Rescue Plan. That money is [earmarked specifically](#) for pandemic-related school improvements.

The latest round of funding, though, must be spent by September 2024 and all projects are subject to state approval, according to Lane. Nearly \$380 million statewide must be set aside for programs to address learning loss, and the most recent guidance from the U.S. Department of Education specifically discourages using the money for new school construction.

"There are some concerns from the federal government that the funds may not put a school division in the position where they can complete a building by 2024," Lane said. VDOE has issued tentative approval to some counties for school additions, which have been necessary for some school divisions to maintain three to six feet of social distancing between students.

The bigger concern, for Perrigan and other superintendents, is that current guidelines will force school divisions to pay for improvements on outdated buildings. In Bristol, for instance, the division has requested to use some of their money for modular units and new property. The property acquisition could pave the way for new construction in the future, but it's unlikely the city would be able to fund it independently, Perrigan said.

He'd rather use the money to consolidate and replace three aging elementary schools with a new facility — a long-time goal that the division hasn't been able to afford.

"It's really a moonshot moment for us," Perrigan said. "We could make a multigenerational impact in the city of Bristol if we just had the flexibility to use the money that way."

It's likely to become a political issue when the General Assembly meets this summer for a planned special session on spending more than \$4.3 billion allocated to Virginia through the American Rescue Plan. While education is a frequently touted priority for the majority Democratic legislature, Stewart said there's been little discussion of earmarking additional federal funding for school construction — separate from the more restrictive ESSER funds.

"There's a huge pot of money that could be allocated toward that," he said. Some of the funding is specifically intended to supplement government services that suffered due to revenue loss. Perrigan said he's advocating for a portion of that to be set aside specifically for school construction and renovation — in addition to restoring the state's basic contribution toward capital expenses.



“We should return, at a minimum, to those pre-Recession levels,” he said. “It’s not the state’s responsibility to build new schools for every locality. But it does have to take a share in that.”

#### **Kate Masters**

Kate grew up in Northern Virginia before moving to the Midwest, earning her degree in journalism from the University of Missouri. She spent a year covering gun violence and public health for The Trace in Boston before joining The Frederick News-Post in Frederick County, Md. While at the News-Post, she won awards in feature writing and breaking news from the Maryland-Delaware-DC Press Association, including a best in show for her coverage of the local opioid epidemic. Most recently, she covered state and county politics for the Bethesda Beat in Montgomery County, Md.

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## A Virginia lawmaker wants to make FOIA requests cheaper or free. Some government and police groups aren't happy about it.

By **Graham Moomaw** - May 19, 2021



*Del. Danica Roem, D-Prince William. (Ned Oliver/ Virginia Mercury)*

To make the case for why Virginia's public-records law needs to work better for reporters and citizens alike, Del. Danica Roem told the story of a constituent, Stephanie Minor, who Roem said spent seven months fighting Prince William County Public Schools for access to video footage showing her autistic daughter being dragged off a school bus.

For Minor to see what had happened, the school system [wanted her to pay \\$2,500](#), down from an initial estimate of \$8,800 for the video and staff emails, to cover its costs of producing the video and redacting it to blur out other students.

"I could get an intern at George Mason University to do it for 10 bucks," Roem, a former journalist and Democrat from Manassas who has made FOIA reform a priority issue, told the Virginia FOIA Advisory Council's records subcommittee Tuesday.

To reduce the chances of others facing prohibitively expensive FOIA fees while seeking access to government records, Roem has introduced [legislation](#) requiring public bodies in Virginia to fulfill records requests for free as long as they take no more than two hours of staff time. For more complex requests that take longer, public bodies could only charge the hourly rate of the lowest-paid employee

working on the request or \$33 an hour, whichever is lower. To try to prevent overwhelming officials with FOIA requests, Roem's bill specifies that the free staff time only applies to the first four requests made by any one person within a 31-day period.

"There's a consensus that the current FOIA fee structure is not working," Roem said.

[State law](#) currently allows all public bodies, from state agencies to school boards to police departments, to "make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying or searching for" government records. In the most simple requests, like asking for copies of lawsuits at courthouses, that means the requester has to pay a small fee to cover printing costs. In complex cases involving sensitive internal records that take significant research time and scouring by lawyers before release, it can cost thousands of dollars to gain access to a government paper trail.

For example, the Virginia Department of Health initially cited a cost estimate of \$2,191 when The Virginia Mercury sought records related to [COVID-19 outbreaks in poultry plants](#) last year. The agency waived some of those costs, settling on a final bill of \$1,095.

Though some public bodies are willing to work with requesters to reduce costs, critics see high price tags as a tactic to make FOIA requests so expensive some requesters decide it's simply not worth spending the money to find out what public officials are up to.

But skeptics of Roem's bill speaking at Tuesday's meeting suggested FOIA requests are being used to "harass" public officials. The wrong type of reform, they said, could make things worse.

John Jones, executive director of the Virginia Sheriffs' Association, said he's aware of sheriffs who receive multiple records requests per day.

"And many of these sheriff's offices are very limited in staff," Jones said. "And the cost of it has been the only thing maybe that has deterred some of these."

Phyllis Errico, an attorney representing the Virginia Association of Counties, said the group wouldn't endorse Roem's proposal, though it agrees FOIA fees could use a study, adding that it can take "hours and hours" for governments to find records responsive to a given FOIA request.

Martin Crim, a Northern Virginia lawyer who represents several local governments, said he was aware of one requester who asked for all records dealing with Lake Manassas, which led to a cost estimate of around \$20,000.



“The idea there is if you’re going to give people carte blanche to make local government turn over documents, they’re going to use that tool inappropriately,” Crim said, adding that he sees many FOIA requests as arising from personal vendettas, not matters of public interest.

Virginia State Police Lt. David Ostwinkle, said his agency saw close to 5,000 FOIA requests in 2020, most taking less than two hours.

“Under that proposal, essentially the entire cost of our operation would be absorbed without charge for the requested materials,” Ostwinkle said.

In response to the feedback, Roem said the idea that the government can use cost estimates as a deterrent is the very problem her bill seeks to fix. It’s not the government’s job, she said, to try to determine which requests for public records are being made in good faith and which ones aren’t.

“If we are going to have a bias in that regard, it should be that we err on the side of acknowledging that public documents are public,” Roem said. “As opposed to the hassle, time and cost to government.”

The subcommittee didn’t take any formal action on Roem’s proposal Tuesday, but the full FOIA Council is expected to make a recommendation for the 2022 General Assembly session. Subcommittee members said they wanted more information on how FOIA fees work in other states ahead of another meeting next month.

Though Roem acknowledged some details on her proposal are up for debate as she tries to hammer out a compromise, the Virginia Coalition for Open Government and the Virginia Press Association support the concept of making simple FOIA requests free.

“VPA believes that providing public records to the public is an essential part of an elected government’s responsibility,” said VPA Lobbyist Mark Hickman.

#### **Graham Moomaw**

A veteran Virginia politics reporter, Graham grew up in Hillsville and Lynchburg, graduating from James Madison University and earning a master's degree in journalism from the University of Maryland. Before joining the Mercury, he spent six years at the Richmond Times-Dispatch, most of that time covering the governor's office, the General Assembly and state politics. He also covered city hall and politics at The Daily Progress in Charlottesville. Contact him at [gmoomaw@viriniemercury.com](mailto:gmoomaw@viriniemercury.com)