

**ITEMS FOR CONSIDERATION**  
**IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM**  
**2020 VIRGINIA GENERAL ASSEMBLY**

**September 17, 2019**

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**HOUSING – ADDING PROTECTED CLASSES TO THE VIRGINIA FAIR HOUSING LAW – SEXUAL ORIENTATION AND GENDER IDENTITY**

PROPOSAL:

Initiate legislation to add sexual orientation and gender identity to the list of unlawful discriminatory housing practices in the Virginia Fair Housing Law.

SOURCE:

Fairfax County Human Rights Commission  
July 29, 2019

BACKGROUND:

The Virginia Fair Housing Law prohibits discriminatory housing practices. Virginia Code § 36-96.4 (A) provides that it is unlawful for any person or entity (including lenders) to discriminate against a person in a protected class in real estate-related transactions, including making or purchasing loans and selling, brokering, insuring, or appraising residential property. Currently, the protected classes are “race, color, religion, national origin, sex, elderliness, familial status, or handicap.”

The Fairfax County Human Rights Commission recommends that the County initiate a bill to add a protected class to Va. Code § 36-96.4 (A), seeking to make it unlawful for a person to be discriminated against in a real estate-related transaction because of his or her sexual orientation or gender identity. Since 2001, when the County first sponsored an initiative in response to a report from the Human Rights Commission on the need to add sexual orientation protections to the Fairfax County Human Rights Ordinance, the County’s legislative program has included support for authority to prohibit discrimination in housing and real estate transactions on the basis of sexual orientation. In 2017, this position was modified to also include support for authority to prohibit discrimination in housing and real estate transactions on the basis of gender identity. The County initiatives in the 2001 through 2009 General Assembly (GA) sessions unsuccessfully sought authority for Fairfax County to prohibit discrimination in housing, real estate transactions, employment, public accommodations, credit, and education on the basis of sexual orientation. In addition to these County initiatives, the County has supported numerous bills which sought to make discrimination based on sexual orientation or gender identity illegal. All such bills have been unsuccessful in the GA, as was legislation considered in the 2016, 2017, 2018, and 2019 GA sessions to amend the Virginia Fair Housing Law to include sexual orientation and/or gender identity as protected classes. The Board supported **HB 971** (Guzman) and **SB 423** (Wexton) in 2018, and **HB 1823** (Convirs-Fowler) in 2019.

On June 20, 2017, the Board passed a resolution re-affirming the County’s commitment to promoting a culture of openness, inclusiveness, and acceptance for all persons in Fairfax County, and opposing discrimination based on sexual orientation or gender

identity. On November 21, 2017, the Board of Supervisors adopted One Fairfax, a joint racial and social equity policy with Fairfax County Public Schools, which commits the county and schools to intentionally consider equity when making policies or delivering programs and services.

RECOMMENDATION:

Recommend retaining position in the legislative program which supports the addition of sexual orientation and gender identity as protected classes, including protection from housing discrimination. Also recommend monitoring for introduction of legislation in order to bring related bills to Legislative Committee for consideration by the Board of Supervisors.

## **HOUSING – ADDING PROTECTED CLASSES TO THE VIRGINIA FAIR HOUSING LAW – SOURCE OF INCOME**

### PROPOSAL:

Initiate legislation to add “source of income” as a protected class to the list of discriminatory housing practices in the Virginia Fair Housing Law.

### SOURCE:

Fairfax County Human Rights Commission  
July 29, 2019

### BACKGROUND:

The Virginia Fair Housing Law prohibits discriminatory housing practices. Virginia Code § 36-96.4 (A) provides that it is unlawful for any person or entity (including lenders) to discriminate against a person in a protected class in real estate-related transactions, including making or purchasing loans and selling, brokering, insuring, or appraising residential property. Currently, the protected classes are “race, color, religion, national origin, sex, elderliness, familial status, or handicap.”

The Fairfax County Human Rights Commission recommends that the County initiate legislation to add a protected class to Va. Code § 36-96.4 (A), seeking to make it unlawful to discriminate against a person in a real estate transaction based on a person’s source of income (i.e., housing vouchers). Families using rental assistance programs may face discrimination when searching for housing because owners or landlords may not want to rent housing units to families who plan to use housing vouchers, or other forms of public rental assistance, to pay some or all of the rent. Nearly 218,000 people in 106,000 Virginia households use federal rental assistance to afford modest housing – 68 percent are seniors, children, or people with disabilities. Bills introduced in the 2007, 2008, 2013, 2014, 2018, and 2019 General Assembly (GA) sessions sought to add “lawful source of income” or “source of funds” as a protected class in the Virginia Fair Housing Law declaration of policy (Va. Code § 36-96.1). The Fairfax County Board of Supervisors supported many of these bills, including **HB 1408** (Bourne) and **SB 909** (McClellan) in the 2018 GA, and **HB 1645** (Bourne) in the 2019 GA. All such bills have been unsuccessful in the GA. Additionally, the Virginia Housing Commission studied this issue in recent years and elected not to support legislation.

### RECOMMENDATION:

Recommend monitoring for the introduction of legislation in order to bring related bills to Legislative Committee for consideration by the Board of Supervisors.

**PERSONNEL – ADDITION OF MEMBER TO THE POLICE OFFICERS RETIREMENT SYSTEM (PORS) BOARD OF TRUSTEES**

PROPOSAL:

Increase the number of members on the Board of Trustees for PORS from seven to eight, specifically by adding a third member elected by active PORS members.

SOURCE:

Fairfax County Board of Supervisors  
April 2, 2019

Fairfax County Retirement Systems  
August 1, 2019

BACKGROUND:

The Fairfax County Police Officers Retirement System (PORS) provides defined benefit pension plan coverage for sworn full-time law enforcement officers of the Fairfax County Police Department. PORS was created pursuant to specific authority granted by the General Assembly in 1944, and is governed by requirements in state law.

The cost of providing system benefits is paid from three sources: employee contributions; employer contributions (determined each year by the Fairfax County Board of Supervisors); and earnings from investments made with PORS funds. The employee contribution to PORS is 8.65 percent of salary (overtime pay is not included in the calculation of salary for retirement contributions). The employer contribution is substantial and fluctuates based on the funding requirements of the system. Employer and employee contributions are invested to provide additional income to PORS. Assets are invested as directed by the PORS Board of Trustees.

The PORS Board of Trustees is responsible for monitoring and selecting investments for PORS, approving asset allocation, administering the retirement plan, and making disability retirement determinations, among other duties. Board of Trustees members have a fiduciary duty to the participants and beneficiaries of the plan. The PORS Board of Trustees currently consists of seven members, as follows:

	<b>Number of Members</b>
County Director of Finance, Ex-Officio	1
Elected by Active Members (Officers)	2
Elected by Retired Members (Officers)	1
Appointed by Board of Supervisors	3
<b>Total</b>	<b>7</b>

Adding another member elected by active PORS members would increase the representation for active PORS members to three, giving equal weight to Board of Trustees' members elected by active members and those appointed by the Board of Supervisors. Although this would shift some control of the Board of Trustees away from the Board of Supervisors, four of the seven seats would continue to be held by the County Director of Finance and three Board of Supervisors-appointed members. It is important to note that six of the ten seats on the other two Fairfax County Retirement Boards of Trustees (the Uniformed Retirement System (URS) and the Employees' Retirement System (ERS)) are Board appointments and agency directors. However, individuals in PORS do not contribute to Social Security and do not receive Social Security benefits based on their service (unlike individuals in URS or ERS), so PORS provides their full retirement benefit, leading to their interest in increased representation on the PORS Board of Trustees.

Increasing the size of the Board of Trustees requires state legislation. Because the enabling authority for PORS pertains to any county with the urban county executive form of government, state legislation seeking to make changes to the PORS Board of Trustees' membership would only affect Fairfax County. An alternative to expanding the size of the Board of Trustees could be for the Board of Supervisors to fill one of its slots by appointing an active PORS member, though such a decision would rest with each Board of Supervisors.

RECOMMENDATION:

Board discussion.

**PERSONNEL – POLICE OFFICERS RETIREMENT SYSTEM (PORS) PURCHASE OF MEMBERSHIP SERVICE CREDIT**

PROPOSAL:

Allow police officers who were previously employed in a position covered by the Fairfax County Employees' Retirement System (ERS) or Fairfax County Uniformed Retirement System (URS) to purchase membership service credit in PORS.

SOURCE:

Fairfax County Board of Supervisors  
April 2, 2019

Fairfax County Retirement Systems  
August 1, 2019

BACKGROUND:

Fairfax County has three retirement systems – the Employees' Retirement System (ERS), the Police Officers Retirement System (PORS), and the Uniformed Retirement System (URS). Fairfax County employees participate in one of the retirement systems depending on their employment type – most County employees participate in ERS, firefighters and sheriffs (among others) participate in URS, and police officers participate in PORS. Employees cannot participate in more than one system at any given time, but if employees move from one type of employment to another they can switch from one retirement plan to another. When an employee changes jobs and becomes eligible to participate in a different County retirement system, he/she must cash out his/her investment in the first system (the employee share of retirement contributions) to enroll in the new system.

Currently, members of ERS and URS who move between systems are entitled to purchase membership service credit for service rendered while a member of another County retirement system. For example, if an employee in ERS moves to a position covered by URS, that employee may purchase service credit in URS for the time they have worked for the County, rather than losing credit for those years worked in a different retirement plan. Employees in PORS who transfer to ERS or URS are also able to purchase service credit in either of those systems for service rendered while a member of PORS. However, employees who move from ERS or URS to PORS are prohibited from purchasing service credit for their service in ERS or URS.

Below are some examples of what the cost to an employee seeking to transfer to PORS would be:

Example A	Transfer from ERS plan A to PORS	1.52 years of service being purchased <i>(Timeframe: 2003-2005)</i>	Cost is \$15,100
Example B	Transfer from ERS plan B to PORS	1.52 years of service being purchased <i>(Timeframe: 2007-2008)</i>	Cost is \$6,617
Example C	Transfer from URS plan D to PORS	13.54 years of service being purchased <i>(Timeframe: 2002-2015)</i>	Cost is \$223,973

Allowing employees with previous service to purchase service credit in PORS would ensure similar benefits exist across the systems. It is important to note that, because the benefit levels and contribution rates of PORS are greater than those of the ERS and URS (due to PORS members' exemption from Social Security), purchasing membership service credit in PORS will likely be quite expensive. Further, allowing such a change could create unintended consequences if it encourages employees to begin their careers with the Sheriff's Office, for example, and then transfer to a PORS-covered position (PORS has a higher retirement multiplier, as well as an automatic surviving spouse/child benefit, which does not exist in ERS or URS).

RECOMMENDATION:

Board discussion.