

ITEMS FOR CONSIDERATION
IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM
2022 VIRGINIA GENERAL ASSEMBLY

October 26, 2021

INDEX

ITEMS FOR INITIAL CONSIDERATION

Renewable Energy – Virtual Net Metering for Local Governments	2
Libraries – Access and Pricing for Digital Literary Materials	4
General Government – Virginia Freedom of Information Act (VFOIA) and Residential Traffic Program Balloting	7
General Government – State Facility Community Engagement	9

RENEWABLE ENERGY – VIRTUAL NET METERING FOR LOCAL GOVERNMENTS**PROPOSAL:**

Initiate legislation to amend Virginia Code § 56-585.1:8, regarding municipal net metering, to allow for the participation of localities that do not own and operate their own renewable energy generation facilities and to amend certain other provisions to encourage local government participation.

SOURCE:

Office of Environmental and Energy Coordination (OEEC)
August 27, 2021

BACKGROUND:

Increasing energy efficiency and renewable energy while reducing the emission of greenhouse gases has been a long-standing County priority. Enactment of the Virginia Clean Economy Act by the 2020 General Assembly (GA), which sets state goals of carbon-free electricity generation by 2045 and 2050 in the service areas of Virginia's largest investor-owned electric utilities, was an important step towards reducing fossil fuel emissions in Virginia, and one Fairfax County strongly supported. However, reducing fossil fuel emissions is a substantial undertaking and customers can also be active participants in reducing their own emissions. Advances in solar generation technologies and storage are making such customer action increasingly feasible. Of particular interest to local governments is the generation of renewable energy through net metering programs, which allow eligible customers to offset their power consumption by selling self-generated renewable power back to the energy grid. Such programs have increased in popularity in recent years.

In general, state law and practice impose numerous restrictions on the sizing of a customer's electric generating facility. Some restrictions limit the size of the systems owned by non-residential customers to either two or three megawatts, depending on the applicable statute. Other restrictions require that the electricity produced by the generating facility be used at the site at which it is generated. Additionally, what constitutes a site is narrowly determined – for example, a single parcel that is crossed by a public right-of-way becomes two sites for the purposes of this restriction. As a result, a solar-generating facility located in the Dominion Energy service area needs to be sized to meet the electricity demand of only the site on which it is located. These restrictions preclude the installation of large systems that could generate renewable energy in a cost-effective manner to offset the electricity usage of multiple properties owned by a single customer, a practice known as virtual net metering.

In 2019, the GA enacted legislation (**HB 2792/SB 1779**) to establish a municipal net metering pilot program, in an attempt to create an exception to the requirement that renewable energy be used at the site at which it is generated through the use of virtual net metering. Unfortunately, several key aspects of the pilot program remain unfavorable to local governments, as evidenced by the fact that County staff are unaware of any local government participants. Most significantly, participation is limited only to localities that own and operate their own solar installations; facilities that are installed and operated pursuant to power purchase agreements (PPAs) with third-party vendors are ineligible. Other impediments include system size limits that are inconsistent with the state's net metering provisions, a very limited bill credit, and the obligation to bear undefined administrative costs.

On July 13, 2021, Fairfax County adopted a declaration committing to become energy carbon neutral by 2040, while significantly reducing operational greenhouse gas emissions in the building and energy, transportation, and solid waste sectors. To meet this carbon neutral goal, the County also adopted an update to its Operational Energy Strategy, which includes the carbon neutral goal in a new greenhouse gas emissions reductions focus area, as well as accelerated targets across many of the remaining focus areas (including energy use and efficiency, and renewables). The current restrictions hinder Fairfax County from achieving its carbon neutral goal, and allowing virtual net metering on reasonable terms is a critical component of reaching that goal. To ensure reasonable terms for Fairfax County and other interested jurisdictions, legislation is necessary to amend the statutory provisions governing the municipal net metering pilot program.

RECOMMENDATION:

Initiate. Direct staff to begin reaching out to various stakeholders to research and work through the various issues restricting the County's use of virtual net metering and possible legislative solutions.

LIBRARIES – ACCESS AND PRICING FOR DIGITAL LITERARY MATERIALS

PROPOSAL:

Initiate legislation to add language to the Code of Virginia requiring all publishers selling eBooks and eAudiobooks (“digital literary materials”) in Virginia to also sell those materials to libraries in Virginia at reasonable costs and terms of access.

SOURCE:

Fairfax County Public Library Board of Trustees
July 14, 2021

BACKGROUND:

The Fairfax County Public Library (FCPL) serves all residents of Fairfax County and the City of Fairfax through the operation of eight regional libraries, fourteen community libraries, and Access Services (which offers customized services for residents with visual and physical disabilities). More than 1.1 million in-person visits were made to FCPL in FY 2021, with more than 10 million items borrowed, including nearly 2.5 million digital literary titles. FCPL has been providing readers 24/7 access to eBooks and audiobooks for several years, and reader interest and usage has grown every year, reflecting popular trends and interests both locally and across the country – in 2019, when FCPL first announced a record-breaking two million digital book checkouts that year, it was one of only 73 systems around the world (including standalone libraries and consortia) that surpassed one million checkouts through Rakuten OverDrive, the leading digital reading platform.

That growth illustrates the continued importance of library lending of eBooks and audiobooks, along with the creative ways the library has served the community with digital services. This became all the more important when the COVID-19 pandemic arrived, requiring the closure of FCPL facilities. Digital materials became a critical lifeline to many whose lives were upended by the pandemic. Instead of visiting a library in person, readers can access the library’s digital collection online, instantly borrow titles, and start reading or listening for free with a valid library card. All titles will automatically expire at the end of the lending period and there are no late fees.

Unfortunately, acquiring digital library materials can be difficult and expensive, and is often very different from the system for acquiring print materials. Typically, when FCPL purchases traditional books, they pay less than a consumer would because of the volume of goods being purchased. Publishers also do not restrict FCPL from purchasing as many copies of a traditional book as they would like to meet community demand. Conversely,

to acquire eMaterials, FCPL purchases the right to license a book (not the actual book itself), and that license is typically limited to a certain number of uses, or a particular term. After the licensing term expires, the item disappears from the virtual library – if FCPL wants to continue to provide access to that book it must repurchase it. Additionally, public libraries like FCPL typically pay prices substantially higher than what a consumer would pay for the same item (sometimes as much as three to five times higher). Further, some publishing companies refuse outright to sell to libraries. Together, these factors result in decreased public access to digital library materials. These types of barriers affect other types of libraries as well, including those in public schools (like Fairfax County Public Schools), as well as university and law libraries.

Over the past several years, the publishing industry’s practices regarding the sale of licenses for digital media – such as eBooks and audiobooks – to public libraries have come under scrutiny. These practices have drawn the attention of both federal and state governments. As a result, a handful of states have proposed legislation regarding the sale of eBook licenses within the state. Those who oppose the states’ proposed legislation claim it violates federal copyright law and certain clauses of the United States Constitution. Maryland is the only state that has successfully enacted legislation on this issue, though New York’s legislature passed a bill that has not been acted upon by the Governor.

At the federal level, in 2020, the American Libraries Association submitted testimony on this topic to the U.S. House Judiciary Committee's Subcommittee on Antitrust, Commercial, and Administrative Law, as part of an “Investigation of Competition in Digital Markets” report. More recently, Senator Ron Wyden (D-OR) and Representative Anna Eshoo (D-CA) sent a letter to the “big 5” publishing companies with a list of questions on eBook contracts with libraries. The legislators asked the publishing companies for information on revenues from, and pricing for, both physical and eBooks, as well as current eBook licensing terms and lending restrictions for academic and public libraries. It is likely that there will be additional discussions on this matter at the federal level in light of the attention this issue has begun to receive.

Existing Virginia Code does not address this issue, and the Virginia General Assembly does not appear to have previously considered legislation on this topic. Imposing a requirement for publishers to sell to libraries does raise a number of implementation questions. For example, it is unclear how it would be determined if a publisher’s costs and terms of access are “reasonable,” as a publisher would potentially be negotiating individually with each public library system in the Commonwealth. It is also unclear which entity would be responsible for enforcing such a requirement – while New York has identified the Attorney General’s office as the central enforcement agency for its pending legislation, Maryland does not appear to have a clear mechanism for enforcing the new law. Further, some publishers could simply decide not to do business in Virginia, rather than negotiate new terms.

RECOMMENDATION:

Direct staff to conduct additional research on this issue, including exploring federal actions. Also, direct staff to add language to the Libraries position in the draft 2022 Legislative Program in support of reducing barriers to libraries acquiring eMaterials under reasonable terms and costs. Finally, direct staff to bring related legislation on this topic to the Board for consideration during the 2022 General Assembly session.

**GENERAL GOVERNMENT – VIRGINIA FREEDOM OF INFORMATION ACT (VFOIA)
AND RESIDENTIAL TRAFFIC PROGRAM BALLOTING**

PROPOSAL:

Initiate legislation to amend the Virginia Freedom of Information Act (VFOIA) to exempt personal information submitted as part of a residential traffic program ballot process.

SOURCE:

Fairfax County Department of Transportation
July 2021

BACKGROUND:

In a congested, suburban environment like Fairfax County, transportation safety is critically important for drivers, bicyclists, and pedestrians. A variety of measures can be used to address such issues, as traffic in and around neighborhoods can create significant challenges. One approach in particular, traffic calming, seeks to decrease the impacts of traffic and enhance safety in neighborhoods by placing devices (including speed humps, speed tables, raised pedestrian crosswalks, chokers, and median islands) in or along the roadway to reduce vehicle operating speeds to the posted speed limit without restricting access.

The Virginia Department of Transportation (VDOT) provides guidance and procedures for local communities to pursue traffic calming or cut-through restrictions in neighborhoods on streets maintained by VDOT. Local residents, homeowners associations (HOAs), or civic associations can initiate a request to their locality for traffic calming or cut-through restrictions. Per VDOT's guidance, the locality conducts a petition, survey, or other process that ensures the accurate measure and documentation of support. Only occupied residences or businesses in the survey area are included in assessing community support (for example, signing a petition or casting a ballot). Each residence or business is allowed a single signature or vote to indicate agreement or disagreement with the proposed traffic calming or cut-through restriction plan measure, and more than 50 percent of the occupied residences or businesses in a survey area must support the traffic calming or cut-through restriction plan for it to be implemented.

The Fairfax County Department of Transportation's (FCDOT) Residential Traffic Administration Programs (RTAP) administers five residential traffic programs, including the Traffic Calming Program and the Cut-Through Restriction Program. The Traffic Calming Program generally uses physical devices (such as speed humps and raised median islands) to reduce speed on the roadway, while the Cut-Through Restriction Program deals with excessive cut-through traffic on state-maintained residential roads, and generally uses time of day turn restriction signs as a way to reduce the volume of

traffic on a roadway (more aggressive physical devices can be used to prevent access where needed).

Consistent with VDOT requirements, both programs employ a ballot process using street addresses and names associated with the identified address to help determine community support. Participants can hand deliver, mail, or email their ballots to the Fairfax County Board of Supervisors' office for the magisterial district in which they live. The information is then compiled to determine the success or failure of the balloting on that particular traffic calming or cut-through restriction proposal.

As is the case with many documents or records submitted to the County, traffic calming and cut-through restriction ballots are considered public documents under VFOIA. As a result, the names and street addresses of the individuals who participate in the ballot process are also subject to VFOIA, as well as information about how they voted on a particular traffic calming or cut-through restriction proposal. Numerous County residents have expressed surprise and concern that their personal information can be made public as part of this process. As a result, County staff have recently added notices to ballots to ensure residents are aware that a participant's personal information is subject to VFOIA; however, traffic calming and cut-through restriction measures can become contentious, and residents may still have concerns about participating if they know their personal information will be made publicly available. Because the ballot change is fairly new, County staff are still evaluating the impacts on participation in the overall traffic calming process.

RECOMMENDATION:

Direct staff to conduct additional research on options for protecting the personal information of participants in a traffic calming ballot process, including the possibility of legislation allowing a VFOIA exemption. Also, direct staff to reach out to relevant stakeholders and bring the issue back for discussion with the Board of Supervisors at the November Legislative Committee meeting.

GENERAL GOVERNMENT – STATE FACILITY COMMUNITY ENGAGEMENT

PROPOSAL:

Support legislation to ensure the Commonwealth engages with communities that will potentially be affected by the establishment or construction of state facilities, allowing such communities to share feedback through a public process.

SOURCE:

Fairfax County Board of Supervisors
Spring 2021

BACKGROUND:

Public engagement is an important component in the local land use process, allowing residents within affected communities to express their support or concerns with particular projects prior to development. By sharing that feedback early in the process, adjustments are often made that address community concerns. Additionally, the adjustments often enhance the project overall, as residents who live in the area of the proposed change have a unique understanding of the surrounding community, including commuting patterns, business and neighborhood activity, school activities, and other details specific to day-to-day life in individual communities.

When the Commonwealth constructs a facility on state-owned land which is being used for a public purpose, it is not subject to local zoning regulations. As a result, there are no corresponding public notice or public hearing requirements for state projects, as there would be for projects undertaken by a private developer, though the impacts to the surrounding area could be equally significant. This can prevent communities located around potential state facilities from having the ability to express their support or concerns in a timely manner. Ensuring that a public meeting is held in an area potentially being impacted by a state project in order to receive feedback on the proposal would allow the local community to share comments and concerns with the state, as well as to ask questions about the proposed project. Such a practice could lead to a more cooperative, productive process for both the Commonwealth and the community.

RECOMMENDATION:

Direct staff to add language to the Local Authority position in the draft 2022 Legislative Program encouraging the Commonwealth to engage with communities affected by the establishment of state facilities on state-owned property, including hosting a public meeting to receive community feedback on the proposed project.