

ITEMS FOR CONSIDERATION
IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM
2019 VIRGINIA GENERAL ASSEMBLY
September 18, 2018

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ELECTIONS – JUNE PRIMARY DATE

PROPOSAL:

Support/initiate legislation to move the date of the June primary from the second Tuesday to the third Tuesday.

SOURCE:

Fairfax County Electoral Board
August 17, 2018

BACKGROUND:

In Virginia, the primaries for Congressional, state, and local November general elections are held the second Tuesday in June (the year immediately after redistricting, such primaries are in August to provide sufficient time for the General Assembly (GA) to complete redistricting). Presidential primaries and primaries for May general elections are held the first Tuesday in March. As is the case in many localities, most Fairfax County precincts (165 of 243 total precincts) are in schools, because they are well-suited to meet federal, state, and local requirements (e.g., accessibility, sufficient parking, technology, etc.). As a result, elections held when school is in session may lead to competing priorities of secure access for students versus unimpeded access for voters. Many local school boards, though not all, close school for the general election in November, but public schools typically are in session during the June and Presidential primaries. Though school boards could choose to cancel school on all election days, closing schools in June creates potential challenges, as the final weeks of school are often filled with state mandated testing, as well as many end-of-year activities.

In 2016, the Fairfax County School Board canceled school for the 2016 Presidential primaries, following security concerns raised by the Fairfax County Electoral Board and Board of Supervisors. During the June 2018 primaries, Fairfax County election officials from 20 school-located precincts reported security concerns, representing a significant increase compared to previous years when there were typically two or three complaints. The chief concern reported was school administrators' desire to lock building doors, requiring someone to be present to let voters in – while such actions help ensure student safety, they also impede free access to polling locations, possibly raising legal concerns. Additionally, holding June elections after the school year ends could make voting easier and smoother. During the June 2018 primaries, Fairfax County election officials from over 60 school-located precincts reported that end-of-year activities contributed to a lack of voter parking, and spaces within schools allocated to voting were often very small or inconveniently located. Election officials from at least 10 schools reported concerns about impeded voter access due to bus drop-off and delivery.

Moving the June primary to the third Tuesday could help address many of these issues, particularly related to security, if the primary would be held after the school year

ends. One challenge to such a proposal is that in Virginia, state law requires local school boards to establish school calendars that begin after Labor Day, unless the jurisdiction has received a waiver from the Virginia Board of Education. There are currently four types of waivers that may be granted, but the one most commonly discussed relates to weather – a school district is eligible to begin school before Labor Day if schools in the district are closed an average of eight days per year during any five of the previous ten years due to severe weather conditions, energy shortages, power failures, or other emergency situations. To maintain the waiver, school divisions must re-certify annually that they meet the criteria for a pre-Labor Day opening.

For the 2017-2018 school year, 85 of 132 school divisions in Virginia had a pre-Labor Day waiver, including Fairfax County, which received a weather-related waiver for that year and the two subsequent school years. School divisions that have a waiver in place would likely complete the school year prior to the June primary if the election were held on the third Tuesday, though school divisions without a waiver for a particular year would likely not have completed the school year prior to the election.

The GA has considered legislation allowing local school divisions to set their own school calendars numerous times, but such efforts have been unsuccessful. Legislation moving the June primary to the third Tuesday has also been considered by the GA, but has not been successful, due in part to concerns about voter turnout during summer vacation. However, as school security issues continue to receive heightened attention, related issues could lead to a different outcome in the future.

RECOMMENDATION:

The House Select Committee on School Safety and other groups are considering this proposal and a bill has already been introduced for consideration by the 2019 GA. Direct staff to bring related bills to Legislative Committee for consideration by the Board of Supervisors.

ENVIRONMENT – DISPOSABLE BAG LITTER ABATEMENT

PROPOSAL:

Initiate legislation to give local governing bodies the option to (a) collect a \$0.05 fee/tax where disposable plastic and/or paper bags are provided, or (b) ban plastic bags. Certain bags could be exempted (i.e. durable plastic or paper bags with handles; bags for meat, fish, poultry, ice cream, newspapers, dry cleaning, or leftover restaurant food; plastic used to carry alcoholic beverages or prescription drugs; and, multiple plastic bags sold in packages and intended for use for garbage, pet waste, or leaf removal). This proposal could be statewide or limited to localities in Planning District 8.

SOURCE:

Environmental Quality Advisory Council
July 30, 2018

BACKGROUND:

Both plastic and paper bags present environmental challenges. While plastic bags may be recycled or disposed of so that they are not released to the environment, many plastic bags end up in fields, streams, lakes, rivers and oceans, where they present a threat to wildlife and aquatic organisms because they do not completely degrade. A 2008 District of Columbia Department of Environment (DDOE) study of Anacostia tributaries found that plastic bags accounted for nearly 50% of litter items; and, since 2006, the Friends of Little Hunting Creek in Fairfax County have reported picking up 3,597 bags of trash and recyclables, including thousands of discarded plastic bags. While paper bags are sometimes viewed as posing fewer environmental risks, discarding paper bags after one use is resource- and energy-intensive in terms of consuming trees, harvesting them, and manufacturing the paper.

Attempts to address the issue of single-use bags have varied across the nation. Some jurisdictions, such as Boston, Seattle, and Portland, Oregon, have favored an outright ban on retailers providing plastic bags to customers. In 2016, California became the first state to institute a statewide ban on single-use plastic bags, while also imposing a \$0.10 minimum charge for recycled paper bags, reusable plastic bags, and compostable bags at certain locations. Other jurisdictions have attempted to discourage use of single-use bags through the imposition of a fee or tax per bag. In June 2009, the District of Columbia's City Council voted to impose a 5-cent tax on paper and plastic bags – businesses subject to the tax may keep one penny for each bag, unless they offer a discount to consumers who bring reusable bags, in which case they may keep two cents. The remainder of the 5-cent levy funds various programs designed to clean up the Anacostia River and provide reusable bags to District residents, with priority to assisting seniors and low-income residents. Similarly, in May 2011, the Montgomery County Council voted to impose a 5-cent tax on paper and plastic bags. Businesses subject to the tax may retain one penny for each bag, with revenues from the tax deposited into the

County's Water Quality Protection Charge Fund. By contrast, several states, including Arizona, Florida, and Indiana, have passed laws preempting local governments from enacting their own plastic bag bans or fees.

There have been numerous efforts in Virginia to impose bans or taxes/fees on the use of plastic and/or paper bags, or provide localities with the option to do so, with legislation considered every session since at least 2008; however, all such efforts have been unsuccessful in the General Assembly. Fairfax County has had support for reducing environmental contamination from paper and plastic bags in the legislative program since 2010.

RECOMMENDATION:

Direct staff to retain the existing "Reducing Environmental Contamination from Plastic and Paper Bags" in the 2019 legislative program. Also direct staff to monitor for introduction of specific legislation in 2019, 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:

Support legislation to amend the Virginia Fair Housing Law to add source of income as a class protected from discrimination in real estate-related transactions.

SOURCE:

Fairfax County Human Rights Commission
August 17, 2018

Fairfax Area Disability Services Board
August 1, 2018

BACKGROUND:

In fall 2017, the Fairfax County Board of Supervisors' Legislative Committee considered a very similar recommendation from the Fairfax County Human Rights Commission. 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 support 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). The Fairfax Area Disability Services Board also expressed support for this proposal. 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. Bills introduced in the 2007, 2008, 2013, 2014, and 2018 General Assembly (GA) sessions sought to add "lawful source of income" 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 **HB 2744** (Englin) in the 2007 GA, and **HB 1408** (Bourne) and **SB 909** (McClellan) in the 2018 GA. All such bills have been unsuccessful in the GA. Additionally, the Virginia Housing Commission studied the issue in recent years and elected not to support legislation.

RECOMMENDATION:

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

PUBLIC SAFETY – PROTECTIVE ORDERS AND WEAPONS

PROPOSAL:

Proposal A: To further protect victims of domestic violence and sexual assault, support actions to clarify current code and recommend new language to Virginia Code § 18.2-308.1:4 to require the immediate surrender of firearms (in addition to current concealed gun permits) directly to law enforcement while subject to a protective order (PO). Current law permits PO respondents to surrender their firearms to a family member or friend within a day's time rather than directly to law enforcement. *Adopted by the DVPPCC in July 2018*

Proposal B: Extend the prohibition on knowingly possessing a firearm while subject to a PO to include victims beyond intimate partners, family members and members of the same household.

Proposal C: Allow for greater judicial discretion in granting an increase in the time period of POs beyond the current two years to victims of domestic and sexual violence, assault and battery, and stalking.

Proposal D: Strengthen the legal mechanisms for surrender of firearms by family abuse PO respondents.

SOURCE:

Domestic Violence Prevention, Policy, & Coordinating Council (DVPPCC)
July 31, 2018

Fairfax County Board of Supervisors
August 27, 2018

BACKGROUND:

Overview of Protective Orders

A protective order (PO) is a civil order issued by a magistrate or judge to protect the health and safety of an abused or threatened person and his/her family or household members (pressing criminal charges is not required to obtain a PO). The person needing protection and filing for a PO is the "petitioner," and the person the PO is filed against is the "respondent." A family abuse PO is issued on the basis of family abuse, while a non-family abuse PO addresses people who are not in a family or household relationship. The non-family abuse PO used to address only cases of stalking, but it is now available to anyone who meets the statutory requirements. POs involving family abuse or a party under 18 are filed through the Juvenile and Domestic Relations District Court (JDRDC), and requests for non-family abuse POs are made through the General District Court (GDC). Both types of POs can be issued as emergency (EPO), preliminary (PPO), or for

up to two years (Two-Year PO). EPOs expire at 11:59 p.m. on the third day following issuance if the court is in session or, if the court is not in session, at 11:59 p.m. on the next day that the court is in session. PPOs are in effect for up to 15 days from the date of issuance. A Two-Year PO (sometimes called a “final” or “permanent” PO), as its name suggests, is issued for a specified period of time up to a maximum of two years, but may be extended an additional two years at the petitioner’s request if a judge deems it necessary – there is no limit to the number of extensions that can be granted by a judge.

In Fairfax County, the Sheriff’s Office is the primary law-enforcement agency responsible for serving POs and entering them into the Virginia Criminal Information Network (VCIN), with the exception of EPOs obtained by Fairfax County Police Department (FCPD) officers. FCPD becomes involved when an FCPD officer makes an arrest for assault against a family or household member, or when an officer has probable cause to believe that a danger of family abuse exists. The officer then submits a petition for an EPO to a magistrate (pursuant to FCPD General Order 601.4) – if approved, the officer attempts to serve the respondent as quickly as possible. Though FCPD primarily serves EPOs, FCPD may also serve PPOs or Two-Year POs.

Once a PO has been served, the respondent is responsible for abiding by the terms of the order, which may contain provisions prohibiting the respondent from visiting the petitioner’s property, contacting the petitioner, and/or committing further acts of violence, among others. Respondents are also prohibited from purchasing or transporting any firearm while the order is in effect, and those with a concealed handgun permit are prohibited from carrying concealed firearms during the order (their permit must be surrendered to the court entering the order) – violations are a class 1 misdemeanor. Additionally, a respondent who violates any provision of a PO while armed with a firearm or other deadly weapon is guilty of a Class 6 felony.

2016 General Assembly Compromise

Numerous bills on this topic have been considered by the General Assembly (GA) over the years, typically with little success, as has been the case with gun control legislation overall. However, the 2016 GA reached a bipartisan compromise on gun legislation, which included the addition of a provision prohibiting respondents to family abuse Two-Year POs from knowingly possessing firearms (with an exception for the 24 hours after being served, to allow the respondent to sell or transfer any firearms to a person who is not otherwise prohibited by law from possessing such firearm) – a violation constitutes a Class 6 felony (**HB 1391** (Murphy)/**SB 49** (Howell)). During the 2016 GA, some advocacy groups raised concerns that **HB 1391/SB 49** did not set forth a process for the surrender of firearms.

To implement this legislation (which took effect July 1, 2016), a Fairfax County staff work group developed a process, including a form for JDRDC to provide to family abuse Two-Year PO respondents, which notifies respondents that they may surrender their firearms to the Sheriff’s Office to meet the terms of the PO (the Sheriff’s Office has developed a form as well). From July 2016 – August 2018, the Sheriff’s Office has received a total of

26 firearms surrendered by a respondent to a family abuse PPO (pursuant to a judge's order) or Two-Year PO. It is important to note that data is not available on the number of firearms transferred or sold to other entities, as the law provides no mechanism to capture such information.

Other Legislation Related to Protective Orders

In recent years, the GA has studied and considered numerous bills relating to POs. Following a 2010 Virginia State Crime Commission study, the 2011 GA passed legislation making POs issued by GDC more similar to those issued by JDRDC and eliminating the requirement that a criminal warrant be issued to obtain a PO, among other provisions. More recently, the 2018 GA considered numerous bills relevant to the aforementioned proposals. **HB 1335** (Bourne)/**SB 952** (Stuart) would have provided authority for the court, after finding a person guilty of certain felonies including murder and rape, to enter a PO for any period of time, including for the lifetime of the defendant. A pair of identical bills (**HB 651** (Murphy)/**SB 797** (Howell)) would have applied the prohibition on knowingly possessing a firearm to non-family abuse Two-Year PO respondents. All measures were unsuccessful.

Another bill considered by the 2018 GA sought to address concerns voiced by stakeholders about gaps in the 2016 law and different implementation approaches throughout the state – **SB 811** (Marsden) would have codified a process for family abuse PO respondents' surrender of firearms. The bill would have required the court to order a family abuse Two-Year PO respondent to surrender their firearms to local law enforcement, or sell or transfer their firearms to a dealer or any other person not prohibited from possessing firearms, including providing a written certification once they were no longer in possession of any firearms. Local law-enforcement agencies would have been required to keep surrendered firearms for the duration of the order. Senate Courts of Justice Committee members expressed concern about this approach, and sent the bill to the Committee on District Courts for study – that Committee is scheduled to hear a staff briefing in October 2018.

Fairfax County Cases

To further shed light on the issue of PO violations and possession of firearms, data from other Fairfax County agencies is helpful, although the existing data has significant limitations.

- FCPD identified three cases (one related to family abuse, one related to child protective services, and one unknown) from July 2016 – August 2018 involving an active PO prohibiting possession or transportation of a handgun and a respondent in possession of a handgun.
- Fairfax County JDRDC recorded 12 preliminary PO violations of all types from January – July 2017 (the number of total firearm-related violations is unknown), with an additional complaint recorded under the prohibition related to firearms and PO respondents.

- Fairfax County GDC identified a total of 75 PO violations from August 5, 2015, through mid-September 2018 – five were for purchasing and transporting a firearm (violations for possession of a firearm are not included, as there is no prohibition on possession of firearms for non-family abuse Two-Year PO respondents).

RECOMMENDATION:

Taken together, these proposals would make significant changes to the laws governing protective orders and need to be comprehensively analyzed to ensure the effects of the proposals and potential implementation challenges are clearly understood. The Fairfax County's Commission for Women is researching and analyzing these proposals; at present, the Commission has not taken a position on the proposals, though additional discussion at a future meeting is possible.

Proposal A: Removes the family abuse Two-Year PO respondent's ability to sell or transfer their firearm(s) to anyone legally allowed to possess firearms within 24 hours, instead requiring that respondents immediately surrender firearms (in addition to current concealed gun permits) directly to law enforcement.

Recommendation: The proposal that would require firearms to be immediately surrendered raises implementation concerns. For example, a PO respondent who owns firearms but does not physically possess them when served with the family abuse Two-Year PO would be in violation of the requirement to immediately surrender firearms – a process would need to be established to address such situations. Do not recommend pursuing at this time. The proposal that would require firearms to be surrendered directly to law enforcement should be further researched; direct staff to discuss this proposal with stakeholders, assess possible obstacles to implementation, and bring back to Legislative Committee for further discussion and an update on the Committee on District Court's review of **SB 811**.

Proposal B: Extend the prohibition on knowingly possessing a firearm while subject to a PO to include victims beyond intimate partners, family members and members of the same household.

Recommendation: Further research is needed; direct staff to provide an update at a future Legislative Committee meeting.

Proposal C: Allow for greater judicial discretion in granting an increase in the time period of POs beyond the current two years to victims of domestic and sexual violence, assault and battery, and stalking.

Recommendation: Direct staff to discuss this proposal with stakeholders, assess possible obstacles to implementation, and bring back to Legislative Committee for further discussion.

Proposal D: Strengthen the legal mechanisms for surrender of firearms by family abuse PO respondents.

Recommendation: This proposal is similar to Proposal A in that both seek to strengthen the existing law prohibiting family abuse Two-Year PO respondents from knowingly possessing a firearm, though Proposal D is broader and could encompass various approaches. Direct staff to focus on the proposal requiring family abuse Two-Year PO respondents to surrender firearms directly to law enforcement.

Additionally, Fairfax County staff are re-convening the work group that was formed after the passage of the 2016 law to identify action steps that do not require legislation to improve implementation efforts. Direct this work group to include in their scope of work opportunities to strengthen data collection, and report back to the Board of Supervisors' Public Safety Committee on their overall progress.

**TRANSPORTATION – SIX-YEAR SECONDARY SYSTEM CONSTRUCTION
PROGRAM PUBLIC HEARING**

PROPOSAL:

Initiate legislation to remove or amend the public hearing requirements for the annual approval of the Six-Year Secondary System Construction Program (SSYP).

SOURCE:

Fairfax County Board of Supervisors
June 19, 2018

BACKGROUND:

Virginia Code §33.2-331 requires that the governing body of each locality work with the Virginia Department of Transportation (VDOT) to annually update an SSYP. As part of this process, the local government body is required to conduct a public hearing on the proposed plan prior to adoption of the program. The Fairfax County Board of Supervisors conducts an annual hearing in accordance with this requirement.

Due to changes in funding formulas implemented in Virginia over the past several years, state roadway funding is largely allocated through the Commonwealth's Smart Scale and State of Good Repair programs. As a result, state funding for secondary road construction has plummeted – from approximately \$29 million in 2004 to zero today. Additionally, the 2016-2018 biennium budget required any secondary road funds to be consolidated to fully fund and advance priority transportation projects within the respective district or locality, unless they were committed and expected to be expended by January 1, 2018. The budget also required that any secondary funds that were allocated prior to 2010 and remained unspent as of January 1, 2018, be deallocated and transferred to the State of Good Repair Program, unless such funds are allocated to a fully funded and active project. Therefore, the County can continue to utilize those secondary funds previously committed to projects (through a process that included a public hearing), but after 2018 the state secondary road construction program will be subsumed into the Commonwealth's Smart Scale and State of Good Repair programs. The programs are adopted as part of the Six-Year Improvement Program (SYIP), following their respective prioritization processes and public hearings in each of the Commonwealth's nine transportation districts.

Conducting a public hearing to elicit input from the community when there is minimal or no funding to allocate or reallocate creates confusion. Such a requirement has become out of date in light of changes in state transportation funding. The charts below provide background on the changes in state funding in recent years. Table A shows the annual VDOT SSYP allocations for Fairfax County from FY 2008 through FY 2024. Table B shows the changes in the statewide SSYP amounts from the FY 2003 – FY 2008 program through the current program.

Table A: Annual Secondary Program Allocations for Fairfax County FY 2008-2024

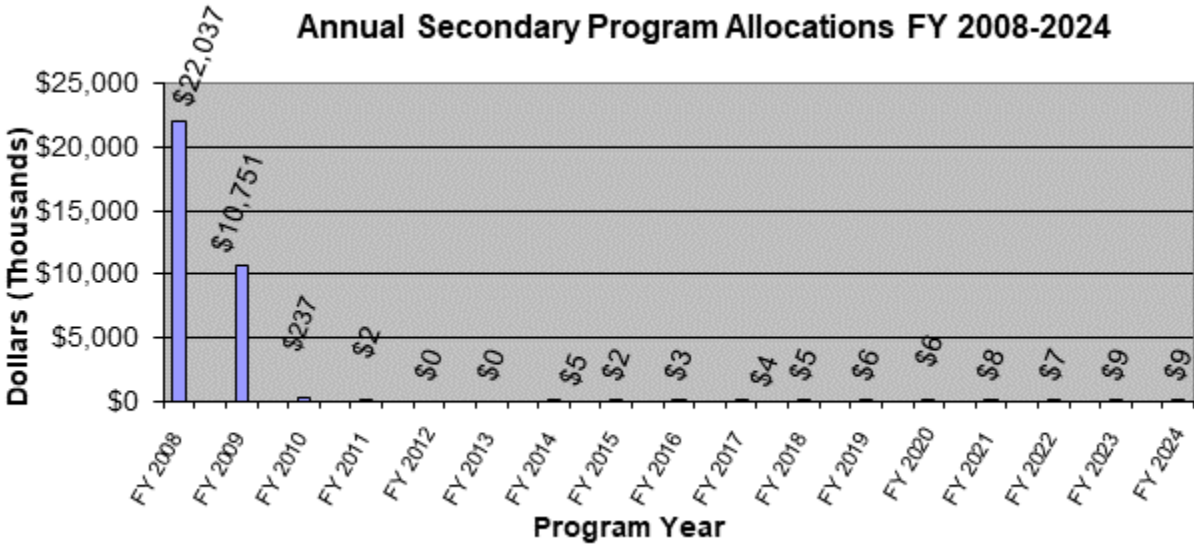


Table B: SSYP Statewide Allocation Over Time

Year	SSYP Amount Allocated Statewide
2003-2008	\$138,335,526
2004-2009	\$153,442,084
2005-2010	\$113,686,186
2006-2011	\$131,445,086
2007-2012	\$78,270,291
2008-2013	\$119,121,972
2009-2014	\$10,994,320
2010-2015	\$1,443,761
2011-2016	\$11,798
2012-2017	\$19,591
2013-2018	\$11,382
2014-2019	\$25,680
2015-2020	\$51,480
2016-2021	\$33,275
2017-2022	\$36,860
2018-2023	\$41,750
2019-2024 (projected)	\$45,836

RECOMMENDATION:

Because the state eliminated funding for SSYP, initiate legislation in the 2019 General Assembly to remove or amend the public hearing requirements for the annual approval of the SSYP.