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THE SUCCESS OF ESTABLISHING LEGISLATIVE
COMMISSIONS TO ADDRESS COMPLEX AND CRITICAL
NEEDS: EXAMINING THE EARLY RECOMMENDATIONS
AND OUTCOMES OF THE COMMISSION ON SCHOOL
CONSTRUCTION AND MODERNIZATION

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ABSTRACT

The 2020 creation of the Virginia Commission on School Construction and Modernization proved to be a pivotal moment in addressing the long-standing issue of school construction and modernization in the state. With \$1.25 billion in new resources allocated for school divisions in 2022, including an increased Literary Fund and a flexible formula-based grant, legislators took decisive action to support school infrastructure. The creation of the School Construction Fund and School Construction Assistance Program, with ongoing funding provided through taxes on casino revenues, marked a significant step forward in providing ongoing resources for school projects.

Despite several successful legislative outcomes, some proposals—such as the 1% sales tax authorization for localities and further financial investments in 2023—faced challenges and were not enacted. Nevertheless, the 2022 session left a lasting impact on the education landscape, prompting bipartisan support for continued progress. The Commission on School Construction and Modernization played a vital role in shaping these advancements, guiding policy makers in making informed decisions and bolstering the state's commitment to improving learning environments for all students. The path paved by the Commission offers hope for further investments and reforms in the future, positioning Virginia as a leader in supporting education infrastructure.

INTRODUCTION

During the 2020 Regular Session, the Virginia General Assembly enacted legislation to create the Virginia Commission on School Construction and Modernization (“the Commission”).¹ The legislation bestowed powers and duties on the Commission to better support local school divisions with the school construction process, and to make funding recommendations to the Governor and General Assembly.² Over the course of three years since its creation, the Commission has witnessed the fruition of several of its recommendations, resulting in tangible progress towards bolstering state financial support for school construction and modernization.³ This article examines the creation of the Commission and its early success in meeting the goal of those who advocated for its creation: more state financial support for

¹ S. 888, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

² *Id.*

³ See *5-Bill School Modernization Package Provides Funding for Virginia Schools*, STAR TRIB. (Feb. 11, 2022), https://www.chathamstartribune.com/news/local/article_64052c98-8b80-11ec-99ba-e3114c261d0e.htm.

school construction and modernization.

Funding for school construction and modernization has been intermittently supported by the state and federal governments during the last century.⁴ Most support for several state programs ended during the Great Recession in 2009-2010, leaving localities to grapple with the full financial burden of constructing and modernizing schools.⁵ However, the advent of the Commission has breathed new life into discussions surrounding school construction needs and the fiscal stress they place on localities across the Commonwealth.⁶ Consequently, the Commission's endeavors have fostered increased legislative attention and action, paving the way for significant developments in addressing the challenges posed by Virginia's aging school infrastructure.⁷

Most notably, the creation of the School Construction Grant Assistance Program stands as a pivotal milestone, exemplifying the Commonwealth's commitment to meaningfully addressing the urgent needs of its educational facilities.⁸ This program recently awarded \$365.3 million in grants for forty approved school projects in twenty-eight divisions.⁹ At an average of over \$9 million per grant, this represents a significant milestone in the Commonwealth's efforts to address the problem of Virginia's aging school infrastructure.¹⁰

I. BACKGROUND: PRE-2019

In Virginia, local school boards are responsible for erecting, furnishing, equipping, and non-instructional-operating of necessary school buildings.¹¹ Over the last century, state and federal governments have supported school divisions by providing financial support through various grant and loan

⁴ VICTORIA JACKSON, ET AL., AMERICA'S SCHOOL INFRASTRUCTURE NEEDS A MAJOR INVESTMENT OF FEDERAL FUNDS TO ADVANCE AN EQUITABLE RECOVERY 2, 6 (2021).

⁵ MICHAEL LEACHMAN ET AL., A PUNISHING DECADE FOR SCHOOL FUNDING 2 (2017).

⁶ See Markus Schmidt, 'A Gigantic Stride,' CARDINAL NEWS (June 9, 2023), <https://cardinalnews.org/2022/06/09/a-gigantic-stride/>.

⁷ See *id.*

⁸ *Id.*

⁹ VA. BD. OF EDUC., FINAL REVIEW OF RECOMMENDED GRANT AWARDS FOR SCHOOL PROJECT APPLICATIONS SUBMITTED TO THE SCHOOL CONSTRUCTION ASSISTANCE PROGRAM 2 (2023); see also *Special Hearing, Before the Virginia Board of Education*, 2023 (Va. 2023) (statement of Daniel Gecker, President, Va. Bd. of Educ.).

¹⁰ See Zachary Phillips, *Virginia to Invest \$365M in School Construction*, CONSTR. DIVE (May 23, 2023), <https://www.constructiondive.com/news/virginia-to-invest-365m-in-school-construction/650992/>.

¹¹ VA. CODE § 22.1-79 (2023).

programs.¹² This support was usually modest, as it did not provide significant enough assistance to fully fund the construction of new schools, or it came with specific eligibility requirements as exemplified by disaster recovery programs.¹³ While the Commonwealth vests school divisions with the responsibilities of school construction, these past investments by the state and federal government demonstrate a shared commitment to ensuring that all students have access to safe and modern school buildings.¹⁴ Governor Glenn Youngkin shared this general philosophy with Cardinal News in April 2022 stating, “historically, school construction has been a local responsibility,” but that “the state should step in and help.”¹⁵

Unfortunately for localities, state and federal support in the last half of the 20th century has generally been modest.¹⁶ A 1993 Joint Legislative Audit and Review Commission (JLARC) study on *State/Local Relations and Service Responsibilities*, summarized the state’s support for school construction from the 1960s into the 1990s as “almost exclusively providing loans—through the Literary Fund and the newly formed Virginia Public School Authority (VPSA).”¹⁷ As of 1993, state aid for school construction continued in the form of loans through the Literary Fund and the VPSA.¹⁸ Unfortunately, the loans provided through these means met only a small portion of localities’ school infrastructure needs.¹⁹ These approaches continued beyond 1993 with the addition of varying lottery funds, and grant programs that calculated and appropriated funds on a per-pupil basis, or by other enrollment and local composite index formulas.²⁰

In 2001, according to the Commonwealth Education Poll conducted by Virginia Commonwealth University, “[t]wo thirds of Virginians said funding for teacher salaries was not enough. About half (51 percent) said funding was not enough for school building construction and maintenance costs. The public was split 43-42 over whether funding for ‘operating costs to keep the

¹² CONG. RSCH. SERV., SCHOOL CONSTRUCTION AND RENOVATION: A REVIEW OF FEDERAL PROGRAMS AND LEGISLATION 1 (2020); see generally VA. DEP’T OF EDUC., *Needs and Conditions of Virginia School Buildings*, COMM’N ON SCH. CONSTR. AND MODERNIZATION (June 2021).

¹³ See CONG. RSCH. SERV., *supra* note 12 at 5.

¹⁴ See *id.* at 5.

¹⁵ Schmidt, *supra* note 6.

¹⁶ JLARC, VIRGINIA’S K-12 FUNDING FORMULA, at iii (2023); see Graham Moomaw, *Study Finds Virginia Underfunds K-12 Schools, Recommends Spending Billions More*, VA. MERCURY (July 10, 2023), <https://www.virginiamercury.com/2023/07/10/study-finds-virginia-underfunds-k-12-schools-recommends-spending-billions-more/>.

¹⁷ JLARC, STATE & LOCAL RELATIONS AND SERVICE RESPONSIBILITIES: A FRAMEWORK FOR CHANGE 95 (1993).

¹⁸ VA. DEP’T OF EDUC., *supra* note 12 at 43-46.

¹⁹ JLARC, *supra* note 17.

²⁰ VA. DEP’T OF EDUC., *supra* note 12, at 49, 51.

schools running' were enough."²¹ Support for increasing public school funding was affirmed in the 2018 Commonwealth Education Poll, which noted that 22% of Virginians supported, "additional K-12 education funding, but also would be willing to pay part of the bill out of their own pocket through increased taxes."²²

Despite this public support, neither the General Assembly nor other state elected officials made significant changes or investments in school construction during the 2000s and 2010s or even recent years.²³ Instead, during this time of need, the legislature gave more attention to other immediate priorities like student counseling and mental health needs.²⁴ This mindset was echoed more recently in 2018 during a legislative priority-setting meeting between members of Richmond's City Council and Richmond-area state legislators who felt that "city leaders should prioritize more specific requests that can be shared among the wide-ranging constituencies lawmakers represent, such as increasing funding for support staff positions in schools to address mental health."²⁵

II. POST-GREAT RECESSION: STUDIES & OUTCOMES

While many legislators agree that school construction and modernization is a pressing topic, there has often been a lack of consensus over how to proceed, especially as legislators navigate the competing priorities during the

²¹ Cary Funk et al., *Virginians Show Strong Support For School Funding Needs*, VCU NEWS (May 22, 2001), https://news.vcu.edu/article/virginians_show_strong_support_for_school_funding_needs.

²² *Public Policy Poll Winter 2017-2018*, L. DOUGLAS WILDER SCH. OF GOV'T AND PUB. AFFS. OFF. OF PUB. POL'Y OUTREACH, <https://drive.google.com/file/d/1rcbjOen-qkTj6XghITo-4yHAoksMRHFH/view?usp=sharing>.

²³ See Jessie Higgins, *Virginia Just Made Its Biggest Investment in School Buildings in Over A Decade. Now, It Has To Decide How To Dole Out The Money*, CHARLOTTESVILLE TOMORROW (Aug. 3, 2022), <https://www.cvilletomorrow.org/virginia-just-made-its-biggest-investment-in-school-buildings-in-over-a-decade-now-it-has-to-decide-how-to-dole-out-the-money/#:~:text=Now%2C%20it%20has%20to%20decide%20how%20to%20dole%20out%20the%20money.,-by%20Jessie%20Higgins&text=Virginia's%20General%20Assembly%20this%20week,year%20to%20upgrading%20school%20buildings>.

²⁴ See VA. DEP'T OF HEALTH, *Va. Youth Survey 2017 Results* (2017), https://www.vdh.virginia.gov/content/uploads/sites/69/2019/09/vys-2017-copy_28905401.pdf; see generally Zara Abrams, *Student Mental Health is in Crisis. Campuses Are Rethinking Their Approach*, APA (Oct. 1, 2022), <https://www.apa.org/monitor/2022/10/mental-health-campus-care> (this comes from the author's experience working in education outreach and advocacy in Virginia).

²⁵ See Mark Robinson, *Legislators: Richmond Faces Long Odds in Getting More State Money For Education*, RICH. TIMES DISPATCH (Oct. 3, 2018), https://richmond.com/news/local/legislators-richmond-faces-long-odds-in-getting-more-state-money-for-education/article_1ca1ca29-7cc0-5675-bc40-56fe7c9db9e6.html.

sessions of the General Assembly and its appropriations obligations.²⁶ Unfortunately, in the aftermath of the Great Recession, Virginia's state support for school construction waned even below the small levels that had been previously in place.²⁷ The funding for school construction grants and Lottery Funded grants for non-recurring costs was discontinued in FY09 and FY10.²⁸ In 2013, in response to advocacy by Democratic Strategist Paul Goldman, Governor Bob McDonnell ordered a study of all existing public school buildings.²⁹ The study found that of the "1,227 of Virginia's school buildings and facilities, more than 60%, are 40 years or older."³⁰

In the aftermath of the Great Recession, Governor McDonnell advocated alongside Senator Mark Warner, Senator Tim Kaine, Majority Leader Eric Cantor, Governor-elect Terry McAuliffe, and other Virginia elected officials to eliminate the federal "prior use" rule, which generally prohibits private investors from earning tax credits if they renovate older schools into a more modern public facility.³¹ Recission of the rule, which falls within federal tax policy, would make Virginia's school buildings eligible for the Federal Historic Rehabilitation Tax Credit.³² They advocated for this federal policy change instead of appropriating state monies for school construction and modernization or considering other options. As of the publication of this review, Virginia elected officials continue to advocate for this policy change.³³

After the 2013 McDonnell report through 2018, there was less activity from elected leaders in advocating for school construction support from the state. Until FY17, no funding was restored or newly appropriated.³⁴ When

²⁶ Kate Masters, *In The Final Days of Session, Funding School Construction Remains a Budget Debate*, VA. MERCURY (Mar. 6, 2020), <https://www.virginiamercury.com/2020/03/06/in-the-final-days-of-session-funding-school-construction-is-still-a-budget-debate/>.

²⁷ *See id.*

²⁸ VA. DEP'T OF EDUC., NEEDS AND CONDITIONS OF VIRGINIA SCHOOL BUILDINGS 52-53 (2021).

²⁹ Olympia Meola, *State Review Itemizes Aged School Buildings*, RICH. TIMES DISPATCH (Nov. 21, 2013), https://richmond.com/news/virginia/state-review-itemizes-aged-school-buildings/article_f7c28650-1d53-56b3-979b-8cc831940c99.html.

³⁰ Taylor Thornley Keeney, *Over 60% of Virginia Schools Could Potentially Benefit in Years Ahead From Change to Federal Historic Rehabilitation Tax Credit*, ARCHIVE-IT (Nov. 20, 2013), <https://wayback.archive-it.org/1655/20131219043525/http://www.governor.virginia.gov/News/viewRelease.cfm?id=2086&printpage=Yes>.

³¹ Jim Webb, et al., *Let's Update Tax Policy to Help Rebuild Schools*, ARCHIVE-IT (Nov. 29, 2011), <https://wayback.archive-it.org/1655/20130228185049/http://www.governor.virginia.gov/News/viewRelease.cfm?id=1025&printpage=Yes>.

³² *Id.*

³³ Michael Martz, *Kaine, Warner Try Again To Use Historic Tax Credits For Schools*, RICH. TIMES DISPATCH (May 10, 2023), https://richmond.com/news/state-and-regional/govt-and-politics/kaine-warner-try-again-to-use-historic-tax-credits-for-schools/article_73735b06-ef51-11ed-9d1e-b38cf828f685.html.

³⁴ VDOE, *supra* note 12, at 55.

the state resumed the distribution of Lottery Funds in FY17, the funds were no longer required to be used on non-recurring costs.³⁵ This meant that much of these funds were no longer reserved for school construction and modernization, and could be used freely based on local division priorities.³⁶ However, in the FY20-22 budgets, the per-pupil flexible funding reinstated the non-recurring cost requirement, such that “at least 30% in FY21 and 40% in FY22 must be spent on ‘nonrecurring’ costs.”³⁷ While school construction and modernization is a non-recurring cost, there are many other possible expenditures that school divisions must prioritize and balance.

The period following the Great Recession was challenging for public education funding.³⁸ The General Assembly’s K-12 public education funding did not recover to pre-2010 levels, and education advocates were left wanting more after every new budget during the period.³⁹ In 2018, when legislators began earnestly discussing rolling back other Great Recession-caused policy changes to education funding—like the Support Staff Cap—advocacy increased surrounding the need for support with school construction and modernization from state leadership.⁴⁰

One legislator that has been particularly inclined to have the state step in and help localities with school construction is Senator Bill Stanley (R-Franklin). In 2018, as Chair of the Senate Local Government Committee, Senator Stanley convened a School Facility Modernization Subcommittee to study the topic between sessions of the General Assembly.⁴¹ This subcommittee’s work led to the introduction of several bills and reinvigorated

³⁵ *Id.* at 55-56 (“Prior state assistance programs required that a percentage of distributions, sometimes set at 30% or 50%, be spent only on non-recurring costs which included: “school construction, additions, infrastructure, site acquisition, renovations, technology, and other expenditures related to modernizing classroom equipment and debt service payments on school projects completed in the last 10 years.”).

³⁶ *Id.* at 55.

³⁷ *Id.* at 56.

³⁸ Lauren Goren et al., *Budget Choices for Today and Tomorrow: Learning Lessons from the Great Recession and Setting Virginia on a More Equitable Path*, THE COMMONWEALTH INST. (Aug. 2020), <https://thecommonwealthinstitute.org/research/budget-choices-for-today-and-tomorrow-learning-lessons-from-the-great-recession-and-setting-virginia-on-a-more-equitable-path/>.

³⁹ Goren et al., *supra* note 38; Robinson, *supra* note 25.

⁴⁰ Justin Mattingly, *Virginia Senator Proposes Using Internet Sales Tax Windfall to Upgrade School Facilities*, RICH. TIMES DISPATCH (Aug. 16, 2018), https://richmond.com/news/virginia/virginia-senator-proposes-using-internet-sales-tax-windfall-to-upgrade-school-facilities/article_5d23f5d6-06ac-567f-8af0-381451e311a0.html; Robinson, *supra* note 25; see e.g., Justin Mattingly, *Virginia State Senator Questions Stoney’s Efforts to Improve School Facilities Stoney Blames General Assembly*, RICH. TIMES DISPATCH (July 3, 2018), https://richmond.com/news/local/virginia-state-senator-questions-stoneys-efforts-to-improve-school-facilities-stoney-blames-general-assembly/article_d6d6302d-97b2-5574-b83d-92a9ede083d4.html.

⁴¹ Laura Vozzella, *New Virginia Senate Panel To Study Need To Modernize School Buildings*, WASH. POST (Apr. 17, 2018), https://www.washingtonpost.com/local/virginia-politics/new-virginia-senate-panel-to-study-need-to-modernize-school-buildings/2018/04/17/e14a9712-4262-11e8-bba2-0976a82b05a2_story.html.

state-level discussion, helping inspire the Commission that is the subject of this review.⁴²

In December 2018, Governor Northam proposed a deposit of \$80 million into the Literary Fund.⁴³ While this was perceived as a favorable development by some, it should still be noted that there was both a constitutional obligation to maintain an \$80 million asset balance, and that it was during these years that the state also used more of the Literary Fund to fund non-infrastructure obligations like teacher retirement plans.⁴⁴ In 2019, the General Assembly appropriated \$35 million in Literary Fund monies for school construction loans and an interest-rate subsidy program—less than half of what Governor Northam had proposed.⁴⁵ An additional \$111.3 million was appropriated within the Literary Fund for teacher retirement plan payments, and thus divested from school infrastructure or other non-recurring costs.⁴⁶

In 2019, the General Assembly enacted two bills—H.B. 2192 and S.B. 1331—that encouraged school divisions to build energy efficient buildings that generate more electricity than consumed, and to consider lease agreements with private developers to help fund the solar infrastructure and other upgrades.⁴⁷ This legislation, combined with bills passed by the 2013 General Assembly (H.B. 2334 & S.B. 1023) that permitted solar power purchase agreements, has spurred modernization projects across the state. Virginia is now considered a national leader in the use of solar energy for K-12 schools.⁴⁸

While smaller pieces of infrastructure legislation were successful that year, the more significant legislative proposals to help deal with the state's school facilities needs were not. Senator Stanley introduced S.B. 1330, a bill to hold a statewide bond referendum to consider \$3 billion in bonds for K-12 building construction and renovation projects across the state.⁴⁹ This bill

⁴² *Senate School Construction & Modernization Commission*, S. OF VA. (Apr. 1, 2021), https://virginia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=4221.

⁴³ Michelle Hankerson, *With a Positive Economic Outlook Northam Proposes Teacher Pay Raise, More Money for School Construction*, VA. MERCURY (Dec. 11, 2018), <https://www.virginiamercury.com/2018/12/11/with-a-positive-economic-outlook-northam-proposes-teacher-pay-raise-more-money-for-school-construction/>.

⁴⁴ VA. CONST. art. VIII, § 8; MANJU S. GANERIWALA, REVIEW OF COMMONWEALTH'S DEBT PROGRAMS 19 (2021).

⁴⁵ 2019 Va. Acts ch. 854, Item 136.

⁴⁶ *Id.*

⁴⁷ H.B. 2192, 2019 Gen. Assemb., Reg. Sess. (Va. 2019); S. 1331, 2019 Gen. Assemb., Reg. Sess. (Va. 2019).

⁴⁸ See Anna Bryson, *Virginia Schools Among Top in U.S. to Utilize Solar Energy*, RICH. TIMES DISPATCH (Sept. 15, 2022), https://richmond.com/news/local/education/virginia-schools-among-top-in-u-s-to-utilize-solar-energy/article_2f18d689-e659-5269-b624-0ce7b464498d.html.

⁴⁹ S. 1330, 2019 Gen. Assemb., Reg. Sess. (Va. 2019).

gained little support from other legislators and died in the Senate Finance Committee.⁵⁰ He also introduced S.B. 1702 to create a Public School Assistance Fund and Program, aimed at funding for the rehabilitation of school roofs.⁵¹ Roof repairs were noted as one of the most significant needs during the Senator's 2018 sub-committee review of the conditions of Virginia school buildings.⁵² The 2019 General Assembly did not pass S.B. 1702; and while Senator Stanley introduced the legislation again in the following years, it never passed.⁵³ Fortunately, its aims were included in the 2022 School Construction Assistance Program.⁵⁴

III. ESTABLISHMENT OF THE COMMISSION

A. Local Request

In 2018, Richmond Public Schools (RPS) adopted its strategic plan, *Dreams4RPS*.⁵⁵ The plan advocated for more overall funding increases from local, state, federal and philanthropic sources, but also focused specifically on school facilities and infrastructure. It directed the division to “develop an advocacy campaign to create the political will for a comprehensive funding package for [RPS] facilities needs (new construction, renovation, and ongoing maintenance).”⁵⁶

To focus on its own legislative advocacy, RPS created the Department of Advocacy & Outreach.⁵⁷ The department was tasked with helping the division with advocacy strategy, and specifically how to advocate for facilities funding that were consistent with the strategic plan. In response to concern about the division investing in a salaried position to advocate with the state, Superintendent Jason Kamras noted in a 2019 Richmond City

⁵⁰ Amy Friedenberger, *Panel Nixes School Referendum Bill*, ROANOKE TIMES (Jan. 31, 2019), https://roanoke.com/news/politics/general_assembly/senate-panel-kills-sen-bill-stanleys-referendum-on-schools-modernization/article_65806864-5510-5ac9-9a4a-da8a36386b08.html.

⁵¹ S. 1702, 2019 Gen. Assemb., Reg. Sess. (Va. 2019).

⁵² *School Modernization Legislation Update*, VA. ASS'N OF CNTY. (Feb. 4, 2019), <https://www.vaco.org/capitol-contact/school-modernization-legislation-update/>.

⁵³ S. 4, 2020 Gen. Assemb., Reg. Sess. (Va. 2020); S. 1106, 2021 Gen. Assemb., Reg. Sess. (Va. 2021); *see generally* S. 1702, 2019 Gen. Assemb., Reg. Sess. (Va. 2019).

⁵⁴ 2022 Va. Acts ch. 2, Item 137.

⁵⁵ Justin Mattingly, *Richmond School Board Approves Five-year Strategic Plan*, RICH. TIMES DISPATCH (Sept. 5, 2018) https://richmond.com/news/local/richmond-school-board-approves-five-year-strategic-plan/article_4dc02cfb-f490-5b73-b12c-d70ac3cb1199.html; *see also DREAMS4RPS: The 2018-23 RPS Strategic Plan*, RICH. PUB. SCH. (Sept. 2018), <https://resources.finalsite.net/images/v1628623046/rvaschoolsnet/lnw0sr1vbbvvy9izxgth/Dreams4RPS-English.pdf>.

⁵⁶ *DREAMS4RPS: The 2018-23 RPS Strategic Plan*, *supra* note 55.

⁵⁷ *See Advocacy & Outreach*, RICH. PUB. SCH., <https://www.rvaschools.net/engagement/ao> (last visited Sept. 17, 2023).

Council meeting that “[w]e need to keep the pressure on the state to make sure that RPS gets all the funding it needs.” Kamras also pointed out that the position’s salary “is an investment of (\$125,000) . . . that could yield \$20 million in state funding, or more.”⁵⁸

At a joint meeting of the Richmond City Council and Richmond City School Board on October 2, 2019, 1st District Richmond City Council Member Andreas Addison suggested a legislative proposal to resolve the lack of state support for school construction: the creation of a state commission that included legislators, executive branch officials, and other appointees to provide state-level, coordinated leadership on the topic, and to support local divisions with best practices to ensure that school construction approaches by localities are conducted as efficiently as possible.⁵⁹ Mr. Addison learned of this approach through the Ohio School Facilities Commission (now merged into the Ohio Facilities Construction Commission), which successfully appropriated over \$2.7 billion in school funding from 1997 to 2005.⁶⁰ Given the Ohio commission’s demonstrative success, Mr. Addison recommended creating a similar commission in Virginia.⁶¹

Accordingly, RPS presented Richmond-area legislators with a proposal that included creating “a School Construction Commission to provide state-level leadership and enable cross-division collaboration in addressing Virginia’s school facility needs.”⁶² Moreover, RPS explained how the “commission would be able to inventory statewide needs, identify new funding mechanisms, establish best practices, and create savings for divisions through standardized designs and procurement.”⁶³ This request was supported by the Richmond City School Board and Richmond City Council, as discussed during the October 10, 2019 Education Compact meeting.⁶⁴

B. Concurrent Advocacy in Regards to the Local Composite Index

RPS also supported “modifications to state funding formulas, like the Local Composite Index (LCI), to recognize the unique needs of the capital

⁵⁸ Kelly Avellino, *Amid Proposed City Tax Hikes, RPS Funds \$100k Gala, \$125k Lobbyist Position*, NBC12 (Mar. 18, 2019), <https://www.nbc12.com/2019/03/18/amid-proposed-city-tax-hikes-rps-funds-k-gala-k-lobbyist-position/>.

⁵⁹ See Joe De Patta, *The Ohio School Facilities Commission*, SCH. CONSTR. NEWS (Dec. 10, 2005), <https://schoolconstructionnews.com/2005/12/10/the-ohio-school-facilities-commission/>.

⁶⁰ *See id.*

⁶¹ *See id.*

⁶² *See* Robinson, *supra* note 25.

⁶³ *Id.*

⁶⁴ *Education Compact Quarterly Meeting*, CTY. OF RICH. MAYOR’S OFF. (Oct. 10, 2019), [https://go.boarddocs.com/vsba/richmond/Board.nsf/files/BGUS256D5C39/\\$file/Education%20Compact%20Presentation.pdf](https://go.boarddocs.com/vsba/richmond/Board.nsf/files/BGUS256D5C39/$file/Education%20Compact%20Presentation.pdf).

city and the abundance of tax-exempt property.”⁶⁵ The Local Composite Index is not covered thoroughly in this article, but it should be noted that a June 2023 JLARC report on Virginia’s K-12 Funding Formula found that the, “LCI appropriately excludes tax-exempt properties when measuring local wealth contrary to” the popular misconception “that the LCI formula overstates the actual value of taxable real estate in their jurisdictions.”⁶⁶

Although RPS requested budget amendments “to create an LCI multiplier for the City of Richmond,” that better compensates Richmond and other localities to provide infrastructure and services to the seat of state government, former Senator McClellan instead introduced a budget amendment which directed the Department of General Services (DGS) to establish a sum-sufficient fund to reimburse localities for the public services provided to state properties.⁶⁷ This budget amendment was not included in the final budget, and further local advocacy on reforms to the LCI have not been enacted since.

Beyond the misconception that the LCI did not properly take tax-exempt property into account, some leaders have pointed out other shortcomings in the formula and believe that it misrepresents localities’ ability to pay for public education.⁶⁸ “[The LCI] doesn’t take Richmond’s concentrated poverty into account,” noted RPS Superintendent Jason Kamras.⁶⁹ Lower-income communities are more likely to go without needed construction and renovations.⁷⁰ Nationally, local funding covers 80% of school construction costs.⁷¹ Kamras followed, “[w]e know from research that it is exponentially more challenging and expensive in terms of educating children [in poverty].”⁷²

⁶⁵ *Id.*

⁶⁶ JLARC, REPORT TO THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA, VIRGINIA’S K-12 FUNDING FORMULA, Reg. Sess., at 54 (2023).

⁶⁷ See *Budget Amendments - SB30 Item 79 #3s*, LIS, <http://budget.lis.virginia.gov/amendment/2020/1/SB30/Introduced/MR/79/3s> (last visited Dec. 13, 2023).

⁶⁸ See Chris Suarez, *Rising Property Values – Up \$4.2 Billion in 2 Years – Means Richmond Will Lose Millions in State Education Funding*, RICH. TIMES DISPATCH (Dec. 3, 2021), https://richmond.com/news/local/government-politics/rising-property-values---up-4-2-billion-in-2-years--means/article_c321fc62-6dcd-5c9f-bdcf-bf439f4231c0.html; see JLARC, *supra* note 66, at 4 (2023).

⁶⁹ Kenya Hunter, *Richmond Schools Superintendent Proposes 5% Teacher Raises, \$4 Million in Central Office Cuts*, RICH. TIMES DISPATCH (Jan. 18, 2022), https://richmond.com/news/richmond-schools-superintendent-proposes-5-teacher-raises-4-million-in-central-office-cuts/article_8c9e27e3-7487-55cc-88ad-e90263887b42.html.

⁷⁰ See KRISTIN BLAGG ET. AL, ASSESSING THE NATIONAL LANDSCAPE OF CAPITAL EXPENDITURES OF PUBLIC SCHOOL DISTRICTS 9 (2023).

⁷¹ Amanda Litvinov, *Our Crumbling Public School Infrastructure*, NEATODAY (Oct. 30, 2018), <https://www.nea.org/nea-today/all-news-articles/our-crumbling-public-school-infrastructure>.

⁷² Suarez, *supra* note 68.

C. Legislative Action

In November 2019, former Senator McClellan agreed to introduce legislation to create the Commission, and S.B. 888 was filed on January 8, 2020.⁷³ The legislation called for establishing the Commission “in the legislative branch of state government to develop and provide guidance and resources to local school divisions related to school construction and modernization and make funding recommendations to the Governor and the General Assembly.”⁷⁴ The proposed membership included eight legislative members, three nonlegislative citizen members, and four ex-officio members with the following requirements⁷⁵:

- Three members of the Senate, to be appointed by the Senate Committee on Rules;
- Five members of the House of Delegates, to be appointed by the Speaker of the House of Delegates;
- One nonlegislative citizen member to be appointed by the Senate Committee on Rules;
- One nonlegislative citizen member to be appointed by the Speaker of the House of Delegates; and
- One nonlegislative citizen member to be appointed by the Governor.

The ex-officio members included:

- The Superintendent of Public Instruction;
- the Director of the Department of General Services;
- the Executive Director of the Virginia Resources Authority; and
- the Director of the Department of Planning of Budget.

The Commission was proposed to have the following powers and duties⁷⁶:

1. Assessing the Commonwealth's school facilities and determining school construction and modernization funding needs.
2. Identifying funding mechanisms and making recommendations to the Governor and the General Assembly.
3. Establishing best practices in school modernization and

⁷³ S. 888, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

construction for school divisions.

4. Creating standardized construction designs and procurement practices to recommend and make available to local school divisions.

5. Identifying potential cost-saving measures for implementation by local school divisions to minimize construction and modernization costs where possible.

6. Submitting to the General Assembly and the Governor an annual report.

S.B. 888, as introduced, passed the Senate unanimously; however, it was amended by the House to include more legislative members.⁷⁷ The Senate rejected the House's amendments, and a committee of conference was created.⁷⁸ The final conference committee report made only one significant change, increasing the Commission membership to seventeen members by adding the State Treasurer and the President of the Board of Education as ex-officio members.⁷⁹

The conference report and bill passed the state Senate by a margin of 39-0 on March 7, 2020, passed the House of Delegates by a margin of 89-5 on March 8, 2020, and was relayed to Governor Ralph Northam on March 20, 2020, for action by April 11, 2020.⁸⁰ The Governor approved the legislation on April 20, 2020, with an effective date of July 1, 2020.⁸¹

D. Other School Construction Legislative Action During 2020

In addition to creating the Commission by adopting S.B. 888, the General Assembly considered additional legislation related to school construction during the 2020 session of the General Assembly.⁸² Some legislators continued advocating for specific localities to be authorized to impose a 1% sales tax to help fund school construction.⁸³ For example, Delegate Thomas Wright, Jr. (R-Victoria) introduced H.B. 200 on December 27, 2019, to allow the locality of Mecklenburg County to receive this authorization, and

⁷⁷ *Id.*

⁷⁸ *SB 888 School Construction and Modernization, Commission on; Established, Report*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=sb888> (last visited Sept. 17, 2023).

⁷⁹ *SB 888 Joint Conference Committee Report*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+amd+SB888AC> (last visited Sept. 17, 2023).

⁸⁰ *SB 888 School Construction and Modernization, Commission on; Established, Report, supra* note 78.

⁸¹ *Id.*

⁸² See Joe Dashiell, *Fight for School Construction Funding to Continue in General Assembly*, WDBJ7 (Dec. 29, 2020), <https://www.wdbj7.com/2020/12/29/fight-for-school-construction-funding-to-continue-in-general-assembly/> (stating that Senator Bill Stanley will be re-introducing three bills that were unsuccessful in the 2020 General Assembly).

⁸³ See VA. CODE § 58.1-605.1(A)(1) (2020).

Delegate James Edmunds introduced H.B. 1631 on January 16, 2020, to authorize the locality of Charlotte County to receive this authorization.⁸⁴ H.B. 200 passed the House of Delegates by a margin of 79-21 on February 11, 2020, and the Senate by a margin of 33-7 on February 24, 2020.⁸⁵ H.B. 1631 passed the House of Delegates by a margin of 73-22 on February 11, 2020, and the Senate by a margin of 31-9 on February 24, 2020.⁸⁶ Both of these bills were approved by the Governor with an effective date of July 1, 2020.⁸⁷

The legislature also considered S.B. 6 introduced by Senator Stanley on November 18, 2019, which proposed to hold:

A statewide referendum on the question of whether the General Assembly shall issue state general obligation bonds in the amount of \$3 billion for the purpose of K-12 school building construction, repair, or other capital projects related to the modernization of school facilities. The results would be advisory only and are intended only to demonstrate the preference of the citizens of the Commonwealth on the issuance of such bonds. The referendum would be held at the November 2020 general election.⁸⁸

S.B. 6 was tabled by the Senate Finance and Appropriations Committee by a margin of 11-5 on January 29, 2020.⁸⁹ While advocates were disappointed in this outcome, Senator Stanley's legislation helped raise further awareness of the significant school infrastructure needs across the Commonwealth.⁹⁰

IV. COMMISSION RECOMMENDATIONS AND RESULTS

A. 2021 and the Early Work of the Commission⁹¹

Due to the state's focus on addressing the COVID-19 pandemic, the

⁸⁴ H.B. 200, 2020 Gen. Assemb., Reg. Sess. (Va. 2020); H.B.1631, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

⁸⁵ *HB 200 Mecklenburg County; Additional Sales and Use Tax, Appropriations to Incorporated Towns*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB200> (last visited Sept. 21, 2023).

⁸⁶ *HB 1631 Charlotte County; Additional Sales and Use Tax Imposed*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb1631> (last visited Sept. 21, 2023).

⁸⁷ *HB 200 Mecklenburg County; Additional Sales and Use Tax, Appropriations to Incorporated Towns*, *supra* note 86; *HB 1631 Charlotte County; Additional Sales and Use Tax Imposed*, *supra* note 86.

⁸⁸ *SB 6 Voter Referendum; Issuance of State General Obligation Bonds for School Facility Modernization*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB6> (last visited Sept. 28, 2023).

⁸⁹ *Id.*

⁹⁰ See Joe Dashiell, *School Modernization Bill Passes Senate, But Funding Must Follow*, WDBJ7 (Feb. 2, 2021), <https://www.wdbj7.com/2021/02/03/school-modernization-bill-passes-senate-but-funding-must-follow/>.

⁹¹ See generally DLS COMMISSION ON SCHOOL CONSTRUCTION AND MODERNIZATION, REPORT ON THE INTERIM ACTIVITY OF THE COMMISSION ON SCHOOL CONSTRUCTION AND MODERNIZATION (2021).

Commission did not hold its first meeting until April 1, 2021.⁹² During the first meeting, former Senator McClellan was elected chair of the Commission, legislative staff provided an overview of studies and legislation related to school construction and modernization from 2018 to 2021, and the Commission established a work plan for the rest of the year.⁹³ The Commission also discussed many types of data and information that it requested the Virginia Department of Education (VDOE) to prepare in advance of their next meeting.⁹⁴

B. Second Meeting Data and Presentations

At the Commission's second meeting on June 3, 2021, the Commission received a presentation from Virginia Superintendent of Public Instruction James Lane.⁹⁵ Some of the key findings shared by the Superintendent included⁹⁶:

- 41% of schools in Virginia are at or above their capacity for students
- 29% of schools in Virginia are nearing their capacity for students
- More than half of school buildings in Virginia are more than 50 years old
- State financial support for school facility capital and debt service costs is limited to loan programs and a portion of state Lottery funding
- For FY20, divisions reported \$1.105 billion in school facility capital costs, \$476.1 million in debt service costs, and \$7.158 billion in outstanding debt on school facilities
- Total replacement cost for school buildings over 50 years old was calculated at approximately \$25 billion by the Virginia Department of Education in 2021

In addition to the Superintendent's presentation, the Commission also reviewed funding provided through the American Rescue Plan that was

⁹² *Commission on School Construction and Modernization*, VA. S. (Apr. 1, 2021), https://virginia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=4221.

⁹³ *Id.*

⁹⁴ COMMISSION ON SCHOOL CONSTRUCTION AND MODERNIZATION, *Organizational Meeting*, *supra* note 91; *see* VA. DEPARTMENT OF EDUCATION, COMMISSION DATA REQUEST TRACKING, https://studiesviriniageneralassembly.s3.amazonaws.com/meeting_docs/documents/000/000/968/original/Commission_Data_Request_Tracking.xlsx?1622573308.

⁹⁵ *Commission on School Construction and Modernization*, VA. S. (June 3, 2021), https://virginia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=4292; *see* VA. DEP'T OF EDUC., *supra* note 12 at 43-46.

⁹⁶ VA. DEP'T OF EDUC., *supra* note 12, at 3, 17.

available to support school infrastructure needs.⁹⁷

C. September Meeting & Architectural Services

At the September 29, 2021, meeting of the Commission, Superintendent Lane provided follow up information to some of the questions that arose during the prior meeting in June.⁹⁸ The VDOE provided a recommendation for the standard size of schools, and a model for determining reasonable construction costs.⁹⁹ Using prototypical space recommendations, and in consultation with designers and contractors, the VDOE maintains the minimum standard school size for elementary, middle, and high schools are: 48,148 square feet for an elementary school with a student capacity of 600; 93,357 square feet for a middle school with a student capacity of 800, and 122,855 square feet for a high school with a student capacity of 1,200.¹⁰⁰

The department also collected data from school divisions to determine how divisions prioritize spending with limited financial resources.¹⁰¹ “Divisions were asked to review the project categories most commonly found among Capital Improvement Plans (CIPs) and rank [in] order the items they would prioritize for funding.”¹⁰² VDOE noted the “New School(s)” category likely would have been rated a “higher priority by more divisions if divisions statewide had more ready access to funding sources supporting new school construction.”¹⁰³

In response to the request to learn whether savings could be realized if replicable, prototype designs were used on multiple school construction projects, the VDOE found that there would be, “some savings on professional fees” and a 5% increase or decrease in “overall savings in construction costs from this approach.”¹⁰⁴ This savings would depend on the similarity of building sites and how many modifications were necessary based on individual school and division needs.¹⁰⁵

The Commission also received a presentation from the American Institute of Architects Virginia (AIA Virginia), who supported greater resource allocation by local and state leaders to school construction:

⁹⁷ *Commission on School Construction and Modernization*, *supra* note 92; see VA. H. APPROPRIATIONS COMM. CHAIRMAN LUKE E. TORIAN, *American Rescue Plan Funds for K-12* (2021).

⁹⁸ *VDOE Responses to Follow-up Questions Posed at the June 3, 2021 Commission Meeting*, VA. DEP’T OF EDUC. 2 (June 2021).

⁹⁹ *Id.* at 19.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 6.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 18.

¹⁰⁵ *Id.*

There is a much higher correlation between the quality of school construction and the relative resources and leadership of different school districts than time periods and types of construction. The better resourced school districts consistently have better designed and maintained facilities. We would urge the Commonwealth to pursue greater equity in available planning, responsive design and construction rather than classifying “good” and “bad” buildings by type or period.¹⁰⁶

Finally, the Commission also reviewed a report from the VDOE and the Virginia Department of the Treasury (“Treasury”) that noted “recommendations to make the Literary Fund loan program more competitive and attractive to school divisions and increase the fiscal health of the Literary Fund.”¹⁰⁷

D. December Meeting & Recommendations

In December 2021, the Commission met and adopted numerous legislative recommendations, including the six joint recommendations of the VDOE and Treasury relating to the Literary Fund, which were provided in a letter dated July 27, 2021.¹⁰⁸ The recommendations included “amending the General Appropriation Act to establish a minimum principal or asset base in the Literary Fund of \$250 million to be used for school construction and renovation loans.”¹⁰⁹ The remaining five joint recommendations involved amending the Code of Virginia to do the following:¹¹⁰

- Increase the maximum Literary Fund loan amount per project from \$7.5 million to \$25 million;
- Require the Board of Education to amend its regulations to reduce Literary Fund loan rates from 2-6% at 1% increments to 1-3% at .5% increments, and create an open application process at a scheduled time each year with priority given to low LCI school divisions that make certain commitments;
- Provide the Board of Education the authority to remove inactive projects from the Literary Fund loan waiting list after a certain amount of time (e.g. 5 to 7 years);

¹⁰⁶ AM. INST. OF ARCHITECTS VA., *Prioritizing Funding for Schools* 33 (2021).

¹⁰⁷ See VA. DEPT OF EDUC., OFF. OF THE SUPERINTENDENT OF PUB. INSTRUCTION, *Recommendations Related to the Literary Fund* 1 (2021); *Review of Commonwealth’s Debt Program: A Briefing for the Commission on School Construction and Modernization*, VA. TREASURY (2021), https://studiesviriniageneralassembly.s3.amazonaws.com/meeting_docs/documents/000/001/208/original/Review_of_Commonwealth_Debt_Programs.pptx?1632927466.

¹⁰⁸ VA. DEPT OF EDUC., *supra* note 107.

¹⁰⁹ COMMONWEALTH OF VA. COMM’N ON SCH. CONSTR. AND MODERNIZATION, *Recommendations Adopted by the Commission* (2021).

¹¹⁰ *Id.*

- Provide a premium loan amount add-on (e.g. \$5 or \$10 million) per project to the maximum set forth above, for projects that involve the consolidation of schools; and
- Provide cash incentive grants of up to \$25,000 to help school boards and localities cover Literary Fund loan closing costs

Another legislative recommendation adopted by the Commission called for establishing a “special nonreverting fund and a competitive program for the award of grants from such fund for the construction or renovation of public school buildings.”¹¹¹ The suggested bill was similar to H.B. 2093 (2021) and S.B. 1087 (2020), but specifically directs funds remaining in the Casino Gaming Fund to be used to support the grant program.¹¹² The Commission also supported amending the General Appropriation Act to provide additional funds, e.g. FY21 surplus funds, to support the grant program.¹¹³

The Commission further adopted recommendations to “amend § 58.1-602 and various other provisions of the Code of Virginia to permit any locality to levy a general retail sales tax . . . to provide revenue solely for capital projects for the construction or renovation of schools, if such levy is approved in a voter referendum.”¹¹⁴ Under current law, such sales tax is only permitted in nine enumerated localities.¹¹⁵

With respect to § 22.1-100 of the Virginia Code, the Commission supported amending the law to: (1) “permit any school board to finance capital projects with any funds appropriated to it by the local governing body that are unexpended by the school board in any year, using H.B. 1921 (2019) as a template,” and (2) “create incentives for local governing bodies and school boards to collaborate to set aside for the purpose of capital projects any funds appropriated to the school board by the local governing body that are unexpended by the school board in any year (‘turn-back’ funds).”¹¹⁶

Finally, the Commission supported directing the Board of Education to make recommendations to the General Assembly for revisions to the Standards of Quality to establish standards for operations and maintenance, and new construction, of public-school buildings.¹¹⁷ The Commission also adopted a legislative recommendation requiring “the Department of

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

Education to consult with the Department of General Services (DGS) to establish or adopt a tool for collecting data from local school divisions to determine the functional age of and ongoing maintenance reserve needs for each public school building in each local school division, similar to the MR-Fix tool that DGS uses for state buildings.”¹¹⁸

E. The Governor’s Budget Proposal and Response

Following the Commission’s adoption of the recommendations, legislators began introducing legislation and then-Governor Northam introduced his final two-year budget.¹¹⁹ The budget included several new proposals, including \$500 million in FY23 funding for school construction and modernization project grants.¹²⁰ While this response from the Governor was welcomed, Senator Stanley continued to emphasize the greater needs of the state’s school divisions, expressing:

We’re really looking at a minimum of \$6 billion to address the crumbling of the schools that’s going on. We need to stop the degradation of schools by time and weather, we must start with the roofs and once we stabilize the structure we have to make sure that teachers have the tools to provide a modern education.¹²¹

The Governor also proposed several changes to the Literary Fund. This included shifting employee retirement plan payments back to being funded through General Funds, freeing up the Literary Fund to offer up to \$200 million in FY23 and up to \$200 million in FY24 for school construction loans or interest rate subsidy grants.¹²² Additionally, the proposal included provisions to implement some of the recommendations from the VDOE and Treasury, “to make Literary Fund construction loans more competitive and attractive to school divisions as a viable source for funding school construction projects.”¹²³

V. 2022 SESSION AND INITIAL RECOMMENDATION OUTCOMES

When the General Assembly agreed to a budget on June 1, 2022, it

¹¹⁸ *Id.*

¹¹⁹ See Robert Zullo & Bob Lewis, *Northam Presents Final Budget, Flush with Cash, to Lawmakers*, VA. MERCURY (Dec. 16, 2021), [https://www.virginiamercury.com/2021/12/16/northam-presents-final-budget-flush-with-cash-to-lawmakers/#:~:text=Oliver%2FVirginia%20Mercury\)-,Gov.,strengthening%20the%20public%20retirement%20fund](https://www.virginiamercury.com/2021/12/16/northam-presents-final-budget-flush-with-cash-to-lawmakers/#:~:text=Oliver%2FVirginia%20Mercury)-,Gov.,strengthening%20the%20public%20retirement%20fund).

¹²⁰ VA. OFF. OF EDUC., 2022-2024 BIENNIAL BUDGET. See *Budget Bill - HB 30 Item 137*, LIS, <https://budget.lis.virginia.gov/item/2022/1/1/30/Introduced/1/137/> (last visited Sept. 28, 2023).

¹²¹ Markus Schmidt, *Is This The End of Crumbling Schools?*, CARDINAL NEWS (Jan. 3, 2022), <https://cardinalnews.org/2022/01/03/is-this-the-end-of-crumbling-schools/>.

¹²² VA. OFF. OF EDUC., *supra* note 120.

¹²³ *Budget Bill - HB 30 Item 137*, *supra* note 121. VA. DEPT OF EDUC., *supra* note 107.

contained \$1.25 billion in new resources available to school divisions for school construction during the biennium.¹²⁴ This included raising the Literary Fund to \$400 million, providing \$400 million in flexible formula-based grants to every school division, and investing an initial \$450 million into the School Construction Assistance Program.¹²⁵

Legislators also approved H.B. 563 and S.B. 473, which created the School Construction Fund and School Construction [Assistance] Program funded through the Appropriation Act.¹²⁶ To provide ongoing resources, the legislation directed 98% of the state's casino revenues towards this program.¹²⁷ It further required the VDOE to provide school boards with data tools like the DGS's Real Estate and Assets Management system (as recommended by the Commission) to plan and reserve funds for school renovations and construction more effectively.¹²⁸ The Appropriation Act also supported creating an additional full-time VDOE employee to administer the program and funding to enhance data collection on public school buildings.¹²⁹ H.B. 563 and S.B. 473 passed the House of Delegates by a margin of 94-0 on June 1, 2022, and passed the Senate by a margin of 39-0 on June 17, 2022.¹³⁰ The legislation was approved by Governor Youngkin on August 4, 2022, with an effective date of July 1, 2023.¹³¹

¹²⁴ COMMONWEALTH OF VA. H. APPROPRIATIONS COMM. & S. FIN. & APPROPRIATIONS COMM., SCH. CONSTR. - SUMMARY OF ACTIONS, Gen. Assemb., 2022 Spec. Sess. I at 2 (2022). *See generally* *Budget Bill - HB 30 Item 137*, *supra* note 120.

¹²⁵ *Budget Bill - HB 30 Item 135 #15c*, LIS, <https://budget.lis.virginia.gov/amendment/2022/2/HB30/Introduced/CR/137/15c/> (last visited Sept. 28, 2023).

¹²⁶ H.B. 563, 2022 Gen. Assemb., Spec. Sess. I (Va. 2022); S.B. 473, 2022 Gen. Assemb., Spec. Sess. I (Va. 2022).

¹²⁷ *See* H.B. 563, 2022 Gen. Assemb., Spec. Sess. I (Va. 2022); S.B. 473, 2022 Gen. Assemb., Spec. Sess. I (Va. 2022).

¹²⁸ H. 563, 2022 Gen. Assemb., Spec. Sess. I (Va. 2022).

¹²⁹ *Budget Amendments - HB 30 Item 135 #3c*, LIS, <https://budget.lis.virginia.gov/amendment/2022/2/HB30/Introduced/CR/135/3c/> (last visited Sept. 28, 2023); *Id.* at #1c.

¹³⁰ H.B. 563, 2022 Gen. Assemb., Reg. Sess. (Va. 2022); S. 473, 2022 Gen. Assemb., Reg. Sess. (Va. 2022).

¹³¹ H.B. 563, 2022 Gen. Assemb., Reg. Sess. (Va. 2022); S. 473, 2022 Gen. Assemb., Reg. Sess. (Va. 2022).

House Finance Committee on January 28, 2022.¹⁴⁰

While presenting her bill to the House Finance Subcommittee, former Senator McClellan expressed support for the legislation as another tool for localities given the breadth of need across the Commonwealth saying, “I appreciate that there is \$500 million on the table in the Senate budget, and a loan program planned that could produce \$2 billion, but that’s a drop in the bucket for the over \$28 billion in school construction and renovation needs across the Commonwealth.”¹⁴¹ In advocating for the local option, Senator Creigh Deeds (D-Bath) also pointed to the overwhelming needs across the state and the need to “let these individual localities decide for themselves.”¹⁴² Responding to the testimony in favor of the proposal, Delegate Kathy Byron (R-Bedford County) said that lawmakers are “trying to return extra tax dollars at a time when people really need it” and that it would be “counterproductive to turn around and ask for more.”¹⁴³

C. Standards of Quality Revisions Deferred

To enact the recommendation to “[d]irect the Board of Education to make recommendations to the General Assembly for revisions to the Standards of Quality to establish standards for operations and maintenance of and new construction of public school buildings,” Senator Stanley introduced S.B. 603 on January 12, 2022.¹⁴⁴ The Senate Finance and Appropriations Public Education Subcommittee debated this bill on February 8, 2022.¹⁴⁵

Senators McClellan and Stanley spoke to the importance of having standards for school buildings, noting that ongoing maintenance reduces costs in the future. Senator Dick Saslaw (D-Fairfax) responded that the topic should be carried over to the next session while the legislature awaited the JLARC report on Virginia’s K-12 Funding Formula.¹⁴⁶ The subcommittee adopted a recommendation to carry over the bill to the 2023 session by a

¹⁴⁰ *HB 531 Sales and Use Tax, Additional Local; Revenues to Support Construction or Renovation of Schools*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?221+vot+H1003V0002+HB0531> (last visited Sept. 17, 2023).

¹⁴¹ *Hearing on Senate 472 Before the Finance. Subcommittee*, 2022 Gen. Assemb., Reg. Sess. (Va. 2022), https://sg001-harmony.sliq.net/00304/harmony/en/PowerBrowser/PowerBrowserV2/20220225/-1/14329?startposition=20220225075326&viewMode=2&globalStreamId=4#people_statement_of_Sen._Jennifer_McClellan.

¹⁴² Markus Schmidt, *House Panel Rejects Bills Allowing Localities to Levy Sales Tax for School Construction*, CARDINAL NEWS (Feb. 25, 2022), <https://cardinalnews.org/2022/02/25/house-panel-rejects-bills-allowing-localities-to-levy-sales-tax-for-school-construction/>.

¹⁴³ *Id.*

¹⁴⁴ S. 603, 2022 Gen. Assemb., Reg. Sess. (Va. 2022).

¹⁴⁵ *Hearing on S. 603 Before the K-12 Educ. Subcomm.*, 2022 Gen. Assemb., Reg. Sess. (Va. 2022), https://virginia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=4930.

¹⁴⁶ *Id.*

margin of 3-2.¹⁴⁷

D. Unexpended Funds & Incentive Recommendations Tabled by House

The final legislative recommendation of the Commission related to school boards and their authority and obligations, was to grant school boards more authority over their fund balances, while also incentivizing better collaboration with local governing bodies.¹⁴⁸

Senator Stanley introduced S.B. 276, and Delegate Jeff Bourne (D-Richmond) introduced H.B. 608 on January 11, 2022, to permit school boards “[t]o finance capital projects with any funds appropriated to it by the local governing body that are unexpended by the school board in any year.”¹⁴⁹ This legislation had been previously considered by the General Assembly but was now a recommendation of the Commission. S.B. 276 was incorporated into former Senator McClellan’s S.B. 481 on February 9, 2022.¹⁵⁰ H.B. 608 was tabled by a House Education Subcommittee by a margin of 5-3 on February 2, 2022.¹⁵¹

Former Senator McClellan introduced S.B. 481 and Delegate Shelly Simonds (D-Newport News) introduced H.B. 251 on January 11, 2022, to establish collaborative agreements between local governing bodies and school boards to use unexpended funds to finance school maintenance, renovation, or construction in the local school division.¹⁵² The bill incentivized these agreements by declaring that, “[a]ny school board that fails to enter into such a collaborative agreement [would be] ineligible to participate in any state grant, loan, or bond program that supports school maintenance, renovation, or construction.”¹⁵³

When Delegate Simonds presented H.B. 251 to the House Education Subcommittee on Early Childhood and Innovation on February 2, 2022, she

¹⁴⁷ *Id.*

¹⁴⁸ COMM’N ON SCH. CONSTR. AND MODERNIZATION, DIV. OF LEGIS. SERVICES, AGENDA, 2023 Gen. Assemb., Reg. Sess. (Va. 2021) (adopted at the Dec. 1, 2021 meeting).

¹⁴⁹ S. 276, 2022 Gen. Assemb., Reg. Sess. (Va. 2022); H.D. 608, 2022 Gen. Assemb., Reg. Sess. (Va. 2022).

¹⁵⁰ S. 481, 2022 Gen. Assemb., Reg. Sess. (Va. 2022); *SB 276 School Boards; Unexpended Local Funds for Capital Projects*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=221&typ=bil&val=sb276> (last visited Sept. 25, 2023).

¹⁵¹ *HB 608 School Boards; Unexpended Local Funds for Capital Projects*, LIS (Feb. 02, 2022), <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB608>.

¹⁵² S. 481, 2022 Gen. Assemb., Reg. Sess. (Va. 2022); H.D. 251, 2022 Gen. Assemb., Reg. Sess. (Va. 2022).

¹⁵³ S. 481, 2022 Gen. Assemb., Reg. Sess. (Va. 2022); H.D. 251, 2022 Gen. Assemb., Reg. Sess. (Va. 2022).

offered a substitute bill that removed the financial penalty.¹⁵⁴ Delegate John Avoli expressed his concern that local governing bodies might need to retain unexpended funds for other purposes and should retain their ability to do so.¹⁵⁵ The Virginia Association of Counties, and the Virginia Municipal League, supported the substitute bill's provisions to maintain local authority.¹⁵⁶ Without further discussion, H.B. 251 was stalled by the subcommittee on February 2, 2022, by a margin of 5-3.¹⁵⁷

S.B. 481, after having incorporated S.B. 276 and unanimously passing the Senate on February 11, 2022, was considered by the same House Education Subcommittee on Early Childhood and Innovation.¹⁵⁸ The Virginia Association of State Superintendents, the Virginia School Boards Association, and the Virginia Education Association all expressed support in addition to prior proponents. Delegate Mike Cherry (R-Colonial Heights) expressed concern that this would inappropriately insert the state into local decision making, and Delegate William Wampler (R-Abingdon) concurred.¹⁵⁹ The bill was laid tabled by the House Education Subcommittee on February 23, 2022, by a margin of 4-3.¹⁶⁰

VI. RESPONSE TO THE 2022 SESSION

Once the budget was approved by the General Assembly, many legislators and leaders celebrated. "I think we've made a gigantic stride this year, and it's going to really pay off for a whole lot of school divisions," said Delegate Israel O'Quinn (R-Washington County), who took on a leading role in the House advocating with his colleagues.¹⁶¹ Delegate O'Quinn further remarked

¹⁵⁴ See *Hearing on H.B. 251 Before the Early Childhood-Innovation Subcommittee*, 2022 Gen. Assemb., Reg. Sess. (Va. 2022), <https://sg001-harmony.sliq.net/00304/harmony/en/PowerBrowser/PowerBrowserV2/20220202/-1/14196?startposition=20220202175159&mediaEndTime=20220202180159&viewMode=2&globalStreamId=4> (statement of Del. Shelly Simonds); H.D. 251, 2022 Gen. Assemb., Reg. Sess. (Va. 2022) (offering amendment in the nature of a substitute).

¹⁵⁵ See *Hearing on H.B. 251 Before the Early Childhood-Innovation Subcommittee*, *supra* note 154 (statement of Del. John Avoli).

¹⁵⁶ See *id.*

¹⁵⁷ *HB 251 School Boards and Local Governing Bodies; Unexpended Local Funds, etc.*, LIS (Feb. 02, 2022), <https://lis.virginia.gov/cgi-bin/legp604.exe?221+vot+H0903V0037+HB0251>.

¹⁵⁸ See *Hearing on S.B. 481 Before the Early Childhood-Innovation Subcommittee*, 2022 Gen. Assemb., Reg. Sess. (Va. 2022), <https://sg001-harmony.sliq.net/00304/harmony/en/PowerBrowser/PowerBrowserV2/20220223/-1/14305?startposition=20220223084044&mediaEndTime=20220223085044&viewMode=2&globalStreamId=4>.

¹⁵⁹ See *id.* (Statement of Del. Mike Cherry and Del. William Wampler).

¹⁶⁰ *SB 481 School Boards and Local Governing Bodies; Unexpended Local Funds Use for School Maintenance, etc.*, LIS (Feb. 23, 2022), <https://lis.virginia.gov/cgi-bin/legp604.exe?221+vot+H0903V0042+SB0481>.

¹⁶¹ Schmidt, *supra* note 6.

in an interview with the *Cardinal News*, “pretty much all school construction has been falling on the localities for a long time, and to go from what I would characterize as basically zero dollars up to, wholly leveraged, \$3.1 billion, is a massive jump.”¹⁶² The outlet also reported, “Bristol City Schools Superintendent Keith Perrigan, who also serves as president of Virginia’s Coalition of Small and Rural Schools, said that he was ‘thrilled’ that the state is now ‘an active participant in improving learning environments’ in the Commonwealth.”¹⁶³

Amidst the welcomed new investments, some legislators still noted some of the measures that failed. Former Senator McClellan noted the missed opportunity of allowing localities to raise the sales tax, saying it was “particularly frustrating because we kept hearing throughout the budget process that school construction is a local matter, and yet we didn’t give them the tools to help them raise that money.”¹⁶⁴ Ultimately, legislators expressed perspectives that the legislative actions of the 2022 session were a major step forward in addressing the issue of school construction after years of inaction.¹⁶⁵ They also noted the bipartisan nature of the issue and the need for continued progress.¹⁶⁶

VII. COMMISSION DECEMBER 2022 MEETING¹⁶⁷

When the Commission next met on December 1, 2022, they reviewed the status of the 2021 recommendations, received a report on the implementation of the School Construction Assistance Program, and adopted legislative recommendations for the 2023 Regular Session of the General Assembly.¹⁶⁸

During the meeting, and consistent with the Board of Education’s Appropriation Act for School Construction Assistance Program, they adopted the following recommendations:

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ COMM’N ON SCH. CONSTR. AND MODERNIZATION, *supra* note 148.

¹⁶⁸ COMM’N ON SCH. CONSTR. AND MODERNIZATION, *supra* note 148; COMM’N ON SCH. CONSTR. AND MODERNIZATION, DIV. OF LEGIS. SERVICES, RECOMMENDATIONS ADOPTED BY THE COMM’N, 2023 Gen. Assemb., Reg. Sess. (Va. 2022) (adopted at the Dec. 1, 2022 meeting); *see generally* STAFF OF THE H. APPROPRIATIONS COMM. AND S. FIN. & APPROPRIATIONS COMM., SCH. CONSTR. - SUMMARY OF ACTIONS, 1st Spec. Sess. (Va. 2022); *see generally* VA. DEP’T OF EDUC., OVERVIEW OF BOARD OF EDUC. GUIDELINES FOR IMPLEMENTING THE SCH. CONSTR. ASSISTANCE PROGRAM IN THE 2022-2024 BIENNium, https://studiesvirginiageneralassembly.s3.amazonaws.com/meeting_docs/documents/000/001/623/original/VDOE_Presentation_12.1.22.pdf?1670006578 (Dec. 1, 2022).

1. Either (a) use multiple years of composite index and fiscal stress data for determining the 10%, 20%, or 30% grant award amounts to recognize changing local economic conditions or fluctuating data values from a single year, or (b) use the most favorable of the latest or multi-year data. Currently, only the latest composite index and fiscal stress data are used in determining the grant amounts to divisions.

2. Making school projects where construction began July 1, 2022, or after, eligible for application to the School Construction Assistance Program, consistent with Board of Education intent for its final guidelines.

3. Making the principal portion of future debt service payments on school projects, where construction is pending or just begun, an allowable cost with grant funding.¹⁶⁹

The Commission further adopted renewed recommendations that authorized a new, up-to-1% local sales tax for all counties and cities with revenues solely used for school construction and renovation projects; and an additional \$2.5 billion in funding from the Appropriation Act for the School Construction Grant and Assistance Program—\$500 million for entitlement/direct in School Construction Grant Program and \$2 billion for competitive grants in School Construction Assistance Program.¹⁷⁰

Another recommendation, adopted by the Commission in concept, required a minimum local effort for capital maintenance programs and for school boards to include in any capital improvement plans a minimum 1.5% capital asset replacement value commitment target to avoid major replacement costs in the future.¹⁷¹ Finally, the Commission supported a Section 1 bill to direct the Board of Education to make recommendations to the General Assembly for revisions to the Standards of Quality to establish standards for operations, maintenance, and new construction of public school buildings.¹⁷²

VIII. 2023 BUDGET IMPASSE AND LIMITED LEGISLATIVE ACTION

A. Funding and Amendments to the FY24 Budget

When Governor Youngkin introduced his amendments to the FY24 Appropriation Act, he did not include any changes to existing school

¹⁶⁹ COMM'N ON SCH. CONSTR. AND MODERNIZATION, *supra* note 148.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

construction funding programs, or any new funding for the purpose of school construction grants.¹⁷³ When the House Appropriations Committee and Senate Finance Committee approved their amendments to the Governor's budget on February 5, 2023, there were few changes.¹⁷⁴

The House included the Commission's recommendations to amend several provisions of the School Construction Assistance Program, including:

(i) adding the principal portion of debt service payments on projects that have not yet been completed as an eligible use,

(ii) clarifying that any project that began construction after July 1, 2022, may qualify for grant funds,

(iii) allowing the most favorable year among three years of fiscal stress index data to be used to determine the grant award amounts instead of only the current year's data, and

(iv) requiring the program guidelines to address joint grant applications for regional school construction projects.¹⁷⁵

Although the amendment was drafted differently, the Senate included the same Commission recommendations in its committee-approved budget amendments.¹⁷⁶ The Senate also included an amendment to allow school divisions to use School Construction Grant Funds for regional programs and joint regional schools, and a contingent allocation of \$100 million for school construction grants.¹⁷⁷

In regard to the Commission's recommendation to include additional funding of \$2.5 billion from the Appropriation Act for the School Construction Grant and Assistance Program, no action was taken on the only proposal—a budget amendment introduced by former Senator McClellan—to provide such funding.¹⁷⁸

¹⁷³ SENATE FIN. & APPROPRIATIONS COMM., OVERVIEW OF PUBLIC EDUCATION PROPOSED BUDGET 6 (2023), https://sfac.virginia.gov/pdf/education/2023/01122023_No1_K-12%20Overview%20SFAC%20SB%20800%20Summary%20of%20Amendments.pdf; see H.B. 1400, 2023 Gen. Assemb., Reg. Sess. (Va. 2023) (as introduced); COMMONWEALTH OF VA. OFF. OF EDUC., 2022-2024 BIENNIAL BUDGET 5-7.

¹⁷⁴ See HOUSE APPROPRIATIONS SUBCOMM. ON ELEMENTARY & SECONDARY EDUC., REPORT OF THE HOUSE APPROPRIATIONS SUBCOMMITTEE ON ELEMENTARY & SECONDARY EDUCATION: HOUSE BILL 1400, 19-20 (2023), <https://budget.lis.virginia.gov/sessionreport/2023/1/2395>.

¹⁷⁵ *Budget Amendments - HB1400*, LIS, <https://budget.lis.virginia.gov/amendment/2023/1/HB1400/Introduced/CA/137/2h/> (last visited Sept. 19, 2023) (*Committee Approved*).

¹⁷⁶ *Id.*

¹⁷⁷ *Budget Amendments - SB800 (Committee Approved)*, LIS, <https://budget.lis.virginia.gov/amendment/2023/1/SB800/Introduced/CA/137/16s/> (last visited Sept. 19, 2023); SENATE FIN. & APPROPRIATIONS COMM. VA. GEN. ASSEMB., REPORT OF THE SUBCOMMITTEE ON K-12 EDUCATION 2 (2023), <https://budget.lis.virginia.gov/sessionreport/2023/1/2382>.

¹⁷⁸ S. 1124, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

After a budget impasse this year where the General Assembly initially adopted a “skinny budget” that corrected a public education funding error and made technical adjustments to other non-education related matters, the General Assembly eventually passed amendments to the FY24 Appropriations Act in a Special Session on September 6, 2023.¹⁷⁹ The budget was approved by Governor Youngkin on September 14, 2023.¹⁸⁰ Unfortunately, the final approved budget did not include the House and Senate committee-approved revisions to the School Construction Assistance Program that were considered in the Regular Session in February 2023.¹⁸¹ The only provision related to school infrastructure that was approved in the budget was \$20 million in targeted flexible grants to school divisions to support school security equipment and renovations.¹⁸²

B. 1% Sales Tax and Income Tax Legislation

Legislators introduced multiple pieces of legislation to allow localities to have voter referendums on 1% local sales and use taxes for the purpose of school construction and modernization.¹⁸³ H.B. 2316 and S.B. 1408 would have authorized all localities to hold such referendums and impose the tax.¹⁸⁴ They also introduced other bills to grant authority to specific localities including Albemarle County (S.B. 1287), the City of Charlottesville (S.B. 1287), the City of Newport News (H.B. 2442) and Prince Edward County (H.B. 1605) to hold referendums and impose the tax.¹⁸⁵ All legislation failed in a House Finance Subcommittee, either on unrecorded votes or party-line votes, with Republicans opposed to the proposals.¹⁸⁶

An additional bill related to taxation, H.B. 2176, was introduced on January 11, 2023, by Delegate Mark Sickles (D-Franconia).¹⁸⁷ The legislation would have directed 5% of a locality’s individual income tax

¹⁷⁹ H.B. 6001, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

¹⁸⁰ *H.B. 6001 Budget Bill*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=232&typ=bil&val=hb6001> (last visited Nov. 26, 2023).

¹⁸¹ See *Budget Bill – HB 6001 (Ch. 1) Item 137*, LIS, <https://budget.lis.virginia.gov/item/2023/2/HB6001/Chapter/1/137/> (last visited Nov. 26, 2023).

¹⁸² See VA. HOUSE APPROPRIATIONS COMM., *Overview of House Bill 6001* (Sept. 6, 2023), <https://hac.virginia.gov/committee/files/2023/9-6-23%20SSI/Consolidated%20Powerpoint%20for%20Conference%209-1-2023.pdf/>.

¹⁸³ See e.g., *H.B. 2316 Sale and Use Tax, Local; Additional Tax Authorized in All Counties & Cities to Support Schools*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?231+sum+HB2316> (last visited Nov. 26, 2023).

¹⁸⁴ H.B. 2316, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); S. 1408, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

¹⁸⁵ S. 1287, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); H.B. 2442, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); H.B. 1605, 2023 Gen. Assemb., Reg. Sess. (Va. 2013).

¹⁸⁶ S. 1287, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); H.B. 2442, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); H.B. 1605, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

¹⁸⁷ H.B. 2176, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

revenues to be distributed to the locality for the purpose of school construction or renovation purposes.¹⁸⁸ The bill failed in a House Finance Subcommittee on January 27, 2023, by a margin of 5-3.¹⁸⁹

C. Standards of Quality

This year, the Commission's recommendation to "[d]irect the Board of Education to make recommendations to the General Assembly for revisions to the Standards of Quality to establish standards for operations, maintenance, and new construction of public school buildings" was successfully enacted.¹⁹⁰ Delegate Simonds introduced H.B. 2307 on January 11, 2023, and Senator Stanley introduced S.B. 1124 on January 10, 2023.¹⁹¹ H.B. 2307 failed to report from a House Education Subcommittee on January 24, 2023, by a margin of 3-5.¹⁹²

S.B. 1124, however, was received more favorably by the House Education Committee after passing the Senate unanimously on February 3, 2023.¹⁹³ The bill reported from the House Education Committee by a margin of 20-1 on February 8, 2023, and passed the full House of Delegates by a margin of 84-15 on February 13, 2023.¹⁹⁴

After passing the General Assembly, Governor Youngkin made a recommendation to allow an additional six months before the Board of Education is required to submit recommendations to the General Assembly.¹⁹⁵ The General Assembly concurred in the recommendation and the Board of Education is now required to submit its recommendations for amendments to the Standards of Quality by July 1, 2024.¹⁹⁶

D. Local Funds and School Maintenance Capital Targets

Delegate Simonds introduced H.B. 2399 on January 17, 2023, to implement the Commission's 2021 recommendation, "[t]o permit any school board to finance capital projects with any funds appropriated to it by the local governing body that are unexpended by the school board in any year."¹⁹⁷ The legislation failed to report from a House Education Subcommittee by a

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ S. 1124, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

¹⁹¹ H.B. 2307, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); S. 1124, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

¹⁹² H.B. 2307, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

¹⁹³ S. 1124, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ H.B. 2399, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

margin of 3-5 on January 24, 2023.¹⁹⁸ Legislation to enact the Commission's recommendation to, "[r]equire a minimum local effort for capital maintenance programs and require school boards to include in any capital improvement plans a minimum 1.5% capital asset replacement value commitment target to avoid major replacement costs in the future" also failed.¹⁹⁹

Delegate Simonds introduced H.B. 1694 on January 9, 2023, and Senator Jeremy McPike (D-Woodbridge) introduced S.B. 1045 on January 8, 2023.²⁰⁰ Their legislation would have placed the requirement on school boards to establish and include in any multi-year capital improvement plan, a school building maintenance capital target of at least 1.5% of the average replacement value of such buildings.²⁰¹ While S.B. 1045 passed the Senate unanimously on January 24, 2023, both bills failed while under consideration by the House Education Committee.²⁰²

E. Renewable Energy Generation

While not a recommendation of the Commission, legislation was introduced during the 2023 session directing the Commission, "[i]n consultation with the Department of Energy, to develop and make recommendations on strategies to assist interested school divisions with incorporating renewable energy generation facilities in the construction or renovation of school buildings."²⁰³ H.B.1852 was introduced by Delegate Suhas Subramanyam (D-Ashburn) on January 10, 2023, and S.B. 848 was introduced by Senator Barbara Favola (D-Arlington) on December 28, 2022.²⁰⁴ While S.B. 848 passed unanimously by the Senate on February 2,

¹⁹⁸ *Id.*

¹⁹⁹ H.B. 1694, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); S.B. 1045, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); *Commission on School Construction and Modernizations Makes Recommendations to the General Assembly*, VA. ASS'N OF COUNTIES (Dec. 13, 2022), <https://www.vaco.org/county-connections/commission-on-school-construction-and-modernizations-makes-recommendations-to-the-general-assembly/>.

²⁰⁰ H.B. 1694, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); S. 1045, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

²⁰¹ H.B. 1694, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); S. 1045, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

²⁰² *H.B. 1106 School Boards; School Building Maintenance Reserves.*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?231+sum+HB1694> (last visited Sept. 17, 2023); *S. 1045 School Boards; School Building Maintenance Capital Target.*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?231+sum+SB1045> (last visited Sept. 17, 2023).

²⁰³ H.B. 1852, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); S. 848, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

²⁰⁴ H.B. 1852, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); S. 848, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

2023, both bills failed to report from the House Appropriations Committee.²⁰⁵

CONCLUSION

Of the Commission's eighteen total recommendations since its creation, including the Literary Fund recommendations from the Departments of Education and Treasury, nine have been implemented and nine have failed. Action in 2023 was extremely limited as a result of the budget impasse that was focused on tax policy and other education funding policy decisions unrelated to school construction.²⁰⁶ More advocacy will be needed in future sessions to secure additional school construction and modernization reform and investment, as budget priorities easily shift from year to year.

While not all proposals have passed, considerable changes and new investments have been made to support localities with school construction costs, notably with the creation of the School Construction Assistance Program. On May 11, 2023, the Virginia Board of Education approved the first set of grants through the program.²⁰⁷ For Richmond Public Schools, the awarded four grants, totaling \$27.6 million, was a significant boon to the division's ability to modernize several facilities, and assist with the unexpected expense of rebuilding William Fox Elementary School which burned down in February 2022.²⁰⁸

This outcome was one of many that were hoped for in creating the Commission on School Construction and Modernization. Overall, the Commission should be considered successful in meeting its purpose. In the years prior to its creation, very little legislative action took place. After its creation and its recommendations, the Commonwealth has taken a stronger role in supporting localities and school divisions and continues to consider additional investments and reforms.

²⁰⁵ *H.B. 1852 Public School Bldgs. & Facilities; Construction & Renovation, Renewable Energy Generation Facility*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?231+sum+HB1852> (last visited Sept. 17, 2023); *S. 848 Public School Bldgs. & Facilities; Construction & Renovation, Renewable Energy Generation Facility*, LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?231+sum+SB848> (last visited Sept. 17, 2023).

²⁰⁶ Sarah Vogel song, *What's in Virginia's Long-Delayed 2023 Budget Deal*, VA. MERCURY (Sept. 5, 2023), <https://www.virginiamercury.com/2023/09/05/whats-in-virginias-long-delayed-2023-budget-deal/>.

²⁰⁷ Commonwealth of Virginia Board of Education, *Minutes for Meeting on May 11, 2023*, VA. DEP'T EDUC. (2023), <https://www.doe.virginia.gov/home/showpublisheddocument/46449/638246970401370000>.

²⁰⁸ *School Construction Assistance Program - Recommended School Project Grant Awards (May 11, 2023)*, VA. DEP'T EDUC., <https://www.doe.virginia.gov/home/showpublisheddocument/44517/638192554907570000> (last visited Sept. 17, 2023); Jason Kamras, *RPS Direct May 16, 2023*, RICHMOND PUBLIC SCHS., <https://t.e2ma.net/message/v2ovfk/vum8h7m>.

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