

**GOVERNOR'S TASK FORCE
FOR LOCAL GOVERNMENT MANDATE REVIEW**



INTERIM REPORT TO THE GOVERNOR

April 6, 2016

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Dear Governor McAuliffe:

I am pleased to submit for your review this interim report of the Governor's Task Force for Local Government Mandate Review.

The Task Force would first like to begin by thanking you for your efforts to address several items of importance to Virginia's localities – many of which were identified as priorities in our previous interim reports. First, the additional funding provided to K-12 education through your introduced budget and the corresponding General Assembly Conference Report is significant and will help to rebalance the state/local share of educational spending. Second, the additional funding provided for state assistance to local police departments is welcome news, and the Task Force hopes this trend will continue so that the state honors its pledge to cover a reasonable portion of local police departments' costs.

The Task Force met in late March to review the outcome of the General Assembly Session and identify items of significant importance to local governments in the Commonwealth. This report represents the priorities the Task Force hopes you will consider as you review legislation to sign or veto prior to the reconvened General Assembly Session on April 20, 2016. We have also identified several other high priority items that we hope you will consider during the remainder of your term. These priorities were identified with the input of the Virginia Municipal League and Virginia Association of Counties.

In addition to continuing to monitor ongoing priorities and identify new issues, the Task Force intends to meet with additional state agencies to discuss the state/local relationship regarding a variety of programs. We also plan to review and actively monitor several recently released and ongoing studies of local interest including the Joint Legislative Audit and Review Commission study on K-12 spending, the AirBnB study by the Virginia Housing Commission, and the recommendations on programmatic improvements for the Children's Services Act by the State Executive Council for Children's Services.

Thank you again for providing us the opportunity to improve the relationship between the Commonwealth and its local governments. We look forward to developing additional recommendations and will provide you with periodic updates.

Sincerely,

A handwritten signature in black ink, appearing to read "Wyatt Shields", written in a cursive style.

Wyatt Shields,

Chairman

**MEMBERS OF THE
TASK FORCE FOR LOCAL GOVERNMENT MANDATE REVIEW**

Wyatt Shields, Chair

City Manager, City of Falls Church

The Honorable Mimi Elrod, PhD, Vice-Chair

Mayor, City of Lexington

The Honorable George Wallace

Mayor, City of Hampton

Gary Larrowe

County Administrator, Botetourt County

Marcus Newsome, EdD

Superintendent, Chesterfield County Public Schools

INTERIM REPORT OF THE TASK FORCE FOR LOCAL GOVERNMENT MANDATE REVIEW

April 6, 2016

For the 2016 General Assembly Session and for future consideration, the Governor's Task Force for Local Government Mandate Review has identified several priorities for the Governor to consider prior to the reconvened session of the General Assembly. We respectfully request consideration of the following priorities:

1. Sign several bills of local interest:

As the April 10 deadline for signature quickly approaches, the Task Force for Local Government Mandate Review would like to bring to your attention four bills affecting local government that have the support of the Task Force. We recommend that you sign House Bill 1345, Senate Bill 468, Senate Bill 416, and House Bill 1362. We have included a brief history of each issue as well as synopsis of the related legislation.

Line of Duty Act Program, House Bill 1345: The Line of Duty Act (LODA) provides benefits to public safety employees, or their survivors, should they die or become disabled in the line of duty. The primary benefit until 2000 was a cash payment; however, at that time, benefits were expanded to include health insurance benefits for disabled persons, their spouses and dependents, and the spouses and dependents of the deceased. This additional benefit increased the cost of the program significantly. All of the benefits for this state-created program were paid for with state funds until FY 2012, after which local governments were then required to pay the premium for this coverage to the State or opt out and seek similar coverage on their own.

The General Assembly re-enacted legislation from the 2015 Session through House Bill 1345, which would create a partially state funded, non-reverting fund to be managed by the Virginia Retirement System (VRS) for LODA.¹ This legislation also transfers administration of health insurance benefits for LODA to the Virginia Department of Human Resource Management (DHRM), directing them to create separate health plans for beneficiaries of LODA. Under this legislation, localities would still have the option not to participate in the fund but would be required to use DHRM's health benefits.

RECOMMENDATION: While localities support the principle behind LODA, having the state set the benefit structure but mandate that localities bear the cost is a structural flaw to the program. Local governments support returning funding responsibility (if only partially) and administration of this program to the State in the form of VRS and DHRM. We recommend the Governor sign House Bill 1345.

Local Stormwater Utilities, Senate Bill 468: Under current law, localities are permitted to create a stormwater utility or system of charges to offset the cost of maintenance and construction of shared stormwater management facilities in the community.² The creation of such utilities is integral to

¹ H.B. 2204 (2015)

² Va. Code § 15.2-2114

supporting a locality's ability to properly maintain their stormwater management facilities and comply with state and federal mandates. Even with the ability to create such utilities, localities struggle to provide adequate maintenance without an excessive burden to their citizens.

The General Assembly adopted legislation in the 2016 Session, Senate Bill 468, permitting localities that have created stormwater utilities to enter in public-private partnerships to more efficiently manage stormwater. This legislation allows localities to use stormwater utility funds for contracts for facilities that may be on either public or private property.

RECOMMENDATION: Local governments support this additional tool that has the potential to provide added efficiency and cost effectiveness in managing stormwater. We recommend the Governor sign Senate Bill 468.

Limited Residential Lodging, SB 416: In the past few years the "sharing economy," through sites such as Airbnb, has begun to provide travelers with the option of staying in a part or all of a person's dwelling for short periods of time. Typically fees are lower than typical hotels or bed and breakfasts. This new lodging option has provided flexibility for travelers and a new source of income for property owners, while at the same time causing issues for local zoning departments and discussions about regulatory fairness from members of the traditional hospitality industry.

The General Assembly adopted legislation in the 2016 Session, Senate Bill 416, to address some of the concerns related to "Limited Residential Lodging." This legislation would preempt local zoning ordinances but would allow localities to adopt an ordinance requiring owners to register with the locality to ensure they are up to date on taxes and maintain a certain level of liability insurance. This legislation includes a reenactment clause for 2017 and directs the Virginia Housing Commission to study the issue during the interim.

RECOMMENDATION: This bill is an important first step in effectively regulating "Limited Residential Lodging," in Virginia. While localities still have concerns about a new state mandate that would require special treatment for certain commercial uses, the loss of local zoning authority, and repayment of certain taxes to the locality, the reenactment clause and Housing Commission Study provide some level of comfort. As such, we recommend the Governor sign Senate Bill 416.

Conflict of Interest Act/Freedom of Information Act, HB 1362: The Conflicts of Interest and Freedom of Information Acts (COIA/FOIA) are critical to local governments as a vehicle for providing ethical, open and transparent government. While these issues are of paramount importance to local government, the regulation surrounding them can at times be confusing and onerous for local government staff and officials to navigate.

Legislation from the 2016 Session of the General Assembly, House Bill 1362, takes steps to clarify existing COIA and FOIA law while further limiting gifts that public officials may receive. Under this legislation, forms in the Code relating to COIA have been placed under the purview of the COIA Advisory Council. An additional, key aspect of this legislation is that COIA forms are only required to be submitted annually instead of bi-annually. Further, the definition of a gift is reduced from \$50 to \$20

and procurement actions governed by COIA must be greater than \$5 million. In regards to FOIA, this legislation exempts informal advisory opinions but maintains that formal advisory opinions are subject to FOIA.

RECOMMENDATION: While there is additional work to be done, this legislation brings some clarity to existing law and reduces mandated COIA reporting requirements for localities. We recommend the Governor sign House Bill 1362.

2. Eliminate the State capture of local fines and forfeitures

The 2012 General Assembly altered how fines and fees assessed by local ordinances were transferred from local courthouses to localities' coffers. In FY 2013, all fines and fees collected by local courts were deposited to the state's General Fund, and the state would then distribute the local fines and fees monthly to each locality. The state also decided to retain one-half of local fines and fees that were in excess of 50% of the total state and local collections within a city or county. The legal basis for the state's action was assumed on a line of reasoning later repudiated by the state's Inspector General and by the Attorney General.³ Under a quirky state-driven formula, a number of localities were unfairly targeted. "Reforms" adopted in the 2015 legislative session ballooned the number of affected localities from five to 33. The threshold for forfeitures was raised from 50% to 65%, and the amount forfeited in excess of that threshold was scheduled to increase with each fiscal year of the current and future biennia (FY 2016: $\frac{1}{4}$, FY 2017: $\frac{1}{3}$, and FY 2018: $\frac{1}{2}$). This item still remains in the Conference Report; however, exemptions have been provided for two localities in the Commonwealth, which brings the total number of affected localities to 31.⁴ The money to be seized yields a total in excess of \$700,000 and is not budgeted for any purpose in the Appropriation Act.^{5 6} The General Assembly recognizes that seizing local fines is not a reliable funding source.

RECOMMENDATION: Eliminate the budget language in Item 3-6.05 authorizing the capture of local fines and forfeitures to the state treasury.

3. Reinstate the First-Day Introduction Requirement for Local Fiscal Impact Legislation

From 1995 through 2010, any proposed legislation that would potentially impact localities by causing a net additional expenditure or a net reduction in revenues was required to be introduced no later than the first day of the General Assembly session. This provided sufficient time for localities and affected interest groups to analyze the legislation for any fiscal impact before the bills were heard in committee. In addition, the Commission on Local Government drafts fiscal impact statements on these bills, which requires several days for local volunteers to provide fiscal data to the Commission. These fiscal impact statements are prepared so that legislators can make informed decisions when the bill is in

³ Office of the State Inspector General, Report on the Independent Evaluation of Court Fines and Fees, May 2013.

⁴ Courts located in the Cities of Falls Church and Fairfax have been excluded. The remaining localities include the Cities of Alexandria, Buena Vista, Charlottesville, Chesapeake, Colonial Heights, Danville, Emporia, Franklin, Hopewell, Lynchburg, Martinsville, Newport News, Radford, Suffolk, Virginia Beach, and Waynesboro and the Counties of Amherst, Arlington, Brunswick, Caroline, Carroll, Charles City, Greensville, Henrico, Matthews, Nelson, Orange, Smyth, Southampton, Sussex, and Washington.

⁵ Virginia Auditor of Public Accounts, "Remittance Amounts."

⁶ Using the FY 2015 "Remittance Amounts" from the Auditor of Public Accounts yields approximately \$742,656.49 when excluding Fairfax and Falls Church.

committee. In 2010, the legislature eliminated the requirement for these bills to be filed early, along with the same requirement for bills proposing sales tax exemptions, claims against the state, and increased terms of imprisonment. Only bills affecting the Virginia Retirement System are still required to be filed early. Under the procedures in place from 2010-2016, a bill with a local fiscal impact could be filed as late as the tenth day of session. During a short session, the house of introduction must have completed action on bills for crossover by the 28th day of session. This constrained timeframe leaves little time for the referral of the bill to the Commission, to engage its volunteer localities for data, and to compile the responses. During short sessions, it is not uncommon for the fiscal impact statement to be completed the day before a bill goes to committee. In the 2013-2016 sessions, bills were introduced after the session began on significant issues, including: uranium mining, eminent domain, stormwater management, public procurement, and conflicts of interest. The constrained timeframe to review bills on these topics and other issues could impair the ability to adequately evaluate the true local fiscal implications and consequences behind their proposals.

RECOMMENDATION: In the 2017 Session, we would ask that the Governor support first-day introduction of bills with a local fiscal impact. While first day introduction is preferred, there has been discussion of introduction by the third day of session for bills affecting local taxing power in Article 3 of Title 58.1. The Task Force would support any move to require the introduction of local fiscal impact bills earlier than the current standard.

4. Consider Future Refinement to and Technical Support for Proffer Law

One of the most significant bills of local government interest during the 2016 General Assembly Session was Senate Bill 549, which impacts conditional zoning and cash proffers and will go into effect July 1, 2016. The Code of Virginia permits localities to accept voluntary proffers, or conditions, during the rezoning of land that impose reasonable additional requirements and restrictions to the use of the property beyond what is contained in the underlying zoning. Proffers are designed to address impacts as a result of the rezoning and must reasonably be related to the rezoning and consistent with the locality's comprehensive plan. In most circumstances, proffers can include voluntary cash contributions to address increased demands on existing public services (e.g. schools, utilities, roads, etc.).⁷

This new law will prohibit localities from requesting or accepting proffers in the event of rezoning or proffer amendments related to new residential development or uses as a condition of approval if the proffers are considered "unreasonable," as defined. Localities will also be prohibited from denying any residential rezoning or proffer amendment if the denial is based on the applicant's failure to submit to an unreasonable proffer or proffer condition amendment. The law also introduces new standards for civil cases challenging rezoning and special use permit cases and places the burden of proof regarding the validity of the conditions meeting the definition of "unreasonable" on localities.

While many changes were incorporated into the final version of the bill prior to its passage, localities and other stakeholders are still concerned about the implications of this law. Of particular importance is that the bill would still prevent localities from requesting or accepting (emphasis added) unreasonable

⁷ Va. Code §§ 15.2-2297, 15.2-2298, 15.2-2303, and 15.2-2303.1

proffers. This could have the effect of not only tying the hands of localities, but also preventing applicants from voluntarily offering additional conditions that – while meeting the definition of “unreasonable” – might not necessarily be considered unreasonable based on the individual perspective of the applicant.

The two highest categories for local cash proffer expenditures are usually Schools and Roads/Other Transportation Improvements, which accounted for approximately 67.1% of all cash proffer expenditures for FY 2015.⁸ Given the recent history of dwindling state aid for K-12 education and transportation, many localities – especially those in high growth areas – have been faced with relying on alternative resources to help fund increased demand for these and other public services (emphasis added). The new law affecting conditional zoning in Virginia could exacerbate this problem because localities will not be able to rely on this resource to meet these demands. Furthermore, it could also have a muting effect on many localities’ comfort level with approving otherwise noncontroversial residential rezoning and special use permit requests for fear of violating the law and being challenged in court.

RECOMMENDATION: Voluntary proffers have been a tool for local governments to work with the developers to mitigate the impact of major unfunded mandates from the state government on their tax payers. While the proffer legislation has already been approved, we strongly encourage the Governor to re-examine the issue for the 2017 General Assembly Session, especially regarding localities’ inability to accept (emphasis added) unreasonable proffers. Furthermore, we would welcome any technical assistance the Governor’s Office or others within the Governor’s administration could provide on interpretations and best practices for complying with this law. Finally, given the potential fiscal implications of this law on the ability of localities to adequately respond to the demand for increased public services, we request that the Governor keep the circumstances behind this financial hindrance in mind as he works on potential amendments to the 2016-2018 biennial budget during the 2017 General Assembly Session.

⁸ Commission on Local Government, “Report on Proffered Cash Payments and Expenditures by Virginia’s Counties, Cities, and Towns 2014-2015.”