

DRAFT MINUTES
COMMISSION ON LOCAL GOVERNMENT (CLG)

Regular Meeting

10:00 a.m., November 5, 2007

Members Present

Kathleen K. Seefeldt, Chairman
Frances M. Parsons, Vice Chairman
Harold H. Bannister, Jr.
John G. Kines, Jr.
Vola T. Lawson

Staff Present

Susan Williams, Local Government Policy Manager
Steve Ziony, Principal Economist
Matthew Bolster, Senior Policy Analyst
Barbara Johnson, Administrative Assistant

Others Present

Nicholas Donohue, Assistant Secretary of Transportation

Call to Order

The Chairman called the meeting to order at 10:10 a.m. on November 5, 2007 in the Second Floor Conference Room at the Department of Housing and Community Development (DHCD) at the Jackson Center in Richmond, Virginia.

I. Administration

A. Approval of Minutes of Regular Meeting of September 10, 2007

Ms. Williams explained that a correction was needed to the first full sentence on Page 8 of the draft minutes – the reference there should be to 281 localities, including 157 towns. The minutes of the Commission’s regular meeting of September 10, 2007 were approved with that single amendment.

B. Public Comment Period

The Chairman opened the floor to receive comments from the public. No person appeared to testify before the Commission during the public comment period.

C. Presentation of Financial Statement for October 2007

Ms. Williams began by announcing that the CLG budget was not reduced in the Governor's Fiscal Year 2008 Budget Reduction Plan. Ms. Williams reminded the members that, in August, Governor Kaine announced that Virginia faces a \$641 million general fund revenue shortfall in the current biennium. The Governor asked that each Secretary prepare a five percent budget reduction plan and submit it to the Department of Planning and Budget. On October 1, Governor Kaine released a Fiscal Year 2008 Budget Reduction Plan. Ms. Williams noted that, while the reductions detailed in the plan did not impact the CLG, the reductions did include a five percent reduction in the amount of funding that the 21 planning district commissions receive from DHCD.

Referencing an internally produced financial statement that encompassed expenditures through the end of October 2007, Ms. Williams stated that the financial report covered one-third of Fiscal Year 2008 and that Commission expenditures for that four-month period represented 27.9% of the total amount budgeted for the current fiscal year. The members accepted the report for filing.

D. Local Government Policy Manager's Report

1. Follow-Up Regarding Commission on Local Government Letterhead

Ms. Williams indicated that the letterhead approved by the members at their September meeting has been ordered and should arrive prior to their next regular meeting.

2. Potential Interlocal Issues

Ms. Williams informed the members that she was contacted by an attorney with Pender Coward in Virginia Beach regarding a potential citizen-initiated annexation involving a yet-to-be identified town and county. Ms. Williams indicated that she provided basic information in response to an initial request from the attorney and that he subsequently traveled to Richmond to meet with her and review files in the CLG library on October 5. As a result, the attorney requested numerous additional documents, which have now been provided to him.

Next, Ms. Williams informed the members that she was contacted by an attorney with Chadwick Washington in Fairfax County regarding the potential incorporation of the community of Reston into a town. Ms. Williams described for the members two statutory obstacles that Reston will face. First, Va. Code § 15.2-817 prohibits an unincorporated area from being incorporated after the adoption of the urban county executive form of government which exists in Fairfax, the county in which Reston is located. Second, Va. Code § 15.2-3602 requires proof that the population density of the county in which a community seeking incorporation is located does not exceed 200 persons per square mile, and Fairfax County's population exceeds this density threshold. Ms. Williams explained that the community could either seek legislation to address these statutory obstacles or seek a town charter directly from the General Assembly, thereby circumventing the statutory process and its inherent obstacles to town incorporation in these particular circumstances. Ms. Williams provided numerous documents to the attorney in response to her requests for information about the incorporation process and the history of town incorporation in Virginia.

Next, Ms. Williams informed the members that the chief planners from the Town of Leesburg and Loudoun County requested a conference call with her, which took place on

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October 19. The conference call concerned the potential Town of Leesburg – Loudoun County annexation, which was discussed at the September 10 Commission meeting, and the conversation focused on the types of information and exhibits that should accompany a submission to the Commission. Prior to the conference call, Ms. Williams provided them with a copy of the Commission’s 2005 Report on the Town of Stephens City – County of Frederick Voluntary Settlement Agreement. During the call, Ms. Williams explained that additional documents and documentation are available for copying and also that they may want to visit the CLG library for research purposes. Subsequently, the Loudoun County representative requested copies of the filings related to revenue and expenditure projections submitted in conjunction with the Stephens City – Frederick County agreement. Ms. Williams ascertained that these documents were archived to the Library of Virginia last year, and she provided the requester with a copy of the case bibliography so that he can identify the specific documents for which he would like to obtain copies.

Finally, Ms. Williams indicated that there were no updates or recent developments to report regarding the other potential interlocal issues discussed at prior meetings.

3. Meeting Per Diem

Ms. Williams stated that, in accordance with the Commission’s policy on compensation and reimbursement, per diem will be paid to Mrs. Parsons for November 4 and per diem will be paid to Mrs. Parsons as well as all other members for their service to the Commonwealth on November 5, 2007.

4. Other

Ms. Williams then updated the Commission on various other staff activities. She indicated that staff attended the Local Government Attorneys Fall Conference in Williamsburg

on September 27 - 29 and that staff, as well as Mr. Kines and Mrs. Parsons, attended the Virginia Municipal League Annual Conference held in James City County on October 14 - 16. Mrs. Lawson then asked Ms. Williams whether she had received any response to the letters Ms. Williams sent to VACo and VML requesting the opportunity for the Commission to address both organizations at their 2008 annual conferences. Ms. Williams indicated that she had not received a response from either organization but would follow up with both of them. Mr. Kines added that Ms. Williams might want to contact the designated conference chairs in connection with this request.

Ms. Williams then highlighted other staff activities including assisting other DHCD staff in preparation for the upcoming Governor's Housing Conference and revising the service area plans for intergovernmental relations and financial assistance for regional cooperation.

III. Assessment of State and Federal Mandates on Local Governments

A. Staff Update

Ms. Williams stated that, on October 11, 2007, Governor Kaine issued Executive Order 58 establishing the policies and procedures for agency assessment of mandates on local government. Ms. Williams reiterated the importance of the issuance of the Executive Order as it will allow the Commission to move forward with its implementation of the recommendations put forth by the mandates assessment task force and approved by the Commission. Ms. Williams then outlined the next steps in implementing the new assessment policies and procedures. First, CLG staff will identify all new and newly identified mandates which have been in effect for a minimum of two years and have not been assessed previously. Next, CLG staff will contact the agencies responsible for administering the identified mandates and request that such agencies propose a schedule for conducting the assessments. CLG staff will compile the proposed

schedules and present them to the Commission for consideration. The proposed schedules will then be submitted to the Secretary of Commerce and Trade and the Governor for their approval.

Finally, Ms. Williams informed the members that the Share Point Portal software that will be used to establish the interactive website recommended by the task force and approved by the Commission has now been installed at DHCD. Ms. Williams explained that, after the Governor's Housing Conference, DHCD staff will be available to begin work on a test site.

IV. Draft 2007 Catalog of State and Federal Mandates on Local Governments

A. Staff Update

Mr. Bolster explained that, since 1993, the General Assembly has charged the CLG with preparing an annual catalog of state and federal mandates imposed on Virginia's local governments. Mr. Bolster stated that the last catalog was issued in February 2006 and included mandates in legislation enacted through 2005. He further explained that the draft edition of the catalog presented today includes mandates from legislation enacted in 2006 and 2007, plus newly identified mandates and changes to existing mandates as of October 2007.

Mr. Bolster then reminded the members of the definition and types of mandates designated for cataloging purposes, as set forth in Executive Memorandum 1-98, which governed the agency assessment process until Executive Order 58 was issued. Mr. Bolster explained that, in most cases, compliance with mandates is overseen by a related state agency. By way of example, Mr. Bolster explained that VDOT oversees mandates related to non-public transportation. He stated that the agencies ensure local government compliance with state statutes and regulations, but may also have some responsibility for ensuring compliance with related federal statutes and regulations, as when the federal government provides funding to the state to administer certain services and projects. Mr. Bolster cited examples of functional areas

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with major federal funding passed through the state, including transportation, human services, education, and emergency management. He explained that, as a result, many of the mandates listed in the catalog include references to both state and federal statutes and regulations as their source of authority.

Mr. Bolster then described the organization of the draft catalog. Mr. Bolster explained that Part A provides the mandates that are overseen by executive agencies, and each listing has a title, an identification number, and a brief description, including the type of mandate, the agency responsible for oversight, the agency's Secretariat, and a citation to the legal authority for the mandate. He also explained that identification numbers are sometimes missing from the sequence because previous mandates have been eliminated, and, when this occurs, the numbering for the rest of the mandates remains the same. He stated that the final section of each catalog listing refers to the last period when the mandate was assessed and the last assessment finding. Mr. Bolster reminded the members that, in the future, the assessment process will change in accordance with Executive Order 58.

Mr. Bolster stated that, in some cases, a non-executive branch or an independent agency is responsible for administering a mandate. By way of example, he explained that the Virginia Supreme Court is ultimately responsible for ensuring that localities provide funding and facilities for local court systems. Mr. Bolster stated that, in other cases, no state agency is responsible for overseeing a mandate even though local governments must comply with the mandate, such as the requirement that every locality have a comprehensive plan and update it every five years. Mr. Bolster explained these "No State Oversight" (NSO) mandates are contained in Part B of the draft catalog, and they are not subject to periodic assessment.

Mr. Bolster then described the five appendices to the draft catalog:

1. Appendices A and B provide copies of the Executive Memorandum and the Executive Order that set forth the old and prospective mandate assessment procedures.
2. Appendix C details the changes in mandates since the issuance of the 2006 edition of the catalog, including new and newly identified, expanded and eliminated mandates as well as other changes.
3. Appendix D separately lists the principal federal mandates that affect Virginia localities; however, references to all of these can also be found within the mandate listings in Part A.
4. Appendix E contains relevant Virginia statutes affecting mandates on local governments.

Next, Mr. Bolster outlined the research that was conducted in order to identify the changes in mandates that have occurred since the last edition of the catalog. He explained that, in August 2007, CLG staff initiated a survey of the 49 state agencies that currently administer mandates, requesting that each agency review for accuracy the draft catalog abstracts pertaining to the mandates they administer; indicate which, if any, mandates have been eliminated; identify any new or previously unidentified mandates that it will administer; and confirm or provide an agency point of contact. Mr. Bolster stated that, by the beginning of October, all 49 agencies had responded to the survey and provided their suggested additions, edits, and changes to the catalog abstracts. In addition, he stated that CLG staff conducted its own review of adopted 2006 and 2007 state and federal legislation and thereby identified several new mandates – particularly

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NSO mandates – and expansions of others. Mr. Bolster explained that the information from these various sources was then verified and compiled into the draft catalog.

Mr. Bolster stated that there are 553 mandates in the draft catalog and that 444 of them are overseen by executive agencies and, as such, are included in Part A. He explained that 109 mandates are either administered by non-executive agencies or have no state oversight. Mr. Bolster observed that the 2006 edition of the catalog contained 520 mandates, with 427 in Part A and 93 in Part B; thus, the net increase in the number of mandates is 33.

Finally, Mr. Bolster highlighted the following changes since the 2006 edition of the catalog:

1. There are six new VDOT mandates of which three relate to local governments' attempts to regulate the maintenance and removal of billboards along state-maintained roads and another pertains to a new program funded under SAFETEA-LU.
2. There is a trend to require localities to undertake specific planning practices that coordinate land use and transportation, such as requiring localities to address certain issues in their comprehensive plans, zoning ordinances, and capital improvement programs.
3. The recent transportation legislation created several new mandates without state oversight. One addresses the reclassification of property tax bases in certain localities that are within the jurisdiction of the two regional transportation authorities. Two others provide authority for levying impact fees on new development under certain circumstances (as opposed to relying on the proffer system). Two others relate to the creation of urban development areas and urban transportation service districts in which counties designate growth areas and have the ability to take over road

- maintenance within them. Mr. Bolster added that the Virginia Chapter of the American Planning Association featured a summary of the new transportation legislation in its newsletter, which staff will provide to the CLG members.
4. Seven mandates in the draft catalog are not new but were newly identified by either a state agency or CLG staff.
 5. Nine mandates were expanded to various degrees, including the CLG's mandate on localities to provide cash proffer information.
 6. Only one mandate that existed in the 2006 catalog is eliminated in this year's draft catalog.
 7. Other changes are technical in nature and do not amount to expansions in existing mandates.

After a brief discussion, the members unanimously approved the draft 2007 edition of the catalog for publication without amendment.

V. Draft Report on Proffered Cash Payments and Expenditures by Virginia's Counties, Cities and Towns, 2006 - 2007

A. Staff Update

Mr. Bolster presented to the members the draft report on proffered cash payments and expenditures. He explained that the CLG is required by Va. Code § 15.2-2303.2 to collect data annually from local governments on the use of cash proffers. He stated that the number of localities eligible to accept cash proffers was increased by HB 1506 (2006) because the legislation allowed localities with decennial growth rates of 5% or more, rather than 10%, to accept cash proffers. He added that other localities could also accept them by virtue of being

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located within or adjacent to other counties with 5% growth rates. Mr. Bolster stated that every eligible locality with a population over 3,500 must report its use of cash proffers to the CLG for each fiscal year, and the CLG must in turn compile the information into a report and publish it by November 30 of each year. Mr. Bannister inquired as to whether updated census data was used for purposes of determining which towns must report to the CLG, and Ms. Williams responded that the *Code of Virginia* requires the use of unadjusted census data in this instance.

Mr. Bolster explained that, under these provisions, a total of 153 localities were required to report their cash proffer activity to the CLG this year, consisting of 88 counties, 36 cities, and 29 towns. By contrast, Mr. Bolster indicated that, last year, only 141 localities – 81 counties, 34 cities, and 26 towns – were required to report such activity to the CLG. He stated that the new localities required to report this year are the Counties of Bath, Bland, Giles, Pulaski, Russell, Smyth and Wythe; the Cities of Roanoke and Salem; and the Towns of Marion, Pulaski and Wytheville. Mr. Bolster added that there are 13 additional towns that have new authority to accept cash proffers under HB 1506, but they are not required to report to the CLG because their populations are less than 3,500. He stated that Appendix B contains a listing of all 281 localities that are permitted to accept cash proffers and that 128 are small towns that do not have to report to the CLG.

Next, Mr. Bolster explained that surveys were mailed out on July 9, 2007 to all 153 localities that are required to report their cash proffer activity to the CLG. Mr. Bolster announced that, after some follow-up, CLG staff achieved a 100% response rate to the survey. He directed the members to Appendix C of the draft report, which contains a copy of the survey instrument. Mr. Bolster explained that, with respect to the 2006-07 fiscal year, the survey asked localities to report the following information:

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1. Total cash proffer revenue collected;
2. Cash proffers pledged, whose payment was conditioned only on time;
3. Cash proffer revenue expended; and
4. Purposes for which cash proffer revenue was expended

Mr. Bolster indicated that 50 localities (32.7% of those eligible) reported cash proffer activity (collections, pledges, and/or expenditures) during the last fiscal year. He noted that this is a 16.7% increase over the previous fiscal year, during which 42 localities (29.8%) reported activity. Mr. Bolster explained that the data for localities with proffer activity is tabulated in Appendix D.

Mr. Bolster stated that, as expected, the localities collecting the most cash proffers are counties in Northern Virginia. He stated that Loudoun County leads the way at \$22.5 million while Prince William County comes in next at \$18.9 million. Among cities, Mr. Bolster indicated that Williamsburg had the highest collections at \$1.4 million while Suffolk came in second at about \$500,000. He stated that the towns with the highest collections were Warrenton and Smithfield at about \$84,000 and \$66,000, respectively. Mr. Bolster reported that FY 2007 collections totaled \$68.3 million, an increase of 1.6% from the prior year.

Mr. Bolster explained that cash proffers are often collected and expended in different fiscal years due to the time needed to plan capital facilities and accumulate sufficient fund balances. He indicated that, in FY07, localities used 49.4% of proffer expenditures for schools; 24.1% for transportation improvements; 11.8% for parks, recreation and open space; and the remaining 14.7% for fire/rescue and public safety, libraries, affordable housing, water and sewer service extension, special needs housing, and miscellaneous. He observed that this is a different pattern from FY06 when 35.3% of expenditures were for transportation and only 31.2% were for

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schools. Mr. Bolster noted that Prince William County was by far the greatest spender of cash proffer revenue in FY07 at \$20.7 million while Fairfax County was second at \$6.6 million. He reported that, among cities, Williamsburg spent the most, and, among towns, Culpeper spent the most. Mr. Bolster indicated that total expenditures for FY07 were \$46.7 million, a decrease of 31.1% from the prior year. Mr. Bolster stated that reported pledges of cash proffers totaled \$38.5 million for FY08, an increase of 14.4% over the prior year.

Next, Mr. Bolster discussed his observations regarding the survey question that asks localities to report cash proffers pledged as “total pledged but whose payment was conditioned only on time.” He indicated that, while the survey question is taken verbatim from the relevant statute and has remained the same over the years, an analysis of the data collected this year and in previous years reveals that there is apparently some confusion among localities as to which pledges to report. Mr. Bolster stated that, in practice, most cash proffers are collected when the locality gives some sort of final approval, such as building permit issuance or site plan approval, rather than the mere passage of time. He further indicated that a review of the data seems to indicate that some localities are adhering to a strict interpretation of the question while others are interpreting it more liberally and are reporting all or nearly all pledges. Mr. Bolster indicated that CLG staff will research the issue and make a recommendation to the Commission prior to the release of next year’s survey.

After a brief discussion, the members unanimously approved the 2007 draft report for publication without amendment.

VI. 2008 General Assembly Session

A. Preliminary Staff Comment

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Ms. Williams indicated that the 2008 Session of the General Assembly will convene on Wednesday, January 9 and that she recently met with Bill Ernst, DHCD policy manager, to discuss the preparation of Fiscal Impact Statements (FISs) and Legislative Action Summaries (LASs) as well as logistical issues associated with the Session. Ms. Williams informed the members that she will soon be contacting the appropriate representatives from VACo and VML in order to request updated lists of the designated local contacts who will provide the information necessary for CLG staff to prepare the FISs requested by the Division of Legislative Services on proposed bills that have a potential fiscal impact on local governments.

VII. Scheduling of Meetings

The Commission confirmed that its next regular meeting will take place on Monday, January 14, 2008 at the DHCD offices in Richmond. In addition, the Commission confirmed that its regular March meeting will take place on Monday, March 10, 2008 at the DHCD offices in Richmond. Finally, the members briefly discussed the upcoming VACo annual conference.

VII. Adjournment

The meeting was adjourned at 11:41 a.m.

Kathleen K. Seefeldt
Chairman

Susan B. Williams
Local Government Policy Manager