MINUTES
Governor McDonnell's Task Force for
Local Government Mandate Review
10:00 a.m., Saturday, November 19, 2011
Old Fluvanna Courthouse
72 Main Street
Palmyra, Virginia 22963

Members Present
The Honorable Pat Herrity, Chair
The Honorable Joan E. Wodiska, Vice-Chair
The Honorable Bobby Dyer [not present at beginning of meeting]
The Honorable Shaun Kenney
Kimball Payne

Members Absent

Government Reform Commission Liaisons to the Task Force Present

Government Reform Commission Liaisons to the Task Force Absent
The Honorable Suzy Kelly
The Honorable Alicia Hughes

Staff Present
Zack Robbins, Senior Policy Analyst

I. Call to Order

Mr. Herrity called the meeting to order at 10:18 a.m. on November 19, 2011 in the Old Fluvanna Courthouse in Palmyra, Virginia.

II. Approval of Minutes of Task Force Meeting on November 7, 2011

[Mr. Dyer arrived at this point in the meeting]

Ms. Wodiska made a motion to approve the draft minutes from the Task Force's November 7, 2011 meeting, as presented. Such motion was seconded by Mr. Payne, and was unanimously approved.

III. Approval of Draft Agenda

Mr. Kenney made a motion to approve the draft agenda. Such motion was seconded by Mr. Dyer, and was unanimously approved.

IV. Staff Presentation

Mr. Robbins provided a brief presentation to the Task Force on the fiscal impact review process for proposed legislation that would have a potential local fiscal impact, and the mandate assessment process, which is used for existing mandates, and provided examples of each.

Mr. Payne expressed concern about both the fiscal impact review with respect to the speed of the legislative process, and the number of bills that seem to be mistakenly not sent through the fiscal impact review process. He also stated that localities are not aware of the assessment process, and that agencies may have a conflict of interest when assessing their own mandates.

Ms. Wodiska and Mr. Dyer expressed general concern about the mandate review processes.

Mr. Robbins further explained that VACo and VML assist with recruitment of a diverse mix of localities to participate in the fiscal impact review process, however the participation rate has been historically low.

Ms. Wodiska inquired why a cost model has not been developed to assist with fiscal impact review.

Mr. Robbins stated that such a model would be prohibitively complicated.

Mr. Ted McCormack from VACo came forward and stated that such a model was considered when he was first employed at the Commission on Local Government, but that all of the data elements required for the model cannot be anticipated. He also said it would take years to develop the model, and funding would be an issue.

There was discussion relative to the value of analytical data as opposed to constituent's stories with respect to legislative decision making. Mr. Payne stated that the speed of the legislative process prevents thorough analysis, and suggested a yearlong review process be implemented prior to the consideration of legislation. Ms. Wodiska suggested that this be considered as part of the short-term moratorium discussion. Mr. Dyer said that there should be year-round discussion about proposed legislation between state and local governments. Mr. Herrity summarized that fiscal impact analysis should be completed early and a structure to gather fiscal information should be developed.

Ms. Mary Jo Fields from VML came forward and mentioned that there was once a requirement for bills with impacts on localities to be introduced by the first day of the General Assembly session, to allow for sufficient time for analysis. Mr. Herrity suggested incorporating this concern into the Task Force's report. Mr. Dyer also stressed that a compelling rationale for a moratorium must be incorporated into the report.

Mr. Robbins also presented sample entries from the Catalog of State and Federal Mandates on Local Government to demonstrate the difference in magnitude that exists among catalog entries and the impact of federal law upon mandates. In addition, he stated that staff observed that 199 of the 616 catalogued mandates contain some reference to federal laws or regulations.

There was discussion regarding the impact of federal mandates, and instances where state regulations exceed federal requirements.

V. <u>Status Reports from Subcommittee Chairs</u>

To continue the previous discussion, Mr. Herrity amended the order of presentation of the status reports, and asked that Mr. Dyer present first.

a. Moratorium [on Mandates]

Mr. Dyer said he would like to study more cases from other state's mandate reform efforts. He advised against requesting a moratorium without providing a justification. Further, he would like to talk with the Virginia Beach legislative delegation to identify any potential political "landmines," and meet with Judge Les Willey, a former Virginia Beach City Attorney as a resource regarding court-related mandates. He also said that additional input will be needed to help build the case to justify a moratorium, and that the corporate culture of state and local government needs to be more collaborative.

There was discussion regarding methods to gather additional input for this effort. Mr. Herrity said that the Task Force should consider what the moratorium should contain so that information can be made available for public comment, and so the Task Force can take action at the next meeting. He also stated that the subcommittee should meet before the next task force meeting.

Mr. Herrity suggested fiscal impact analysis should be conducted by JLARC, and that mandate bills should be filed by a deadline to allow for sufficient review.

Mr. Payne stated that he felt comfortable requesting a simple moratorium, even though the likelihood of the General Assembly approving such was low, it would demonstrate the importance of the issue and open discussion of the issue. He added that the budget bill should be included in such language.

Mr. Dyer stated that even though such action would not be successful, it could result in discussion, compromises or revised processes.

Ms. Wodiska referred to "pending mandates" – those that have been adopted, but enactment has been deferred – and stated that they should be included in the moratorium.

Mr. Dyer suggested the Task Force use regional Town Hall meetings to involve stakeholders.

Ms. Wodiska made a motion to request staff to draft legislation to authorize a moratorium on all new mandates, and on all mandates that are currently in suspension from being enforced. Such motion was seconded by Mr. Kenney.

Mr. Payne stated that he could support the motion if it were to include mandates within the Appropriations Act. Ms. Wodiska agreed to incorporate Mr. Payne's request into the pending motion.

Mr. Herrity stated that it is not yet clear whether the Task Force's report will ultimately include draft legislation or recommendations regarding a potential moratorium.

Mr. Robbins advised the members that the Appropriations Act supersedes general law, therefore legislative action alone may not create the proposed moratorium. He emphasized that staff may be reporting back with multiple alternatives to meet the Task Force's intent to create a moratorium.

Mr. Dyer suggested that background explanation for the recommended moratorium should be included in the final report.

Mr. Herrity called the question on the amended motion, which passed unanimously.

Mr. Herrity said that the background story and reasons for requesting such a moratorium should be developed by the subcommittee for inclusion in the report, and Mr. Dyer agreed to address this in his research as well as in that portion of the report.

Ms. Wodiska suggested contacting states that have developed or are developing mandate moratoriums, such as North Carolina and New York.

b. <u>Education</u>

Ms. Wodiska presented the background of the VSBA/VASS survey of local school divisions, and asked that the cover sheet that was distributed with the Task Force's materials be revised to reflect the names of the school divisions that provided comments. Ms. Wodiska then outlined several themes that emerged from the survey results.

1. Desire for local control – Localities should be able to determine when school years begin; state-mandated advisory committees, such as gifted, special education, family life education, or adult education, are inappropriate because they create partitions in education, and consume staff time; the newly-mandated College and Career Preparation Planning and Programs; and new required courses such as personal finance.
2. Duplicative and Excessive Reporting – many state and federal reports are similar or duplicative, and significant staff time is required.
3. ARRA Reporting – The Virginia Department of Education's Master Calendar reporting requirement exceeds the intent of ARRA, is excessive, and requires transmission of volumes of personal information.
4. Excessive Testing
5. Barriers to Recruit and Retain Staff – New requirements for some disciplines are making it difficult to find qualified staff.

Ms. Wodiska noted that Virginia requirements for special education exceed federal requirements in many areas, however the issue is too complex for the task force to address in the short term.

Ms. Wodiska then distributed and explained the results of the survey. Mr. Herrity asked if Ms. Wodiska intended for the Task Force to consider the elimination of all of the mandates included on the list. Ms. Wodiska responded that it would be the pleasure of the Task Force, but the list contains duplicates and special education requirements.

There was general discussion about the poor economic outlook, budgeting difficulties, the usefulness of educational reporting, and the cost of federal mandates trickling costs down from the federal, to state and local levels.

c. Suggestions for Potential 2012 Mandate Elimination Legislation

Mr. Payne presented a master list of mandates to be considered for elimination, which consisted of the mandates that were submitted from local governments that have the potential for immediate action and would not require funding, in compliance with the Governor's direction. Mr. Payne indicated that Kyle McDaniel, legislative aide to Mr. Herrity, prepared the list. He then outlined several themes that emerged from the survey results, some of which would require funding, but should still be mentioned in the report to the Governor:

1. $60 Million Aid-to-Localities reduction (almost all localities)
2. The shift of funding for the Line of Duty Act from the state to localities
3. Comprehensive Services Act
4. Funding of Constitutional Officers
5. Stormwater and Chesapeake Bay Act
6. School standards that exceed Federal standards
7. State-responsible prisoners held in local jails
8. The shift of funding for health benefits for retired teachers from the state to localities
9. Costs of primary elections
10. Records retention requirements
11. Several counties voiced concern about the potential future shift of road maintenance from the state to localities

He then stated that many localities suggested modification or reduction of certain requirements, and stated that he was doubtful that the elimination of as many as 60 mandates would be possible, and that the Task Force should concentrate on submitting a report to the Governor for his office to consider pursuing elimination. Mr. Herrity confirmed that based on his discussion with the Governor's office, the Task Force would be submitting an interim report, with a list of mandates for modification or elimination. Mr. Payne said that the important task currently is to pare down the list to those that could be modified or eliminated with little discussion, one example being reductions in recycling reporting frequency.

Mr. Dyer suggested comments be submitted from front line employees of localities. Mr. Herrity stated that not only legislative mandates, but administrative ones be considered, citing a review process used by VDOT for locally-administered construction projects.

Ms. Wodiska stated that the Task Force needs a press release and notice should be sent to the public to encourage participation and convey that the Task Force has determined that a moratorium on new mandates should be established, that 15% of mandates should be eliminated, and to seek public input. She added that the matrices created by Mr. Payne's subcommittee and her subcommittee should be formed into a master list and made available to the public.

Mr. Kenney then made a motion: (1) to accept the list of mandates, except those imposed on special education, for further consideration by the Task Force; (2) to direct staff to incorporate any appropriate clarifying information; (3) to direct staff to post the mandates on the Task Force website and that the Chair notify local governments of the posting and request their feedback either in writing or in person at our next meeting; and (4) that staff promptly notify state agencies requesting their input on the elimination of these mandates before the next meeting. Mr. Dyer seconded the motion.

Mr. Herrity suggested amending the motion (1) to clarify that the list of mandates included the education mandates presented by Ms. Wodiska, but also the list of other mandates that was presented by Mr. Payne; and (2) to also mention within the notification the proposal to create a moratorium on mandates.

Ms. Wodiska stated that the list of DOE reporting requirements should also be incorporated [to be posted on the website].

Mr. Kenney accepted the amendments.

Mr. Payne stated that all of the Task Force's information received and reported should be included on the website.

Mr. Dyer stated that the press release to newspapers is important to involve the general public, so that not only interest groups will be involved. He further stated that he believed that with increased public participation, the General Assembly delegation will be more likely to consider the Task Force's recommendations.

Mr. Robbins advised the Task Force that agencies may not be able to respond by the next meeting.

Mr. Herrity stated that the agencies have an interest in these mandates and should be given an opportunity to provide justification.

Mr. Payne stated that the agencies should be able to respond quickly, just as localities are expected to do for legislative fiscal impact statements.

Mr. Herrity called the question on the amended motion, which passed unanimously.

VI. Public Comment

Mr. Herrity opened the floor to receive comments from the public.

Phil Abraham from Vectre Corporation came forward and asked if there were a timeframe intended for the proposed moratorium.

Mr. Dyer stated that New York was proposing a four-year moratorium, and he felt that a time limit would be palatable to the legislature, as opposed to a permanent ban on mandates, and to allow periodic review. Mr. Kenney said that he felt a permanent repeal should be initially requested, and negotiation could result in a sunset moratorium. Ms. Wodiska stated that additional community input was needed, and that the moratorium should be in effect for the duration of the Task Force's existence. Mr. Herrity said that the timeframe would need to be addressed at the next meeting. Mr. Dyer said that he would research the success of mandate moratoriums in other states.

Mr. Jim Sturgis, Mayor, Town of Eastville, came forward and brought to the Task Force's attention a DEQ water withdrawal permit that will require $160,000 of improvements to the Town's water system, and also cited excessive related paperwork.

Mr. Herrity called Mr. Marvin Moss, Ms. Mozell Booker and Ms. Gena Keller, all of whom had signed up to address the Task Force. None were present.

Mr. Bob Minnick, of Goochland County, came forward to emphasize support for the repeal of the requirement for localities to incorporate Urban Development Areas in comprehensive plans. He said that the County's Planning Commission has recently voted to not comply with the mandate.

Mr. Ted McCormack from VACo, came forward and recommended that the Task Force pursue a constitutional amendment, as it is the only method to ensure that the Appropriations Act would be affected by a moratorium on mandates. He also suggested identifying what party should be responsible for determining whether proposed legislation is a mandate. He also questioned if the administration were responsible for such determination, then what would happen if the administration were supporting a proposal that contained a mandate, such as devolution of road maintenance to counties.

Mr. Payne suggested a process administered by the Division of Legislative Services to act as a filter to stop proposed legislation from advancing.

Mr. Dyer suggested using the mandate definition included within the materials he distributed as a guiding principle in the development of the Task Force's definition.

In response to a question from Mr. Herrity, Mr. Robbins stated that Executive Order 58 (2007) contains a definition of mandate, but the fiscal impact study uses different criteria.

No additional persons signed up to address the Task Force.

VII. Comments

Ms. Wodiska and Mr. Kenney suggested future discussion topics include VRS and the Line of Duty Act.

Mr. Dyer commented that the Task Force is now headed toward creating process changes in addition to eliminating mandates.

Mr. Herrity stated that he would draft, with assistance, language for the initial report, and requested Ms. Wodiska draft the education portion. Mr. Dyer said he would work on the moratorium portion. Mr. Herrity also asked that Mr. Payne provide additional comment [for the proposed 2012 General Assembly recommendations?]. Mr. Herrity said that he would consolidate the information for the members to review and then post to the website in advance of the next meeting.

VIII. Scheduling of Future Meetings

After brief discussion, the Task Force by consensus agreed to hold the next meeting on December 9, 2011 at 10:00 a.m., in Richmond.

Mr. David Blount, Thomas Jefferson Planning District Commission, asked how soon the lists adopted by the Task Force would be posted to the website. Mr. Robbins said that it should be possible to post them by the end of Tuesday.

IX. Adjournment

There being no further business, the meeting was adjourned at 12:20 p.m.