

From: [Fields, Mary Jo](#)
To: [DHCD-Mandate Relief](#)
Subject: Short Term Actions for Mandate Relief
Date: Tuesday, November 29, 2011 4:38:51 PM
Attachments: [ShortTermItems.xlsx](#)

Dear Chairman Herrity and members of the Governor's Task Force for Local Government Mandate Review:

We greatly appreciate the work the Task Force has done on the important issue of mandates on local government.

We have gone through the list of mandates that were approved at the Nov. 19 meeting of the Task Force and were posted on the Task Force's web site.

There were a number of items on this list that we felt were ready to be tackled immediately, either in the legislative session in 2012 or by gubernatorial/administrative action.

In addition, there were some mandates that were not on the list that we felt should be addressed in the short term.

The attached spreadsheet combines the items from the Task Force's list that we feel should be acted upon in the short run, as well as additional items that we hope the Task Force will include in its recommendations.

Finally, we'd like to point out that the last item on page 14 of the document posted on the Task Force web site, dealing with boards of equalization, should be revisited. Currently the burden of proof lies on the taxpayer, but the description of this item says otherwise.

Please let us know if VML can be of assistance in your important endeavor.

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VML suggests these items for short term action

Area	Code	Description	Problem	Possible Solution	State Agency	VML Comments
CSA	TBD	<i>CSA State Executive Council</i>	Local governments are a major funding partner for CSA however representation on the State Executive Committee does not reflect this fact.	Give local governments more representation on the CSA State Executive Committee.	OCS	
Human Resources	§9.1-700 - §9.1-704; NSO.125	<i>Fire and Police Overtime Pay</i> -- current code requires that LEO and fire overtime be paid for annual and sick leave that would normally be counted to work.	This is a benefit that is extended to no other class of employee and local governments are having a difficult time funding this mandate.	Modify to allow local governments to not calculate annual and sick leave in overtime pay calculations.	DCJS, DFP	
Public Safety	TBD	<i>Blood Borne Pathogen training</i> -- current code requires training on hazmat courses every year.	Other inservice training requirements are performed every two years.	Modify mandate to allow for biennial training.	DCJS, DFP	
Environment	Virginia Stormwater Regulations	<i>Stormwater fee remittance</i> --current code requires that 28% of all stormwater fees collected at the local level be remitted to the state.	Localities are already having a hard carrying out and enforcing the stormwater regulations and remitting 28% of the fees used to support the program to the state is a heavy burden.	Eliminate this mandate.	DCR	
Reporting	SNR.DEQ015	<i>Annual Recycling Survey Report</i> -- Local governments must prepare and provide an annual Recycling Survey Report	Compiling the report requires significant staff time because most recycling is done by the private sector. County staff must prepare and mail surveys, follow-up and remind people to complete the survey, compile and send reports to Richmond. The report does not change the amount of material that is actually recycled, however.	1) Eliminate the requirement all together; or 2) Require the report be submitted every 2 or 3 years as opposed to every year.	DEQ	Support reporting every 3 years with sampling in other years if needed.

Environment	TBD	<i>Local Landfill Closures</i> -- there are currently ongoing reporting and monitoring requirements for all closed local landfills.	Administratively burdensome and could serve no purpose	Eliminate the requirement to monitor closed landfills that have had no identified problems for 3 or more years.	DEQ	
Environment	TBD	<i>Wastewater testing</i> -- the state has established additional wastewater testing requirements that include new parameters to test and increase the frequency of others.	This will increase the cost to localities of testing because many samples must be sent to outside labs.	Relax these requirements and examine where minimum thresholds can be raised with little to no adverse environmental impact.	DEQ	
Environment	SNR.DEQ014	<i>Solids Waste Management Plans</i> -- mandates that local governments develop a solid waste management plan and submit to the state.	This mandate provides little to no impact on the actual management of solid waste and each local government should be allowed to operate their own plans without state oversight.	Eliminate this reporting requirement.	DEQ	
FOIA/Transparency	VPPA 2.2-4301 2	<i>VPPA</i> -- currently required to report public notice of request for proposals in newspapers of general circulation.	This is an antiquated and expensive requirement.	Eliminate this requirement and replace it with appropriate online advertisements and notices in public spaces.	DGS	
FOIA/Transparency	VPPA 2.2-4301 3.a	<i>Procurement of professional services</i> - procedures for acquiring professional services is done in a different manner than for non-professional services and goods.	The requirement to rank and evaluate each bidder on an individual basis and not as a group limits the ability to obtain a better result for the taxpayer because it mandates the order in which bidders are evaluated and does not allow bidders to be evaluated as a group.	Allow professional services to be procured following the existing procedures that apply to goods and non-professional services.	DGS	

FOIA/Transparency	VPPA 2.2-4303 G	<i>Minimum number of bidders</i> --requires that for procurements that exceed \$30,000 a minimum of 4 informal bidders are received as well as a posting of a public notice. The act also allows localities to adopt their own written purchasing procedures where goods and non-professional services do not exceed \$100,000.	The minimum bidder requirement for purchases over \$30,000 contradicts the ability of a locality to adopt their own procurement policies for goods and non-professional services under \$100,000	1) eliminate the requirement for a certain number of bidders for procurements over \$30,000; 2) allow localities to adopt their own procurement procedures for all procurements less than \$100,000	DGS	
FOIA/Transparency	VPPA 2.2-4343 12	<i>Procurement thresholds</i> -- the formal procurement threshold for professional services is \$50,000 yet for all other procurements it is \$100,000.	All procurement classifications should have equal thresholds for formal procurement to ensure uniformity and reduce administrative costs.	Raise the formal procurement threshold for professional services to \$100,000--the level it was before the GA changed it last year.	DGS	
FOIA/Transparency	15.2-955	<i>Auction of surplus property</i> --current code mandates that surplus property must first be offered for sale to other local governments and volunteer fire departments.		Eliminate this mandate.	DGS	
Reporting	TBD	<i>UDA Reporting</i> --current code requires that UDSs be reported to the state.	Serves no practical purpose.	Eliminate.	DHCD	
Education	TBD	<i>School Construction and Renovation Standards</i> --current code mandates that schools to be constructed or renovated meet standards adopted by the State Board of Education, the Uniform Statewide Building Code, and the Superintendent of Public Instruction.	This is duplicative in that there are 3 different sets of standards that must be met with little to no state assistance.	Consolidate the requirements and eliminate redundancies.	DOE	

Education	TBD	<i>Sale of School Property</i> --current code mandates that all proceeds from the sale of school property go into capital improvement.	This decision is best left to the local school system based on their unique needs.	Eliminate this mandate.	DOE	
Education	SOE.DOE104	<i>Virginia Public School Construction Grants</i> --current code outlines procedures for local governments to attain grants from the Board of Education for school construction.	The state no longer provides this grant and thus this code section should be eliminated	Eliminate this mandate.	DOE	
Education	22.1-92	<i>Notification to parents on financial status</i> --current code mandates that the superintendent annually reports to parents and guardians the cost per pupil across the entire system.	Any parent or guardian may find this information in the school budget which is usually available online.	Eliminate this mandate.	DOE	
Social Services	37.2-1021	<i>Annual Report of Guardians</i> --state code outlines specific procedures for the filing and reporting of the annual report of guardians	The rigorous requirements seem overly burdensome and draining on local government resources.	Relax these procedures and allow Allow for more electronic submissions to streamline the process.	DSS	
Social Services	TBD	<i>Medicaid Applicants Duplication</i> --current code requires that new medicaid applicants be entered into the Virginia MMIS system. This system cannot track the status of the pending applications so a second system, Medpend, was created that the same applicant information must also be entered into.	This is a clear case of duplication of efforts.	Review the feasibility of developing a new system that consolidates the two existing systems.	DSS	

Social Services	TBD	<i>Investigation of child abuse claims--</i> current code requires that local governments investigate claims of child abuse at <u>state juvenile correctional detention centers.</u>	<u>State Juvenile correctional facilities</u> (Not detention centers) are exclusively owned and operated by the state. This has the potential to drain resources from local social service programs.	No longer require the local governments to investigate a matter that has no bearing on that local government because these facilities are owned and operated by the state.	DSS, DJJ	VML suggests an alternative solution which is to have the state pay for the investigations or to transfer the investigations to the State Police. The concern is that the state does not have staff trained in these investigations.
FOIA/Transparency	TBD	<i>Record keeping and retention requirements</i>	In general, these requirements are near impossible to meet, over burdensome, redundant, and resource consuming with little to no use served.	Reform the state record keeping and retention requirements.	FOIA	VML suggests establishing a task force of State Library and local representatives to suggest new requirements, or alternatively asking JLARC to make recommendations on a new process that is less complex.
FOIA/Transparency	TBD	<i>Newspaper Ads</i> --current code mandates that newspapers be utilized for public meeting notices for a local government.	This is very expensive to enact and electronic resources could be implemented.	Modify mandate to allow for electronic advertisements.	FOIA	

FOIA/Transparency	Chapter 37, Section 2.2-3704 (B)	<i>VFOIA Response Times</i> --current code requires that governments respond within 5 business or request an extension.	Most FOIA requests are extended due to the staff time required to fulfill the requests.	Raise the response time from 5-7 days to 7-10 days to decrease the number of extension requests that must be processed.	FOIA	
Land Use/Zoning	15.2-2204	<i>Notification for zoning changes</i> -- current code mandates that localities notify all property owners individually by mail anytime a change in the zoning ordinance affects 25+ parcels.	This is over burdensome. Current technology could be utilized to accomplish the same goal but cost significantly less.	Modify this mandate to allow for electronic communications to be used.	FOIA	
Land Use/Zoning	NAO.108	<i>Cash Proffers Collection and Temporary Restriction</i> --This mandate requires localities to collect after final inspection and prior to issuance of a certificate of occupancy cash proffers.	This could create a problem where occupied structures must be entered without a certificate of occupancy being on hand.	Modify the time line of collection of cash proffers to not conflict with a certificate of occupancy requirement.	NO AGENCY	
Education	TBD	<i>Consolidation of School and County Administrative Services</i> --current code does not allow for local governments to compel consolidation of administrative services between the schools and the county government.	This prohibits the ability for local governments to consolidate functions and activities with the school system.	Eliminate this restriction.	NO AGENCY, DOE	
Courts	TBD	<i>Courthouse Construction</i> -- current code mandates that localities construct and maintain court facilities. Additionally, the circuit court can arbitrarily order the construction of a new court with no regard for local finances or CIP plans.	Financially burdened localities should not be in the position to be forced to construct new court facilities.	Eliminate the ability for a circuit court to order the construction of a new courthouse.	SUPCT	

Reporting	TBD	<i>Depositing Requirements for State Funds & Estimated Tax Payments</i> -- current code requires the reporting and submitting of funds daily.	This is a heavy administrative burden that serves little to no purpose and could be relaxed.	Allow for weekly or monthly reporting.	TAX	
FOIA/Transparency	TBD	<i>Unclaimed Property</i> --current code requires that localities identify, collect, and return property that has been held for specified dormancy periods to rightful owners. Property held more than 1 year must be reported and remitted.	This is a very time consuming task and has little to no benefit to the public.	Establish a threshold (\$25) under which this mandate would not apply.	TRS	
FOIA/Transparency	Chapter 11.1 Section 55-210-1	<i>Unclaimed Property Due Diligence</i> -- current code requires due diligence be exercised for property \$100 or more. Reports are also required to be submitted.	The impacts of this mandate on the citizens is minimal however it takes significant staff time and resources.	Raise the threshold for due diligence to \$500.	TRS	
Reporting	TBD	<i>VCCS Reporting</i> --VCCS requires a monthly report on the accruals under the Workforce Investment Act.	Accruals are almost always done on an annual basis and this mandate has led to the establishing of more work to format the data.	Make this report annual.	VCCS	
Public Safety	SPS.VDEM013	<i>Disaster Pet Planning/Animal Protection</i> --current code mandates that localities coordinate with VDEM in developing emergency response plans to address the needs of individuals with household pets and service animals in the event of a disaster.	The necessity of this mandate is questioned. Elimination would free local resources.	Review and possibly eliminate.	VDEM	

IT	TBD	<i>VITA Health Department</i> --current code requires that health departments paid by the cooperative budget utilize IT services provided by VITA.	VITA recently outsourced their IT services to Northrop Grumman and the costs have risen significantly.	Modify mandate to allow the local health departments to determine which IT service is best for them.	VDH, VITA	
Transportation	TBD	<i>Local Use of Transportation Funds</i> --current mandates require oversight from VDOT on certain local road projects.	This mandate is unnecessary as it only adds additional personnel to a road project and local officials could be trained and perform the same oversight duties as VDOT officials while not tying up VDOT resources.	Modify mandate to allow for a VDOT certification for local governments to attain or eliminate all together with conditions.	VDOT	
Transportation	TBD	<i>Six Year Secondary Improvement Plan</i> --current code requires that local governments publish a 6 year plan that outlines secondary road improvements.	This is unnecessary when there is no funding for these planned improvements.	Eliminate.	VDOT	
Transportation	TBD	<i>Bus Shelter Permitting</i> --current code mandates that bus shelter permitting go through DGS procedures which takes 8 weeks.	The vast majority of bus shelters are a stand alone kit and already meet Uniform Building Code Standards. The additional permitting through DGS for a routine bus shelter installation seems unnecessarily burdensome.	Modify the code to allow for blanket permitting of bus shelters and to allow for a 3 year permitting as opposed to the newly established annual permitting.	VDOT	
Transportation	33.1-210.2	<i>Watch for Children Signs</i> --current code does not allow for local governments to install these signs.	This is akin to parking enforcement signs that local governments are allowed to install under a blanket permit.	Eliminate this code and allow for these signs to be installed under a similar blanket permit used for parking enforcement signs.	VDOT	

Transportation	TBD	<i>Secondary road projects through Richmond</i> --current code requires that all secondary road projects, once approved by a regional VDOT directors, must go to Richmond for further approval.	This is overly time consuming considering the fact that the VDOT District Director follows the same standards as the Richmond office. Design waivers and exceptions could also be approved in the district offices.	Modify this mandate to allow for secondary road projects to only need approval from the District Director.	VDOT	
Transportation	15.2-968.1J	<i>Red Light Cameras</i> --VDOT currently requires cities to submit for approval the intersections that a locality wishes to place a red light camera at.	Towns and Cities are responsible for their own road maintainance and this should be under local control.	Eliminate this requirement.	VDOT	
Transportation	TBD	<i>Bike and pedestrian trail storm water regulations</i> --current code requires that bike or pedestrian trails which are constructed on a roadway that was previously exempted from storm water runoff regulations contain implementation for storm water runoff regulations for the entire roadway.	This is over burdensome and cost prohibitive. This has resulted in many bike and pedestrian trails not being constructed.	Eliminate this mandate.	VDOT, DCR	
Land Use/Zoning	TBD	<i>Mandated Land Use Requirements</i> --state code requires the inclusion of several elements in a local land use plan such as cluster zoning, urban development area designations, and by-right temporary family healthcare structures.	These requirements impede on the ability of a local government to make land use decisions in the best interest of their unique demographics and community concerns.	Relax these requirements to give more local control to local governments to deal with land use cases.	VDOT, DHCD	
Reporting	TBD	<i>Reporting of Salary Date</i> --Current code requires that quarterly salary data be reported to the VEC for the Occupational Employment Statistics Survey.	This date is not published in any meaningful way.	Eliminate this mandate.	VEC	

Human Resources	TBD	<i>Employees at Multiple Work Sites Report</i> --current code requires that localities report to the state cases in which employees work at multiple sites.	This serves no purpose.	Eliminate.	VEC, DHRM	
Human Resources	TBD	<i>New Hire Reporting</i> --local governments are required to provide a list of new hires on a monthly basis to the state.	The necessity of this report is in question.	Eliminate this reporting requirement.	VEC, DHRM	
Human Resources	TBD	<i>VRS contribution</i> -- local governments are not allowed the option to require employees hired before July 1, 2010 to contribute the 5% employee share of VRS.	Benefits are a local issue that should meet the needs of the local government as determined by the local governing body. Also, the state has this option themselves.	Allow local governments to have the option to require employees hired before July 1, 2010 to contribute the 5% share to VRS.	VRS	
Public Safety	SPS.VSP009	<i>VSP Sex Offender Registry</i> --current code does not allow for electronic submission of fingerprints.	New technology should be utilized in order to streamline the fingerprint submission process.	Review this mandate and study the feasibility for electronic submission.	VSP	
Additional mandates for elimination/amendment						
Housing	§ 6.2-1700 et seq	The federal SAFE Act places training and licensing requirements on Mortgage Loan Originators, and the state has interpreted the requirements to cover local government employees. HUD has ruled that local government employees are not covered (Federal Register, Vol. 76, No. 126, page 38466).	Local government and housing authorities face significant costs in complying with the training requirements for the licensing process, but these employees should not be subject to these requirements in the first place.	Eliminate the requirement	DHCD	

Libraries	17VAC15-110-10	State regulations provide that local operating expenditures from taxation or endowment for any library, or library system, shall not fall below that of the previous year. If funding is reduced, the state grant is reduced.	State aid to local libraries has been subjected to repeated cuts. In addition, it is part of the "menu" of cuts for the \$60 million a year in across the board reductions in state aid to cities and counties. This is an unreasonable requirement given the current economic conditions.	Eliminate the requirement	LVA	
Line of Duty Act	Chapter 890, Acts of Assembly, Item 258 4(c)	Currently the budget provides that the "State Comptroller shall determine and collect from a non-participating employer an amount representing reasonable costs incurred, directly and indirectly, with the administration, management and investment of the Fund." .	Non participating local governments derive no benefit from the state fund and should not be required to subsidize the funds expenses.	Eliminate the italicized language in Item 258 4 (c)	DOA, VRS	
Line of Duty Act	Chapter 890, Acts of Assembly, Item 258 4(c)	Currently the budget requires that "All payments for benefits provided through the Line of Duty Act shall be paid by the State Comptroller. The State Comptroller shall be reimbursed by the non-participating employer for all Line of Duty Act benefit payments made on behalf of such non-participating employer for which payments have been approved by the State Comptroller. The State Comptroller shall be reimbursed on no more than a monthly basis from documentation provided to the non-participating employer."	Local governments that opt out of the state administered LODA Fund will be billed an administrative charge for these services provides by the state. Local governments that opt out; however, are either self insuring on an individual basis or on a group basis. Incurring their own administrative costs for these claims, it is inefficient and wasteful to have the state involved in administering these claims.	Replace Item 258 4 (C) with: "Nonparticipating employers shall not be subject to this paragraph 4(c) and shall be permitted to pay and administer benefits under the Line of Duty Act."	DOA, VRS	

Line of Duty Act	§9.1-405	The Line of Duty Act currently appears to provide no right of appeal except by the claimant. Local governments should have the right to appeal a claims determination by the State Comptroller.	Local governments should have the right to appeal a claims determination by the State Comptroller.	Amend the section to add italicized language: Any beneficiary, disabled person or his spouse or dependent of a deceased or disabled person <u>or governing body</u> aggrieved by the decision of the Comptroller shall present a petition to the court etc.	DOA, VRS	
Line of Duty Act	§ 9.1-408	The Line of Duty Act currently prohibits information obtained during an investigation by the state police from being disclosed to anyone.	Local governments are required to account for their LODA liabilities through GASB 43/45 and should have all relevant information at their disposal to accurately estimate their liabilities. This is equally true to protect their appeal rights.	Amend section as follows: (iii) not be released in whole or in part by any person to any person except <u>representatives of governing bodies and their insurance carrier, group self insurance pool or third party administrator as provided in this chapter.</u>	DOA, VRS	

Line of Duty Act	§ 9.1-400 et seq	There is no provision for apportionment of payments or assignment of claims to a particular local government.	Public safety officers may be employed by more than one local government or be employed by one and volunteer at another. It is not uncommon for paid fire and rescue personnel of one local government to serve as a volunteer for another local government. It is also not uncommon for an auxiliary police officer to serve more than one jurisdiction. In cases of injury or death sustained during a specific emergency call, it is evident which local government is responsible for the benefits. In the case of a workers' compensation presumption claim leading to a LODA claim (for example a heart attack at home), how are claims to be assigned or apportioned between multiple entities?	Add language either as a new subsection or as a new section as follows: <u>In the event a claimant is entitled to benefits under this chapter from more than one governing body, the cost of benefits and administrative costs, if any, shall be assigned to the primary governing body for which the claimant provided service.</u>	DOA, VRS	
Line of Duty Act	§ 9.1-400 et seq	The Line of Duty Act currently does not provide any authority to settle a claim.	The ability to voluntarily settle a claim would be an attractive option for both claimants and local governments.	Add language either as a new subsection or as a new section as follows: <u>A governing body and a claimant and/or his beneficiaries may mutually agree to settle a claim arising out of this chapter.</u>	DOA, VRS	

Line of Duty Act	§9.1-400(B)	The statute does not define "member" creating ambiguity as to intent with respect to active, inactive, honorary or other member types.	Local governments should have the authority to approve a volunteer company's eligibility requirements. Volunteer companies may keep a person on the roster as a "member" for years or even decades after the individual has responded to any type of call. The Line of Duty Act was not intended to provide benefits to individuals who were not performing public safety functions.	Add underlined text to existing language in §9.1-400(B): "as a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town" <u>and has had their membership eligibility requirements accepted by the governing body.</u>	DOA, VRS	
Line of Duty Act	§9.1-400(B)	There is no provision to pursuing subrogation against 3rd parties.	Local governments should have the authority to pursue subrogation against responsible 3rd parties that cause a disabling injury or death of an LODA eligible employee or volunteer to recoup its cost for providing LODA benefits.	Add a new section as follows: " <u>A governing body may pursue subrogation against third parties for costs Line of Duty Act costs incurred due to a third party's negligence.</u> "		
CSA	§ 2.2-2648 et seq	Local governments are required to file numerous reports for services provided under the Comprehensive Services Act.	Local governments pay more than 80 percent of the administrative costs for this program. State funding for administration has not increased in more than a decade, despite numerous additional requirements for data collection and reporting.	Revise data/reporting requirements to eliminate reports	OCS	

CSA/Transparency	§ 2.2-2648 et seq	Regulations imposed by the Office of Comprehensive Services are not subject to the Administrative Process Act.	Regulations should fall under the Administrative Process Act in order to allow input into the regulatory process by families, providers, and local governments.	Bring OCS regulations under the APA.	OCS	
Efficiencies in operation	TBD	Allow local governments to “piggy-back” on state contracts for services like insurance, purchasing, health care, and maintenance where the locality determines such action to be cost-beneficial.	Local governments are not able to take advantage of economies of scale that may be available by piggy-backing on various state contracts.	Allow local government piggy-backing on various state contracts.	DGS, DHR	
Public Safety	§ 3.2-6528	State code limits local license fees on animals.	This is a decision best made by the level of government providing the service.	Eliminate the cap.		

Common Sense Strategic Reforms

1. Aid to Localities Reductions

Description: The state has imposed a \$60.0 million a year reduction across 21 programs that provide financial assistance to local governments for carrying out state-mandated or state-high priority services.

Proposal: Restore the state reduction. If restoration is not possible, then the affected state funding agencies should prepare a menu of options that encompass administrative, legal and policy issues to reduce the program and/or administrative costs borne by cities and counties. If the state cannot meet its funding commitment, then standards, reporting requirements, and program regulations should be adjusted to reflect the decrease in state resources. As part of the adjustment process, localities should work collaboratively with the state to develop common sense standards and program requirements. In essence a contractual relationship should be developed whereby the state contracts with local governments for the delivery of services, establishing program requirements with funding and accountability standards to be set for both the state and local governments, and allowing for changes in service levels when funding is cut.

Implementation: Appropriation Act and Executive Order

2. Line of Duty Act Administrative Challenges

Description: These state-created benefits were enacted with the understanding that the state would pay for it. The state has shifted the funding responsibility for the program to local governments. The General Assembly has provided local governments the opportunity to make an irrevocable choice to either pay VRS to administer a local government's LODA program or to have another party do so.

Proposal: VML and VACo recommend the attached paper (Appendix A) as a prescription for making the administration and management of LODA programs as efficient and effective as possible. These recommendations do not change the state's policy decision to transfer the funding responsibility.

Implementation: Legislation

3. Academic and Career Plan

Description: The state Board of Education approved in 2009 as part of the accreditation process a new requirement for an Academic and Career Plan for students beginning in grade seven. The components of the Plan shall include, but not be limited to, the student's program of study for high school graduation and a postsecondary career pathway based on the student's academic and career interests. The plan is to be signed by the student, student's parent or guardian, and school officials designated by the principal. The Plan shall include the student's record and shall be reviewed and updated before the student enters the ninth and eleventh grades. This requirement is NOT part of the Standards of Quality, meaning the costs are to be absorbed entirely by local school divisions. SB 810 (2011) successfully suspended this unfunded mandate until July 1, 2012.

Proposal: New legislation should be introduced in the 2012 session to keep the suspension in effect through the next biennium. In fact, all new mandates enacted by

legislative or administrative powers should be suspended in the 2012-2014 biennium unless required by federal code, federal regulation, or court action.

Implementation: Legislation

4. Other Excessive State Education Mandates

Description: The state requires student testing beyond the requirements of the federal No Child Left Behind Act. For example, Virginia mandates that all students in grades three through eight be tested in not only reading and math (as required under NCLB), but also in social studies and history, and that students in high school take additional end of course tests. Also, state regulations exceed federal mandates in special education. Virginia exceeds the federal requirements under the Individuals with Disabilities Act (IDEA) in over 175 areas. Another example of negative state mandates is the number of reports required to be filed with the state. Because of state cuts in support positions, a great number of teachers are now burdened with these clerical reporting duties. This detracts from the time they have to devote to instruction-related activities.

Proposal: Testing requirements should be as rigorous as federal requirements, but additional testing mandated by the state should be paid by the state. Special education services should respond to federal law and court decisions. The Board of Education should adjust state requirements to meet this test. If the Board determines the excess state requirements are needed, then the state should adequately fund them. The Board should also consolidate and reduce reporting requirements.

Implementation: Legislation and Executive Order

5. Comprehensive Services Act Inefficiencies and Inequities

Description: Local governments pay more than 80.0 percent of the administrative costs of this “shared” program. State money for administration has not been increased in more than a decade while the state has increased administrative costs through additional data collection and reporting requirements. Although local governments are a major funding partner in CSA, representation on the State Executive Council does not reflect this fact. Policy decisions made often drive up the program’s costs and burden on localities.

Proposal: The state should either provide additional funding for administrative support or revise its data collection and reporting requirements. Also, the CSA program should fall under the Administrative Process Act to ensure adequate public notice about, and input into proposed rules and regulations that affect all taxpayers. The current CSA process is broken, and does not provide sufficient time for the general public to provide comments and for local governments to analyze the fiscal and programmatic impact of proposed changes.

Implementation: Appropriation Act and Legislation

6. “Buying in Volume”

Description: State mandates on local governments rarely include provisions to save taxpayer money. Cost/benefit analysis incorporates a state perspective but consideration of the local impact is not a priority.

Proposal: Allow local governments to “piggy-back” on state contracts for services like insurance, purchasing, health care, and maintenance where the locality determines such action to be cost-beneficial. This principle can also be applied to mental health and other provider services where certain localities may be penalized by the private sector for not being able to guarantee a certain volume of business or where the state-local matching rates are so unfavorable that local governments are forced not to provide a needed service.

Implementation: Legislation and Executive Order

7. Determining Program Eligibility

Description: Determining an applicant’s eligibility for social net programs can be both costly and inefficient (in terms of money and time) for state and local agencies as well as the applicant.

Proposal: Examine whether the state should determine the eligibility for Medicaid and social services. Technology and computer software is available to determine eligibility for programs and other administrative functions. State determination of eligibility for Medicaid may also make it easier for the state to meet upcoming deadlines under the federal health care reform law.

Implementation: Executive Order

8. Consolidating Duplicative Services

Description: It is not uncommon to find local governments and local school divisions having separate maintenance and purchasing departments or personnel agencies. Consolidation offers taxpayers a savings opportunity.

Proposal: Grant local governing bodies the authority to compel the consolidation of non-classroom functions with school divisions, where cost beneficial and operationally efficient. Examples include management of capital projects and “back office” operations.

Implementation: Legislation

9. Preserving the Virginia Constitution

Description: Each session of the General Assembly includes a number of revenue and administrative proposals that chip away at the state constitution.

Proposal: Enacted legislation that creates new mandates or significantly increase current mandates, and eliminates or curtails local revenue authority should not take effect unless re-enacted the following session. During the interim the proposals should be studied by JLARC, executive agencies and local governments to determine more authoritatively the cost of the new or expanded mandate or the loss of revenue. The studies should be made available prior to the next legislative session.

Implementation: Legislation

10. Not Every Issue is a State Issue

Description: As a “Dillon Rule” state, Virginia law and judicial decisions reserve government powers to the state unless the state explicitly assigns a certain power to local governments. Local authority should be expanded to provide services and programs that have no compelling statewide priority or impact.

Proposal: Local governments should be allowed to design and build local bus stops and pedestrian facilities; determine the color of local government vehicles; set the cost of pet licenses; cut grass and weeds on derelict, abandoned and foreclosed properties; include mosquito control in an existing gypsy moth control tax district; install photo red light cameras; set fines locally as a means of enforcing community expectations for property maintenance and protecting community health and welfare; set fees locally so that users of government services contribute toward the costs of these local services; and seek waivers from state regulations in order to meet community standards as Governor Allen's Blue Ribbon Strike Force recommended the state be allowed to do at the federal level.

Implementation: Legislation

Appendix A

Line of Duty Act Administrative Challenges

Uncertainty with respect to volunteer fire and rescue exposure

§9.1-400(B) of the Act reads (in part): “ ‘Deceased person’ means any individual whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, as a law-enforcement officer of the Commonwealth or any of its political subdivisions; ... a **member** of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town;..” (member bolded for emphasis).

The statute does not define “member of any fire company or department or rescue squad,” thus creating ambiguity as to the intent with respect to active, inactive, honorary or other member types. Volunteer companies play an important social role in communities, and some people remain as "members" long after they stop responding to emergency calls. Further, not all volunteer organizations have the resources to keep their membership rosters up-to-date. There may well be members on the roster who have not maintained certification or responded to emergency calls for a lengthy time period. Local governments should have the authority to approve a volunteer company’s eligibility requirements.

Recommended language (added to end of language above):

“a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town *and has had their membership eligibility requirements accepted by the governing body.*”

Inefficient administration

The Line of Duty Act creates an unnecessary bureaucracy for those local governments that opt out of the state LODA fund. The Line of Duty Act provides that the state police, in most cases, conduct the investigation for LODA claims. That report is provided to the State Comptroller for a claims determination. If the State Comptroller determines that the claimant is eligible for LODA benefits, the Comptroller is responsible for making the claims payments.

Local governments will be billed for administrative expenses as well as for the cost of the health insurance and death benefit.

The local governments that opt out of the state LODA fund will be either self insuring on an individual basis or on a group basis. It is inefficient and wasteful to have the state involved in

administering these claims. Currently, the state comptroller pays the benefits and then bills the local government. In some cases the claimant will remain on the local government's health plan. Why should the state pay the health insurer (or the local government if self insured) and then bill the same local government the amount of the benefit plus an administrative charge?

Local governments that opt out of the state fund should be allowed to administer their own obligations under LODA. Whether self insuring on an individual or group basis, local governments are very capable of administering their own LODA obligations, and have demonstrated that capability through the self administration of workers' compensation benefits for decades.

Recommended language (replaces 4(c) in 2011 budget amendment item #258):

Non-participating employers shall not be subject to this paragraph 4(c) and shall be permitted to pay and administer benefits under the Line of Duty Act."

LODA Fund Expenses

Should the state continue to administer claims determinations and claims payments, language contained in the 2011 budget amendment should be changed to ensure that non-participating local governments bear no expense for administration, management and investment of the fund.

Currently 4(c) of the 2011 budget amendment provides that the "State Comptroller shall determine and collect from a non-participating employer an amount representing reasonable costs incurred, directly and indirectly, with the administration, management and investment of the Fund."

Non-participating local governments derive no benefit from the state fund and should not be required to subsidize the fund's expenses. The State Comptroller should only be allowed to recoup direct expenses associated with specific claims handled on behalf of a non-participating local government.

Recommended language:

"State Comptroller shall determine and collect from a non-participating employer an amount representing reasonable direct expenses associated with specific claims handled on behalf of a non-participating local government."

Right of Appeal

The Line of Duty Act currently appears to provide no right of appeal except by the claimant. Local governments should have the right to appeal a claims determination by the State Comptroller. This is a due process issue.

Furthermore, Virginia courts should decide these matters. Currently, a petition must be presented to "the court in which the will of the deceased person is probated or in which the

personal representative of the deceased person is qualified or might qualify or in the jurisdiction in which the disabled person resides.” Neither the Attorney General nor local government should have to travel to wherever the claimant, his beneficiaries or his personal representative reside.

Recommended language (added to §9.1-405):

§ 9.1-405. Appeal from decision of Comptroller.

Any beneficiary, disabled person or his spouse or dependent of a deceased or disabled person *or governing body* aggrieved by the decision of the Comptroller shall present a petition to the court *where the employing agency is located* ~~in which the will of the deceased person is probated or in which the personal representative of the deceased person is qualified or might qualify or in the jurisdiction in which the disabled person resides.~~

The Commonwealth shall be represented in such proceeding by the Attorney General or his designee. The court shall proceed as chancellor without a jury. If it appears to the court that the requirements of this chapter have been satisfied, the judge shall enter an order to that effect. The order shall also direct the Comptroller to issue his warrant in the appropriate amount for the payment out of the general fund of the state treasury to such persons and subject to such conditions as may be proper. If, in the case of a deceased person, there is no beneficiary, the judge shall direct such payment as is due under § 9.1-402 to the estate of the deceased person.

Investigative records

The Line of Duty Act currently prohibits information obtained during an investigation by the state police from being disclosed to anyone. Local governments are required to account for their LODA liabilities through GASB 43/45 and should have all relevant information at their disposal to accurately estimate their liabilities. This is equally true to protect their appeal rights.

Recommended language:

§ 9.1-408. Records of investigation confidential.

Evidence and documents obtained by or created by, and the report of investigation prepared by, the Department of State Police in carrying out the provisions of this chapter shall (i) be deemed confidential, (ii) be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.), and (iii) not be released in whole or in part by any person to any person except *representatives of governing bodies and their insurance carrier, group self insurance pool or third party administrator* ~~as provided in this chapter.~~

Apportionment/assignment of claim

The Line of Duty Act provides no direction as to apportionment or assignment of claims to a particular local government. Public safety officers may be employed by more than one local

government or be employed by one and volunteer at another. It is not uncommon for paid fire and rescue personnel of one local government to serve as a volunteer for another local government. In cases of injury or death sustained during a specific emergency call, it is evident which local government is responsible for the benefits. In the case of a workers' compensation presumption claim leading to a LODA claim (for example a heart attack at home), how are claims to be assigned or apportioned between multiple entities?

Recommended language:

In the event a claimant is entitled to benefits under this chapter from more than one governing body, the cost of benefits and administrative costs, if any, shall be assigned to the primary governing body for which the claimant provided service.

LODA Claim Settlements

The Line of Duty Act currently does not provide any authority to settle a claim. The ability to voluntarily settle a claim would be an attractive option for both claimants and local governments.

Recommended language:

A governing body and a claimant and/or his beneficiaries may mutually agree to settle a claim arising out of this chapter.

LODA claim adjudication

The Virginia Workers' Compensation Commission may be better suited to adjudicate contested LODA claims than the State Comptroller's office, due to the Commission's extensive history in employment issues and to the availability of legal staff who are well versed in this area.

Definition of "mentally or physically disabled" with respect to dependent child

Currently, the Act does not define "mentally or physically disabled" with respect to a dependent child. This term should be defined so as to avoid confusion and litigation. Did the General Assembly intend to cover all mental or physical disabilities including mental health conditions such as depression or attention deficit hyperactivity disorder or physical disabilities such as carpal tunnel syndrome? Given the potential magnitude of cost associated with a lifelong disability of a child, this issue should be addressed.