

MINUTES
Regular Meeting
Commission on Local Government
11:00 a.m., November 9, 2009
Grottoes Town Hall
601 Dogwood Avenue
Grottoes, Virginia

Members Present

Vola T. Lawson, Chairman
Harold H. Bannister, Jr.
Frances M. Parsons
Kathleen K. Seefeldt
Wanda C. Wingo

Members Absent

Staff Present

Susan Williams, Local Government Policy Manager
Steve Ziony, Principal Economist
Matthew Bolster, Senior Policy Analyst

Call to Order

Commission Chairman Vola T. Lawson called the meeting to order at 11:02 a.m. on November 9, 2009 at the Grottoes Town Hall in Grottoes, Virginia.

Mrs. Lawson announced that, on October 19, 2009, Governor Kaine appointed Wanda C. Wingo of Troutville to serve Elmer Hodge's unexpired term on the Commission on Local Government. Mrs. Lawson welcomed Mrs. Wingo to the Commission. She indicated that Mrs. Wingo is the former Chairman of the Botetourt County Board of Supervisors; former President of the Virginia Association of Counties; former Member of the Board of Directors of the National Association of Counties; former Member of the Roanoke Valley – Alleghany Regional Commission; and former President of the Virginia Association of Planning District Commissions.

I. Election of Vice Chairman to fill Unexpired Term

Mrs. Seefeldt nominated Mr. Harold H. Bannister, Jr., to fill the unexpired term of Vice Chairman created by Mr. Hodge's resignation from the Commission. Such nomination was seconded by Mrs. Parsons, and the Commission unanimously elected Mr. Bannister as Vice Chairman.

II. Town of Grottoes – County of Augusta Proposed Voluntary Settlement Agreement

Ms. Williams reviewed the activities to date in connection with the Commission's review of the proposed Town of Grottoes – Augusta County voluntary settlement agreement. She indicated that the initial submission, filed on October 16, 2009 by the Town of Grottoes and Augusta County, which was prepared by the Town of Grottoes, requested the Commission to review and issue findings on a proposed voluntary settlement agreement negotiated by the town and county. Ms. Williams explained that the proposed agreement would allow the Town of Grottoes to annex certain territory in Augusta County known as Grand Caverns Park and would also establish a moratorium on further town-initiated annexation within the limits of Augusta County for a period of ten years subsequent to the effective date of the annexation of the specified area.

Ms. Williams stated that the Upper Valley Regional Park Authority (comprised of the Cities of Harrisonburg and Staunton and the Counties of Rockingham and Augusta) owned and operated Grand Caverns Park – which encompasses approximately 99 acres – but dissolved effective October 1, 2009 and subsequently transferred ownership and operation of the park to the Town of Grottoes.

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Ms. Williams further indicated that the initial submission included documents from the town and county describing the proposed agreement and the affected area, all of which were forwarded the members in advance of the meeting. Ms. Williams stated that staff subsequently made a request for additional information on October 26. She reported that the town provided the response to the Commission's request on Friday, November 6, and staff has conducted a preliminary review of the supplemental submission.

Ms. Williams then reviewed the day's meeting schedule, which included a tour of the affected area (as well as other relevant areas in the town); oral presentations from town and county representatives on the proposed agreement; and a public hearing. She stated that the public hearing and oral presentations were advertised by notice published in the *Staunton News-Leader* and in the *Daily News Record* on Monday, October 26, 2009 and again on Monday, November 2, 2009 and that such notice was also mailed to the pertinent local government officials.

Ms. Williams indicated that the record for the receipt of additional comment will be kept open through November 24, 2009 and that staff will endeavor to produce a draft report for the Commission's consideration at their January 11, 2010 meeting.

Ms. Williams then explained that the Commission is directed by law to review proposed annexations, petitions for partial county immunity, other local boundary change and transition issues, as well as negotiated agreements settling such matters prior to their presentation to the courts for ultimate disposition. She stated that, upon receipt of notice of such proposed action or agreement, the Commission is directed to "hold hearings, make investigations, analyze local needs and make findings of facts and

recommendations” regarding the issue to the affected local governments. She further stated that, with respect to a proposed agreement that is negotiated under the authority of Section 15.2-3400 of the *Code of Virginia* – such as the one proposed here – the Commission is required to report, in writing, their findings and recommendations as to whether the proposed settlement is in the best interest of the Commonwealth.

III. Administration

A. Approval of Minutes of Regular Meeting of September 14, 2009

Mrs. Seefeldt made a motion that the minutes of the Commission’s regular meeting of September 14, 2009 be approved, and such motion was seconded by Mrs. Parsons. Mr. Bannister and Mrs. Wingo abstained from voting as they were not in attendance at the September 14 meeting. The minutes were subsequently approved without 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 2009

Referencing an internally produced financial statement that encompassed expenditures through the end of October 2009, Ms. Williams explained that the Commission’s FY 09 non-personnel budget was reduced by \$4,125 as a result of budget reductions. The members accepted the report for filing.

D. Local Government Policy Manager’s Report

1. Potential Inter-local Issues

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Ms. Williams provided a brief update concerning potential inter-local issues involving the City of Covington – Alleghany County and the Town of Culpeper – Culpeper County. In addition, Ms. Williams called attention to the following items contained in the agenda package: newspaper articles concerning potential issues / actions in Appomattox (Appomattox); La Crosse (Mecklenburg) and Fairfax County; an August 24, 2009 Opinion of the Attorney General, which concludes that there would be no effect on existing charters and no impact on legal powers of or limitations on the City of Fairfax or the Town of Vienna should Fairfax County become a city; and an article on revenue-sharing authored by Mr. McCormack that appeared in a recent issue of VACo's *County Connections*.

2. Joint Subcommittee Studying Development and Land Use Tools

Ms. Williams reminded members that the full Joint Subcommittee was scheduled to meet on August 19, but the meeting was cancelled due to the Special Session. She indicated that the meeting has been re-scheduled for December 4, 2009. Mr. Bolster added that the meeting is supposed to feature presentations from several nationally-known impact fee experts. Ms. Williams indicated that, to date, there has been no response to DHCD director Bill Shelton's July 28 letter to Joint Subcommittee Chairman Delegate Clay Athey, which outlined the agency's concerns with respect to proposed legislation that would impact the work of the Commission and DHCD.

3. Staff Activities

She stated that Mr. Bolster attended the Planning for Sustainable Affordable Housing Workshop by the Virginia Housing Development Authority in Richmond, and

she attended the VML Annual Conference in Roanoke; the Virginia Association of Planning District Commissions (VAPDC) annual agency heads luncheon meeting in Richmond; the Local Government Attorneys (LGA) Fall Conference in Virginia Beach; and the FOIA 2009 Workshop in Richmond.

IV. 2009 Catalog of State and Federal Mandates on Local Government

Mr. Bolster noted that he had handed out a replacement page 3, which corrects a typo on the current page. He explained that since 1993, the Commission has been charged with the responsibility of preparing an annual catalog of state and federal mandates imposed on Virginia's local governments. The last catalog was issued in November 2008 and included mandates in legislation enacted in 2008, plus newly identified mandates and changes to existing mandates as of October 2008. The current edition includes all new mandates from legislation enacted in the 2009 General Assembly session as well as other changes between November 2008 and October 2009.

Mr. Bolster said that Executive Order 58, issued in 2007, defines a mandate as "a state or federal constitutional, statutory, or administrative action that places a requirement on local governments." EO 58 further divides mandates into four types, which are reflected in the catalog:

1. Compulsory Orders: these require local government compliance regardless of receipt of aid or other circumstances.
2. Conditions of Financial Aid: these require compliance only if the local government accepts the state or federal assistance in question.

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3. Regulation of Optional Activities: result from state or federal regulation of activities that local governments undertake voluntarily.
4. State Fiscal Preemption: measures or actions that result in a net reduction of revenues collected by a locality or restricts a locality's authority to collect such revenues.

Mr. Bolster noted that the last type is new, while the other categories have been in use since the inception of the catalog. No state fiscal preemption mandates are yet in effect, although every General Assembly session features several bills that attempt to impose them. An example is a proposal to limit increases in real estate assessments to a certain percentage each year.

In most cases, Mr. Bolster explained, compliance with mandates is overseen by a related state agency. 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. This typically happens when the federal government provides funding to the state to administer certain services and projects. Examples of functional areas with major federal funding passed through the state are transportation, human services, education, and emergency management. Therefore, many of the mandates listed in the catalog include references to both state and federal statutes and regulations as their source of authority.

Part A of the catalog lists mandates that are overseen by executive agencies. Each listing has a title, an identification number, and a brief description, including the type of mandate, the agency responsible for oversight, that agency's secretariat, and the code

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sections that provide legal authority for the mandate. Sometimes identification numbers are missing from the sequence because previous mandates have been eliminated. When this happens, the numbering for the rest of the mandates stays the same. The last part of each listing refers to the last period when the mandate was assessed by the administering agency, the last finding, and the current schedule for reassessment. Pursuant to EO 58, there is no longer regular reassessment of mandates. Only new mandates are assessed, except in a few circumstances.

In some cases, Mr. Bolster continued, a nonexecutive or independent agency is responsible for the mandate. Examples of these are the Virginia Retirement System and the Auditor of Public Accounts. In other cases, no state agency is responsible for overseeing the mandate. Local governments must comply, but no state agency is assigned to check on them. An example is the requirement that every locality have a subdivision ordinance. Both of these types of mandates are listed in Part B. The mandates in Part B are not subject to assessment.

There are six appendices in the mandates catalog:

1. Appendix A contains EO 58, which describes mandate assessment procedures.
2. Appendix B contains the current FY 09-10 schedule for mandate assessments. All of these were listed in last years catalog but have never been previously assessed.
3. Appendix C contains a listing of all the changes made since the last edition of the catalog.

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4. Appendix D separately lists the principal federal mandates that affect Virginia localities. References to these can be found in many of the mandate listings in Part A.
5. Appendix E contains a table summarizing the number of mandates by type and agency.
6. Appendix F contains the statutes in the Code of Va. that apply to mandates.

Mr. Bolster then explained how he conducted the research for the catalog.

Beginning in July 2009, he conducted a review of adopted 2009 legislation and identified several new mandates and expansions of others. He then asked representatives of all executive and nonexecutive agencies to review the 2008 mandate listings and provide any additions, deletions, or changes. All this information was compiled into the catalog.

Mr. Bolster observed that there are 570 mandates in the catalog. 456 of these (an increase of 9 from the 2008 catalog) are overseen by executive agencies and are included in Part A. 114 are overseen by nonexecutive agencies or have no state oversight (increase of 1). The 2008 catalog contained 560 mandates, with 447 in Part A and 113 in Part B. The total net increase is 10.

Mr. Bolster then directed the members' attention to Appendix C to review the notable changes in this year's catalog. Ms. Seefeldt asked Mr. Bolster which of the new mandates he felt were most significant. Mr. Bolster cited SHHR.VDH029, the Virginia Indoor Clean Air Act, and NSO.102, the Fair and Accurate Credit Transactions Act of 2003. The former requires local health departments to inspect restaurants for smoke-free status in the course of regular health inspections. It should not be a great cost burden,

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since health departments already perform inspections. The latter mandate requires local governments that bill for services already used, such as water and sewer, to adopt practices to discourage identity theft. Mr. Bannister asked whether anyone was collecting data on localities' compliance with this mandate. Mr. Bolster said that no state agency was doing so because it is solely a federal mandate, and he doubted whether any federal agency was actively monitoring compliance either. However, the Virginia Municipal League has been disseminating information to localities about how to comply.

Mr. Bolster noted the effective suspension of two mandates by a provision in the 2009 Appropriations Act. The State/Local Hospitalization Program was defunded, resulting in the suspension of SHHR.DSS068 and SHHR.DMAS001. In addition, the elimination of funding for disability services boards led the General Assembly to make such boards optional by virtue of overriding language in the Appropriations Act, while the original mandatory language in the Code of Virginia remains unchanged. This action caused the mandate type to change from Compulsory Order to Regulation of Optional Activity.

V. 2009 Report on Proffered Cash Payments and Expenditures by Virginia's Counties, Cities and Towns

Mr. Bolster noted that he had handed out three replacement pages for the report. One locality's survey came in a few days ago, which caused some numbers to change. In addition, there is a note regarding a correction to the 2006 report.

Mr. Bolster explained that the Commission is required by 15.2-2303.2 to annually collect data from local governments on their use of cash proffers. The Commission has been doing this since 2000, and in 2006 the General Assembly expanded the number of

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localities eligible to accept cash proffers. It allowed localities with decennial growth rates of 5% or more, rather than 10%, to accept cash proffers. Other localities can also accept them by virtue of being within or adjacent to other counties with 5% growth rates. The complete eligibility rules are set forth on page 2 of the report.

Every eligible locality with a population over 3,500 must report its use of cash proffers to the Commission for each fiscal year. The Commission must in turn compile the information into a report and publish it by Nov. 30 of each year. 153 localities must report to the CLG this year, consisting of 88 counties, 36 cities, and 29 towns. Appendix B contains a listing of all 281 localities that can accept cash proffers. 128 of these are small towns that do not have to report.

Mr. Bolster explained that staff mailed out surveys on July 15, 2009 to all 153 localities that are required to report. The due date was Sept. 30. After some follow-up, staff achieved a 100% response rate. For the 2008-09 fiscal year, the survey asked localities to report:

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

For possible future research purposes, this year the survey also asked localities whether they have a cash proffer ordinance or policy, and if so, to provide a hard copy of it or a link to their website. The survey instrument is in Appendix C.

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Mr. Bolster noted that there is a correction to the 2006 report. Due to a data entry error on the part of Commission staff, the figure for Loudoun County's expenditures has two digits transposed. Mr. Bolster noticed this error in the course of preparing some charts to show trends in cash proffer usage. The correction increases the total 2006 cash proffer expenditures by \$630,000. Ms. Williams added that the 2006 report has long since been disseminated to the General Assembly, so it cannot be recalled, and printing a correction in this year's report is most appropriate.

Mr. Bolster then presented some statistics from the report. In the last fiscal year, 45 localities (29.4% of those eligible) reported cash proffer activity (collections, pledges, and/or expenditures). This is a 2.2% decrease over the previous fiscal year, when 46 localities reported activity. In 2007, 50 localities reported activity. The data for localities with proffer activity is tabulated in Appendix D. As expected, the localities collecting the most cash proffers are counties in Northern Virginia. Loudoun County leads the way at \$14.1 million (decreased from \$15.9 million last year), while Prince William County, first last year, comes in second at \$12.4 million (decreased from \$18.2 million last year). The only non-northern Virginia county among the top five is Chesterfield, which came in third at \$4.8 million. Among cities, Chesapeake had by far the highest collections at \$2.5 million, up from \$1.4 million last year; all others were under \$100,000. Last year, Manassas Park had the highest collections at \$2.7 million, but reported no collections at all this year. The towns with the highest collections were Leesburg and Herndon. Leesburg collected \$1.2 million after only collecting \$143,000 last year. Herndon's

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collections increased from \$68,000 to \$200,000. Total collections were \$42.4 million, a decrease of 29.6% from 2008. Collections dropped 11.9% during the prior year.

Mr. Bolster noted that cash proffers are often collected and expended in different years due to the time needed to plan capital facilities and accumulate sufficient fund balances. In FY 08-09, localities used 45.5% of proffer expenditures for schools; 26.1% for transportation improvements, 8.9% for fire and rescue improvements, and the remaining 19.5% for libraries; parks, recreation, and open space; affordable housing; water and sewer service extension, community centers, stormwater management, special needs housing, affordable housing, and miscellaneous. This is the same pattern as in FY 07-08, although with a 9 percentage point increase in spending on schools. Prince William County was by far the greatest spender of cash proffer revenue in FY 08-09 at \$21.2 million while Loudoun County was second at \$11.6 million. Among cities, Manassas spent the most, and among towns, Leesburg spent the most. Total expenditures were \$49.2 million, a decrease of 3.2% from the prior year.

Reported pledges of cash proffers conditioned only on time were only \$7.9 million after totaling \$64.7 million last year. This is a decrease of 87.8% from the prior year. However, Mr. Bolster said he did not think this was necessarily significant because he suspects that localities do not always interpret the survey question consistently.

Mr. Bolster mentioned that there is still interest in replacing cash proffers with impact fees, but on the workgroups for the Joint Subcommittee Studying Development and Land Use Tools, homebuilders and localities are far apart on how to do it. The industry wants a cap on fees, while this is unacceptable to localities. The next meeting of

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the committee is on Dec. 4, at which time the Virginia chapter of the American Planning Association will bring in a national impact fee expert to make a presentation.

Finally, Mr. Bolster said that he had prepared three charts to show trends since the Commission started collecting survey data in 2000. A line chart compares cash proffer collections and expenditures, and stacked bar charts show localities reporting cash proffer activity and cash proffer expenditures by category. Mr. Bolster proposed uploading the charts to the Commission's website, and the members concurred.

At the conclusion of Mr. Bolster's remarks, Mrs. Seefeldt made a combined motion that the Commission approve both the 2009 Catalog of State and Federal Mandates on Local Governments and the 2009 Report on Proffered Cash Payments and Expenditures by Virginia's Counties, Cities and Towns. Such motion was seconded by Mrs. Wingo and unanimously approved by the Commission.

VI. Local Revenue of Virginia's Counties and Cities, FY 2008 and

VII. Local Source Revenue Profile of Virginia's Counties and Cities, FY 1989 – 2008

Mr. Ziony indicated that the tables distributed to the members offer partial documentation of the own-source revenues generated by county and city governments from property taxes, non-property taxes, and diverse non-tax funding mechanisms during the FY1989-2008 time frame. He further stated that detailed treatment of all relevant data will appear in a Commission staff report that should be completed by the late spring of 2010.

Mr. Ziony explained that, in our usage, the construct of own-source (or indigenous) revenue exclusively denotes the collections which a particular county or city

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engenders through fiscal instruments promulgated under its own authority. In sum, this term does not embrace intergovernmental transfer payments received by the designated jurisdiction from federal and state entities or from other localities.

Mr. Ziony stated that property tax revenues encompass any receipts yielded by jurisdictional taxes on real estate, personal property, public service corporation property, machinery and tools, and merchants' capital. He explained that "real property" and "personal property" tax revenues, as classified by the Auditor of Public Accounts, denote the local proceeds from sources other than public service corporations (e.g., privately-owned utilities and common carriers). He indicated that, to the extent that the latter enterprises generate real estate and personal property tax collections for a given county or city government, such amounts are discretely categorized by the State Auditor's office under the rubric of "public service corporation" payments, even though the designated receipts do not qualify as conceptually independent revenues.

Mr. Ziony stated that non-property tax revenues embrace, for example, amounts yielded by local levies on general retail sales, gross business receipts, consumer utility payments, restaurant food purchases, and hotel room rentals. He explained that, whatever the fiscal importance of the foregoing levies, the annual non-property tax collections of the various local governments also capture any proceeds associated with franchise license, motor vehicle license, bank stock, recordation and probate, tobacco, admission and amusement, natural resource, motor fuel, and communication sales and use impositions. He explained that non-tax revenues stem from such funding sources as

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permit and license fees, fines and forfeitures, property sales and rentals, and service charges.

Mr. Ziony also explained that, in the strictest sense, the midpoint (or median) locality of the Commonwealth is a hypothetical jurisdiction, not an actual entity. He stated that, with respect to a numerically ordered series of 134 case scores, the quantitative location of this theoretical place falls halfway between the 67th and 68th values.

Mr. Ziony then reported the following preliminary findings with respect to Total Local-Source Revenue, FY1989-2008:

1. For the Commonwealth at large, Table 4.1B records successive yearly increases in the median per capita magnitude of total own-source jurisdictional collections, which rose by 205.04% from \$499.01 during FY1989 to \$1,522.16 over the course of FY2008.¹

2. With regard to the typical Virginia locality, however, the annual rates of change in aggregate tax and non-tax receipts per capita displayed appreciable variation (see Table 4.3B) across the time frame under review.

3. On a statewide basis the median pace of local-source revenue growth declined substantially from 9.81% over FY1990 to 6.29% in FY1991 and 2.63% during FY1992.

4. Among the counties and cities of the Commonwealth, the overall midpoint statistic, as documented by Table 4.3B, staged a modest post-recession recovery to 4.29%

¹According to Table 4.1B, though, the median value for the 95 counties declined by \$11.86 and \$0.78 across FY2000 and FY2008, respectively. The data further reveal that the midpoint statistic covering the 39 cities manifested a reduction of \$2.06 in FY2001.

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in FY1993 and manifested even greater resilience at 6.99% across the subsequent fiscal year.

5. During FY1995 and FY1996, though, the revenue expansion rates posted by the "median jurisdiction" (respective magnitudes of 6.53% and 5.23%) were distinctly lower; and the growth margin of the midpoint locality, while exhibiting considerable strength (7.16%) in FY1997, proved to be materially less robust at consecutive annual levels of 4.30%, 4.59%, 2.45%, 4.21%, 1.17%, and 4.69% between FY1998 and FY2003.

6. Over FY2004 the statewide median jurisdiction realized an increase of 6.21% in its per capita receipts from tax and non-tax sources.²

7. The revenue growth rate of the Commonwealth's midpoint locality, though less pronounced (5.84%) during FY2005, climbed dramatically to 8.96% in FY2006.

8. With respect to the latter year, however, the significant revenue performance of the typical Virginia locality, as Table 4.3B establishes, fell short of the relative funding gains achieved by the State's median jurisdiction in FY1990.

9. Then, too, consecutive midpoint growth rates of markedly diminished strength--6.77% and 4.63%--characterized aggregate tax and non-tax receipts per capita across the 134 localities during FY2007 and FY2008.

²During FY2004 (and, indeed, FY2003), local revenue yields were generally buoyed as the private-sector economy recovered from the 2001-2002 recession, the magnitude of which had been compounded in Northern Virginia by the financial impact of the "9/11" tragedy at the Pentagon.

VIII. Presentation of Commending Resolution to Elmer C. Hodge, Jr.

Mrs. Lawson presented a resolution, adopted by the Commission on September 14, 2009, to Mr. Elmer Hodge recognizing his significant contributions as a member of the Commission from August 20, 2008 until August 27, 2009. Mr. Hodge expressed his appreciation for the resolution as well as for the opportunity to serve on the Commission.

IX. Scheduling of Regular Meetings

The Commission confirmed that its next regular meeting is scheduled to take place on Monday, January 11, 2009 at 10:00 a.m. at the VHDA Housing Center in Glen Allen and that future regular meetings are tentatively scheduled for March 8 and May 10, 2010.

X. Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 1:01 p.m. on a motion by Mrs. Seefeldt, which was seconded by Mrs. Parsons.

Vola T. Lawson
Chairman

Susan B. Williams
Local Government Policy Manager