

DRAFT MINUTES
Regular Meeting
Commission on Local Government
10:00 a.m., January 9, 2012
The Virginia Housing Center
Henrico Room 3
4224 Cox Road
Glen Allen, Virginia

Members Present

Cole Hendrix, Chairman
John G. Kines, Jr., Vice-Chairman
Wanda C. Wingo,
Harold H. Bannister, Jr.

Members Absent

Staff Present

Susan Williams, Local Government Policy Manager
Zack Robbins, Senior Policy Analyst
Ed Lanza, Senior Public Finance Analyst

Call to Order

Commission Chairman Wanda C. Wingo called the meeting to order at 10:04 a.m. on January 9, 2012 in Henrico Room 3 at the Virginia Housing Center in Glen Allen, Virginia.

I. Election of Officers

Mrs. Wingo nominated Mr. Hendrix for Chairman, and the Commission unanimously elected Mr. Hendrix as Chairman for 2012. Mr. Bannister nominated Mr. Kines for Vice-Chairman, and the Commission unanimously elected Mr. Kines as Vice Chairman for 2012.

II. Administration

A. Approval of Minutes of November 14, 2011 Regular Meeting

Mrs. Wingo made a motion that the minutes of the Commission's regular meeting held on November 14, 2011 be approved. Such motion was seconded by Mr. Kines, and the Commission approved the minutes without amendment. Mr. Bannister abstained from voting because he was not present at the November 14 meeting.

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 December 2011

Referencing an internally produced financial statement that encompassed expenditures through the end of December 2011, Ms. Williams stated that the financial report covered one-half of Fiscal Year 2012 (FY12) and that Commission personnel and non-personnel expenditures for that period represented 46.37% of the total amount budgeted for the fiscal year.

B. Local Government Policy Manager's Report

1. Previous Cases Before the Commission

Ms. Williams informed the members that the special three-judge court appointed to review the Town of New Market – Shenandoah County voluntary settlement agreement is scheduled to convene this week.

2. Potential Issues

Looking ahead, Ms. Williams indicated that the Commission, prior to their March regular meeting, can reasonably anticipate the filing of Notice and accompanying materials requesting that the Commission review a proposed voluntary settlement agreement negotiated by the City of Bedford and Bedford County that provides for the

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reversion of the City to town status in the County in addition to certain boundary adjustments. Ms. Williams further indicated that, prior to the March meeting, the Commission can also reasonably anticipate the filing by the Town of Clarksville of Notice of its intention to seek the annexation of territory located in Mecklenburg County, along with the accompanying materials. She stated that Commission staff recently met with the attorneys representing the Town of Clarksville, upon their request, to discuss their upcoming submission.

3. Staff Activities

Ms. Williams highlighted various staff activities that have taken place since the Commission's regular meeting on November 14, including providing continued staff support to the Governor's Task Force for Local Government Mandate Review; meeting with representatives from the Virginia Association of Counties (VACo) and the Virginia Municipal League (VML) to craft a mandate moratorium proposal; assisting the Governor's Policy Office with its work on Rockbridge County's petition to the Governor for temporary suspension of a state mandate that will require the County to close its "medium risk," unlined landfill by December 31, 2012; and meeting with Department of Conservation and Recreation (DCR) representatives to discuss potential legislation that would integrate the Stormwater Management Law, Erosion and Sediment Control Law, and Chesapeake Bay Preservation Act.

4. Governor's Proposed Budget

Ms. Williams indicated that Governor McDonnell's Proposed Budget for the 2012-2014 Biennium and his Executive Amendments to the 2010-2012 Biennial Budget were published on December 19 and did not include any changes that directly impact the

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Commission on Local Government. Ms. Williams then called members' attention to a document prepared by VML and included in their meeting packages, which summarizes the major proposals of interest to local government in both budgets.

5. Commission Vacancy

Ms. Williams stated that Mrs. Seefeldt was not reappointed to the Commission, and her term expired on December 31, 2011. Ms. Williams said she has not received any information regarding when the vacancy will be filled by the Governor. The Commission members asked that, prior to their March meeting, Ms. Williams prepare and circulate for their review a resolution commending Mrs. Seefeldt for her many years of dedicated service to the Commission.

III. Fiscal Stress Report for 2009/2010

Mr. Lanza stated that he had two goals for the 2010 fiscal stress report. The first was that it be shortened without sacrificing valuable information. The second was that it be easier for users to understand. He believes that the report accomplished both goals. Mr. Lanza then identified three additions to the report: summaries by transportation district, GIS maps (prepared with the help of Mr. Robbins) and scatter graphs.

Mr. Lanza then described the background of the fiscal stress index and the basics of its structure. He defined the index as one that can illustrate a locality's ability to generate additional local revenues from its current tax base relative to the rest of the state. He defined average stress as equaling a score of 165. He described the four stress categories (i.e., low, below average, above average, and high) and that standard deviation is what separates localities into these categories.

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Mr. Lanza revealed some statistics regarding revenue capacity per capita, which is one of the factors in the fiscal stress computation. He noted the range of data, from Lee County (approximately \$840 per person) to Bath County (approximately \$5,200 per person). He identified that 99 of 134 localities (or 73.9%) were between \$1,000 and \$2,000. He indicated that the median total was \$1,696.78 and that average annual growth since 2006 was 4.86% statewide. At this time, Mr. Banister expressed concern over the nomenclature of the factor and requested heading changes to two of the fiscal stress tables.

Mr. Lanza then presented a number of statistics regarding revenue effort, the second factor in the fiscal stress computation. He defined the calculation as actual collections divided by revenue capacity. He identified the range of results from Highland County (45.16% of capacity) to Covington City (181.98% of capacity). He then compared average county effort (74.4%) to average city effort (131.2%) to illustrate the significant difference between the two. Next, he highlighted Poquoson as the only city below the statewide average of 90.93% of capacity. Finally, he remarked that average annual change in effort since 2006 was -1.88% statewide. As Mr. Lanza concluded, Mr. Hendrix requested that language be added to the executive summary to better describe the index, keeping readers of the report, such as the news media, in mind.

Mr. Lanza then presented data regarding median household income, which is the final piece of the index. He indicated the range of totals from Martinsville City (\$28,298) and to Loudoun County (\$114,200). He indicated that average annual growth statewide since 2006 was 2.42%. He then remarked that 66.7% of cities experienced growth below the state average. Finally, he stated that six localities experienced negative growth: two

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counties and four cities. As he concluded, Mr. Lanza noted that, following precedent, he used 2009 median household income data for the 2010 report, even though 2010 data was available. He asked that, when taking action on the report, the Commission approve the use, in future annual fiscal stress computations and reports, of the most recent available data.

Finally, Mr. Lanza presented information regarding the 2010 fiscal stress scores. He presented the range of scores, from Bath County (136.79) to Covington City (188.60). He compared the average county score (161.57) to the average city score (173.35) to illustrate the difference between the two. Next, he indicated that 33 of 39 cities are experiencing stress above the state average. He then remarked that 20 of the 21 localities experiencing high stress are cities and that Buchanan County is the only county in that stress category. Finally, he stated that eight localities experienced a change in stress class, with three moving out of the high stress category (i.e., the Counties of Dickenson, Greenville and Wise). He further indicated that no localities moved into the high stress category.

Mr. Hendrix expressed his concern over average stress equaling 165 and the interpretation for the media. Mr. Lanza then informed the Commission of his desire to rescale the index to make 100 the average in accordance with most widely used economic indices. The Commission agreed that this would be easier to understand and recommended the change for the next computational round in 2011. Mr. Hendrix asked that this change as well as the prospective shift to the use of the most recent median household income be described in the executive summary of the report along with language better describing the index.

Mr. Bannister made a motion to approve the report with the recommended revisions. Such motion was seconded by Ms. Wingo and unanimously approved by the Commission.

IV. Governor's Task Force for Local Government Mandate Review

Ms. Williams reminded the Commission that, on September 22, 2011, Governor McDonnell appointed the five members of the Governor's Task Force for Local Government Mandate Review. She stated that, in addition, two members of the Governor's Reform Commission serve as liaisons to the task force. She also said that Commission staff continues to provide staff support to the task force.

Ms. Williams indicated that Governor McDonnell sent a letter on October 4, 2011 to all county board of supervisor members, county administrators, city council members, city managers, town council members, town managers and school boards asking them to suggest mandates that can be eliminated. She stated that the Governor invited the same local government and school officials to participate in a telephone conference with him on October 27. Ms. Williams explained that Governor McDonnell made a distinction during that call between mandates that can be eliminated and state funding for unfunded mandates and asked that, in light of the current budget situation, the task force focus in the short term on the mandates that can be eliminated now and look in the future at those that require state funding.

Ms. Williams said that the task force held its "kick-off" meeting on November 7, 2011 at which time they formed three subcommittees: Suggestions for Potential 2012 Mandate Elimination Legislation; Education and Mandates Moratorium. Ms. Williams stated that the task force has met three additional times since its initial meeting – on

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November 19, December 9 and January 4. She indicated that the task force will meet on January 16 to adopt its first interim report to the Governor, a draft of which was included in members' meeting materials.

Ms. Williams explained that, in the interim report, the task force will recommend mandates for potential elimination through legislation introduced at the 2012 General Assembly Session. Ms. Williams explained that the Governor's office will decide which recommendations of the task force to pursue through legislation and/or administrative action. Ms. Williams said that Commission staff has been working closely with staff in the Governor's Policy office and the Secretary of Commerce and Trade's Office to provide them the information they need and to coordinate the work of the task force. Ms. Williams then called members' attention to four (4) handouts, which will become appendices in the interim report and contain general mandates recommended for elimination; general mandates recommended for further study; education mandates recommended for elimination; and education mandates recommended for further study.

Ms. Williams explained that, of the task force's three subcommittees, the work of the Mandates Moratorium Subcommittee has the most direct impact on the work of the Commission on Local Government.

Ms. Williams said that the task force considered the following possible solutions relating to a mandates moratorium:

- Amend the Constitution of Virginia;
- Establish a process whereby potential unfunded and underfunded mandates are reviewed by the Governor; and
- Establish a process whereby mandates are funded by the legislature

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Ms. Williams stated that the task force identified amending the Constitution as a potential long-term solution because a proposed amendment to the Constitution must be twice approved by a majority of members elected to both houses of the General Assembly, and an intervening general election of the House of Delegates is required before the question is submitted to the voters. She indicated that, because the next general election will take place in November 2013, this approach would take three years to accomplish, provided the referendum initiative were successful.

Ms. Williams then described a process, which was suggested by representatives from VACo and VML that would involve review by the Commission on Local Government and the Governor. She indicated that the process would be established by adding language to Part IV of General Provisions in the Budget Bill. Ms. Williams explained that, upon the request of local governments or school divisions, unfunded and underfunded mandates would be reviewed by the Commission and the Governor after approval by the General Assembly but before the Reconvened Session. She stated that this process would be in addition to the fiscal impact estimation process conducted by the Commission during the legislative session.

Ms. Williams further explained that the process would primarily take place during the thirty days after the adjournment of the session in which the Governor has to act on the bills presented to him, including the Budget Bill. She said that, at such time as a bill or a budget amendment is approved by its house of origin in the legislature, local governments or school divisions could begin petitioning the Commission for a determination that the bill or budget amendment amounts to an unfunded or underfunded

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mandate. She indicated that petitions would be accepted until ten days after the adjournment of the legislative session.

Ms. Williams explained that, in order for the Commission to review a bill or budget amendment, local governments or school divisions containing thirty-five percent of the Commonwealth's population would be required to submit petitions requesting the Commission's review of the particular bill or budget amendment. She also stated that the Commission could also be given the authority to select bills or budget amendments for review on their own initiative.

Ms. Williams explained that, in the interest of time, local governing bodies and school boards would be permitted to authorize the chief administrative officer of the locality or the school superintendent to file the petition on behalf of the locality or school division. She further stated that, once the General Assembly approves a bill or budget amendment, local governments and school divisions would have ten remaining days in which to file their petitions, and the Commission would have ten days to review their petitions and make recommendations to the Governor.

Ms. Williams indicated that the criteria used by the Commission in making the determination would be the same as that set forth in the statute governing fiscal impact analysis: does the measure require a net additional expenditure by any county, city or town [or school division] or does it require a net reduction of revenues collected by any county, city or town?

Ms. Williams stated that, upon a finding that the criteria are met, the Commission would recommend the bill or budget amendment to the Governor for further action. She said that the Governor's options would include: to recommend an amendment to

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eliminate the unfunded mandate; recommend an amendment to fund the mandate; recommend a reenactment clause on the mandate to allow time for it to be studied; or take no action.

Ms. Williams then briefly describe additional approaches that were identified to prevent new mandates. First, she indicated that amending the Code of Virginia to reinstitute the first day introduction requirement for bills that have local fiscal impact was identified by the task force as an important first step in improving the process for identifying the local fiscal impact of proposed legislation because it would maximize the time available to conduct the analysis. Ms. Williams described other approaches considered by the task force, including legislation to prohibit the imposition of new unfunded mandates, unless the local governing body or school board affirmatively votes to accept the mandate or the General Assembly appropriates sufficient funds to effectuate the purposes of the bill; a “Sunset Clause” on new mandates; amendments to the Administrative Process Act (APA) to comprehensively address the impact of proposed regulations on local governments and school divisions through economic impact analysis; executive action to more comprehensively address the impact of proposed regulations; and executive action to delay the implementation of new or expanded regulations that impose a mandate on local governments or school divisions, where possible.

Ms. Williams stated that the task force voted unanimously at their meeting on December 9, 2011 to make the following recommendations to Governor McDonnell with respect to potential unfunded and under-funded mandates:

- Amend the Code of Virginia to reinstitute the first day introduction requirement for bills that have local fiscal impact;

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- Establish the process, described in detail above, whereby potential unfunded and underfunded mandates are reviewed by the Governor; and
- Amend Executive Order #58 (2007) to provide for a better process of mandate assessment by “(1) reducing the two-year waiting period and (2) providing for more frequent review rather than a four-year cycle under appropriate circumstances.”

Ms. Williams reminded members that the Executive Order (EO), which governs the state agency mandate assessment process, provides that no mandate shall be subject to assessment until it has been in effect for a minimum of two years. She further stated that the EO and Va. Code Sec. 15.2-2903(6) provide that no mandate shall be subject to reassessment more than once every four years unless such mandate has been so substantially modified as to create a new mandate; therefore, that the recommendation for more frequent review would require a change to the statute as well as the EO. Ms. Williams added that the EO also provides that no mandate that was assessed or reassessed by any agency through the assessment period concluding in April 2007 shall again be subject to reassessment unless such is requested by the Commission based on input from local governments, state agencies, interest groups and the public.

Initiated by Mr. Kines, a discussion ensued during which the Commission acknowledged the incredible burden that unfunded mandates place on local governments and the importance of eliminating existing mandates where possible as well as seeking to prevent the adoption of new mandates. The Commission expressed its full support and commitment to the process recommended by the task force that would require the Commission's review of new unfunded and underfunded mandates with recommendations to the Governor.

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V. 2012 General Assembly Session

A. Fiscal Impact Analysis Process

Ms. Williams stated that the General Assembly Session will convene on January 11 and should adjourn 60 days later on March 10. Ms. Williams reminded the members that the *Code of Virginia* requires the Commission to determine whether bills referred for local fiscal impact analysis impose either a “net increase in expenditure” or “net reduction in revenue” on localities. She said that the bills are referred to the Commission for analysis by the Division of Legislative Services (DLS), but that VML and VACo may also request that DLS refer specific bills to the Commission.

Ms. Williams reported that 36 local government volunteers – from 20 counties, ten cities and six towns across the Commonwealth – had signed up to participate in the process so far, compared with 28 volunteers last year. She explained that, once bills are assigned to the Commission, staff sends out an email to the volunteers with a bill list and a priority designation – either A, B or C – that has been determined jointly by VACo and VML and that the volunteers provide the fiscal estimate information on special forms. Ms. Williams said that Commission staff reviews and synthesizes the information provided then writes a fiscal impact estimate, which is provided to the patron of the bill and posted on the Legislative Information System (LIS) website next to the bill.

Ms. Williams indicated that, of the six bills referred by DLS to the Commission for analysis in 2011, all were requested by VACo and/or VML; five were defeated, tabled or continued; and one was amended to lessen its fiscal impact on local governments.

Ms. Williams stated that, as suspected, the elimination in 2011 of the first-day introduction requirement for bills with local fiscal impact affected the timing of bill

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assignments and fiscal impact statement (FIS) filings, making it more difficult to prepare FISs prior to the bill being heard in committee for the first time.

B. Bills of Interest and Legislative Action Summaries

Ms. Williams reported that, by the end of the business day on Friday, January 7, nearly 300 bills and resolutions had been introduced, including 165 House Bills and 79 Senate Bills. She noted that the pre-file deadline for legislation is 10:00 AM on the first day of the Session, and, after that, there are limits on the number of bills that each member can introduce. She added that a total of 2,692 bills and resolutions were introduced in 2011, and 2,964 were introduced in 2010. She said that Commission staff, to date, had been assigned and had completed two legislative action summaries (LASs) and that, last year, staff prepared 44 LASs and six fiscal impact statements.

VI. Scheduling of Regular Meetings

The Commission discussed the anticipated filings by the City of Bedford – Bedford County and the Town of Clarksville in light of the scheduling priority given to the first case filed. Ms. Williams explained that the City of Bedford – Bedford County will be jointly requesting the review of a voluntary settlement agreement, whereas the Town of Clarksville will be initiating an annexation action, which will require that time be allotted in the schedule for a response from Mecklenburg County. Ms. Williams noted that, while statute and Commission regulations specify a timeframe in which the Commission is required to issue its report, neither contains a specific timeframe in which the affected County must respond to the Town's submission. Ms. Williams indicated that, in prior cases, the affected county has been given three or four months to prepare and submit a response. Consequently, the Commission agreed to tentatively schedule

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their requisite meetings (i.e., tour, oral presentations and public hearing) in Bedford for May, and their requisite meetings in Clarksville for July, provided that both filings are received prior to the March regular meeting of the Commission and subject to the input of the parties at the Commission's March meeting. The Commission would hold its regular May and July meetings in conjunction with these other meetings. The Commission subsequently adopted the following tentative 2012 meeting schedule:

March 19 at the Virginia Housing Center (provided that space is available);
May 14 and 15 in Bedford at a location to be determined;
July 9 and 10 in Clarksville at a location to be determined;
September 10 at the Virginia Housing Center (provided that space is available);
and
November 19 at the Virginia Housing Center (provided that space is available).

VII. Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 11:42 a.m. The Commission's next regular meeting is scheduled for Monday, March 19, 2012 at 10:00 a.m. The meeting will be held at the Virginia Housing Center in Glen Allen, provided that space is available.

Cole Hendrix
Chairman

Susan B. Williams
Local Government Policy Manager