

DRAFT MINUTES
Regular Meeting
Commission on Local Government
10:00 a.m., November 14, 2011
The Virginia Housing Center
Henrico Room 3
4224 Cox Road
Glen Allen, Virginia

Members Present

Wanda C. Wingo, Chairman
Cole Hendrix, Vice-Chairman
Kathleen K. Seefeldt
John G. Kines, Jr.

Members Absent

Harold H. Bannister, Jr.

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 10:01 a.m. on November 14, 2011 in Henrico Room 3 at the Virginia Housing Center in Glen Allen, Virginia.

I. Administration

A. Approval of Minutes of September 12 and 13, 2011 Meetings

Mr. Hendrix made a motion that the minutes of the following meetings, which took place in the Town of Culpeper, be approved: the Oral Presentations made on September 12, 2011; the Public Hearing held on September 12, 2011; and the Commission's regular meeting of September 13, 2011. Such motion was seconded by Mr. Kines, and the Commission approved the three sets of minutes without amendment.

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Mrs. Wingo abstained from voting because she was not present at the meetings in Culpeper.

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 2011

Referencing an internally produced financial statement that encompassed expenditures through the end of October 2011, Ms. Williams stated that the financial report covered one-third of Fiscal Year 2012 (FY12) and that Commission personnel and non-personnel expenditures for that period represented 31.3% of the total amount budgeted for the fiscal year.

D. Local Government Policy Manager's Report

1. Previous Cases Before the Commission

Ms. Williams informed the members that the referendum on consolidation failed in both the City of Covington and in Alleghany County. She further indicated that the proposal failed in the City 37.9% to 62.1% and in the County 45.3% to 54.7%.

2. Potential Issues

Looking ahead, Ms. Williams indicated that the Commission 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 reversion of the City to town status in the County in addition to boundary adjustments. Ms. Williams explained that Mr. Carter Glass, the attorney representing the City of Bedford with respect to the proposed

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agreement, inquired as to whether the City would be required by the Commission to hire Dr. Petersen to update his "Report on Fiscal Implications of Reversion to Town Status and Proposed Boundary Changes," which he was hired by the City to prepare. Because the negotiations between the two localities were protracted, Dr. Petersen's original report, which was based on FY 2008 data, was updated in October 2010 using FY 2009 data. In addition, at the City's request, Dr. Petersen recently reviewed his findings and concluded that a comprehensive updating of his earlier analysis with financial data from the 2010 fiscal year would not have a material impact on his findings as to the financial effect of a reversion or boundary adjustment. Ms. Williams stated that she asked the Bedford County attorney if the County is comfortable with the use of FY2009 data, but she did not hear back from the County prior to the meeting. Ms. Williams indicated that Commission staff conducted its own analysis, and she called on Mr. Lanza to explain staff's conclusions.

Mr. Lanza then gave a very brief overview of the report to the Commission. Mr. Lanza summarized Dr. Peterson's remarks in relation to updated data, which were that (1) City expenditures declined at a faster rate than did revenues, (2) the City did not behave significantly differently than other Virginia cities in making an adjustment to lower revenues, (3) neither the City nor the County demonstrated significant differences from that of their peer groups, and (4) he does not believe that the recession alters the financial benefits that were estimated using FY 2009 data. Finally, Mr. Lanza stated that the biggest issue in the analysis was the value of real property in the City, which actually rose by 2.4% from 2009 to 2010 according to the Department of Taxation.

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Ms. Wingo called on Mr. Glass, who reiterated the conclusions drawn by Dr. Petersen and Mr. Lanza and explained that it would be expensive and time consuming for Dr. Petersen to update the report again. He reminded members that the Commission's regulations require the use of the most recent data available and indicated that, on behalf of the City, he was asking the Commission, in this instance, to accept other than the most recent data.

After a brief discussion, Mr. Cole made a motion that the Commission accept Dr. Petersen's report "as is" and not require that it be updated, which motion was seconded by Mr. Kines and unanimously adopted by the Commission.

3. Staff Activities

Ms. Williams highlighted various staff activities that have taken place since the Commission's regular meeting on September 13, including participation in the Virginia Municipal League (VML) Annual Conference; the Local Government Attorneys Fall Conference; a FOIA workshop; and a seminar on local data sponsored by the Federal Reserve Bank of Richmond.

II. Draft Report on the Town of Culpeper – Culpeper County Voluntary Settlement Agreement

Ms. Williams and Mr. Robbins presented the draft report. Ms. Williams highlighted the various sections contained in the report. Ms. Williams explained that, with respect to a proposed agreement such as this one negotiated under the authority of Va. Code §15.2-3400, the Commission is required to determine "whether the proposed settlement is in the best interest of the Commonwealth."

Mr. Robbins then provided an in-depth analysis of the interests of the town, county and area proposed for annexation as well as the Commonwealth.

Next, Ms. Williams presented the following draft findings and recommendations and concluding comment to the members for their consideration:

FINDINGS AND RECOMMENDATIONS

In the preceding sections of this report, the Commission has reviewed a proposed voluntary settlement agreement negotiated by the Town of Culpeper and Culpeper County addressing the interests of the two jurisdictions. Based upon that review, we find that the agreement promotes the viability of both local governments and is consistent with the best interests of the Commonwealth. Accordingly, we recommend the court's approval of the agreement. While finding the agreement to be in the best interest of the two jurisdictions and the State, there is a related issue which we are obliged to address.

MINIMUM 30-YEAR ANNEXATION MORATORIUM

The Commission has historically approached provisions for lengthy bans on annexation with reservation. In this instance, the agreement provides for a waiver of annexation and city status rights by the Town during the term of the agreement, which will be for a minimum period of 30 years. The Commission carefully considered the length and indefinite nature of the moratorium on annexation in the context of a complicated, heavily negotiated agreement, which clearly reflects significant compromise by both parties. In resolving its concern, the Commission evaluated, among other factors, the need for the Town to expand its tax base as well as the benefit of replacing the current fragmented provision of utility services with an efficient operation in which the Town acts as the exclusive service provider in the County's Water and Sewer Service Areas. The Commission concludes that, on balance, the lengthy and indefinite moratorium is acceptable under these specific circumstances because the agreement settles major issues facing both jurisdictions and should work to enhance cooperation between them.

CONCLUDING COMMENT

The Commission on Local Government acknowledges the considerable effort devoted by officials of the Town of Culpeper and Culpeper County to negotiate the agreement before us. The agreement reflects a notable commitment by the leadership of both jurisdictions to address in a collaborative fashion the concerns of their localities and the needs of their residents. We commend the officials of the two jurisdictions for their public leadership and for the interlocal agreement which they have negotiated.

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Ms. Williams then described a few typographical errors in the draft report that she will correct. After a brief discussion, Mr. Hendrix made a motion that the Commission approve the report with any corrections identified by staff. Such motion was seconded by Mr. Kines, and the report was unanimously approved by the three members who participated in the review and were present at the meeting. Ms. Wingo abstained from voting because she was unable to participate in the review.

III. 2011 Report on Proffered Cash Payments and Expenditures by Virginia's Counties, Cities and Towns (Draft)

Mr. Robbins explained that Va. State Code §15.2-2303.2 requires the Commission to gather data from local governments on the collection and use of cash proffers. He further explained that every locality eligible to collect cash proffers that has a population in excess of 3,500 must report its use of proffers by September 30 each year to enable the Commission to prepare its annual report by November 30.

Mr. Robbins stated that, of the 285 localities eligible to accept cash proffers, 153 localities are required to report to the Commission, including 88 Counties, 36 Cities and 29 Towns. An additional 132 Towns are eligible to collect proffers, but are not required to report on them because their population does not exceed 3,500. A list of these localities is included in Appendix B to the report.

Mr. Robbins noted that the surveys were mailed in July, and a 100% response rate was achieved upon completing follow-up emails and phone calls.

A copy of the survey form is in Appendix C to the report. The survey asked localities to provide:

- Total cash proffer revenue collected

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- Cash proffers pledged, whose payment is conditioned only on time
- Cash proffer revenue expended
- Purposes for which the revenue was expended

Mr. Robbins then reviewed the results of the survey, which are summarized in Appendix D. For FY2011, 40 localities (26% of those eligible) reported cash proffer activity in the form of collections, pledges or expenditures. Mr. Robbins explained that this represents a 7% decrease from the FY2009, when 43 reported activity. He reported that total cash proffer collections were \$36.1 million – down 25.9% from the previous fiscal year. The six localities with the highest cash proffer revenues – the Counties of Loudoun, Prince William, Chesterfield, Fairfax and Hanover and the City of Williamsburg – collectively accepted about 85 percent of the total amount of statewide cash proffer revenue.

Mr. Robbins then explained that cash proffer expenditures are often collected and expended in different years due to capital facility planning and time needed to accumulate sufficient funds to complete a project. In FY2011, the total amount of cash proffer funds expended decreased 39.1% from FY2010. Of the funds expended in FY2011, 40.6% was spent on transportation, 32.3% on education, and 13.8% for parks and recreation.

Finally, Mr. Robbins shared information regarding localities that became eligible to collect cash proffers or became subject to the reporting requirement as a result of the Census 2010 data that was released in February 2011. These localities, which will be surveyed beginning next year, are listed at the end of Appendix B.

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Mr. Hendrix requested that notification of the report's availability on the Commission's website be sent to the Virginia Association of Counties (VACo), VML, and the Homebuilders Association of Virginia (HBAV).

On the motion of Ms. Wingo seconded by Mr. Hendrix, the Commission unanimously approved the 2011 Report on Proffered Cash Payments and Expenditures by Virginia's Counties, Cities and Towns.

IV. Report on Urban Development Area (UDA) Designations in Comprehensive Plans (Draft)

Ms. Williams explained that UDAs are required to be established within the comprehensive plan for any locality that has adopted zoning and either (i) has a population of at least 20,000 and a decennial population growth of at least five percent, or (ii) has a decennial population growth of at least fifteen percent. She then summarized the required components of UDAs and stated the deadlines for implementation.

Ms. Williams said that localities are directed to forward to the Commission documents describing all UDA designations (or a resolution certifying compliance with the UDA requirement), associated written policies, zoning provisions and other ordinances, and the capital improvement program within ninety days of the adoption or amendment.

She indicated that the Commission is required to report annually to the Governor and General Assembly on overall compliance with the UDA requirement. Ms. Williams explained that the Commission was required to develop an appropriate report format in concert with the relevant planning district commission (PDC), and she described how that was accomplished.

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Ms. Williams then provided an overview of the survey results. She indicated that, by the deadline on September 9, 2011, 216 Virginia localities had responded to the questionnaire, for an overall response rate of approximately 66.7 percent. More specifically, she reported that 87 of 95 (92%) counties, 30 of 39 (77%) cities and 99 of 190 (52%) towns responded to the survey.

Ms. Williams next explained that, for purposes of analyzing the data collected, localities were divided into six groups based on population growth and statutory requirements. She explained that this year's report focuses on Groups 1 and 2 because the deadline for implementation has not yet occurred for the other Groups.

Ms. Williams described "Group 1 Counties" as the counties that met the population growth threshold based on the difference in their population from the 1990 to the 2000 Census and based on the difference in their population from the 2000 to the 2010 Census. She stated that Group 1 consists of 41 counties, and their deadline to establish one or more UDAs was July 1, 2011. Ms. Williams described "Group 2 Counties" as counties that met the population growth threshold based on the difference in their population from the 1990 to the 2000 Census only (i.e., they did not meet the threshold based on the difference in their population from the 2000 to the 2010 Census). She stated that Group 2 consists of 11 counties, and their original deadline to establish one or more UDAs was July 1, 2011. However, Ms. Williams stated that, because Va. Code § 15.2-2223.1 does not specifically address whether the localities in this category are still required to comply with the UDA mandate, some jurisdictions contend that they are no longer subject to it based on their population growth between the 2000 and 2010 Census.

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Ms. Williams then presented survey highlights for Group 1 and Group 2 and called members' attention to the complete survey results as well as the Group 1 and Group 2 UDA descriptions contained in the body of the report.

Next, Ms. Williams presented the conclusions contained in the report. She indicated that Group 1 counties have made significant progress toward designating UDAs in their comprehensive plans and that they have designated a total of 87 UDAs. She also pointed out that, of the Group 1 counties that did not meet the July 1, 2011 deadline, 90 percent are either in the process of developing a comprehensive plan amendment or have a draft that is before the Planning Commission. Ms. Williams noted that, collectively, Group 2 counties reported notably less progress toward designating UDAs in their comprehensive plans. She said that only 18 percent responded that they have designated one or more UDAs, and they collectively reported a total of only two UDA designations.

Ms. Williams reiterated that the counties in Group 2 met the population growth threshold that triggers the UDA requirement based on the difference in their population from the 1990 to the 2000 Census, but they did not meet the threshold based on the difference in their population from the 2000 to the 2010 Census. She indicated that some jurisdictions in Group 2 contend that they are no longer subject to the UDA mandate based on their population growth between the 2000 and 2010 Census. Ms. Williams explained that this interpretation of the statute has obviously impacted the overall progress of Group 2 counties in designating UDAs.

Finally, Ms. Williams stated that 97% localities that were awarded UDA grants from the Virginia Department of Transportation (VDOT) responded to the Commission's survey. She further stated that the survey results reveal that 100 percent of the 16 Group

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1 counties that received UDA grants have either established one or more UDAs or are in the process of doing so, as are 100% of the six Group 2 counties that received UDA grants. Ms. Williams stated that these results suggest that localities may be more likely to comply with the UDA mandate if they receive funds for that purpose. At the conclusion of her remarks, Ms. Williams distributed a revised title page for the report.

A brief discussion ensued primarily concerning the underlying mandate on certain local governments to establish UDAs. Ms. Seefeldt made a motion that the Commission accept the report with the revised title page; her motion was seconded by Mr. Hendrix and approved by the Commission. Mr. Kines abstained from voting to accept the report.

V. Assessment of Cash Proffer Reporting Mandate

Ms. Williams explained that the assessment, which was conducted July 1 through September 30, 2011, has been approved by the director of the Department of Housing and Community Development (DHCD) as well as the Secretary of Commerce and Trade. She stated that the agency recommended that the mandate be retained because it ensures government transparency in the collection and expenditure of proffered cash, and it provides useful information to other localities, state agencies, taxpayers, the homebuilding industry and legislators.

Ms. Williams described an optional supplemental questionnaire that was included with this year's cash proffer survey. She said responses indicated that the statewide average cost per locality to comply with this mandate is \$1,353. She added that there was significant variation from locality to locality (from minimal to over \$20,000). Ms. Williams reported that the Homebuilders Association of Virginia (HBAV) was also asked to provide input during the assessment process. HBAV indicated that they would

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strongly oppose elimination of this reporting requirement because “before the reporting was required, localities refused to disclose the balances in the Cash Proffer Accounts, and the schedule of disbursements of the same.”

Ms. Williams stated that an alternative was considered to include cash proffer data in the report of local revenue and expenditure data that localities are required to submit to the Auditor of Public Accounts (APA). She said that this alternative would likely result in the collection of more accurate and consistent information because it would be audited data. However, Ms. Williams added that this approach might actually increase the burden on local governments. She also reported that, while 53.3% of responding localities indicated that the annual cash proffer survey requirement should be eliminated, 46.7% indicated that it should be retained (and, further, that 18 localities indicated that the reporting of cash proffers provides useful information or that it should continue to be reported for government transparency reasons).

VI. Governor’s Task Force for Local Government Mandate Review

Ms. Williams announced 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 will serve as liaisons to the task force. She also said that Commission staff will be providing staff support to the task force.

Ms. Williams stated 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

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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, since the Governor's letter, overall 5% of counties, cities, towns and public school divisions in Virginia have submitted suggestions for mandates that can be eliminated.

Ms. Williams said that the task force held its "kick-off" meeting on November 7, 2011. At that time, Mr. Pat Herrity was elected Chairman and Ms. Joan Wodiska was elected Vice-Chairman. Ms. Williams explained that the task force heard presentations from Commission staff, VACo and VML. The task force also heard from the Virginia Association of School Superintendents (VASS) and a concerned citizen during the public comment period.

Ms. Williams reported that the task force established three subcommittees: education; moratorium [on mandates]; and suggestions for potential 2012 mandate elimination legislation. She then reported that the task force will next meet on Saturday, November 19, 2011 at 10:00 AM at the old Fluvanna County Courthouse in Palmyra, Virginia.

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VII. Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 11:59 a.m. The Commission's next regular meeting is scheduled for Monday, January 9, 2012 at 10:00 a.m. The meeting will be held at the Virginia Housing Center in Glen Allen, provided that space is available.

Wanda C. Wingo
Chairman

Susan B. Williams
Local Government Policy Manager