



**FAIRFAX COUNTY BOARD OF SUPERVISORS'
2011 GENERAL ASSEMBLY
FINAL LEGISLATIVE REPORT
March 1, 2011**

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To protect and enrich the quality of life for the people, neighborhoods, and diverse communities of Fairfax County by:

Maintaining Safe and Caring Communities

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Maintaining Healthy Economies

Practicing Environmental Stewardship

Creating a Culture of Engagement

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Final Report to Board of Supervisors 2011 General Assembly

Section I –Report on Priorities, Initiatives, and Preliminary Budget Analysis

The General Assembly convened on January 12, 2011, for its final session prior to the November 2011 elections, which will feature newly-drawn districts as part of the Constitutionally-required decennial reapportionment process. With all House and Senate seats on the ballot in November, election-year pressures were palpable in the list of hot-button issues addressed by legislation filed this year, including school vouchers, immigration, and abortion. The discussion of SJ 344 (Stuart) on the House floor encapsulated the concerns of legislators facing the voters in a few short months. This Constitutional amendment would have permitted localities to cap the personal property taxes levied on certain large boats, which, proponents argue, have been leaving the state to seek more favorable tax treatment elsewhere. After being derisively dubbed a tax break for millionaires' yachts, the resolution, which had been relatively uncontroversial, being touted by local commissioners of the revenue from coastal jurisdictions as a jobs measure for local marinas, was overwhelmingly defeated on a vote of 19-78.

National political trends made their presence felt in Virginia this year as well, as Virginia drew headlines for a resolution requesting a constitutional convention to consider an amendment permitting the repeal of any federal law or regulation by a vote of two-thirds of state legislatures. Other resolutions would have memorialized Congress to adopt a balanced budget amendment or to curtail the Environmental Protection Agency's regulation of greenhouse gases. Virginia also drew national attention late in the session, when, after a protracted and emotional floor debate, the Senate narrowly approved a House amendment requiring that facilities in which five or more first trimester abortions are performed per month must meet certain standards applied to hospitals.

While there were many controversial measures considered during the 2011 session, there were also many measures on which there was broad agreement. Numerous legislators introduced bills to ban synthetic marijuana, or "spice," due to its harmful health effects, with legislation ultimately passing unanimously. Similarly, legislation broadening the class of persons who may request protective orders also passed unanimously. In a departure from previous sessions, the issue of transportation funding was significantly less contentious this year. While there was little appetite on either side of the aisle to consider bills containing one aspect of the Governor's proposal--privatizing the state's Alcoholic Beverage Control stores--the General Assembly overwhelmingly approved the bulk of the Governor's plan, albeit without the additional General Fund dollars he had proposed. The legislation will not provide long-term, dedicated, sustainable, new revenues for transportation, but it does provide short-term funding for projects, and Senator Edd Houck likely spoke for many legislators when he said, "There is a time for everything, and now is the time for this. It's a time to build."

Several legislators cited a similar sentiment when they announced their retirements at the end of the Session. Delegate Albert Pollard and Senators Ticer and Whipple announced that they will not seek reelection in November, and their colleagues saluted them in moving floor speeches, sometimes through tears. Legislators also paid tribute to the late Chief Justice of the Virginia Supreme Court, Leroy R. Hassell, who died February 9 and whose body lay in state at the Capitol prior to his funeral.

Despite these sober moments, there was also time for levity this session, as delegates participated in the annual bestowing of mock awards on members who frequently "pop up" on the floor to speak, and the House and Senate competed in a charity basketball tournament. Delegates agreed with the Senate to name the striped bass the state saltwater fish, at the request of a fourth-grade class, though not without contemplating bestowing the honor on the menhaden instead.

In what is becoming more the rule than the exception, the regular session had to be extended to allow budget conferees an additional day to complete negotiations. However, despite the frustrations expressed by some conferees (in a report to his Senate colleagues on the floor on Saturday evening, Senator Saslaw characterized the House's bargaining position as "What's mine is mine and what's yours is negotiable"), the conference report was adopted unanimously in both chambers—a rare occurrence in recent times. The 2011 Regular Session adjourned *sine die* on Sunday evening, February 27, setting the stage for the

immediate convening of a special session on reapportionment. The special session is scheduled to reconvene on April 4 to consider bills containing redistricting plans for House of Delegates, state Senate, and House of Representatives seats.

COUNTY PRIORITIES

Funding Core Services – Transportation Funding

Principle: Adopt new revenue sources for transportation funding.

Several bills aimed at addressing the Commonwealth's crumbling transportation infrastructure were introduced this session. The most notable among them was a plan proposed by the Governor, which was divided into several bills:

As introduced, **SB 1446** (Wampler) / **HB 2527** (Howell, W.J.) would:

- accelerate the issuance of HB 3202 (2007) bonds (\$1 billion would be sold over 3 years);
- allow the issuance of \$1.2 billion in Federal GARVEE Bonds;
- create a Virginia Transportation Infrastructure Bank (VTIB);
- change the Revenue Sharing program by increasing the total program maximum and eliminating the project cap and the tiered allocation structure;
- direct 2% of revenue growth in the General Fund to transportation, when General Fund revenue grows by more than 5%; and
- dedicate 2/3 of annual budget surpluses to transportation, immediately after deposits are made into the Revenue Stabilization Fund.

The revenue growth provision was removed in the House and Senate substitutes. The provision related to annual budget surpluses was removed from **SB 1446**. The **HB 2527** substitute changed the provision to state that after deposits into the Revenue Stabilization Fund, two thirds of a surplus would be assigned to transportation and one third would be deposited into the Water Quality Improvement Fund. **HB 2527** passed the House (65-33), **SB 1446** passed the Senate (34-6), and the bills were discussed within a Conference Committee. The Conference Report includes language that accelerates the issuance of the HB 3202 Bonds, allows the issuance of the Federal GARVEE Bonds, creates the VTIB, and changes the Revenue Sharing program to eliminate the tiered structure and raise both the project cap and the total program maximum. It does not include any provisions related to budget surpluses or the General Fund. The Conference Report passed the House 80-16 and the Senate 33-7.

Other portions of the Governor's Plan were included in **SB 1394** (McWaters)/ **HB 2404** (Rust), which would have allocated .25% of the state sales tax in Northern Virginia and Hampton Roads to transportation projects in those regions. **SB 1394** was passed by indefinitely by Senate Finance and **HB 2404** was left in House Appropriations. Additionally, **SB 1417** (Obenshain)/**HB 2456** (Brink), which would have privatized the Alcoholic Beverage Commission (ABC) stores and licenses and sent the proceeds to the VTIB, were left in Senate Rehabilitation and Social Services and House General Laws, respectively.

Other Transportation Funding Legislation

There were several bills that would have created additional transportation resources by changing the state's tax structure. However, they were left in the House Finance Committee. Among these bills were **HB 1413** (Scott), which would have changed the tax on gasoline from cents per gallon to a percentage; **HB 1531** (Howell, A.), which would have increased the gas tax by \$.10 per gallon; and **HB 1653** (Purkey), which would have imposed an additional 2.1% gas tax in transportation districts across the Commonwealth that approve a referendum doing so. **HB 1892** (Watts) included a Northern Virginia funding package and would have provided for additional funding by, among other things: imposing a motor fuels sales tax rate of 4%, phased in over four years for highway maintenance; increasing the state sales tax in Northern Virginia by 0.5% for transportation projects in Northern Virginia; and increasing the recordation tax in Northern Virginia at a rate of \$0.40 per \$100 valuation. **HB 1604** (Albo) would have changed the way the sales factor is determined, for purposes of the corporate income tax, from costs-of-performance to market-based sourcing, with the revenues being dedicated to the Highway Maintenance and Operations Fund. In the Senate, **SB 833** (Peterson) would have indexed the gas tax rate and was left in Senate Finance.

HB 2222 (Oder) provided for transportation funding and administration in Northern Virginia, Hampton Roads, the Richmond Highway Construction District, the Staunton Highway Construction District, and the Salem Highway Construction District by capturing a portion of the growth in certain state tax revenues for each area. **HB 2222** was passed by in House Appropriations.

Delegate Oder also introduced **HJ 511**, a constitutional amendment to permanently protect the Commonwealth Transportation Fund from transfers to the General Fund. The amendment would have allowed the General Assembly to borrow from the funds for other purposes only by a vote of two thirds plus one of the members voting in each house, and stated that the loan must be repaid with reasonable interest within four years. This approach is known as the “single lockbox.” A corresponding bill, **SJ 363** (Norment), would do the same, but would also limit the use of general and other non-transportation funds for transportation purposes. This approach is known as the “double lockbox.” The Speaker ruled the Senate substitute for **HJ 511** was not germane. **SJ 363** was sent to a conference committee, but while the Senate acceded to the House request for the conference committee and delegates were appointed by the House, no further action was taken by the Senate.

COUNTY LEGISLATIVE INITIATIVES

Due to the ongoing difficult economic situation and the need to focus on the state budget, the County again kept its initiatives to a minimum this year.

HB 2203 (Comstock) removes the tier structure in the Virginia Department of Transportation (VDOT) Revenue Sharing Program. The current structure, which gives priority to locally administered projects, has disproportionately affected Fairfax County, which has its roads maintained by VDOT. Numerous bills changing this program were introduced, each of which makes similar changes to the criteria. **HB 2203** was incorporated into **HB 2021** (May), which eliminates the tiers and the total program cap, but keeps the \$1 million maximum per jurisdiction. **HB 2021** then was incorporated into **HB 2527**, the House version of the omnibus transportation plan, which includes provisions to eliminate the tiers, as well as the jurisdictional and total program caps. **SB 1329** (Herring) would have removed the jurisdictional cap and increased the total program cap, but changed the tier structure to prioritize projects that produce significant traffic congestion relief. **SB 1329** was incorporated into **SB 1446**, the Senate version of the omnibus transportation plan, which increases the jurisdictional and total program caps, but retains the tier structure. **HB 2527** and **SB 1446** were referred to a conference committee. The Conference Report on the bills increases the project cap to \$10 million and the total program cap to \$200 million. It also removes the tier structure, but stipulates that priority will be given to projects in the Six-Year Improvement Program or a locality’s capital plan. The Conference Report passed the House by a vote of 80-16 and the Senate by a vote of 33-7.

REGIONAL ISSUES OF IMPORTANCE

Regional Transportation Funding

HB 1491 (Albo), **HB 1544** (Kory), **HB 1631** (Watts), **HB 1884** (Filler-Corn), and **HB 2331** (Lingamfelter) all would have changed current formulas for allocating transportation funds. **HB 1491**, which incorporated **HB 1884**, would have required the Commonwealth Transportation Board (CTB) to consider achieving a minimal level of disparity among highway construction districts in meeting asset performance standards. **HB 1491** was referred to the Joint Commission on Transportation Accountability, **HB 1544** and **HB 2331** were left in House Appropriations, and **HB 1631** was left in House Transportation.

SB 1112 (Miller, Y.B.), which specifies the role of Metropolitan Planning Organizations (MPOs) in the Commonwealth’s transportation decision-making process, passed the Senate. It was then amended in the House to clarify Federal requirements for MPOs and address Northern Virginia’s multi-state MPO situation; the amended version was passed by both the House and Senate.

Several bills that adversely impact Northern Virginia’s regional transportation authority were introduced this session. **HB 1865** (Cole) would have allowed portions of localities to withdraw from transportation districts and would have changed the Commonwealth-required tax for the transportation district into a local option tax. This could have impacted the bonding authority of the Northern Virginia Transportation Commission

(NVTC) and Potomac and Rappahannock Transportation Commission (PRTC), as well as their member localities' 2.1% tax that is spent on transportation projects and services.

HB 1999 (LeMunyon) would have required the Northern Virginia Transportation Authority (NVTA) to prioritize emergency evacuation and congestion mitigation projects when allocating its regional funds. While both important criteria, the bill would have excluded other NVTA criteria, such as improvements to safety and air quality and the connection of regional activity centers. **HB 2000** (LeMunyon) would have required NVTC to appoint one representative of the Commonwealth to the WMATA Board as a principal.

While **HB 1865**, **HB 1999**, and **HB 2000** passed the House, they were passed by indefinitely or failed to report in the Senate Finance Committee. **Budget Amendment 447#1g**, similar to **HB 2000**, was included in the House budget, but not in the Senate version. The amendment was not included in the final budget. **HB 2016** (Albo) would have required NVTC, PRTC, and NVTA to consolidate. Due to the numerous legal and financial complications that this consolidation would have required, **HB 2016** was sent to the Joint Commission on Transportation Accountability for further study.

OTHER LEGISLATION OF INTEREST

Miscellaneous

Under **SB 762** (Puller), in addition to existing requirements, police, fire, ambulance and any other emergency vehicles proceeding past red lights or other traffic signals requiring a stop have a choice to sound a siren, slow the vehicle down to a speed reasonable for the existing conditions, yield right-of-way to the driver of another vehicle approaching or entering the intersection from another direction, or bring the vehicle to a complete stop before proceeding. Failure to execute at least one of these tasks at the intersection would make the driver subject to criminal prosecution. Similar legislation was originally introduced in 2008, and was referred to the Crime Commission, which convened a workgroup in 2010 to consider the issue.

UPCOMING AND CONTINUING ISSUES

Select Studies of Interest

As was the case in recent years, in a continuing cost-saving effort, no new legislative subcommittees were created this year, with the exception of the Autism Advisory Council, which was funded through an appropriation in the state budget. Legislators instead directed standing commissions or executive agencies to undertake studies of particular issues. Studies authorized this year of particular interest to the County are listed below.

HJ 603 (Surovell) and **SJ 292** (Puller) requests Department of Rail and Public Transportation (DRPT) to conduct a study, in consultation with associated localities, transportation authorities, and Federal agencies, for improved public transportation services to Fort Belvoir and the Marine Corps Base at Quantico. **HB 603** was left in the House Rules Committee while **SJ 292** passed both the Senate and House.

SJ 297 (Miller, Y.B.) requests DRPT to make a one-year study of transit programs in the Commonwealth, including but not limited to the funding of such programs.

SJ 329 (Howell) directs JLARC to study the effectiveness of economic development incentive grants in Virginia.

HB 1956 (Rust) would have provided that, when a local governing body regulates towing by ordinance, such ordinance shall not limit the ability to remove a trespassing vehicle from one locality and store or release it in another as long as the stored or released location is within five miles of the actual tow. This legislation would have limited the County's ability to enforce the provisions of its towing ordinance, since vehicles could be towed outside of the County. The bill was passed by indefinitely in Senate Transportation by a vote of 9-6, but was sent to the Board of Towing and Recovery operators for study.

OVERVIEW OF THE 2010-2012 BIENNIUM BUDGET

The 2011 General Assembly began with a bit of cautious optimism on the budget front, as the Governor announced increased revenues when he presented his 2010-2012 biennium budget amendments in December. Following the pain of numerous and substantial budget cuts in recent years, resulting from the national recession and a \$4.2 billion state budget shortfall, the news of additional revenues, however small, was welcomed in Richmond and throughout the Commonwealth. However, the key question for local governments was about the allocation of resources – would the state seek to restore the state-local funding partnership, by putting additional dollars into core services, or would other priorities and interests prevail? In an election year when the entire House and Senate would be up for re-election, it was clear that there would be a struggle between policy and politics.

Governor's Budget Proposal

Governor McDonnell's budget included an increase of \$510.8 million in total general fund (GF) resources, including balances from FY 2010 (\$183.2 million); additional tax revenues (\$133.2 million), and transfers from state agency cash balances (\$13.2 million) in FY 2011; additional tax collections (\$157.3 million) and transfers (\$22.9 million) in FY 2012. The Governor cautioned that, while the projections reflected stronger than planned growth and an uptick in economic activity, he was still intent on finding savings and making state government more efficient. As a result, his budget amendments included \$191.6 million in cuts, savings, and reprioritization across state government.

Unfortunately, the Governor's budget did not include the restorations local governments had hoped for, and instead included a reduction of \$50 million for K-12 over the biennium, the quintessential core service local governments share with the state. Other items of particular interest to the County in the Governor's budget included: reducing the state match rates for therapeutic foster care under the Comprehensive Services Act (CSA); eliminating all CSA services not mandated by federal or state law; maintaining a reduction to HB 599 funding of \$18.7 million (10.5%) in FY 2012; reducing funding for fee system child care by \$5.9 million in FY 2012 statewide; and language directing a JLARC study on impact on local revenue streams of restructuring BPOL from gross receipts to net income.

The Governor primarily focused his budget resources on economic development, higher education and transportation. In the area of transportation, the Governor's amendments to the 2010 – 2012 budget contained elements of his proposed transportation funding plan, which was designed to produce \$4 billion in funding over the next three years. One key item in the budget was the dedication of \$150 million in FY 2010 GF surplus funds to capitalize the proposed Virginia Transportation Infrastructure Bank.

House and Senate Budgets

The Senate budget included an additional \$177.6 million of new revenues resources for the biennium, and offset that with net new spending of \$175.3 million. In the House, resources increased by \$112 million for the biennium, which was offset by net new spending of \$104.4 million. In other words, the Senate budget plan had more resources and spending than its House counterpart. But, more importantly, it was the focus of the two budget plans that defined the significant differences, with the Senate budget focusing on core services and restoring the funding partnership with localities, while the House focused on funding VRS, reducing the burden on businesses and achieving structural balance in the budget.

The House and Senate also differed over how to treat transportation – the House supported Governor McDonnell's proposal to capitalize a transportation infrastructure bank with \$150 million from the general fund, while the Senate did not. The two budgets also differed over several issues, including: funding for K-12, HB 599, CSA, local juvenile crime control, and local social services offices; VRS contributions for teachers and local government employees; local economic development efforts; upgrades to locally-owned public wastewater treatment plants, and deposits to the Rainy Day Fund.

Budget Conference Report

Going into overtime by one day, the 2011 GA approved the 2010-2012 biennium budget conference agreement unanimously in both houses. In general, both sides achieved victories in key areas. The House prevailed in largely reversing the Accelerated Sales Tax for 80 percent of dealers and providing an additional payment of \$64 million to the state's Rainy Day Fund, while the Senate prevailed in providing more funding for core services, including \$75 million for K-12, \$22.6 million for sheriffs, \$12.4 million for HB

599, filling 21 vacant judge seats, and additional funding to restore Medicaid waiver slots, respite care hours and other community-based services for those with intellectual disabilities and mental illness. The House trumpeted the lack of tax and fee increases in the budget, and eliminated funding for non-state agencies (resulting from a recent Attorney General's opinion that such funding is unconstitutional), while the Senate ensured that the state will continue to provide funding, although reduced, for public radio and television. The budget also includes \$30 million for the Behavioral Health and Developmental Services Trust Fund, to help transition people with severe intellectual disabilities out of state-operated institutions and into community-based care, in response to a scathing report about the conditions of Virginia's facilities by the US Department of Justice.

The Governor was successful with some of his budget proposals, but not with others. The adopted budget provides additional funding for higher education, including \$13 million to increase financial aid for in-state students and funding for science, math and technology initiatives. The budget also includes \$250 million from a VDOT audit for the newly formed Virginia Transportation Infrastructure Bank (VTIB), but only deposits about \$33 million in surplus revenue, the amount required by current statute, rather than the \$150 million the Governor requested.

And, in the midst of national debate about public employees and their benefits, the budget requires state employees to begin making annual payments to their retirement fund for the first time since 1983, but eased the pain of this by agreeing to give employees an offsetting 5 percent pay raise, their first increase in four years. The budget did not, however, include a defined-benefit plan for state employees, as was discussed, and was silent on the issue of how/when/should local school divisions deal with the employee share of retirement costs for teachers (most school divisions in Virginia pay both the employer and employee share of VRS for teachers).

Overall, the budget was better than expected for local governments, finally beginning the process of restoring the state and local partnership that is so critical to the provision and delivery of services throughout the Commonwealth. However, the massive reductions in recent years, coupled with state efforts to further shift responsibilities and costs to localities in numerous areas, continue to be significant concerns. If the state is, in fact, in the midst of an economic recovery and revenues are increasing, it is essential that funding restorations for shared services receive the highest priority as new funds become available, in order to rebalance the state's resources and responsibilities.