

October 13, 2011

2012 Legislative Program
Legislation Requested

TransDominion Express Commission.

Sen. Edwards has proposed legislation which would establish the TransDominion Express Commission to be responsible, within the TransDominion Corridor, for identifying needed construction, reconstruction, improvements of or repairs to railroads and their facilities and equipment necessary to provide enhanced passenger rail service, coordinated with freight rail opportunities, within the Corridor. The Commission may finance or assist in financing any rail transportation project. (Sen. Edwards patroned S.B. 435 in 2010; it was continued to 2011 in Senate Rules Committee, where it was left.) It would have repealed Chapter 1041 of the 2003 Acts of Assembly, which provided for the creation of a Rail Transportation Development Authority, but never became effective because its "reenactment clause" was never satisfied)

Passenger Rail Service.

The City of Roanoke supports the proposal to extend passenger rail service from Bristol through Roanoke and on to Lynchburg and then to Washington, D.C., and Richmond, Virginia (the "TransDominion Express"). Roanoke is the largest city in Virginia without passenger rail service. The 2000 General Assembly provided \$9 million in preliminary funding for this important economic development initiative. The City supports the additional State funding necessary to place the service into operation. Priority should be give to instituting passenger rail service between Roanoke and Lynchburg, to enable residents of this region access to passenger rail service. The State has provided funding for the City to initiate the Smart Way Connector bus service between Roanoke and Lynchburg, coordinated with train schedules. (Senator Edwards patroned S.B. 864 in 2009, which would have created the Rail Transportation Development Authority; it failed to report from the Finance Committee.)

Restore State Budget Cuts.

The State should restore the funding reductions in local aid made during the last legislative session, and not make any further reductions in local funding. The State should also stop utilizing cuts in aid to local governments as a budget balancing tool. The budgeted amount for such cuts that the City must remit to the State as "Aid to the Commonwealth" for FY 2012 is \$1,459,000.

Unfunded Mandates.

The Commonwealth must provide sufficient resources to pay its share of mandated services, and should not pass the costs on to local taxpayers of State-mandated services. The State should not enact any further legislation that imposes new mandates on local governments without providing for a source of revenue to pay for them. The recent shift in funding responsibilities to localities for the Line of Duty Act is a good example of how the State has acted to shift costs to localities. The State should either repeal current mandates upon local governments that are unfunded, or should authorize specific revenue sources to pay for them. The 2009 Catalog of State and Federal Mandates on Local

Governments, compiled by the Commission on Local Government, Department of Housing and Community Development, Commonwealth of Virginia, identifies hundreds of mandates. See: [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD3262009/\\$file/RD326.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD3262009/$file/RD326.pdf)

Pneumatic Weapons.

The City prohibited since at least 1909 the discharge, anywhere within the City, of air-guns and similar implements (Code of the City of Roanoke 1909, Sec. 399); but by the enactment of S. B. 757 during the last session of the General Assembly, the General Assembly invalidated all existing local ordinances "that prohibit the use of pneumatic guns in or within private property with permission of the owner or legal possessor of the property when conducted with reasonable care to prevent a projectile from crossing the bounds of the property." The prohibition of the discharge of air-guns and similar pneumatic weapons in the City is a prudent measure that helps ensure the public safety, health, and welfare, especially given the City's high population density of over 2,200 persons per square mile, and the narrowness and small size of many lots within the City; Pneumatic guns include rifles and pistols that fire .22 caliber pellets - the same caliber as the smallest rifle caliber, and they reportedly have killing power at close range and the ability to kill small animals at fifty yards. In addition, law enforcement officers are concerned that the resemblance of some pneumatic weapons to even more lethal weapons will cause problems for officers responding to calls, and having to make split-second decisions about how to respond appropriately.

The City requests that localities with a population density of at least 1,000 persons per square mile be authorized once again to regulate the discharge of pneumatic weapons, as they were able to do before the enactment of S. B. 757.

Other Legislative Priorities

Revenue related requests

Education Funding.

The State has a constitutional duty to meet its education funding obligations. The City supports full funding of State education programs including the Standards of Quality, incentive, categorical, and school facilities programs. The City opposes changes in methodology and changes in the division of financial responsibility that result in a shift of funding responsibility from the State to localities. As an example, the City opposes the elimination or decrease of State funding for State mandated benefits for school employees. The State should consider alternatives to generate additional funds to fulfill the constitutional commitment to education. Alternatives could include raising the sales tax or decreasing the amount of funding for the personal property tax exemption program.

The City opposes policies that lower State contributions to education under the Standards of Quality or other programs, but do nothing to address the cost of meeting the requirements in the Standards of Accreditation and Standards of Learning. The State should not continue to maintain and increase educational requirements while at the same time decreasing State funding.

BPOL and Machinery and Tools Taxes.

The City oppose efforts by the State to limit local government taxing authority, such as eliminating the business license tax or the machinery and tools tax.

Taxation of Motor Vehicles, Travel Trailers, Boats and Airplanes Weighing Over 10,000 Pounds.

Sec. 58.1-3511, Code of Virginia, provides, in relevant part, that the situs for personal property taxation of motor vehicles, travel trailers, boats and airplanes weighing over 10,000 pounds is the locality where they are "normally garaged, parked, or docked." The Attorney General and State Department of Taxation have opined in recent opinions that in order for the phrase "normally garaged, parked, or docked" to apply, the property must be located in the locality for six months or more, even though this is not a statutory requirement. This interpretation is beginning to cost the City and other localities significant revenues. The Commissioner of Revenue estimates that approximately 7,138 vehicles and trailers in the City could escape any local taxation if the six-month rule is consistently applied, potentially costing the City over \$1,750,000 annually. The Commissioner of the Revenue has requested that Sec. 58.1-3511 be amended to add the following provision: "For purposes of this section, the phrase 'normally garaged, docked or parked' as applied to motor vehicles, travel trailers, boats, and airplanes weighing over 10,000 pounds, shall mean that the motor vehicle, travel trailer, boat, or airplane must be located physically in the taxing jurisdiction a greater amount of time in each tax year than it is in any other jurisdiction or state." (Requested by the Commissioner of the Revenue.)

Arts and Cultural Organizations.

The Commonwealth should continue funding for the Virginia Commission for the Arts, which makes grants to local arts art and cultural organizations. According to a recent study by the Arts Council of the Blue Ridge, such organizations and local artists account for about \$18 million in tourist spending in the area, and \$760,000 in local and State tax revenues.

Fee for Domestic Violence and Domestic Related Offenses.

Enabling legislation authorizing localities to impose a fee of \$50.00 on those convicted of domestic violence and domestic related offenses would help offset the expense of domestic violence investigations and provide services to victims. This fee would be separate from and in addition to any fine and/or costs otherwise imposed by the courts. (Suggested by the Roanoke Domestic Violence Task Force.)

State Aid to Public Libraries.

State aid to public libraries has been cut dramatically since full-funding was last achieved in FY 2001. In fiscal year 2010 State aid is only funded at 56% of the level mandated by the Code of Virginia, which has produced a shortfall in State aid to public libraries of nearly \$7 million per year. The 2010 General Assembly approved an additional 15% reduction in State aid for fiscal years 2011 and 2012 which will drop State support to nearly 50% of the State funding required.

Payment of Taxes, Fees, and Fines Owed the City.

Sec. 15.2-2286.B, Code of Virginia, permits localities to require applicants for special exceptions, special use permits, variances, rezonings or other land disturbing permits, including building permits and erosion and sediment control permits, to produce satisfactory evidence that any delinquent real estate taxes owed the locality have been paid. It is requested that this section be amended to include any taxes (such as personal property), fees, or fines owed the locality by the owner of the subject property. (Requested by Division of Planning, Building and Development.)

Sales Tax Payments by State.

Section 58.1-605.F, Code of Virginia, gives the State Department of Taxation a six-month time period in which to distribute to localities sales taxes that are incorrectly paid to another locality, after an audit reveals that an incorrect distribution of such taxes has been made. The state should correct sales tax distributions to localities within thirty (30) days. (Requested by Dana Long, Manager, Billings and Collections.)

Penalty for Untaxed Cigarettes.

Section 58.1-3832(5), Code of Virginia, provides that localities may impose a penalty for fraud or evasion of payment of a cigarette tax, but limits the penalty to an amount not to exceed fifty percent of the tax owed. At the current tax rate of \$.54 per pack, the maximum penalty which may be imposed is \$.27 per pack. This limit should be removed so that localities can set their own rate of penalty, e.g., 100% penalty of the tax due with a stated dollar flat rate amount also authorized. For example, a penalty of \$500 in addition to 100% of the tax amount owed. The amount of interest imposed on the unpaid balance should be ten percent as is commonly charged on other receivables. The goal is for the penalty to be large enough to act as a deterrent and also strong enough to encourage legal compliance. (Requested by Dana Long, Manager, Billings and Collections.)

Untaxed Cigarettes.

Section 58.1-3832.5, Code of Virginia, authorizes localities to adopt ordinances making it a misdemeanor for persons to possess more than six cartons of untaxed cigarettes. This should be amended to make it a misdemeanor to possess any amount of untaxed cigarettes. (Requested by Dana Long, Manager, Billings and Collections.)

Fee for Transporting Arrestees.

Legislation should be adopted authorizing localities to impose a fee (\$5.00 is suggested) for each time an arrestee must be transported by local law enforcement, such as transporting them to a holding facility, such fee to be imposed upon the person if convicted of the crime for which he or she was arrested. Such fee would be used to offset the cost of transporting arrestees. (Requested by Roanoke City Police Department.)

Conservation Easements.

The State should provide some incentive, financial or otherwise, for localities which place land owned by them under a conservation easement, such as assisting in paying for any necessary surveys.

Requests related to quality of life/public health, safety and welfare

Preserve Sovereign Immunity.

On October 23, 2009, the Boyd-Graves Conference (composed of lawyers who represent the interests of both plaintiffs and defendants) voted to recommend that the sovereign immunity of Virginia localities be limited, and that the Virginia Tort Claims Act be extended to apply to localities. The Act currently applies to the Commonwealth. One justification cited for this action is that the current system of tort liability is confusing and unfair, in that counties have total sovereign immunity, while cities have liability for injuries incurred during the performance of a “proprietary” function, but have immunity when injuries are incurred during the performance of a “governmental function”.

Abolishing sovereign immunity could be very expensive for the City’s taxpayers. The City joins with the Virginia Municipal League in opposing placing the City and other localities under the Virginia Tort Claims Act.

Dangerous Weapons in Government Buildings.

The City joins with the Virginia Municipal League in supporting legislation to allow local governments to prohibit or restrict the carrying of dangerous weapons in city and town halls, county administration buildings, public libraries, public community and recreation centers, and public convention/conference centers. Section 15.2-742, Code of Virginia, currently prohibits localities from adopting or enforcing any such prohibition or restriction with regard to firearms.

Carrying Loaded Firearms in Public Areas.

The Police Department has requested that Roanoke be added to the list of localities in Sec. 18.2-287.4, Code of Virginia, that are authorized to prohibit the open carrying in public areas of certain weapons. That section provides:

Sec. 18.2-287.4. Carrying loaded firearms in public areas prohibited; penalty.

It shall be unlawful for any person to carry a loaded (a) semi-automatic center-fire rifle or pistol that expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine that will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock or (b) shotgun with a magazine that will hold more than seven rounds of the longest ammunition for which it is chambered on or about his person on any public street, road, alley, sidewalk, public right-of-way, or in any public park or any other place of whatever nature that is open to the public in the Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Newport News, Norfolk, Richmond, or Virginia Beach or in the Counties of Arlington, Fairfax, Henrico, Loudoun, or Prince William.

The provisions of this section shall not apply to law-enforcement officers, licensed security guards, military personnel in the performance of their lawful duties, or any person having a valid concealed handgun permit or to any person actually engaged in lawful hunting or lawful recreational shooting activities at an established shooting range or shooting contest. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

The exemptions set forth in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section.

Injured Animals.

Sec. 3.2-6507, Code of Virginia, authorizes licensed veterinarians to “treat, hospitalize or euthanize” a sick or injured animal if the owner of the animal “cannot be immediately located.” The Police Department requests that this section be amended to authorize animal control officers to have the same authority accorded licensed veterinarians by this section.

Nuisance Abatement.

Sec. 15.2-901, Code of Virginia, authorizes localities to go onto private property and abate certain nuisances thereon, after giving notice to property owners and the failure of the owners to act to correct the nuisances, such as accumulations of trash, garbage, refuse, litter and other substances which endanger the public health or safety, and excessive “grass, weeds or other foreign growth.” In addition to such nuisances, citizens and neighbors often complain of shrubbery and trees which have been neglected and have become overgrown, creating various problems and nuisances. It is requested that Sec. 15.2-901 be amended to add nuisances caused by “shrubbery and trees” to the type nuisances which localities may abate.

Outdoor Lighting.

Legislation is requested which would authorize the City to regulate, through its zoning ordinance, exterior illumination levels of the lighting on new buildings and structures. Albemarle and Prince William Counties (see §15.2-504.1, Code of Virginia) and Arlington County (see §15.2-742, Code of Virginia) have this authority.

Predatory Lending Practices.

Local governments must retain the authority to regulate the location and number of payday lending institutions, and the State should limit the effective interest rates and fees charged on loans to 36 percent

Plastic Bags.

The City supports legislation such as H. B. 521, introduced by Del. Morrissey in 2011, and H. B. 1498, introduced by Del. Ware in 2011, that would prohibit retailers from providing customers with plastic bags unless they are (i) durable with handles, (ii) at least 2.25 mils thick, and (iii) specifically designed and manufactured for multiple use. San Francisco, the Outer Banks (Currituck, Dare and Hyde Counties), and several other cities (including Paris and London) have banned such bags, and several other states and

cities are considering such a ban. (Requested by City's Transportation Division, which reports that it must spend as much time picking up litter from City rights-of-way as it does in mowing along them.)

In the alternative, the City requests that localities be authorized to impose a fee on each plastic bag distributed by retailers, with such fees to be devoted to litter prevention. Washington D.C.'s 5 cent tax on plastic bags, instated just this past January, has already proven to have a phenomenal impact: the number of plastic bags handed out by supermarkets and other establishments dropped from the 2009 monthly average of 22.5 million to just 3 million in January 2010. While significantly reducing plastic waste, the tax simultaneously generated \$150,000 in revenue, which will be used to clean up the Anacostia River.

Smoking in Certain Public Places Outdoors.

Enabling legislation should be enacted to authorize localities to regulate or prohibit smoking in defined areas outdoors, specifically in proximity to the entrance to public buildings, and in areas where children's programs or sports are being conducted. These are areas where citizens are exposed to tobacco smoke, and they often complain of it. Localities currently have no authority to regulate smoking in such areas.

Vacant Building Registration.

Section 15.2-1127, Code of Virginia, authorizes cities, by ordinance, to require the owners of buildings that have been vacant for a continuous period of twelve months or more to register such buildings on an annual basis, and to impose an annual registration fee not to exceed \$25.00. This registration fee is inadequate, and should be increased to an amount "not to exceed \$250.00." (Del. Ware introduced H. B. 363 in 2010; it was left in committee.)

Requests related to law enforcement/domestic violence.

Possession of Weapons by Felons.

Sec. 18.2-308.2, Code of Virginia, prohibits convicted felons from carrying firearms, ammunition for firearms, stun weapons, explosive materials, and certain concealed weapons. The Police Department requests that this section be amended to also prohibit convicted felons from carrying "pneumatic guns," which is defined in Sec. 15.2-915.4, Code of Virginia, as "any implement, designed as a gun, that will expel a BB or a pellet by action of pneumatic pressure... [including] a paintball gun that expels by action of pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact."

Use of Pneumatic Guns during Commission of a Felony.

Sec. 18.2-53.1, Code of Virginia, makes it unlawful for a person to use "any pistol, shotgun, rifle, or other firearm or display such a weapon in a threatening manner" while committing or attempting to commit various felonies. The Police Department requests that this section be amended to include "pneumatic guns," which is defined in Sec. 15.2-915.4, Code of Virginia, as "any implement, designed as a gun, that will expel

a BB or a pellet by action of pneumatic pressure... [including] a paintball gun that expels by action of pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact."

Penalties for Eluding Police and Disregarding Signals by Law Enforcement Officers.

Sec. 46.2-817, Code of Virginia, establishes the penalties for disregarding signals by law enforcement officers, and eluding police. The Police Department requests that the penalties for these offenses be increased. It is suggested that the penalties be increased as follows:

Sec. 46.2-817. A – makes it a Class 2 misdemeanor (up to six months jail time and a fine of up to \$1,000, either or both) for an person “who, having received a visible or audible signal from any law-enforcement officer to bring his motor vehicle to a stop, drives such motor vehicle in a willful and wanton disregard of such signal or who attempts to escape or elude such law-enforcement officer whether on foot, in the vehicle, or by any other means.” It is requested that the penalty be a Class 1 misdemeanor punishable by confinement in jail for not more than twelve (12) months and a fine of not more than \$2,500, either or both.

Sec. 46.2-817.B - makes it a Class 6 felony (imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both) for any person “who having received a visible or audible signal from any law-enforcement officer to bring his motor vehicle to a stop, drives such motor vehicle in a willful and wanton disregard of such signal so as to interfere with or endanger a person.” It is requested that the penalty be a Class 5 felony, punishable by a term of imprisonment of not less than one year nor more than ten years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. The Department requests that the statute provide that if any person is killed as a result of a violation of this subsection, and it is a direct result of a pursuit, then it shall be classified as a homicide,

The Police Department also requests that any vehicle used in the commission of a violation of subsection A or B be forfeited to the Commonwealth.

Enjoining Drug Paraphernalia Merchants.

Sec. 18.2-265.3, Code of Virginia, establishes criminal penalties for those who knowingly sell drug paraphernalia knowing that it may be used for illegal purposes. The Police Department requests that this section be amended to authorize localities to seek injunctions to prohibit the continued operation of businesses which either knowingly or repeatedly violate this statute, and to prohibit certain identified individuals engaged in such sales from entering upon the premises where the sales take place.

Domestic Violence Offense.

Legislation should be adopted establishing a requirement that prosecution of any domestic violence offense involving a knife or a gun be expedited. (Suggested by Roanoke Domestic Violence Task Force.)

Definition of Prostitution.

The definition of "prostitution" in Section 18.2-346, Code of Virginia, should be amended. To convict someone of prostitution, three elements of the crime must be established: an agreement to perform a sex act, an agreement to exchange money or its equivalent for such act, and then the performance of a "substantial act" in furtherance of the crime. According to the Police Department, the "substantial" requirement makes it difficult to convict those guilty of prostitution. It is suggested that either this word be deleted, or replaced with the word "material." (Requested by Police Department.) In addition, language should be added further defining "prostitution", as follows:

§18.2-346. Being a prostitute or prostitution.

- A. Any person who, for money or its equivalent, commits adultery, fornication, *any physical act with the intent to sexually gratify another*, or any act in violation of §18.2-361, or offers to commit adultery, fornication, *any physical act with the intent to sexually gratify another*, or any act in violation of §18.2-361 and thereafter ~~does performs~~ any ~~substantial~~ *material* act in furtherance thereof, shall be guilty of being a prostitute, or prostitution, which shall be punishable as a Class 1 misdemeanor.

- B. Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated above and thereafter ~~does performs~~ any ~~substantial~~ *material* act in furtherance thereof shall be guilty of solicitation of prostitution and shall be guilty of a Class 1 misdemeanor.

Requests related to general government.

Legal Advertising.

The City and its citizens expend tens of thousands of dollars annually to publish legal ads in newspapers, as required by various State laws for various types of notices. State law should be changed to permit some of these notices to be given by the Internet or by radio or television, in order to reduce costs, or the required number of publications of such ads should be reduced.

Examples from the Code of Virginia:

Section 15.2-2204.A. Notice of all zoning text amendments and rezonings must be advertised twice before they are considered by the planning commission, then twice again before being considered by the governing body.

Section 15.2-2606.A. Two ads must be published for all public hearings on bond issues.

Section 15.2-3107. Two ads must be published before localities can agree on voluntary boundary line adjustments.

Section 15.2-107. Two ads must be published before zoning or subdivision fees, or sewer and water fees, can be imposed or raised.

The City supports legislation such as H. B. 1935, introduced by Del. Ware in 2011, which would have permitted legal ads to be published on a locality's World Wide Web site or advertised on radio or television.

FOIA.

An exemption should be added to Section 2.2-3711 of the Freedom of Information Act to permit governing bodies to discuss in closed meetings the granting of economic development incentives for projects which already have been announced publicly. Section 2.2-3711.5 of the Freedom of Information Act should allow public bodies to meet in closed session to deal with the possibility of the closing or relocation of a business.

U. S. SAFE Act.

The U.S. SAFE Act ("Act"), a response to the subprime mortgage lending crisis, requires all states to have a stringent licensing system in place for all persons who are "mortgage loan originators." Under the Act, "mortgage loan originators" are defined as persons who "take an application for or offer or negotiate the terms of a residential mortgage loan." These requirements are codified in Sections 6.2-1700 and 6.2-1701, Code of Virginia. Unfortunately, the licensing requirements encompass local government employees who sometimes are involved in offering deferred, no interest, housing assistance loans to citizens through HUD-funded housing assistance programs. Such loans clearly were not the impetus for the Act. Recently, the U. S. Department of Housing and Urban Development ("HUD") clarified that the Act does not apply to governmental employees who offer housing assistance loans outside of the commercial context. However, the Code of Virginia does not incorporate this clarification. Section 6.2-1700 should be amended to provide an exemption to the licensing requirement for local government employees who offer deferred, no interest housing assistance loans outside of the commercial context, consistent with HUD's recent clarification, by the addition of the following language which adds another category of individuals who are exempt from being considered "mortgage loan originators" "*(x) any governmental agency, or individual employed by a government agency or housing finance agency, that offers or negotiates the terms of a housing assistance loan on behalf of such agency, whether or not such loan is secured by a deed of trust or other security instrument, if such loan is not offered in a commercial context for the purpose of obtaining profit for the agency or individual for which the individual acts, and where such loan is offered exclusively for public, charitable, or family purposes.*" Section 6.2-1701 should be amended by the addition of the following language "*An individual that is an employee of a government agency, or housing finance agency, that offers or negotiates the terms of a housing assistance loan in accordance with their duties as an employee of such agency, shall not be required to obtain a mortgage loan originator license if the loan is negotiated or offered outside of a commercial context. For purposes of this section, the phrase 'outside of a commercial context' shall mean that the loan does not obtain a profit for such agency or individual.*"

SCHOOL BOARD LEGISLATIVE PRIORITIES

City Council endorses the School Board Legislative Program, which follows:

The Virginia High School League (“VHSL”) currently determines student eligibility and what classification group a particular high school must compete, and bases its classification group designation solely on the size of the high school without regard for the natural regional rivals or the travel cost suffered by the school division. In this current economic environment school divisions throughout the Commonwealth of Virginia are forced to make tough budgetary choices regarding their academic and athletic programs; the cost for maintaining these public high school athletic programs continues to increase each year. Should a high school disagree with a determination made by the VHSL, that high school does not have the ability to appeal the VHSL’s decision to an independent third party. For the foregoing reasons, the School Board for the City of Roanoke, Virginia, hereby requests that the General Assembly consider taking one of the following actions regarding the Virginia High School League and its affect on high school athletics and ultimately budgets of the school divisions who participate in high school athletics:

1. That the General Assembly establish a permanent oversight committee to review the operations of the Virginia High School League and to resolve any student athlete or school division appeals of Virginia High School League decisions that might be filed.
2. That the General Assembly establish a study committee to review the effects of the Virginia High School League on the Commonwealth’s student athletes, its public high school athletic programs and the budgets of the Commonwealth’s school divisions.