

VIRGINIA CAPITOL CONNECTIONS

QUARTERLY MAGAZINE

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is On**



INSIDE
Transportation—pages 2–7
Education—pages 10–15

Spring–Summer 2008

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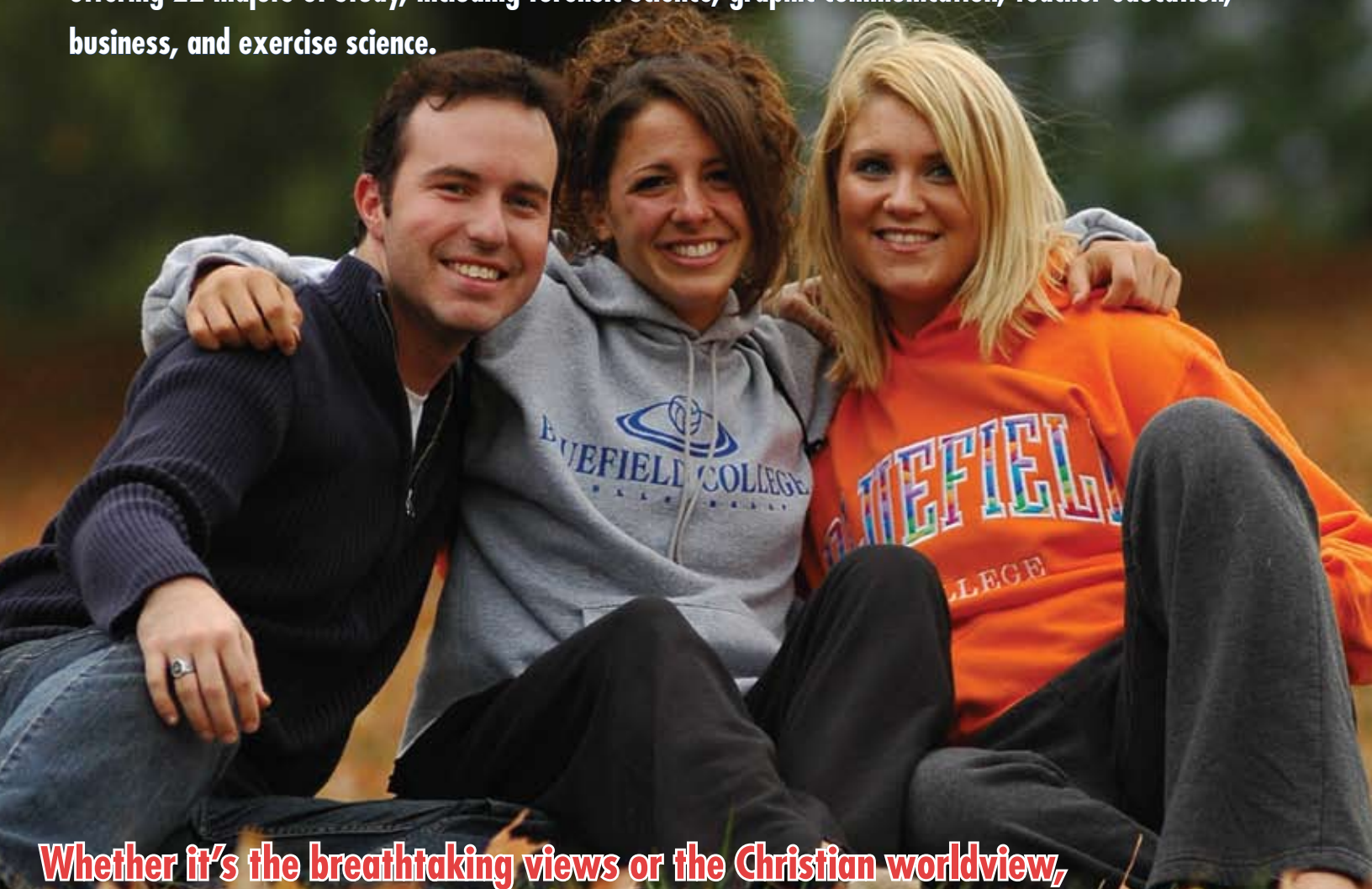
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Governor Tim Kaine



Brian Moran



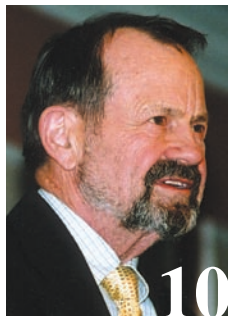
Phillip Hamilton



H. Morgan Griffith



Speaker William J. Howell



Charles Todd



Shirley Fields Cooper



Jo Ann Davis



Melanie Rapp



Brenda Pogge

The Women of the 96th District 16

TRANSPORTATION

2

9

10

VIRGINIA CAPITOL CONNECTIONS

QUARTERLY MAGAZINE

SPRING—SUMMER 2008 ISSUE

TRANSPORTATION

Governor Kaine's Proposed Transportation Funding Package/Bill . . .	2
Transportation Concessions:	
A Different Transportation Funding Option	2
Transportation Proposals to Get Virginia Moving	
A 1-cent sales tax increase can pay for investments in our roads, mass transit and rail.	3
Fuzzy Math Won't Help Virginia Meet the Transportation Challenge .	3
Virginia Transportation Facts.	4
Transportation: Special Legislative Session	6
What Ever Happened to that Bridge to the 21st Century?	7

Bolling Announces Decision to Run for Reelection in 2009	8
VA Tech—One Year Later	8
Continued Progress Needed on Land Use Reforms	9

EDUCATION

The Standards Of Quality—An Oral History.	10
The Leaders During The Standards Of Quality Development . .	11
Virginia's Unique System of Public Schools	11
Is It Time For the Commonwealth to Cut Education Funding? .	12
SOQ Study	12
SOQs: Local Impact Goes Beyond Funding	13
Preparing Professional Educators to Ensure Safe and Secure Schools	14

2008 GA Corrects Sales Tax Inequity.	15
Primary Vote Totals	15
The 96th House of Delegates District—Women Only Please . . .	16
On The Scene	17
Conflicts of Interest? Legislators At Bar	18
Virginia: on (or falling off of) the cutting edge of political reform? .	19
In Memoriam—Four Former Legislators	20
Commending Resolutions	23
Celebrating FOIA's 40th Birthday	24
Help End Family Violence—Purchase Kids First License Plates . .	24
Politics, religion a bad mix	25
New Market Tax Credits: Successful Development Funding in Virginia.	27
Association and Business Directory	28

On The Web

www.dbava.com/qmsum.html

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Governor Kaine's Proposed Transportation Funding Package/Bill

The transportation plan Governor Timothy M. Kaine laid out on May 12th is simple, statewide, sustainable and provides funding to advance meaningful solutions to the transportation problems we all are facing.

- It relies on revenue sources that are sustainable—that will exist for years to come—and will grow as needs grow. It also meets three major transportation goals:
- It addresses safety concerns with a statewide component that will provide revenue to safely maintain our state and local roads.
- It includes substantial funds to combat congestion and expand transit and highway capacity in Northern Virginia and to build key transportation connections in Hampton Roads, while also increasing funding for local roads statewide.
- And it takes a new approach to investing in transportation, both increasing our commitment to transit, rail, and innovative congestion relief, as well as funding transportation projects that support economic development.

The plan includes a 1% statewide increase in the sales tax on cars and the dedication of all revenue from sales tax on cars to road maintenance. It also includes a \$10 statewide increase in the annual car registration fee, a 25 cent statewide increase in the grantor's tax and a 1% regional retail sales tax increase, excluding food and medicine, in Northern Virginia and Hampton Roads.

All funds the Governor proposes for transportation will include a lockbox mechanism, specifying that the fund shall expire if it is used for any purpose other than transportation.

The Governor's plan keeps safety as the first priority. Last year,



for the first time since the advent of drunk driving laws, more than 1,000 people died on Virginia's roads. Our existing roads are getting old and they require more attention to keep them safe; most of our bridges are more than 45 years old, and 8% are in need of replacement. Emergency vehicles are slowed down by traffic gridlock. In the event of a hurricane, it will take more than a full 24 hours to evacuate the low-lying areas of Hampton Roads, Norfolk and Virginia Beach. And this is assuming everything runs smoothly – that no crashes disrupt the evacuation routes. The problem is maintenance. We have a maintenance deficit – the dollars taxpayers have been paying to fix traffic or to help bring jobs to their communities have been going to patch the potholes and repave the road. This trend will worsen unless we address the deficit directly. In fact, eventually, we'll lose our ability to match federal dollars, and the taxes we pay to the federal government on transportation will start to go to other states. By addressing the maintenance deficit, we will stabilize the funding to keep our roads and bridges safe and free up construction dollars that will help ease congestion.

The Governor's plan includes a 1 percent increase in the motor vehicle sales tax, and a \$10 increase in the annual car registration fee, both to be dedicated to maintenance.

The Governor's plan also reallocates 1% of the existing statewide motor vehicle sales tax to maintenance. The other existing 2% already go to maintenance. This part of the Governor's plan is really truth in budgeting. It ends the shell game, the major raids on highway construction funds by dedicating revenue streams to maintenance.

That means the money that is intended for construction will actually go for construction. In addition, the Governor's plan dedicates other sources of revenue—statewide and regional—to new transportation projects. See *Governor Kaine's Proposed*, continued on page 5

Transportation Concessions: A Different Transportation Funding Option BY PHILLIP HAMILTON

If you continue to do what you have always done, you will continue to get what you have always gotten. This age-old adage is more than relevant today as Virginia elected representatives once again consider a plan to address its ever-growing transportation needs.



With overwhelming citizen opposition to sales or gas tax increases and transportation congestion and gridlock continuing to worsen in the more populated areas of the Commonwealth, Virginia must consider different options to address the on-going deadlock on how to address new funding for transportation. One such option is the concept known as a transportation concession.

Transportation concessions are long-term lease agreements between government and private entities to construct, maintain and

operate highways, bridges, and tunnels in exchange for the toll revenues generated on such transportation facilities.

This funding concept has been utilized internationally for years and is just beginning to be utilized in the United States to construct, maintain or operate major roadways. The Chicago Skyway Bridge, a 7.8-mile toll road built in 1958 to connect the Dan Ryan Expressway to the Indiana Toll Way, was the first major transportation concession project in the United States.

For almost 50 years, this transportation facility had been operated and maintained by the City of Chicago Department of Streets and Sanitation. In January 2005, the Skyway Concession Company (SCC) paid \$1.83 billion dollars to the City of Chicago in order to assume operations of the Skyway through a 99-year operating lease. The SCC is responsible for all operating and maintenance costs of the Skyway and has the right to all toll and concession revenue through the lease agreement. This agreement between SCC and the City of Chicago was

the first privatization of an existing toll road anywhere in the United States.

Recently, the concession concept was put forward for the long-term lease of the Pennsylvania Turnpike. It has been reported that a financing consortium has considered offering the state of Pennsylvania \$18 billion for a seventy-five year toll concession on this transportation facility.

Even though these examples involve existing toll roads, such a concession agreement might have applicability for new, expanded, or improved roads, bridges, and tunnels throughout the congested, population regions of Virginia.

Expansions and improvements of the bridges and tunnels in Hampton Roads, conversion of HOV lanes to HOT lanes in Northern Virginia and Hampton Roads, and the leasing of existing toll roads in the Richmond and Northern Virginia regions are examples of road projects that should be aggressively considered by the Commonwealth.

See *Transportation Concessions*, continued on page 5

Transportation Proposals to Get Virginia Moving

A 1-cent sales tax increase can pay for investments in our roads, mass transit and rail.

By THE HONORABLE BRIAN MORAN

Virginia needs bold action on transportation infrastructure investment to provide for a strong economic future. We need a long-term vision and a plan for a 21st century transportation system that helps grow our economy, gets traffic moving, and makes sure we can repair our roads and bridges.



The investment we need to jump-start our economy won't come from raising the state's gas tax. Hitting folks with higher prices at the pump at a time when gas prices are skyrocketing, putting the squeeze on middle-class families and those on a fixed income, is not the answer. Besides, soon Congress will increase fuel efficiency standards for our cars, and gas tax revenues will decline. The tax is not a sustainable revenue source on which to build our future transportation system.

Most importantly, for too long this debate has been stalled in an ideological battle between proponents of the gas tax and those opposed to solutions. I'm offering another

option that raises additional new funds for transportation without engaging in that old debate.

First, we can get Virginia moving again by investing \$1 billion in our statewide transportation system to ensure a bright economic future, strong job growth and a healthy economy. We can invest this in our roads, mass transit and rail through a 1-cent sales tax increase. Estimates show that every \$1 billion invested in transportation infrastructure could create 35,000 new jobs. To raise that much with a gas tax, the tax would need to increase 20 cents per gallon.

And, unlike a regressive gas tax that would raise the price of getting food to the market, this sales tax proposal would exempt food and prescription drugs.

Importantly, this new sales tax will apply to all the out-of-state visitors, from shoppers at Potomac Mills to tourists in Virginia Beach, to truck drivers traveling down route I-81.

More than one-third of the funds from this sales tax should be dedicated to the Northern Virginia Transportation Authority for projects of regional significance, including new roadways, transit, rail systems and our federal matching funds for Metro. This means the money will stay in Northern Virginia, and

the decisions on how to use it will be made in Northern Virginia.

Nearly one-quarter of this investment should go directly to Hampton Roads for a series of major projects, many of which have already been identified through regional planning processes. This would relieve traffic congestion, ease cargo movement from the port and protect the ability for emergency evacuations.

The remaining funds—nearly half—should be invested in statewide road safety, repair and construction. We can fund vital new construction projects in every region of the commonwealth, including the Coalfields Expressway and I-73, as well as new rail and transit projects of statewide significance. A portion of the statewide funds should be earmarked for projects that will attract additional private dollars for transportation.

Second, it is clear that roads and rails alone won't solve our transportation crisis. We have to break the gridlock where growth and development put more cars on the road and continue to require a larger road network. We need to plan high-density development along mass transit lines and link our land-use decisions to our transportation planning.

See *Transportation proposals*
continued on page 5

Fuzzy Math Won't Help Virginia Meet the Transportation Challenge

By THE HONORABLE H. MORGAN GRIFFITH

Hold on to your wallets folks! The Virginia General Assembly Democrats and any other legislators the Governor can corral are coming at you with another statewide tax increase. And, even though they passed the largest tax increase in the history of the Commonwealth just four years ago, they've decided that Virginians need to pay more in taxes annually.

Hopefully, other members of the Governor's party will not fall into the "fuzzy math trap" being laid for them by Governor Kaine and his political appointees. As House Majority Leader, I remain discouraged by big government's attempt to win support for massive statewide tax increases when numerical justification is conspicuously absent. Let's see how the Kaine Administration has built their current economic doomsday scenario.

For starters, the Secretary of Transportation and VDOT have trotted out a plan which projects a \$1.1 billion reduction in transportation revenues over the next seven years. But before buying into their assertion that transportation is facing a new crisis less than one year after the General Assembly approved the largest injection of annual sustainable funding into Virginia's roads, railways, and public transit, let's peel back the veneer and take a look at the curious assumptions behind those numbers.

I think most of us will agree that it is wise for government agencies to plan future expenses in a fiscally conservative manner. But in this instance, the Governor has taken a snapshot of current economic conditions and projected them to continue over the next ten

years. Not even the most pessimistic of our national forecasting models anticipates a ten-year long recession. So why is the Governor promoting a forecast that is so obviously unrealistic?

Undeniably, we are experiencing a downturn in the business cycle of our market-based economy. For most of us, this is a serious matter as energy costs rise, the housing market cools, and employment stagnates. But accepting this obvious truth about current economic conditions, why in the world would anyone be discussing hefty, statewide tax increases on cars and homes?

I believe all responsible taxpayers know that maintaining and improving Virginia's transportation network is essential for our economy and must remain a top priority. Consequently, I suggest that funding for transportation should be a consideration along with all other citizen needs, such as education, health care, and public safety, rather than separate from these requirements. Sound budgeting by the Governor and planning by VDOT would be helpful in addressing all these requirements. Instead, we see an administration using the current economic slowdown as justification for increasing taxes.

The budgets approved by Republican legislators (not the budgets submitted by the Governor) have increased transportation spending by 20% over the past four years. This far exceeds both the rate of

See *Fuzzy Math*, continued on page 5



Virginia Transportation Facts

Chart 1:

Where Virginia Now Spends Its Transportation Monies

Source: Commonwealth Transportation Board budget June 2007
http://www.virginiadot.org/projects/resources/CTB_Budget.pdf

Distribution of Commonwealth Transportation Fund, July 2007–June 2008 • Total \$4.8 billion

Maintenance	\$1.6 billion
Debt Service	\$263 million
Other Agencies and Transfers	\$45 million
Operations, Tolls & Administration	\$471 million
Mass Transit Fund	\$694 million
Airport Trust Fund	\$22 million
Port Trust Fund	\$88 million
Earmarks & Special Financing	\$583 million
Systems Construction	\$1.0 billion

Chart 2:

Increased Demands on Virginia's Transportation System

Source: Feb. 20, 2007 The Road Information Program (TRIP) news release—<http://www.tripnet.org/state/VirginiaPR022007.pdf> and <http://www.tripnet.org/VirginiaReportFeb2007.pdf>
 DRPT, Ports and Aviation

- Between 1990 and 2005, vehicle traffic in Virginia increased by 33% and is expected to increase by 50 percent in 2025.
- In 2004, 30% of Virginia's state roadways were considered congested; by 2025, 45% are expected to be congested.
- In 2004, 29 percent of Virginia's interstate lane miles were considered congested. According to current projections, 79 percent of the state's interstate lane miles will be congested in 2025.
- From FY02-06, Virginia transit ridership grew by 20 percent or 30 million trips. The national average for the same time period was only 4 percent.
- Average daily ridership on Virginia Railway Express has increased by 11.55 percent in April FY08 compared to April FY07.
- By 2025, the amount of goods coming into the country could double, even triple. The Port of Virginia will need transportation infrastructure investments to handle the projected growth.
- Unprecedented growth to air cargo and passenger traffic will require improvements costing \$5.5 billion in next twenty years.

Chart 3:

The Shrinking Virginia Transportation Budget

Sources: VDOT and TRIP

- Major revenue sources for highways have not increased since 1986.
 - One-half cent per dollar of general sales tax.
 - Motor vehicle title tax and license fees.
 - Seventeen and one-half cents per gallon fuel tax.
- Increases in vehicle miles per gallon and average passenger loads have reduced gas tax revenue in terms of overall vehicle miles driven.
- Despite the rapid increase in costs for motor fuel of all types—due to inflation or shortages, the fuel tax in Virginia remains the same: 17.5 cents (although it has increased in all adjacent states), but costs for highway construction and maintenance continue to rise.
- Average family costs for taxes on a thousand gallons of gasoline in Virginia in 1988 were \$175; they are still \$175 today. During the same period, federal gasoline taxes have increased from \$90 to \$184.

- Increasing costs of road maintenance and debt services payments come “off the top” before any remaining funds are available for road construction reducing funds available for improvements to local roads.
- The costs of maintaining the existing highway system has increased and will continue to increase as the system ages
- By 2016, under the present funding scenario, Virginia will not have enough state construction money to provide the necessary match to use all available federal-aid funds.
- In 1989, only 1% of the total six-year plan costs went to debt service; in 2008, 5% of the total six-year plan costs go to debt service.
- Virginia's highway maintenance funding needs have increased as highway use has gone up and the infrastructure has aged, but spending power has decreased. In 2004, \$10 million would pave 282 lane miles; in 2007 it would pave only 185 lane miles.
- According to a 2007 TRIP report, Virginia faces a \$74 billion backlog through 2025 in unfunded highway transportation improvements and a \$31 billion backlog in needed transit improvements.

Source: Transportation Technology Institute 2007 Urban Mobility Study—<http://mobility.tamu.edu/ums/>

In its 2007 Urban Mobility Report, the Texas Transportation Institute noted the Washington DC-VA-MD area ranked second in the country in congestion, with the annual delay being 60 hours per traveler. Virginia Beach ranked 42nd with 30 hours of delay a year. The D.C. area was fifth in the country in wasted fuel at 43 gallons per traveler annually; Virginia Beach was 40th with 20 gallons per year.

Chart 4:

Some Documented Adverse Effects on Virginia Motorists from an Inadequate Transportation System*

Source: The Road Information Program 2007 news release and report <http://www.tripnet.org/state/VirginiaPR022007.pdf> and <http://www.tripnet.org/VirginiaReportFeb2007.pdf>

- Increased commute times—38 hours of delay; nearly one full working week
- Increased vehicle maintenance costs because of poor roads—\$1.4 billion
- Annual average traffic crashes fatalities 2001-2005—933 people

Other Adverse Effects:

- air pollution from idling vehicles
- traffic-related stress
- delays in service
- emergency service vehicles stuck in traffic
- lost family and personal time

Chart 5:

What is the Bottom-Line Solution for These Transportation Problems?

According to the VTRANS 2025 Report:

- The maintenance, operation and capitol needs of all Virginia transportation modes in Virginia will approach \$203 billion over the 2005–2025 period. Revenue will total \$95 billion. Either the expectations of Virginians must be lowered or financing of the system must be raised.”
- Bottom-Line: Virginia needs almost \$1 billion annually to address maintenance needs and congestion in the Northern Virginia and Hampton Roads areas.

Compiled by VDOT staff. [V]

Governor Kaine's Proposed from page 2

The Governor's statewide maintenance plan will provide \$445.3 million during the 2009 fiscal year. That will increase yearly to \$512.6 million in 2014. It will eliminate the maintenance deficit for at least the next five years. The plan also provides regional relief.

To address traffic congestion in Northern Virginia and Hampton Roads, the Governor's plan calls for a 1 percent increase in the retail sales tax in the two regions—providing self help for the state's two most congested regions. This will raise \$306.3 million for Northern Virginia in fiscal 2009 and will increase to \$414.3 million in 2014. These dedicated funds for Northern Virginia are on top of the Dulles Rail and HOT lanes projects already in development. The funds will be managed by the Northern Virginia Transportation Authority, consistent with current legislation to emphasize regional transit and local highway construction.

The regional sales tax will raise \$167.9 million for Hampton Roads in 2009 and will increase to \$227.1 million in 2014.

The Governor's plan discontinues the Hampton Roads Transportation Authority, but continues a lockbox commitment to the six designated regional projects, plus the addition of the Hampton Roads Bridge Tunnel as an eligible project. The exact scope of the Hampton

Roads Bridge Tunnel project is under study. All money raised in the regions stays in the regions. Finally, Governor Kaine's plan creates a Transportation Change Fund. The Governor knows that we cannot solve our traffic challenges through road construction alone, and we must recognize how traffic contributes to the environmental and energy challenges faced by the Commonwealth. His plan calls for a 25 cent increase statewide in the grantor's tax to create the Fund.

The fund will increase investment in cleaner more energy efficient transportation options like transit and rail, as well as innovative solutions to reducing traffic congestion like teleworking and ridesharing. It increases rail and transit funding by about 30%.

The fund will also make dollars available for transportation projects to support economic development and continue our current level of support for ports and airports.

This part of the Governor's plan will raise \$142 million in fiscal year 2009, growing to \$155 million in fiscal year 2014 for new, innovative transportation projects that will reduce traffic and support economic development.

Release from the Office of the Governor. ▮

Transportation Concessions from page 2

With the state's transportation needs currently billions and billions of dollars behind the current funding availability, it is unlikely that the traditional transportation tax revenue streams will ever be able to meet future transportation needs of the Commonwealth.

Virginia is one of only fourteen states that enjoy a preferred status from the federal government for such projects. It is believed that, worldwide, private investors have nearly \$400 billion available to invest for such transportation infrastructure projects.

Virginians want congestion to be addressed, and they believe the users of the roads should bear the burden for their construction and maintenance. As a result, Virginia should be more aggressive in seeking these public-private partnerships to address transportation projects that reduce congestion on our highways, bridges, and tunnels.

Transportation concessions offer an opportunity to maximize the existing transportation assets of Virginia. The potential of the private sector through transportation concessions to address the transportation congestion needs of Virginia must be more of a factor in the ongoing transportation debate and more actively pursued by Virginia's transportation officials.

The Honorable Philip Hamilton is a member of the House of Delegates representing the 93rd District. Hamilton chairs the House Health, Welfare and Institutions Committee. ▮

Transportation Proposals from page 3

We can break this cycle by creating an Office of Responsible Growth that helps statewide transportation planning sync with local land-use decisions. A fixed percentage of the new funding should be dedicated to rail and transit improvements across the state to lessen dependence on our cars.

Third, for years Virginians have been worried that transportation funds are diverted to other areas of government. To address this problem, we need a constitutional amendment to lock our transportation trust fund and ensure that what we raise for transportation goes to improve that system.

If we do these three things, we will improve our quality of life by keeping folks in traffic less and at home with their families more. Additionally, companies will be more likely to locate here if we have the transportation infrastructure that meets their long-term needs.

More than 20 years ago, Gov. Baliles used the sales tax to invest in our transportation system. It's time to do that again.

Brian Moran is chairman of the House Democratic Caucus and a delegate representing Alexandria and Fairfax County.

This article originally appeared in The Virginian-Pilot. ▮

Fuzzy Math from page 3

inflation and increases in population. The vast majority of statewide construction funding approved in a bipartisan manner last year remains intact. This includes nearly \$500 million in new, ongoing, sustainable funding for roads, rail, and transit. That's nearly \$500 million even without the money from the regional authorities and abusive driver fees.

One of the unfortunate facts of public finance is that there is never enough tax revenue to meet every request. The role of legislators is to balance revenues and prioritize needs. We made transportation a priority in 2005 when we invested \$850 million. We invested another \$500 million in recurring

statewide funding last year. In fact, of the total \$77 billion state budget, 13% or almost \$10 billion is dedicated to transportation. And, such progress will continue.

Ignoring and discarding the substantial improvements in transportation funding over the last several years, and corraling his own team by playing the role of "Chicken Little" simply is not a suitable one for a Governor of Virginia. As former VDOT Commissioner Philip Shucet noted, the Governor's success during a reconvened session on transportation will require "...a clarity of purpose that is razor sharp. He has got to say, 'This is why we're here.'" He has to have a plan

with broad support *before* legislators arrive in Richmond.

If there is a case for increasing taxes during a serious economic downturn, Governor Kaine and his teammates need to make that case on its own merits – not by exaggerating bleak numbers or by painting a picture of the future where Virginia is in an endless recession.

H. Morgan Griffith (R-Salem) is the Majority Leader for the Virginia House of Delegates, was a conferee on the Comprehensive Transportation Reform and Funding Act of 2007, and represents the 8th District. ▮

Transportation: Special Legislative Session By STEPHEN J. FARNSWORTH

Governor Tim Kaine (D) is hoping lightning strikes twice.

Four years ago, then-Governor Mark Warner (D) convinced 34 moderate Republicans in the Virginia Senate and House of Delegates to help balance the state's budget with a \$1.4 billion tax increase. Now, Kaine wants to raise \$1.1 billion in higher taxes and fees to build and repair the state's roads.

As uphill a struggle as Warner faced when he sought to pass a tax increase during his third year, the odds are even worse for Kaine this time. Many of those moderate Republicans who were so useful to Warner in 2004 have left the legislature, creating a much more cohesive, combative and conservative GOP caucus in Richmond than existed four years ago.

Kaine may need fewer Republicans to cross party lines than Warner did, but he is far less likely to get enough to win. The governor's main problem is the Virginia House, where Democrats control only 45 of 100 seats. To make matters worse for the governor, the



House Republican caucus is far more unified and anti-tax than it was four years ago.

In addition, fewer Republicans represent districts in traffic-clogged Northern Virginia and Hampton Roads than in the past, making it harder for the current governor to find persuade-able Republicans trying to look out for their district's interests.

The governor's plan calls for a \$10 increase in annual vehicle registration fees statewide as well as a one percent rise in the car titling tax. Residents of northern Virginia and Hampton Roads would see a one-cent increase in the sales tax, now at five percent.

While some Republicans were willing to vote to authorize others to levy tax increases, as was done a year ago, the Virginia Supreme Court invalidated that legislative side-step. For Kaine's plan to succeed, lawmakers will have to raise taxes themselves, a far more unappealing prospect for many House Republicans.

The good news for the governor is that the Democrats now have a slim majority in the Virginia Senate, and the upper chamber seems far more likely to go along than the Republican majority in the House. But what the Senate would support matters not if Kaine's plan dies in the House.

Besides the many no-new-taxes pledges offered by many Republican legislators, wa-

vering Republicans will not forget the "Least Wanted" posters and primary opposition generated by conservative Republicans who wanted to punish defectors four years ago. The gerrymandered districts that are the norm in the Virginia House of Delegates mean that most Republicans fear primary challenges by other Republicans – generally more conservative ones – far more than they fear any Democrat they would face in a general election.

If nothing else, Republicans also have a stake in making sure that Tim Kaine does not become the next Mark Warner. Warner's gubernatorial successes gave him a bi-partisan seal of approval. With this moderate mantle, Warner is now the odds-on favorite to replace John Warner in the US Senate next year.

The last thing Republicans in Virginia need to do is help create another Democratic governor with a national reputation for bipartisan lawmaking.

Given such hurdles, why does Kaine even call a special session? Some risks may be worth taking. Transportation is clearly in crisis in urban areas of the state, after all. In addition, if Mark Warner had played it safe, his legislative record as governor would have been far thinner and his political future would be less bright.

Kaine's high-risk strategy may also be about winning the war of 2009. Democrats

Continued on next page

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What Ever Happened to that Bridge to the 21st Century?

By THE HONORABLE CHARLES L. WADDELL (FORMER VIRGINIA STATE SENATOR)

Eleven years ago this month, I authored for *Capitol Connections Quarterly Magazine* (Volume 3, # 2) an article on the critical need for additional state funding for our then-languishing Virginia public transportation system. That article, entitled “The Bridge to the 21st Century—A State Political Perspective with a Backward Glance” was prescient as it happens.

Here we are in June 2008—eleven years later—and not only have we not crossed that 21st Century transportation funding bridge but the sad truth is that we have not even decided how to build that critical financial bridge. Even the U. S. Congress with Representative Don Young’s “Bridge to Nowhere” has gotten further along in at least planning some funding for even an implausible project than the lackluster efforts of Virginia General Assembly have gotten in planning for the absolutely essential: an honest and realistic source of adequate funding for the Commonwealth’s current critical transportation needs.

Twenty-two years ago—thanks to the dynamic and courageous leadership of then-Governor

Jerry Baliles, assisted by then-Secretary of Transportation Vivian Watts and then-VDOT Commissioner Ray Pethel—Virginians bit the political bullet and agreed to honestly tax themselves to meet most of our then-critical transportation needs, as we were all aware that when it came to adequately funding transportation needs, there was no tooth fairy to put the required money under our legislative pillow. As the then-Chair of the Senate Transportation Committee, I was proud to serve as a patron of the 1986 Virginia Transportation Funding and Reform legislation.

When the level of funding derived from that legislation was not sufficient to meet our Northern Virginia local transportation needs, I responded with additional locally-oriented transportation funding initiatives. In 1987, I introduced and led to passage—against the opposition of a number of state and local legislative nay-sayers—the Multi-County Tax Improvement District Act which allowed the rural, two-lane Route 28 then serving Dulles International Airport to be expanded, first to four-lanes and then to six-lanes, so that the primary economic engine both for Northern Virginia and the Commonwealth could continue to effectively function. That same funding mechanism is being used to pay a share of the funding for the proposed Dulles Metro-Rail project.

After my Loudoun and Fairfax County constituents were confronted in 1986–1988 with inadequate and highly-congested roads and excessive travel-times in commuting between rapidly developing work and residential centers in western Fairfax and eastern and central Loudoun Counties, I introduced and led to passage—again against a number of state and local legislative nay-sayers—the Virginia Private Toll Road Corporation Act of 1988 which led to the building of the now-named Dulles Greenway.

The point: My constituents quickly and clearly understood that when it came to funding a transportation system adequate to meet



their commuting needs, maintain their personal quality of life, and sustain the economic vitality of our communities and region, there was no such thing as a “free lunch” on transportation funding. But, here we are today—still looking backwards because we lack the foresight and political courage to look forward in an honest, realistic, and fiscally-responsible manner.

Political gimmickry such as “no tax increase” slogans or local imposition of “bad driver fees” are not realistic, honest, or fiscally-responsible solutions to Virginia’s current transportation funding problems;

admittedly, no one likes to pay higher taxes, but the honest answer is, as U. S. Supreme Court Chief Justice Oliver Wendell Holmes, Jr. once famously remarked; “Taxes are the price we pay for civilized society.” Until Virginia legislators are willing to be honest with their constituents and admit there is no such thing as a “free lunch” when it comes to transportation funding, we will never solve our transportation funding problems. As Walt Kelly’s famous cartoon character, Pogo, remarked many years ago “we have met the enemy and he is us.” Until the Virginia General Assembly actually faces up to these inconvenient facts, the situation will continue to be, as Yogi Berra once said, “Its ‘deja vu’ all over again!”

Senator Waddell was the Chairman of the Virginia Senate Transportation Committee from 1986–1997. ▮

“Instead of raising the sales tax to fund transportation, we ought to add 50 cents a pack to the tax on cigarettes (which would still put Virginia’s cigarette tax well below the national average). This would bring in \$215.4 million per year statewide to cover the maintenance deficit without a general tax increase while also saving \$1 billion in long term health care costs currently coming out of the General Fund.”

The Honorable David Englin represents the 45th House District

Editor’s Note: *The Honorable Gerald Baliles, former Governor of Virginia, was interviewed by Dennis Petersen in the fall of 2006 and this was printed in the November ’06–January ’07 issue of Virginia Capitol Connections Quarterly Magazine.*

Gerald Baliles says history shows it could be 2010 before the next real opportunity arrives and by then Tim Kaine will have joined him in the ex-governor’s club.

“Here is the reason,” he tells a visitor. “In 2007 every member of the General Assembly is up for reelection and it is unlikely that they will find those significant sums of new revenue in an election year. 2008 is a presidential year....and if you will check the records you will find very few, if any, state legislatures raising new revenue sources during an election year. The following year, 2009, is a gubernatorial election year and the House (of Delegates) is up for reelection. So that suggests 2010 may be the first year in which the legislature will be in a situation which it found itself this year.”

Baliles has heard the call for ideas and innovative thinking but, he says, “You can adopt new paradigms, you can adopt a new plan, you can rename the department, you can do a lot of these things but at the end of the day it still takes money to build roads and bridges.”

Citing a \$3 billion backlog for highway maintenance that has been deferred, Baliles warns against extended delays in upgrading the transportation infrastructure. “At one point, that becomes a safety issue not to mention quality of life” for Virginians. ▮

Transportation: from previous page

have prevailed in a number of statewide elections in recent years — including Warner in 2001, Kaine in 2005 and the US Senate victory of Jim Webb in 2006 — by painting Republicans as out-of-touch extremists. If House Republicans win the battle of the 2008 special session by blocking the Kaine plan, the Democrats hope their party can win the war for partisan control of state government a year later.

Stephen Farnsworth is associate professor of political science at the University of Mary Washington and co-author of “The Nightly News Nightmare: Television’s Coverage of US Presidential Elections 1988-2004.” ▮

Bolling Announces Decision to Run for Reelection in 2009

As excerpted from a statement by Lt. Governor Bolling...

For the past 16 years it has been my privilege to represent the people of Virginia at various levels of state and local government: as a member and Chairman of the Hanover County Board of Supervisors, as member of the Senate of Virginia and as the 40th Lieutenant Governor of Virginia.

During that time I have done my best to provide the people of Virginia with aggressive and effective leadership in state government, to focus on finding solutions to the important challenges we face and to consistently support the conservative principles of government that I believe in.

There is no greater honor someone can be given than the honor of representing his or her fellow citizens in the halls of government. I have often remarked that if someone had told me when I was little boy that I would one day have a chance to do what only 39 other people have done in the 400 year history of Virginia I would not have believed that possible.

I have been humbled by the opportunities I have been given and will forever be grateful for the confidence the people of Virginia have placed in me.

I have made no secret about the fact that I would like to be Governor of Virginia someday. It would be a great honor to serve in our state's highest elected office, and I think I would make a great Governor.

But if there is one thing I learned from my campaign for Lieutenant Governor in 2005, it was that a statewide political campaign is a very demanding thing and a campaign for Governor is an all-consuming thing.

I do not believe that anyone should seek the office of Governor unless they are prepared to make that campaign the most important thing in their life and dedicate their full time and attention to that effort.

I have given a great deal of thought to whether or not I am at a point in my life where I am able to dedicate my full time and attention to a gubernatorial campaign in 2009.

After a great deal of consideration, I have decided that I will not be a candidate for Governor of Virginia in 2009.

Unfortunately, I have a number of other personal and professional commitments in my life that currently prevent me from dedicating the time that is needed to run an effective and successful gubernatorial campaign, at least not in 2009.

In Virginia the office of Lieutenant Governor is considered to be a part time office. I'm not independently wealthy and do not currently have a full time government position; I have to work for a living to pay the mortgage, college tuition, the power bill and all the rest.

My first responsibility has to be to my family and I have concluded that it would not be possible for me to hold down a very demanding job in the private sector, fulfill my duties as Lieutenant Governor and run a successful campaign for Governor at the same time.

It is difficult to have a goal and be so close to achieving that goal, only to have it deferred to another day. I know that my decision will surprise most people, disappoint many people and it may even make a few people happy. However, I am confident that it is the right decision for me and my family.

While I will not be a candidate for Governor in 2009, I do plan to seek re-election to the office of Lieutenant Governor. I believe that this is the best decision for me, for my family and for Virginia.

Attorney General Bob McDonnell has expressed his interest in running for Governor in 2009 and I think he would make a great Governor. Bob McDonnell is a good friend and a good man, and he has done an outstanding job serving as the Attorney General. Should Bob decide to seek the office of Governor, he will have my full, complete and enthusiastic support.



VA Tech— One Year Later

By ATTORNEY GENERAL BOB McDONNELL

One year later the images remain vivid.

We see the familiar campus buildings of Virginia Tech, a special place for many thousands of Virginians. We see terror on the faces of students and relive that terrible morning. Words are inadequate to describe the emotions. We mourn still over precious lives lost and families forever changed.

We saw horror on April 16, 2007, but we saw also goodness that rushed to fill the void. We saw the greater love that causes one person to lay down his life for others. We saw the injured cared for and the broken comforted. We saw the power of prayer. We saw the resilience of the Virginia Tech community. We have long known of its excellent academic and athletic programs; now we know also the character and compassion of the Tech community.

Since last April, Virginia's leaders have sought to respond properly to this unprecedented tragedy. Changes were needed in our laws and systems, and they are being made. The legislative and administrative reforms that are underway truly are nonpartisan, resulting from the efforts of all three branches of government and the leadership of Virginia Tech. There has been a shared common purpose in learning from this tragedy.

Two weeks after the shootings, Governor Kaine worked with the Office of the Attorney General to craft Executive Order 50, which harmonized state and federal law to prevent gun purchases by those adjudicated mentally ill. Subsequent legislation has codified this Executive Order.

This initial step was followed by the most significant revision of Virginia's mental health laws in a generation. Dedicated career attorneys from the Office of the Attorney General continued their work with Virginia Supreme Court Chief Justice Hassell's commission, initiated in 2006, to reform mental health laws and services. They drafted legislation, testified before committees, and provided the necessary research for these reforms. Virginia's mental health laws have undergone sweeping changes in five key areas: involuntary commitment criteria, mandatory outpatient treatment, procedural improvements, privacy and disclosure provisions, and firearms purchase and reporting requirements. In addition, the mental health system received an infusion of more than \$41 million as requested by Governor Kaine to increase service capacity, particularly at the community level.

The Office of the Attorney General has continued to advise all state agencies of duties and responsibilities under federal law, with particular attention to interpreting the Family Education Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA). This Office has provided guidance for crafting a model policy for law-enforcement personnel to provide death notifications with accuracy, sensitivity and respect. Our Office and other state agencies have worked closely with Governor Kaine to facilitate the implementation of numerous recommendations of the Virginia Tech Review Panel, including improving campus safety and coordinating more effective exchanges of information.

These actions by the Commonwealth's leaders reflect renewed dedication to the values that have sustained us since that terrible morning one year ago. This year's work manifests our resolve to improve our laws and processes in the face of great tragedy. In so doing, the Commonwealth honors the memories of those killed and wounded. Today, we pray again for all affected, that God's healing hand will touch them anew.

This submission from the Attorney General was originally published in the Richmond Times-Dispatch, on April 16, 2008 and is reprinted with RTD permission.



I have enjoyed serving as Lieutenant Governor for the past two and half years. I believe I have made a positive contribution to the betterment of our state and our party, and I think I am growing into the job with every passing day. I am willing to continue serving in that capacity if it is the will of the people of Virginia.

Continued Progress Needed on Land Use Reforms



By **SPEAKER WILLIAM J. HOWELL**

One of the most challenging issues recently facing the General Assembly has been how best to approach providing public facilities and services needed to serve new development in growing localities. For over 20 years, most Virginia localities have been authorized to accept proffered conditions on rezoning applications, including voluntary cash proffer payments, as a way for developers to mitigate the impact of development on public infrastructure.

Concerns have been expressed by homebuilders, localities, the conservation community and lawmakers about the current system. For example, both local governments and the conservation community are frustrated that the current system allows no means of getting contributions from "by-right" large lot residential developments being built in rural areas. At the same time, homebuilders have contended that the dollar level of voluntary cash proffers in some larger localities is negatively impacting their businesses. In recent months, the concerns about home mortgage financing and the resultant declining real estate values in some markets have made the latter concerns more acute.

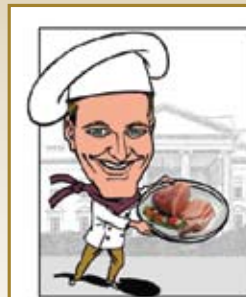
During the 2008 Session, Senator John Watkins and the Virginia Homebuilders' Association advanced Senate Bill 768. It would have replaced the current cash proffer system with impact fees on all new development, but would have capped cash proffers at per-unit levels significantly lower than some localities' current guidelines. Unfortunately, the bill did not address concerns about urban sprawl raised by many.

After SB 768 passed the Senate by a narrow margin, it was referred to the House Committee on Rules, which I chair. Ultimately, that committee voted to adopt a substitute bill incorporating some constructive changes to the original bill and agreed to "carry over" the substitute version for consideration in the 2009 Session.

In connection with that Rules Committee decision, I agreed to write a letter urging all interested parties to continue meeting in a good-faith effort to find common ground on this issue as well as other issues related to unbridled residential growth. The General Assembly also created a joint legislative committee, through HJR 178 and SJR 70, to study newly created urban development areas as well as current and proposed land use tools addressed in SB 768. I also agreed to request that local governments consider postponing increases in their present cash proffer guideline amounts prior to the 2009 Session to facilitate more fruitful discussions on cash proffers, impact fees and other legislative proposals.

I believe it is fair to say that members of the House Rules Committee, and members of the entire House of Delegates, understand and are sympathetic with concerns about housing affordability and the affects of the current cash proffer system. Members also recognize, however, that local governments may have few alternatives to replace the cash proffer payments they are now receiving, and that any change in the existing proffer system must therefore provide an effective avenue to meet infrastructure requirements. Further, the strain on existing infrastructure and land conservation efforts caused by increased sprawl bring challenges to the table which, in my opinion, must be part of any solution. Any balanced proposal should take into account all of these concerns. That is one reason why the House Rules Committee voted to broaden the purview of the two-year study created in HJR 178 / SJR 70 to encompass all of the aforementioned concerns and to provide a public forum so all interested and affected parties may participate in any solution crafted for consideration.

See *Continued Progress Needed*, continued on page 16



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The Standards Of Quality—An Oral History

By CHARLES TODD

During the 2008 General Assembly, when funding the Standards of Quality was being considered, I mentioned to a friend about having been employed by the Virginia Department of Education in a minor capacity when the SOQs were developed in 1971-73. He suggested I write about their history since few people are still alive who contributed to their formation.

As I recall and have been able to document in part, it was during the first Mills Godwin administration that a Constitutional Revision Commission was formed which offered several changes to the Virginia Constitution. Former Governor Albertis Harrison chaired the Commission.

The Commission's suggested changes were adopted by the General Assembly, and in 1970 a state referendum was held. Voters overwhelmingly approved the new Constitution which took effect on July 1, 1971. Among the changes was Article VIII which included:

"Standards of quality for the several school divisions shall be determined and prescribed from time to time by the Board of Education, subject to revision only by the General Assembly."

The State Superintendent of Public Instruction at that time was Dr. Woodrow W. Wilkerson, a mild-mannered gentleman who served in this office longer than any other person. As one of the first in the Virginia Department of Education to hold a doctorate, he was often referred to as "the Doctor."

When it was official that Standards of Quality needed to be written, Dr. Wilkerson turned to his special assistant Fendall R. Ellis and asked him to work with state education leaders to carry out the assignment. While there was much talk about the Standards, no

one knew what they were or where to begin, although they had to be completed for approval by the State Board of Education by the fall of 1971.

Ellis selected 40 division superintendents composing a cross-section of rural, urban, large, and small school systems and invited them to Richmond to write the Standards. Several staff members of the Department were called upon along with professors from the University of Virginia and the College of William and Mary.

The entire group met on several occasions and in smaller groups over a period of months. The Department of Education was housed at that time in 5 separate buildings in downtown Richmond and lacked adequate space, so meeting rooms were rented at the John Marshall Hotel where groups of 12 to 15 could assemble. Fendall R. Ellis coordinated the work.

After several drafts, copies of the Standards were developed which included "standards for personnel, instructional materials (including educational television), programs, and systemwide planning and management." These four categories were described in detail in an 8-page booklet that was widely distributed to school divisions, individual schools, and to teachers. In addition, performance objectives for the state and for divisions were set as well as planning and management objectives for individual schools and classroom teachers.

The Standards described basic needs and allowed the state to project a minimum cost for a quality program. These agreed-upon Standards were adopted by the State Board of Education and approved by the General Assembly for the 1972-74 biennial.

This early document led to the development of a "Manual for Implementing Standards of Quality and Objectives for Public Schools in Virginia, 1972-74," which was largely written and edited by Fendall Ellis and Drs. William H. Seawell and George W. Holmes, III from the University of Virginia.

This document began the age of accountability.



The Manual included schedules and forms for reporting by local school divisions on progress in meeting requirements, some of which were new.

Further, the new Constitution, Article VIII, stated:

"The General Assembly shall determine the manner in which funds are to be provided for the cost of maintaining an educational program meeting the prescribed standards of quality, and shall provide for the apportionment of the costs of such program between the Commonwealth and the local units of government comprising such school divisions."

With the Standards in hand, the cost for minimum quality programs could be projected. Dr. J. Fred Young, an Assistant State Superintendent joined the Department in late 1971. The following year, he worked with Governor Linwood Holton's Commission on Funding, assisted by Dr. Forbus Jordan, a consultant from the University of Florida.

Development of the Standards of Quality formula took the burden of school funding away from property tax. This was quite timely because the United States Supreme Court had ruled on cases in other states that funding schools primarily through property

See *Standards of Quality*, continued on page 12

Calculation of the Composite Index of Local Ability-To-Pay

$.5^* \frac{\text{Local True Value of Real Property}}{\text{Local Average Daily Membership}} + .4^* \frac{\text{Local Adjusted Gross Income}}{\text{Local Average Daily Membership}} + .1^* \frac{\text{Local Taxable Retail Sales}}{\text{Local Average Daily Membership}}$	$.5^* \frac{\text{Local True Value of Real Property}}{\text{Local Population}} + .4^* \frac{\text{Local Adjusted Gross Income}}{\text{Local Population}} + .1^* \frac{\text{Local Taxable Retail Sales}}{\text{Local Population}}$	$\text{Average Daily Membership Composite Index} = \frac{\text{Local True Value of Real Property}}{\text{Local Average Daily Membership}} + \frac{\text{Local Adjusted Gross Income}}{\text{Local Average Daily Membership}} + \frac{\text{Local Taxable Retail Sales}}{\text{Local Average Daily Membership}}$	$\text{Per Capita Composite Index} = \frac{\text{Local True Value of Real Property}}{\text{Local Population}} + \frac{\text{Local Adjusted Gross Income}}{\text{Local Population}} + \frac{\text{Local Taxable Retail Sales}}{\text{Local Population}}$
$.6667 \times \text{Average Daily Membership Composite Index} + .3333 \times \text{Per Capita Composite Index} = \text{Local Composite Index}$			

*The constants (.5, .4, and .1) represent the average share of local revenues gathered from real property taxes, charges and miscellaneous revenue, and the 1 percent local option sales tax, respectively. Adjust gross income data are used in the above formulas as a proxy for the taxes derived from local charges and miscellaneous revenue because detailed information on the latter is not available. This is specified for the Appropriations Act.

The Leaders During The Standards Of Quality Development

By CHARLES TODD

Dr. Woodrow W. Wilkerson

As with all leaders, Dr. Wilkerson was sometimes criticized for not doing more for education, but he served longer than any other Virginia State Superintendent of Public Instruction. James T. Micklem, retired longtime Director of Special Education for the state, agreed that no Virginian since Robert E. Lee had had a more loyal and admiring staff. Dr. Wilkerson provided leadership during the early days of integration, the development of the first Standards of Quality, and the Richmond, Henrico and Chesterfield County merger case to which the State Board of Education was a party. Judge Robert R. Merhige ruled that the State Board could have merged the three divisions, but didn't, thus making it a party to the suit. The Fourth Circuit Court of Appeals ruled that consolidation was **not** required and the United States Supreme Court failed to overturn the lower court. This ruling came while 14 senior staff members of the Department of Education were attending a seminar at the American Management Association's facility in Hamilton, New York. Dr. Wilkerson was called out of the room. Training stopped until the CEO returned and announced that the Court had voted 4-4, which meant the lower court's ruling stood. Justice Lewis Powell had recused himself because he had served on both the Richmond School Board and the State Board of Education.

Dr. Wilkerson had a keen mind and was an able writer and speaker, but he relied on his staff for much administrative work. Consultants with the American Management Association were critical of the amount of time that the Superintendent spent on writing letters, but when a letter went to members of the General Assembly or the public, they were clear and concise and understandable. He often requested first drafts from staff members and then proceeded to write them with his own style. As the State Superintendent from 1960-75, his tenure indicated he did many things quite well.

When Governor Linwood Holton initiated the Cabinet system, members of the Department of Education felt that Education had been moved to a lower level. Governor Holton made a convincing statement (in an interview with *Capitol Connections*, Winter, 2007, "Where Are They Now?") that "it was impossible for a Governor to have 100 people reporting to him."

Fendall R. Ellis

Mr. Ellis, a native of Chesterfield County, was a graduate of the College of William and Mary. His first teaching assignment was in the city of Hopewell. Later he was an administrator in Pittsylvania County and then superintendent of schools in Wythe County. In 1953

he became superintendent in Charlottesville and was called to the Department of Education by Dr. Wilkerson in 1963. The original Standards of Quality and Objectives bear the touch of Fendall Ellis and include some of his previous writings. Fendall Ellis was called the "Father of the Standards of Quality in Virginia."

Former State Superintendent of Public Instruction Dr. Woodrow W. Wilkerson said in 1986, "Fendall Ellis was one of our outstanding leaders in public education. While he was with the department, he played a significant role in the development of the state's Standards of Quality program, one of the most significant advances in the history of public education in Virginia. He was in charge of the committee that developed the standards of quality. This is the program that set the qualities below which no school division in the state would be allowed to fall."

Dr. J. Fred Young

Dr. Young was from North Carolina where he taught and served as a high school principal and a superintendent of schools. He was brought to the Virginia Department of Education as Assistant State Superintendent in 1971 and had major responsibilities for work on funding the Standards through the development of the Composite Index, which is still in use. When Dr. Young was appointed President of Elon College in 1973, Governor Holton, speaking at a Richmond Kiwanis luncheon, decried the loss of a bright young administrator to a neighboring state. Dr. Young served 25 years at Elon College (now University) and retired in 1998.

J. G. Blount

While J. G. (he insisted everyone call him J. G.) did not play a visible role in the origin of the SOQs, he was a steadying influence on the Department during the period of their formation. Legend has it that he never graduated from high school and began work at the Department as a shipping clerk. He advanced rapidly and during most of his tenure served as Assistant State Superintendent for Finance, working under numerous State Superintendents and Governors. His expertise on school budgets made him a ready resource for division superintendents across the state.

Every new employee was called to J. G.'s office along with a request to bring his or her original social security card for him to record. He encouraged employees to purchase savings bonds. Every night, J. G. carried a valise stuffed with travel vouchers which he inspected at home before approving for payment. He also had the awesome power to assign parking spaces. When the new funding formula was approved, J. G. decided it was time to retire having served the Department for 43 years. [Z]

Virginia's Unique System of Public Schools

By CHARLES TODD

The "Underwood Constitution" of 1870 required public schools in Virginia. It was revised in 1902 and amended from time to time with a most recent revision in 1971.

Article IX stated "The general assembly shall establish and maintain an efficient system of public free schools throughout the State."

"The general supervision of the school system shall be vested in a State Board of Education to be appointed by the Governor... and,"

"First [the State Board], shall divide the State into appropriate school divisions, comprising not less than one county or city each,..."

So, Virginia has school divisions rather than districts as in other states.

The operation of schools is a state function. In the opinion of some, Virginia is one school district with divisions controlled by local school boards. School Boards are state agencies and teachers are state employees although retirees do not always receive the same benefits

from the Virginia Retirement System as other state employees.

It is "very Virginia" to have school divisions. [Z]

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Is It Time For the Commonwealth to Cut Education Funding?

By ROBLEY JONES

Virginia's public school funding formula, the Standards of Quality (SOQ), implemented following the adoption of the 1971 Constitution and weakened by amendment in the mid 1980's, came under attack in the 2008 General Assembly Session. The battle ended when Delegate Hamilton conceded, "We were beaten into submission. We said, 'No mas! No mas!'"

Despite this concession, one element of the House effort to weaken the SOQ is included in the adopted biennial budget: the manner in which inflationary costs are borne by localities. A "hard cap" is applied to the inflation adjustment from the "base year" up to the biennium for non-personal and health insurance costs. Current policy applies a "soft cap" with full credit for the first five percent of inflation, and 35 percent of any inflation increase above 5 percent. Under this amendment, full credit is given for the first three percent and 50 percent of inflation increases between three and seven percent.

I fear the battle over SOQ methodology engendered by The House Appropriations Committee at the behest of the Family Foundation is but the beginning of a protracted battle between the Republican dominated House and the Democratic Senate. Thankfully, the divide over this issue is of a partisan nature only on the part of the House, where only one Republican, Delegate Rust, sided with education advocates. In the Senate, Republican conferees Wampler and Stosch sided with public education. Support for public education should not be a partisan issue. Simply put, the majority in the House led an effort to reduce state support for public education.

If we are to move toward reducing state support for our schools, it should be done based on facts and not ideology. The Family Foundation stated in its March 6th missive to its members, "spending goes up no matter what. By continuing with this system, public education is assured of securing funds at the expense of other core budget items (public safety, transportation, etc.)."

Let's look at what drives public education spending: Virginia's standing compared to other states and the degree to which education is funded at the expense of other core services.

The factors contributing to increased educational costs are increasing enrollment, escalating fuel prices for bus fuel and heating, rapidly increasing health care costs for employees and the need to compete for qualified teachers in a time of a dire teacher shortage.

SOQ Study

The 2008-2010 budget (HB 30) contains the following:

H. 1. The Chairmen of the House Appropriations and Senate Finance Committees shall each appoint four members from their respective committees to a joint subcommittee to provide on-going direction and oversight of Standards of Quality funding cost policies and to make recommendations to their respective committees.

2. The Joint Subcommittee on Elementary and Secondary Education Funding shall: 1) study the Commonwealth's use of the prevailing salary and cost approaches to funding the Standards of Quality, as compared with alternative approaches, such as a fixed point in time salary base that is increased annually by some minimum percentage or funding the national average teacher salary; and 2) review the "federal revenue deduct" methodology, including the current use of a cap on the deduction.

3. The school divisions, the staff of the Virginia Department of Education, and staff of the Joint Legislative Audit and Review Commission, are directed to provide technical assistance, as required, to the joint subcommittee.

<http://leg1.state.va.us/cgi-bin/legp504.exe?081+bud+21-1>

It is important to acknowledge first that Virginia's schools perform! In our national rankings, we are:

- 10th in math
- 9th in reading
- 9th in SAT Scores

We achieve this success while our state spending per-pupil is 33rd in the nation.

Is education spending devouring the state budget? Let's look at the trends. Here is the share of the state general fund budget allocated to public education over the past 20 years:

1990-92	35.4%
1992-94	35.5%
1994-96	35.0%
1996-98	36.8%
1998-00	34.2%
2000-02	32.8%
2002-04	33.1%
2004-06	33.9%
2006-08	34.0%
2008-10*	35.7%

*introduced budget

The current level of state spending for public education is right in line with its historic budget share. One might note that in the 1966-70 budget, prior to the adoption of the Standards of Quality funding formula, 50.6% of the state General Fund went to public education.

Clearly, public education is not being funded at the expense of "other core budget items (public safety, transportation, etc.)."

Virginian families want good public schools for their children. Our public school system is recognized as being one of the best in the nation. The state share of current education spending is comparatively low, 33rd in the nation. The adopted biennial budget calls for a "Joint subcommittee of Senate Finance and House Appropriations to study methodology for funding SOQ salaries and policy for federal revenue deduct." Let's hope that the study will be done with an eye on what's best for Virginia in the long run. If the state reduces its level of support for our schools, it is simply shifting the burden for funding our schools to local government and shafting the local tax payer with rising real estate taxes. The children in poor districts without the ability to make up for lost state revenues will be hurt the most.

Robley S. Jones is Director of Government Relations for the Virginia Education Association.

Standards Of Quality from page 10

taxes was unfair to poorer districts. An SOQ formula was prepared using a composite index to determine how much state money would go to localities. The Index was weighted with 5 parts based on the **local true value of real property**, 4 parts on **local adjusted gross income**, and 1 part on **local taxable retail sales**. The index was framed so that .2000 would be the lowest and .8000 the highest numbers and determined distribution of state money, divisions having the lowest index numbers receiving the most money per student.

This formula ensured funding for a "minimum quality education program" would be available in each division and may have required some counties and cities to spend more local money for education. The formula has served since 1974 with minor adjustments.

The Composite Index calculation is shown at the bottom of page 10.

The Standards of Quality are revised every odd year, and minor adjustments have been made to the funding formula. Originally it was the purpose of the formula to divide the statewide cost of education evenly between the state and local governments, with the poor divisions receiving more aid and the affluent divisions less state aid. Whether this actually or accurately took place is a matter of conjecture.

See *Standards of Quality*, continued on page 15

SOQs: Local Impact Goes Beyond Funding

By KIM BRIDGES

Just as the Standards of Quality guide public school systems throughout the Commonwealth, the SOQs most certainly have an impact on the capital city's school system and its decision-making body. As one of Richmond's school board members, I have seen how the SOQs can have a wide-ranging influence on my role, and I have come to realize that the SOQs impact much more than our state funding level; the SOQs influence everything from community buy-in to local expectations about how our schools should operate.



One element of the SOQs, school accreditation standards, receive more public interest than almost any other. Whether in urban, suburban, small, or large locations, parents of school-aged (or soon to be school-aged) children have become savvy consumers of information on potential schools. Searches for accreditation status and SOL scores have become commonplace for families considering where to live and which schools to attend.

School accreditation has other implications for school leaders as well. Prior to my board membership, the Richmond School Board made a novel decision in 2002 to tie the superintendent's job security to state accreditation benchmarks. As a parent and an interested observer, I felt increasing confidence in the school system as I watched the accredited schools in our city jump from 10 to 23 in one year, then climb again in the next. The expectation today is for consistent accreditation results. In addition, the connection remains strong between academic standards, professional accountability, and public confidence. In fact, improvement benchmarks continue to be a part of our contract with the superintendent and will certainly be a key discussion point as we begin a search for our next superintendent.

Though not as obvious to parents and school stakeholders, SOQ staffing requirements are another area with major impact on school board actions. In today's economic climate, community leaders and the public expect their schools to provide both fiscal efficiency and quality instruction, and that expectation guides school board policies and budget decisions. In some cases, school decision-makers react to the demand for increased efficiencies by comparing staffing standards to the SOQ standards and reducing them to SOQ levels. To achieve flat local funding for its 2007-2008 budget, the Richmond School Board proposed the elimination of 5 elementary and 1 high school assistant principals; 4 elementary, 2 middle and 5 high school guidance counselors; and 2 middle school clerical staff for an overall salary and benefit savings of \$1,443,734. This staffing reduction reflects an ongoing sentiment that SOQ staffing standards can be viewed as a "ceiling" rather than a "floor."


When staffing levels do remain above State SOQ standards, school leaders must be ready to justify those choices to the funding authority and the public. For example, within a few weeks of my arrival on the school board, a city audit of the school system cited possible school savings of three to five million dollars in personnel expenses that could be achieved by staffing at SOQ levels. Yet the analysis did not explore the reasons for the staffing of positions, like Assistant Principals,

that exceeded SOQ minimums yet provide critical services based on our children's needs. Though the school system responded to the reduction recommendation with a needs-based rationale for keeping those positions, the assumption remained that the SOQs delineate all of the resources our school system needs.

Increasing public awareness about the SOQs would lead to an understanding that they provide consistency but also allow for variations among systems. Such varying needs include those of urban school settings like ours where many students come through the school door from environments of concentrated poverty and lower school readiness. Indeed, many students attending RPS require instructional services above SOQ funded minimums. RPS exceeds the State average in both its percentage of students qualifying for Free & Reduced Lunch (33% in Virginia versus 70% in Richmond) and in its percentage of students qualifying for Special Education Services (14.7% in the Commonwealth compared to 19.6 % in our city.) It logically follows that some "above average" staffing levels must parallel these "above average" factors.

As a school board member in Richmond, I appreciate the state's recognition that the quality of education depends on high-quality instructional personnel, a suitable learning environment, quality instruction, and adequate resources. I also appreciate the unique circumstances facing many of our city's children that may lead to unique decisions about how to educate them. The school board has worked over the past several months to move RPS from state compliance to global competitiveness through a whole child approach. The resulting changes in how we do business will surely lead to additional discussions about how state standards and funding can help ensure that we get there.

Re-benchmarking, revision, and enhancement ensure that the Standards of Quality reflect both statewide concerns and local realities. It also takes collaboration between the state leaders who provide this foundation and the local school leaders who build their educational offerings upon it. By working together to face the changes of educating 21st century learners, we can ensure that the Commonwealth offers what every child—whether low-income or middle-class, city-dweller or county resident—needs to achieve success in school, the workplace and the community.

Kim Bridges represents district one on the City of Richmond School Board. 

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Preparing Professional Educators to Ensure Safe and Secure Schools

By DOROTHY SLUSS

The concept of safe and secure schools changed dramatically following the tragedy of April 16, 2007, at Virginia Tech. Two organizations involved in teacher preparation dedicated their fall and spring professional conferences to exploring issues surrounding the Virginia Tech tragedy. VACTE (Virginia's AACTE affiliate) sponsored the fall meeting and the Association for Teacher Education-Virginia coordinated the spring conference. Dr. Sandy Brownscombe (President of ATE-Virginia and Professor at Eastern Mennonite University) and Dr. Brenda Gilman (President of VACTE and Professor at Randolph-Macon College) and their respective boards planned and organized the meetings as a multi-level event. The fall meeting was coordinated by Dr. Phil Wishon (VAACTE President Elect and Dean of the JMU School of Education) and focused on promoting resilience following crises (Wishon, 2007). The spring conference served as the next level and considered issues in teacher education related to establishing safe and secure schools.

The spring conference was held April 3-4, 2008, on the grounds of Sweet Briar College located in Amherst, Virginia. The serene beautiful campus filled with the lush green vegetation of spring served as an eerie reminder that the beauty and tranquility of college campuses does not deter violence. The conference opened with a welcome from Dr. David Richie, President of the Association for Teacher Educators (ATE). He noted the value of joint meetings focused on a common theme and applauded the organization's efforts to address concerns through conference venues.

The lead session was presented by Dr. Sue Magliaro, Director of Teacher Education at Virginia Tech, and Dr. Bill Modzeleski, Associate Assistant Director Secretary, U.S. Department of Education, Office of Safe and Drug Free Schools. Dr. Magliaro discussed the aftermath of the April 16 events and expressed her appreciation for the support extended to the Virginia Tech community. She noted that the conference theme exemplified the support the VT community has received throughout the year.

Assistant Secretary Bill Modzeleski shared an overview of threats to school safety at the national level. He noted that there are approximately 54.6 million students in schools throughout the United States and the opportunity for violence is present on 180 days a year when students are in school resulting in 9.8 billion student school days when violence is a possibility. Given this information, schools are generally safe places and the actual number of violent acts on school campuses is decreasing. In summing up the threat situation in schools, Modelzeleski (2008) noted that a recent study found:

- That a single individual often isn't equipped to assess whether a person poses a threat of targeted violence. A trained Threat Assessment Team was recommended.
- That examination of a person's behavior is critical-not his/her characteristics. Also examination of words alone is not enough.
- That school climate does matter!

In response to Modzeleski's statement that school climate makes a difference, Dr. Beatrice Bailey, Past President of South Carolina Association of Teacher Educators and Professor at Clemson University, discussed opportunities for improving school climate. Dr. Bailey developed a metaphor for extending hospitality to the stranger entering new schools and new world rooted in school community interconnectedness. She discussed ways to develop a working ecology that




connects school and community and provides a sense of place and belonging for all students. During her talk, she distributed *Creating a Sense of Place and Belonging: How to Meet the Emotional and Affective Needs of K-12 Students* (Stegelin & Bailey, 2004) to the audience. She advised those interested in receiving additional materials or resources to contact the National Dropout Prevention Center at Clemson University at <http://www.dropoutprevention.org/>.

Focused sessions built on the concept of creating environments to prevent violence. A session presented by Dr. David Herr and students at James Madison University featured recent efforts to develop a college chapter of Friends Of Rachel (F.O.R.) as an antidote to campus violence. Rachel Scott was killed during the Columbine High School shootings. Rachel's mantra "to change the world through starting a chain reaction of kindness and compassion" has inspired the growth of Friends of Rachel (F.O.R.) chapters on high school campuses throughout the United States. Dr. Herr and student officers Erinn Jefferson, Emily Pulleyn, Sarah Ward, and Ryan Middleton have established a chapter at James Madison University. The chapter at JMU is recognized as the first chapter on a college campus. They invited other institutions of higher education to join them in their efforts and provided a website with additional information, <http://www.rachel-schallenge.com>.

Other focused sessions examined preventing behaviors that create hostile environments. Dr. Judy H. Mullet, Eastern Mennonite University, led a key session on using Restorative Discipline (RD) to deal with bullying in schools. This approach has been used successfully in many schools throughout the United States. It basically focuses on the victim and ensuring that the perpetrator understands how their behaviors impact the victim and others in the social setting. The focus is on restoration not punishment. In this same vein, Dr. Osayimwense Osa, Virginia State University, investigated the power of literature in creating peaceful classrooms and resolving conflicts; Charlene Green, University of Virginia, provided an interactive session that considered ways to access diversity issues in classrooms; and James and Susan Barnes, James Madison University, demonstrated instruments that can be used to evaluate school safety.

The process of planning the conferences, sharing information, and discussing all aspects of the events of April 16, 2007, was cathartic. Comments from the participants of both meetings indicated that the process was both effective and beneficial. One board member noted, "It was difficult to listen to the parents in the fall and know that we must move beyond the grief, beyond the pain. This [spring] session helped open a new chapter. Looking at the meetings collectively, it was the right thing to do at the right time. We made the right decision and now we must continue onward." Dr. Bill Graves, Old Dominion University School of Education Dean, noted that "the underlying theme of the spring meeting was connectivity." From the first session to the last, the message was interconnectivity. Dr. Dorothy Sluss, President Elect and conference coordinator, noted that "Professional educators realize that the creation of safe and secure schools lies not in adding more guards at the door but in developing relationships and connections among students, teachers, and community members."

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- Dr. Dorothy J. Sluss is President-Elect, ATE-Virginia, and Associate Professor of Early, Elementary, and Reading Education, College of Education, James Madison University. 

2008 GA Corrects Sales Tax Inequity

By MARK SINGER

More than 30,000 postsecondary students in Virginia have cause to celebrate due to actions taken at the just-concluded Virginia General Assembly. The 2008 session of the Virginia General Assembly enacted legislation correcting a long-lingering inequity in state law—assessing sales tax on the purchase of textbooks only from students who attend institutions of higher



education that are corporately structured as for-profit entities.

A joint effort by the Virginia Career College Association and National College led to the successful introduction and passage of Senate Bill 392, patroned by Senator Steve Martin (R-Chesterfield). Now signed into law by the Governor, the change will put the state's career college students on parity with students attending all other institutions of higher education in Virginia who are able to purchase their required textbooks without paying sales tax.

Each year this inequity gap grew as the cost of textbooks continued to increase. Individual textbooks can now cost in excess of

\$100.00, and students can easily find themselves paying in excess of \$500 a semester for these required resources. Removing the 5% sales tax and treating all students enrolled at institutions of higher education the same was not only a fair resolution, it will end up saving students real money that they can use to meet other educational costs.

Career school students will, however, have to wait until the 2010 budget cycle to benefit from this change. That effective date was added to the legislation as a result of the state's current budget crunch. Career college students can wait for fairness. But now they don't have to wait forever!

Mark Singer is Executive Director of Virginia Career College Association. [V]

Primary Vote Totals

By BILL SHENDOW

In the movie classic of the late 1960's *Butch Cassidy and the Sundance Kid*, Butch and Sundance find themselves trying to escape a very large and apparently skilled posse bent on their capture. Out of frustration, Butch turns to Sundance and says something to the effect, "who are these guys?" Butch's question is appropriate for those trying to make sense of the very large turnout of voters in the Commonwealth's February 12th primaries. Who were these guys... and gals and what does it mean for the fall general election?



Butch's question was my first thought upon arriving with my wife at my voting precinct on primary Election Day. There I immediately encountered a long line which stretched to the parking lot. Not knowing if we were to get into line, we proceeded inside the precinct. There we found a shorter line of voters. To our surprise we discovered that the long line were voters in line to vote in the Democratic primary. The shorter line was for voters in the Republican primary. The scene of long lines of Democratic voters waiting to vote was replicated at many precincts throughout the state.

Winchester, the most northern city in the Shenandoah Valley, has a long history of being bright red in past presidential elections. Winchester, like Virginia, last went Democratic during the 1964 presidential election. Winchester is less red in state elections having ended a twenty year drought of Republican majorities in gubernatorial elections in 2001 and then again in 2005. Democrats have been even more competitive in local elections.

The results of the February 12th primary election confirmed my initial suspicions that Democratic turnout was much larger than Republican turnout. At my voting precinct, Merrimans, the Democratic vote total was 1,025 compared to 572 Republicans voting. The state mirrored these results with 930,000 Democrats voting in their primary compared to 505,000 Republicans. The Democratic turnout exceeded the party's previous national primary by 130%.

Some pundits have discounted the importance of the difference in the party vote totals of the two statewide primaries as nothing more than an anomaly probably never to be replicated again. Others have contributed the differences to the level of competition in the two primary races. Still others say it was a result of what is now being called the "Limbaugh Challenge", a challenge made by talk show host Rush Limbaugh to conservative voters to vote in the Democratic primary for the weaker of the two candidates.

Two reasons given for the difference in the primary vote totals are rather easily refuted. Virginia's Republican primary was highly contested by John McCain and Mike Huckabee. While some conservative voters

may have indeed taken-up the "Limbaugh Challenge", there is nothing to substantiate Republicans crossing over in large numbers to vote in the Democratic primary for reasons other than to vote for their favored candidate. As to the phenomena of a large Democratic primary turnout being an anomaly, only time will tell.

What can be determined from the large primary turnout in the state's primary election is that the totals were significant. What does this mean for the fall? It surely doesn't mean that the party vote total will reflect the heavy advantage for the Democrats which appeared during the primary vote. One cannot equate a general election with a primary election. The elections are different, attracting more and different voters who make up their minds based on issues which were not as clear during the primary races. Virginia's primary election occurred at a particular point in time when the prospects for the Democratic party and its candidates were very bright. A long and often bitter campaign has somewhat dulled the luster the party and its candidates once enjoyed. What's more the Republicans have had time to regroup while the Democratic contest has gone on.

What is clear from the Democratic primary vote totals is that for the first time in a long time Virginia will be a battleground state, maybe even a bellwether state which will foretell the outcome of the national election. Other factors not associated with the primary vote totals support this conclusion. These factors include the reality that popular Democrat Mark Warner will be on the Virginia ballot in the fall as a candidate for the U.S. Senate and the prospect that another Virginia Democrat, either Governor Tim Kaine or U.S. Senator Jim Webb, will be on the Democratic ticket as the Vice Presidential candidate. The party or candidate that overlooks the competitive nature of this fall's political environment in Virginia does so at their own risk.

Bill Shendow is the Chairman of the Political Science Department at Shenandoah University. [V]

Standards Of Quality

from page 12

An immediate outcome of the SOQs was that each locality was required to spend a minimum for education, with the minimum recalculated from year to year. Each school division could spend as much beyond this amount as the community wished to provide from local funds. Program standards required that kindergartens be planned in divisions which did not already have them, with implementation by a date acceptable to the State Board of Education.

The original document included extensive planning and management objectives as well as considerable public involvement. In these and other ways, the Standards of Quality moved Virginia forward in improving education and providing a method of funding which has lasted more than 36 years.

Dr. Charles Todd is a retired teacher, principal, and superintendent who served as director of planning with the Virginia Department of Education from 1970 to 1973. [V]

The 96th House of Delegates District—Women Only Please

By CHRISTIAN RICKERS

The 96th is the only House District in the Commonwealth that has been exclusively represented by women. It all started in 1981 when the Justice Department ruled Virginia's multi-member districts unconstitutional. Until then Virginia had 100 delegates representing 52 districts. Some areas were represented by one member and others by as many as five. There were even "floater" delegates who represented several districts or localities. The multi-member districts and floaters were one way for the party in power to retain large majorities.



The 96th House District was born in 1982 after the elimination of multi-member districts in 1981. In the special election of 1982, the incumbent George Grayson D-Williamsburg a delegate from the 51st district, decided to challenge First District Congressman Herb Bateman. Grayson later dropped out of the race citing personal reasons. In 1984 he returned to the House of Delegates representing the 97th district, a seat he held until retirement in 2001. Shirley Fields Cooper, a teacher, community activist, and eight year veteran of the York County Board of Supervisors ran for the open seat in the newly created 96th against Republican Charles H. "Mac" Duff. After a hard fought campaign Cooper prevailed by 364 votes out of roughly 15,000 cast.

Cooper retained the seat until 1997 when Jo Ann Davis upset the 15 year incumbent by 353 votes. The same year Jim Gilmore was elected Governor by a wide margin on a platform based on the "No Car Tax" theme. Del. Davis served until 2000 when she ran successfully for US Congress upon the death of longtime 1st district Congressman Herb Bateman. A special election was held on December 19, 2000 to replace Delegate Davis. Her political protégé, York County Supervisor Melanie Rapp, ran for the seat. Her opponent was Democrat Patrick Petit, a lawyer in Alan Diamonstein's practice. Rapp edged out Petit by 230 votes out of nearly 10,000 cast.

Melanie Rapp served out the term and was re-elected 3 subsequent times. In 2007 Rapp decided to focus on her career and declined to run for a 5th term. The Republican nominee became citizen activist Brenda Pogge who narrowly defeated York County Supervisor Shelia Noll in a firehouse primary by 23 votes. Pogge cruised to victory in the general election against Democrat Troy Farlow to become the fourth consecutive woman to represent the 96th district in the Virginia House of Delegates.

Christian Rickers has joined the David Bailey Associates team and serves as Assistant Editor of Virginia Capitol Connections.

Publisher's note: We sincerely apologize to Melanie Rapp for omitting her service from the list of women legislators in the Winter 2008 issue. [Z]



Shirley Fields Cooper



Jo Ann Davis



Melanie Rapp



Brenda Pogge

Continued Progress Needed from page 9

To be truly successful, I believe the outcome of the discussions should recognize what the General Assembly accomplished when it passed the forward-looking land-use portions of the Comprehensive Transportation Funding and Reform Act of 2007 (House Bill 3202), which I patroned last year. We charted a new way forward toward more efficient and compact growth management, which preserves open space outside of designated urban development areas. Virginia state law and public policy now embraces the fact that neither the state nor local governments can afford to continue development practices that sometimes resulted in unbridled sprawl. Accordingly, I respectfully suggest that all ongoing efforts proceed with an acknowledgement that we must further develop and refine such policies and not reverse the positive new direction imbedded in HB 3202.

As land use decisions affect a wide range of issues including not only transportation mobility, but also environmental conservation, affordable housing, community cohesiveness and the delivery of government services, we must remain committed to moving forward with a truly comprehensive approach. I am disappointed that the Governor's latest transportation tax plan fails to include any land use provisions. Nevertheless, I remain confident that by continuing the positive progress we have made in reforming our Commonwealth's land use system, we will further reduce congestion, increase transportation mobility and improve the overall quality of life for all Virginians.

The Honorable William J. Howell, Speaker of the House, represents the 28th House of Delegates district which includes Fredericksburg and Part of Stafford County. [Z]

Capitol Connections *On The Scene*



Enthusiastic crowd (includes Bailey Addison Hardy and Keenan Caldwell) reaching for Governor Kaine at the Jefferson Jackson Dinner.



Kaitlyn Hawk, Randolph Elementary student, Goochland County, is "Sarah Fain" on Famous American Day. Kaitlyn was inspired by our article, *First Women in the General Assembly*, Winter 2008.



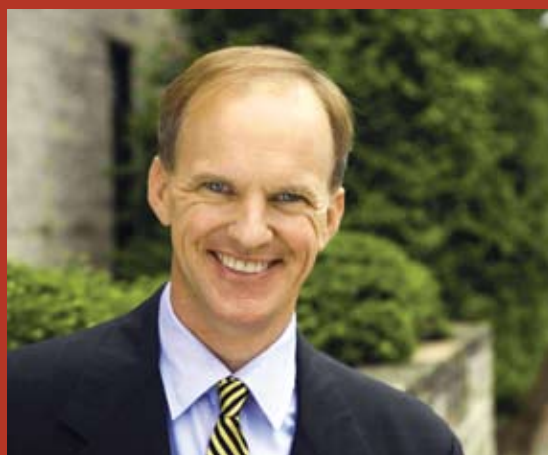
Bi-partisan leaders gather as Governor Kaine signs mental health reforms into law.

Photo by Michael L. White



Red Cross Day at the Capitol, 2008, and leaders from around Virginia meet with the Governor.

Photo by Michael L. White



The Honorable Albert C. Pollard, Jr., newest member of the General Assembly, representing the Northern Neck's 99th House District.



Virginia Capitol Police participated in the "6th Annual LawFit Challenge" (competitive events that measure officers' strength, flexibility, cardiovascular efficiency and work performance), George Mason University, Fairfax. Left to right, Larry Harlow (won "Men's Rookie of the Year"), and Tony Gulotta, Francis Stevens, Brian Alexander and Bruce McMackle participated in the 4-man team competition). The National Center for Public Safety Fitness sponsored the event.

Conflicts of Interest?

Legislators At Bar

By LAUREN COHEN BELL

In an Associated Press story dated February 24, 2008, writer Bob Lewis detailed a handful of the potential conflicts of interest that confront Virginia's citizen legislators each year. Lewis noted that conflicts between state legislators' outside-the-General-Assembly career and financial interests and their inside-the-Capitol activities are "inevitable in a legislature that meets only 46 to 60 days annually and pays only \$17,000 a year."



As high-profile scandals have demonstrated at the national level, lawmakers must take care to ensure that their own interests do not creep into their legislative activities—even when their interests and their constituents' interests are in harmony. Members of Virginia's General Assembly may have to recuse themselves from votes affecting their private-sector clients or, while off the public clock, they may have to avoid situations that might create a conflict of interest when they return to Richmond in the future. It's just part of the job, they say. As the February AP story noted, most state legislators take care to abide by the General Assembly's conflict of interest rules that stipulate when they must abstain from voting.

But what about deeper, more structural conflicts of interest such as the one created by Virginia's continuing system of full legislative appointment of the Commonwealth's judges? Virginia is the only state in the nation that appoints its judges entirely by action of elected legislators—and part-time legislators at that. For the lawyer-legislators in the General Assembly, that means that they may be called upon to try cases in front of judges that they helped to put on the bench.

How is a litigant in a civil case to feel when they discover that the person they've got a conflict with has retained a sitting member of the Virginia General Assembly to serve as his or her lawyer—in a case that's before a judge whose reappointment the General Assembly will soon consider? It happened a few years ago to a friend of mine; she and her husband lost their lawsuit against a seemingly unscrupulous handyman. They might have lost anyway, but the fact that the man's lawyer was a state senator made quite an impression.

The political science literature has demonstrated that high-profile litigators, such as members of a state legislature, frequently enjoy higher rates of success before the courts. These litigators' reputations and posi-

tions of authority provide judges with important signals about how their decisions will be received. In Virginia, with state legislators fully responsible for appointing judges to the Commonwealth's courts in which many members regularly practice, this issue is all the more salient.

In 2005, my colleague Margaret Williams, then on the faculty at James Madison University and now at the Federal Judicial Center in Washington, D.C., and I conducted a study of the effect of Virginia's legislative appointment system on the success rates of the Commonwealth's legislators who practice before the judges they help to appoint.

Because of time and data constraints, Professor Williams and I limited our analysis to the Virginia Supreme Court. We noted in our analysis that there is every reason to believe that Virginia's state legislators who practice before the Virginia Supreme Court would enjoy higher rates of success than would non-legislator lawyers:

- state legislators generally have a good understanding of the content and scope of the Commonwealth's laws and may even have been involved with crafting the original legislation;
- legislator lawyers, like all attorneys (with the exception of public defenders who are named as counsel by the court) have broad discretion over which cases they appeal to the Commonwealth's court of last resort;
- the presence of a state legislator at bar sends a powerful message that a member of the state's political elite believes the case worthy of consideration and decision in a particular direction;
- the presence of a state legislator might imply the nature of the General Assembly's willingness to enforce the state Supreme Court's decision;
- legislator lawyers appearing before the Virginia justices have direct involvement in their reappointment.

Despite all these reasons, Dr. Williams and I found that Virginia's state legislators are no more or less successful than other litigators when they appear as attorneys of record before the Virginia Supreme Court. Our results demonstrated that members of the Virginia Supreme Court do not appear to be beholden to the preferences of those who appoint them.

This is perhaps a bit of good news for Virginia's system of legislative appointment of judges. But, it doesn't resolve the perceived conflict of interest that can occur when a Virginia citizen sits across the aisle from a state legislator that is acting as opposing counsel. As recent scandals at the national level have demonstrated, perceptions can sometimes be as important as reality. It is something that our lawyer legislators might consider the next time they weigh whether or not to take a case.

Lauren Cohen Bell is Associate Professor of Political Science and Associate Dean of Randolph Macon College. ▣



CIVIL RIGHTS MEMORIAL

Virginia State Capitol Dedication

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JULY 20-21, 2008

Sunday, July 20, 2008

"From Struggle to Triumph to Tomorrow" Afternoon Event (Symposium – Library of Virginia)
Premiere preview of "They Closed Our Schools." The film is based on the Moton High School story and will be followed by an intellectual symposium to discuss the question of "Are our schools better off today? Where do we go from here?" The discussion will feature a stellar panel of education experts, intellectuals and preeminent commentators on socioeconomic issues in the African-American community including John Stokes of the Moton school protest and Cheryl Brown Henderson of Brown v. Board of Education.

Monday, July 21, 2008 — 10:30 am

Unveiling and Dedication Ceremony (Virginia Capitol Square – Downtown Richmond)
The culminating event of the two-day celebration will be the unveiling and dedication of the Civil Rights Memorial on the Virginia State Capitol Grounds. Governor Timothy M. Kaine and the General Assembly Leadership will be the primary speakers as well as the Honorary Co-Chairs. The Executive Committee will detail the formal program to include musical selections and student participation.

Additional signature events will be announced. Visit www.vacivilrightsmemorial.org for more information.

It could be said that Barbara Rose Johns is Virginia's Rosa Parks. Not enough have heard the story of how this brave young 16-year-old caused a quiet revolution in the small town of Farmville, Virginia, the ripples of which would be felt throughout the state and the nation for years to come.

In April 1951, Barbara and her fellow students at Robert Russa Moton High School staged a walkout and protest to draw attention to the deplorable conditions at their segregated school. The case eventually led to *Brown v. Board of Education*. The Prince Edward case inspired the writers of Virginia's 1971 state constitution to put education in the Bill of Rights to prevent a recurrence of this tragedy.

The Capitol Square Civil Rights Memorial will recognize and celebrate the Virginians who risked everything in the struggle to gain educational rights for all. The memorial, to be installed on the grounds of Virginia's historic state Capitol in Richmond, Virginia, also serves to remind us of the debt we all owe to the sacrifice and courage of a few. It will give the thousands of students who visit Capitol Square every year an opportunity to learn important lessons from a pivotal time in Virginia's history and to inspire future generations.

Virginia: on (or falling off of) the cutting edge of political reform?

By MARK RUSH

“Give me Liberty or Give me Death.” “No Taxation without Representation.” “A Better, Fairer Political Process Through New Redistricting Procedures!(!?)”

OK. Redistricting reform is hardly as likely to capture the imagination of the public as some of the other great causes in American political history. Nonetheless, the redistricting process is once again making news as we head towards the end of one decade, the beginning of another and the inevitable partisan wrangling that will attend the next round of line drawing.

Redistricting and electoral reform have been on the political agenda in the Commonwealth. But amidst this season of incredibly intense presidential politicking, the excitement of the primaries overshadowed two important reform initiatives. The first was raised by Governor Kaine in his annual address and subsequently pursued by State Senator Creigh Deeds: a proposal to reform the redistricting process in the Commonwealth. The second arose when the federal district and appeals courts struck down section 24.2-509(B) of the Virginia Code (which allows incumbents to choose the method of their renomination).

For many, these aspects of politics may seem to be pretty arcane when compared to the excitement of a presidential primary or a decision by the United States Supreme Court. But, since redistricting and the nomination process have been frequent topics of Supreme Court scrutiny, what's going on in Virginia may have an impact on election law across the land.

A common theme joins Sen. Deeds' call for redistricting reform and the decision by the Federal Appeals Court to strike down section 24.2-509(B): fear of incumbent entrenchment. Deeds' proposal (sb38) called for the establishment of a bipartisan districting commission to replace the current process that empowers our elected officials to redraw the districts in which they campaign. Alas, while Deeds' proposal passed the Senate, it did not survive in the House.

I believe this would have been a great improvement over the current system. Deeds' proposal would have removed at least the veneer of self-interest in the districting process by taking control out of the hands of incumbents and setting forth stringent criteria for drawing district lines, all of which clearly have the interests of the voters—not the incumbents—in mind.

As demonstrated by the redistricting process in the last two decades, partisan concerns have dominated the manner in which district lines were drawn. Incumbents of the same party were pitted against one another, political subdivisions were divided, districts crossed bodies of water and district shapes looked more like the patterns in a Rohrschach test than politically relevant geographic areas. In the 1990s, the Democrats wrought havoc on the Republican incumbents. In the 2000 round of redistricting, turnabouts was fair play and the GOP returned the favor. There was no question that partisan and incumbent self-interest played a determinative role in the drawing of district lines.

I don't mean to offer gratuitous criticism of our incumbents. Campaigning for and serving in the legislature involves great personal sacrifice and time commitment. Nonetheless, the current redistricting process does confront our incumbents with a clear conflict of interest: they have complete control over the process by which they are returned to office.

Critics may argue that taking control of the redistricting process out of the hands of elected officials would somehow weaken the



connection between voters and their representatives. In fact, this is not the case. Many other states have turned at least part of the redistricting process over to nonpartisan or bipartisan commissions.

According to work done by the Rose Institute of State and Local Government and Michael McDonald of George Mason University, at least nine other states employed methods of redistricting at the beginning of this decade that were “nontraditional” in the sense that the legislature did not have complete control over the line-drawing process. The independence (or, if you wish, partisan “neutrality”) of the processes varies from complete independence (in Iowa, the nonpartisan Legislative Services Bureau draws the lines and the legislature votes on its recommendations) to different forms of bipartisan committees (similar in spirit to that proposed by Senator Deeds) that are appointed by the legislature, the governor, etc.¹

The benefits of moving to a more nonpartisan method of drawing district lines are obvious: doing so would remove the appearance of self-interest that currently exists. McDonald (391) notes at the end of his study that, regardless of the method of redistricting, “incumbents and parties work strategically within the constraints of the redistricting process to produce plans they believe to be most favorable to them.” In essence then, political actors act in their own self-interest.

This may seem completely natural: no one would expect a political actor to act against his or her own best interest. Nonetheless, it is sometimes easy to forget that, ultimately, it is the voters' best interests that are at stake in the redistricting process. But, in a process that is designed to enable incumbent officials to select their own electors, it is not inconceivable that the voters' best interest can be forgotten.

This concern about the power of incumbents was an important element of Harvie Wilkinson's opinion in *Miller v. Cunningham* this January where he asserted that section 24.2-509(b) was unconstitutional. In that case, Wilkinson argued that something is wrong when an incumbent can impose his or her will on the party organization—at the expense of voter choice. Section 24.2-509(B) let incumbents choose the means by which they would stand for re-election. No doubt, an incumbent would choose the method that would give him or her the best chance of winning renomination.

Wilkinson argued that this system transfers control over elections from the voters to the legislators. It undermines the democratic process in the same way that letting incumbents draw their own districts does: in both cases, incumbents choose their voters. Democracy requires the opposite: voters should choose their representatives.

Governor Kaine, Senator Deeds and Judge Wilkinson have raised important concerns about the nature of the democratic process, the rules by which it is conducted and the role voters should play vis a vis their elected representatives. As we have seen throughout this long and exciting presidential nomination season, the rules by which politics and elections are conducted are vitally important to the integrity of the political process. Thanks to the efforts of Kaine, Deeds and Wilkinson, Virginia has initiated its own important conversation about the rules of the political game. As we approach the 2010 round of redistricting, there is no question that this conversation will continue with a heightened sense of urgency.

Mark Rush is the Robert G. Brown Professor of Politics and Law and Head of the Department of Politics at Washington and Lee University.

¹See generally Michael McDonald, “A Comparative Analysis of Redistricting Institutions in the United States, 2001-02,” *State Politics and Policy Quarterly* (Winter, 2004) 371-95. ■

In Memoriam—Four Former Legislators

A Salute to Al Smith

By CHARLES S. ROBB

Al Smith was my friend. Now I know everyone here was a friend of Al's as well—he had more real friends than almost anyone I've known—and I know many of you made plans on short notice to travel several hours, or more, to get here, because you wanted to say one last goodbye to your friend, Al Smith.

But Al was always a very special friend to me, and to Lynda, and to everyone in our extended family. We always called him "Uncle Al". And if it hadn't been for Al Smith, I wouldn't be here today, because I don't think I could have been elected Governor without him.

Now he wasn't always a political supporter of mine. In fact, when I was a candidate for the party nomination for Lt. Governor, Al had another horse. He'd signed on with fellow Delegate Major Reynolds before I even started testing the waters—and when Al said he was committed—he was committed!

So when I came to Winchester, and Clarke and Frederick Counties, the man who took me around to meet all of the people I'd need support from was Dickie Dick—and that may be the only time Al and Dickie had different horses in a political race, but once the primary was over Al and Dickie "reunited", and they worked wonders.

When it came time to start running for Governor, however, (which is usually the first day after the previous election) Al was the first to volunteer, and he worked hard for four years to make it happen.

Now he didn't elect me all by himself. In fact there are many in this church today (most having become lifelong friends) who were also instrumental. But Al was part of a little troika of very special friends, who rewrote the books on political support and fundraising. Alan Diamonstein, who's here with his wife, Beverly, from Newport News, and Bill Thomas, who's undergoing serious surgery and can't be here today, teamed up with Al Smith to form the most potent fundraising machine that the state had ever known in the 20th Century.

Everybody referred to the two Al's as "Big Al" and "Little Al", but nobody was ever sure which Al was which. But they were a team, and they did it better than anyone else.

I remember a meeting in late 1980, at an apartment that Lynda and I rented in Richmond while I was Lt. Governor, when Al proposed a "little party" (he called everything a "little party") at Berkley Plantation for \$5,000 a couple (now remember this was almost 30 years ago) and Josh Darden, a major business leader in Tidewater, said "Al, you're never going to get \$5,000 a couple for a fundraising event: people just won't do it."

Of course they did do it—and their next fundraiser was for just 12 people at \$25,000 a PLATE! And that was down in far Southwest Virginia when the coal companies were able to afford it. Amounts like that were unheard of. Then, when I agreed to run for the Senate in 1988, they put together the first million dollar fundraiser in Virginia history (or most other states for that matter).

Al loved this area—and every part of our Commonwealth, but he had a special affinity for the folks down in the hills and hollers of Southwest Virginia. Folks like Edgar and Evelyn Bacon, Billy Thomas, Alciberry Mullins, Jim and Emma O'Quinn, Fotsie Pratt, and so many more. The most colorful fellow of all always wanted you to visit late at night and share a bottle of tequila—and we couldn't leave until we'd gotten to the worm in the bottom of the bottle! They were some of the most unforgettable people I've ever met, and after Al had



a little "prayer meeting" with them they'd give you the shirt off their back. Those friendships last for a lifetime.

He liked being the "go to" guy. He liked to bring people together. He loved to tell everyone that if he couldn't get it for you, you didn't need it. With that twinkle in his eye and that broad impish grin, he'd call all of the women "sugar" and all of the men "partner"—or sometimes "pard". He had a keen sense of justice—and he always knew what was right and wrong. He'd be explaining someone's plight to me and say "that's just not right".

When he'd recommend someone to me for an appointment he'd almost always say they were "over qualified".

If ever there was a patron saint of law enforcement officers, at the state and local levels, it was Al Smith. The number of sworn police officers you see here this morning is not required. They're here out of genuine respect and affection for this man. Even after his stroke, when I visited him with the sainted Johnnie Hardesty, from whom you'll hear shortly, he loved to put on the State Troopers hat he'd been given. Until his stroke, even after both of us were out of office, every time I came to town he'd make sure "his" officers took good care of me—and he always took good care of them.

He knew personally almost every member of Virginia's Finest, from the State Superintendent, who was usually appointed on Al's recommendation, to the newest rookie, and they loved him. They were his troopers and his sheriffs.

Most of the folks who are younger probably never knew Al had been a star athlete in track and football at Handley High School, or that he'd amassed a string of Tastee-Freezes in three states, but they knew he'd stand up for the little guy on principle every time. He always advised me, or anyone else tackling a tough decision that, "it's got to feel right"—and "you've got to be comfortable with your decision, in your gut, or it's not the right decision."

Now that doesn't mean that he didn't like to rub shoulders with fancy folks—like the Apple Blossom Celebrities—or the John Klugies of the world. One of the most enduring, and endearing, stories about Al was when he and the other members of the troika got invited to a "shooting" party at the estate of John Kluge - outside of Charlottesville. John Klugie was then believed to be the richest man in the world.

Bill Thomas, always the aristocrat, and Allan Diamonstein, always impeccably dressed, both arrived in very fashionable English shooting attire - and Al arrived in a bright blue jump suit with the words "Tastee-Freez" emblazoned on the front pocket. Bill Thomas was speechless, and Allan Diamonstein was so overcome with laughter that he couldn't speak.

The host, John Klugie told Al he'd send off to Scotland for some woolens to make him a proper "shooting" outfit, but Al was not deterred and spent the entire day on the elegant Klugie Estate firing away in his blue Tastee-Freez jump suit!

Al was truly "one of a kind". His passing marks the end of an era—and a consistent effort to put the people's business first and to reach across party lines. Many of those I respect and admire most were first introduced to me by Al Smith. I hope the spirit that Al brought to the General Assembly—and to everything he did—will again take root in Richmond, and throughout his beloved Commonwealth.

Al gave hope to more people than we can ever imagine. "Easter" is about "hope"—and Al hung on until early Easter morning. Nice timing Al!

And thank you Margarette and Skip and your family, and all of Apple Blossom Country, for sharing him with us.

The Honorable Charles S. Robb served Virginia both as Governor and U.S. Senator. Governor Robb delivered this eulogy at Al Smith's memorial service. ▮

Commemorating Mitch Van Yahres By TOM HYLAND

Former Delegate Mitchell (Mitch) Van Yahres passed away on February 8, 2008 of complications from surgery for lung cancer. Van Yahres, 81, who represented the City of Charlottesville and Albemarle County, served in the Virginia House of Delegates for 24 years (1981–2005) including a period as Chair of the House Agriculture and Natural Resources Committee, as well as having served two terms as a city councilman and two years as Mayor of Charlottesville. He was seventh in seniority in the House of Delegates when he retired.

Frequently lauded as the “Conscience of the House of Delegates,” Van Yahres also was well known for the rare political trait of being willing to champion an unpopular cause when he firmly believed in that cause. University of Virginia Political Science Professor Larry Sabato, the nationally renowned political policy pundit who knew Van Yahres for many years, has been quoted as describing Mitch Van Yahres as “...the original progressive,” “an exceptionally joyful fellow...well-liked in the Democratic Caucus,” and “...a different kind of legislator. How many tree surgeons are there in the Virginia General Assembly? Mitch gave a good name to politics. You could agree or disagree with him on the issues, but you never doubted that he was sincere, well motivated and totally honest. How many people are in politics for almost a half-century and never have their integrity seriously questioned?”

Bob Gibson, longtime capital reporter for the *Charlottesville Daily Progress* depicted Van Yahres as “a progressive voice and a joyful political warrior.”

Father Gerald Fogarty, Van Yahres’ priest, who was among several persons who celebrated a Mass for Mitch, described him as “...an arborist [who] tended trees and cared for people.” According to Gene Corrigan, former athletics director at the University of Virginia and a friend of Van Yahres, [Mitch]... took all of his tasks seriously, but one of his greatest advantages was [that] he didn’t take himself too seriously.”

Fairfax County Delegate Ken Plum (and a long time friend of Mitch Van Yahres) said of Van Yahres that “he did not fit the mold [of a politician]..., but we like to remember [that Mitch] was a leader. He was a trailblazer. He advocated for positions that are so commonplace today that we sometimes forget he helped introduce them: urban forests; walkable cities; early childhood education, and smoke-free environments. Unlike many in our political life today,” said Plum, “... [Mitch] saw the worth in every person; he never bashed immigrants or gays or lesbians, rich or poor, young or old. He was a liberal and never apologized for it. He was a deeply religious person; not that he ever toted the Bible or quoted scripture, but in his everyday life he demonstrated by the way that he lived that he was a Man of God.” Plum also noted that Mitch Van Yahres “...was more interested in our universities being inclusive than being elite.”

Paul Harris, a former Republican delegate from Albemarle County, praised Van Yahres as “...a likeable fellow and respected political maverick whose sense of decency and core commitment to public service extended well beyond political boundaries. I think that is his

legacy.” Harris also commented that “Mitch had a wonderful sense of humor and deep passion for the principles that infused his daily politics. He cared honestly and sincerely about voiceless people, so he dared to speak for them in the halls of power.”

G. C. Morris, a well known Virginia speech writer and editorialist (and Mitch Van Yahres’ first legislative aide) depicted Van Yahres as “the most remarkably optimistic human I have ever met. As a state legislator, Charlottesville made him possible. Mitch always marched to his own drummer according to his own values. He simply voted how he believed and because he was from Charlottesville, that was OK. He was as genuine person as a politician. He had a point of view that wasn’t particularly common to Virginia, but it endured.”

Albemarle County Supervisor Lindsay G. Dorrier, Jr., described Van Yahres “...as a good man who always did the right thing. He stood for treating all black people equally at the table even (during the time period) when it wasn’t the popular thing to do that. That’s one of the things that I always admired most about Mitch. He had the courage of his convictions.”

Keith Van Yahres, Mitch’s son, stated that his father not only wanted to make things fair and just, but “was a man of passion and integrity. He noted that “One of Dad’s causes was not founded in some deep-rooted theological belief; he recycled because he was cheap. My notes today are written on recycled House of Delegates stationery, which he used on his printer. And, it’s not even his [own] letterhead.

Dad saved everything...Well before glass recycling was in vogue; Dad got a glass cutter and...cut the tops off the [glass] jars to make drinking glasses. He even recycled trash bags.”

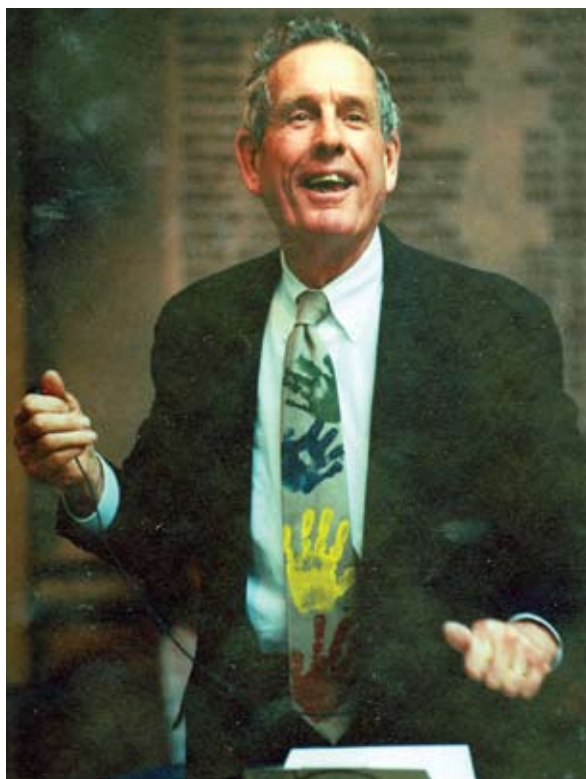
After the Mass, former Delegate James B. Murray of Earlysville, a longtime friend, was quoted as describing the service as the “happiest funeral that I’ve ever been to.”

On the Monday following Mr. Van Yahres’ passing, State Senator Creigh Deeds of Charlottesville requested that the Senate of Virginia adjourn that day in the memory of a good friend and colleague:

Mitch Van Yahres. Senator Deeds noted that: “A more kind, gentle, jovial fellow never walked this hall. Mitch was the champion for the damned and desperate, the downtrodden, the forgotten, and the unpopular. He was a man of the people; he was a fighter to the end. He never quit; He never gave up. He was the happy warrior.”

Mitch Van Yahres was born and raised in Long Island, New York, served in the U. S. Army Air Corps, and attended and graduated from Niagara College and Cornell University. He moved to Charlottesville in 1949 to care for the trees at Monticello, a business that he inherited from his father. Mr. Van Yahres was survived by his wife, Betty, whom he married in 1948, three sons (Mike, Mark and Keith) two daughters (Peggy and Elizabeth—and Elizabeth’s, husband, Bryan Nave), eleven grandchildren, and three great grandchildren.

Tom Hyland is the Editor-in-Chief of Virginia Capitol Connections. ▮



In Memoriam—Four Former Legislators—continued

Senator James Telford “Jim” Edmunds

By CHRISTIAN RICKERS

Former Senator James Telford “Jim” Edmunds a Democrat representing the 17th district from 1971-1979 died of a brain tumor in late February with his wife (Harriett) and family by his side. He was 76.

In 1970 J. Sergeant Reynolds, the Lt. Governor and likeminded progressive, urged Edmunds to seek election to the Virginia Senate. At the time Edmunds was town attorney in the Lunenburg County town of Kenbridge. He was successful in the 1971 Democratic primary defeating longtime incumbent Sen.

Joe Hutchinson (D-Lawrenceville) in the district stretching from the North Carolina Line to Western Chesterfield near Richmond. He had no opposition in the General Election. Senator Edmunds was re-elected in 1975 defeating Jack Lewis III (R-Powhatan) and Shelton Short III (I-Chase City). They received 44%, 40% and 16% respectively with opponents outspending him nearly 9–1. Short spent over \$100,000 on the race. Edmunds served on the Senate Committee on Rules; Agriculture, Conservation, and Natural Resources; Education and Health; General Laws; and Rehabilitation and Social Services. He also served as the chairman of the Joint Legislative Subcommittee on Alcohol and Drug Abuse.

Jim Edmunds worked hard to promote racial reconciliation in the Southside Virginia District, an area reeling from the preceding desegregation battle. In 1979 Eva F. Scott, a conservative Republican can Delegate from Amelia defeated Edmunds. She ran an aggressive campaign and won the more populous areas close to Richmond. Scott upset Edmunds by 886 votes of the 36,000 cast to become the first woman elected to the Virginia Senate.

Jim Edmunds was often mentioned as a potential successor to 5th district Congressman Dan Daniel, but legal troubles prevented his political ascent. In 1988 he faced prosecution, pled guilty and fully cooperated with authorities. After paying restitution, his civil rights were restored and the Virginia Supreme Court reinstated his law license. He practiced law with McEachin & Gee in Richmond before his retirement to the Outer Banks of North Carolina in 2003.

Christian Rickers has joined the David Bailey Associates team and serves as Assistant Editor of Virginia Capitol Connections.



Delegate George P. Beard, Jr.

By ED SCOTT

Former Delegate George P. Beard, Jr. was many things to many people. He was a native son of Culpeper, a veteran, a banker, a respected community leader, and he was our Delegate for five terms starting in 1978. His leadership and his service to the community began decades before he was elected to the General Assembly. His influence in Culpeper continued long after his legislative and professional retirement.

He contributed to and led numerous community organizations including the Chamber where he served as President, the hospital which he helped found and was Chairman of its Board of Trustees, as well as the Culpeper Presbyterian Church where he was an Elder and a Trustee. He was President and Chairman of the Board of Second National Bank and served a term as President of the Virginia Bankers' Association. He lent his business acumen and community knowledge to other local businesses, serving as a Director of the Culpeper Broadcasting Corporation and the Culpeper Agricultural Enterprises.

When you follow in the footsteps of someone like George Beard, serving in the House of Delegates is not just a political exercise; it is a responsibility to be the face and voice of your community in the state capitol. The first vote that I ever cast for a member of the House of Delegates was for George Beard. It remains one of the best votes I ever cast.

Another of my predecessors, former Delegate John J. “Butch” Davies, III shared in an e-mail that “losing George is the passing of an era.” Our community, banking, and the General Assembly have all changed in the last twenty years. While not all of the changes have been for the best, clearly all three are better from the service and leadership of George P. Beard, Jr.

The Honorable Ed Scott represents the 30th House of Delegates District including Culpeper, Madison, and Part of Orange Counties.



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Commending Resolutions

By **BONNIE ATWOOD**

They say that newspapers are the first draft of history. One can add magazines, television, and now the Internet. Textbooks and epics come much later. But there is an often-overlooked source of fascinating, far-reaching, and accurate state historical data and commentary: the commending resolutions. From tragedies to tributes, almost every major event or personality of our time and place is represented by a commending resolution.

These commending resolutions, formally introduced and passed by either the Virginia House of Delegates or the Virginia Senate or both, are sometimes called memorializing resolutions. They do not become laws; they become official expressions of sentiments of the majority of the members of the legislature. These resolutions can have great symbolic significance. They can celebrate, or mourn, a person, an institution, or an event.

Tech

In the General Assembly of 2008, perhaps the most touching commending resolution is Senate Joint Resolution No. 154, which enters into permanent record the names of all those who died at Virginia Tech on April 16, 2007. All of the names are listed at the top, which calls upon all of us to “celebrate the lives” of these individuals. The resolution is eloquently written, drawing in part from the words of poet and Tech professor Nikki Giovanni. In the form of a resolution, the document states half a dozen “Whereas’es,” which state the facts, and finishes with a “Resolved.” In this case, it is “Resolved further” that each family will be presented with a copy of the resolution.



Indeed, many a parlor in Virginia displays a beautifully matted and framed copy of a commending resolution. These documents are not given out lightly, and those to whom they are bestowed are justifiably proud.

Massive Resistance

A student of history can gain a wealth of information through review of resolutions, now readily available on the Internet (<http://leg1.state.va.us>). One can trace, for example, some of the events and key names linked to Massive Resistance, Virginia’s period of steadfast resistance to racial integration. Just this past session, for example, House Joint Resolution No. 139 was passed to commend Dr. William Ferguson Reid, an African-American surgeon, born in 1925, who went on to establish a medical practice in Richmond. The resolution tells us that Dr. Ferguson was rejected for membership in the medical society due to his race, and he “led the fight to desegregate medicine in Richmond,” opening doors for African-American physicians to membership in local, state and national medical education associations. He made contributions in other ways as well, including serving three terms in the Virginia House of Delegates.

Another fascinating resolution to read is House Joint Resolution No. 423, which celebrates the life of the late Thomas Roswell Mayfield, an educator, and a contemporary of Dr. Reid. In 1951 Mr. Mayfield was a high school teacher during the student strike to protest the inferior public education for African-American students that became part of the famous lawsuit, *Brown v. Board of Education*. When Prince Edward County Public Schools were closed in 1955 to avoid desegregation, Mr. Mayfield was forced to seek employment elsewhere. He returned in 1963 to work in “Free Schools for Blacks,” established to educate African-Americans after the closings. He taught in public school when they reopened in 1964.

Look back into earlier resolutions and you will see Virginia’s “expression of profound regret” regarding Massive Resistance. House Joint Resolution No. 613, passed in 2003, 50 years after the *Brown* case, recounts the five-year period of school closings, and remembers the students deprived of their education. The resolution goes on to state that “the population will learn from history and will reject absolutely any such discriminatory practices in the future.”

The following year saw the passage of Senate Joint Resolution

No. 73, which designates 2004 and 2005 as “*Brown v. Board of Education* Years” in Virginia. This resolution provides the relevant references to the Declaration of Independence, describes the doctrine of “separate but equal,” and lists numerous court cases which played a major role in *Brown*. House Joint Resolution No. 20, passed in 2004, commends the Prince Edward County School Board for being “poised to begin healing old wounds from the days of segregation by awarding more honorary diplomas in the summer of 2004 to remaining students of the ‘lost generation.’” The resolution offers some valuable history dating back to 1915 and the Supreme Court cases that “commenced the demise of Jim Crow Laws.”

September 11

Virginia resolutions also express our collective sadness over the events of September 11, 2001. The following General Assembly session passed House Joint Resolution No. 112, honoring the Virginians who died as the result of the terrorist attacks. The resolution cites the “inexcusable attack on the United States, causing great destruction and horrific human suffering.” It calls the effect on Virginia “devastating” because of the Pentagon attacks, but also names the attacks in New York and Pennsylvania. House Joint Resolution No. 19 designates September 11 as “Virginia Police, Fire, and Rescue Services Memorial Day.” There are similar resolutions commending other services, such as United Way, American Red Cross, and Salvation Army.

Individuals, Institutions

Individuals can be commended and memorialized for outstanding things that they have done, such as serving in military service or competing in Special Olympics. Often it is a group of people who are honored, such as the Organized Women Voters, based in Arlington County. This year the OWV was commended for celebrating its 85th year of serving women voters—dating back to when suffrage was attained. OWV boasts Eleanor Roosevelt as one its early guest speakers.

Sometimes a town or locality is honored in a resolution. The Town of Potomac reached its 100th anniversary this year. You’ll find new and old resolutions commending Boy Scout troops, Little League teams, and service groups, such as Bread and Water for Africa. Some are funny; some are sad; all are important glimpses into what 21st Century Virginians consider to be important people, ideas, and events.

Bonnie Atwood is an award-winning freelance writer, working for Tall Poppies Freelance Writing LLC. She can be contacted at atwood@tallpoppiesfreelance.com. ▮

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Celebrating FOIA's 40th Birthday By ERIN BENDER

On July 1, 2008, the Virginia Freedom of Information Act (commonly referred to as FOIA) will celebrate its 40th birthday.

Virginia legislators celebrated FOIA's 40th birthday during the 2008 session by passing a total of 21 bills amending FOIA. Nine bills created seven new exemptions for records, three bills added new closed meetings exemptions, and 11 bills amended existing provisions of FOIA. Records which are now exempt include certain records concerning fundraising and donors from public higher education institutions, confidential documents provided to the State Health Commissioner by insurance carriers, and information related to active investigations conducted by or for the Board of Education that relate to the denial, suspension, or revocation of teacher licenses. Meeting exemptions include certain meetings of the VA Military Advisory Council, the VA National Defense Industrial Authority, and local or regional military affairs organizations that are appointed by local governing bodies. All of these changes, if signed by Governor Kaine, will take effect on July 1, 2008.

Legislators also referred bills to the Freedom of Information Act (FOIA) Advisory Council, and the Council will be conducting studies of these bills during the 2008 interim. HB 858 (Ebbin) and SB 647 (Ticer) would create exemptions for records that are used to identify individuals who choose to donate or loan personal property for displays in publicly owned museums. SB 529 (Houck) would protect access to personal information of Virginia citizens who carry concealed handgun permits; this information would still be available to law-enforcement agencies, officers, and agents, and non-identifying statistics would still be available to the general public.

In my opinion, one of the most pressing threats facing access to records and personal information is identity theft. We see references to identity theft in certain credit card commercials, and all Americans want to ensure that their personal information is kept private and can't be accessed by those who wish to steal it and do harm. Virginia legislators did take steps toward protecting personal information and Social Security numbers during the 2008 session; however, bills that would create new

exemptions to FOIA were not brought to the floor of the House of Delegates but were referred to the FOIA Advisory Council for further study. While it is important to conduct further study on potentially controversial bills, it's unfortunate that these bills did not receive a vote during the 2008 session.

The proposed amendments illustrate two general arguments about FOIA. While citizens should have access to government because government is established to serve the people, there is a legitimate need to protect some private information, such as Social Security numbers. Protection of certain private information is needed to ensure that others are not using this information to conduct identity theft or other illegal operations. However, it is important for government to realize when protection has gone too far— all information cannot be concealed or the idea of open government would just be a pipe dream.

Overall, as FOIA's 40th birthday approaches, it is important for citizens to remember to access their FOIA rights when necessary. Citizens can access governmental records and open meetings unless exceptions have been stipulated in FOIA. As of February 29, 2008, the FOIA Advisory Council had

Continued on next page.

Help End Family Violence— Purchase Kids First License Plates

The Family and Children's Trust Fund (FACT) of Virginia supports programs designed to bring an end to family violence through public/private partnerships and collaboration by providing funding to community based organizations offering programs in family violence prevention, treatment and public awareness activities. These programs serve those affected by child abuse and neglect, adult abuse, neglect and exploitation, domestic violence, dating violence and suicide. Funds for these grants are secured through two main sources: KIDS FIRST License Plates and the Virginia State Income Tax Check-off Program. Direct donations are also accepted. For more information about what FACT is and how you can help, please visit www.fact.state.va.us.

If you or the organization needs local or additional information please have them contact:

Fran Inge, Executive Director
The Virginia Family & Children's Trust Fund
7 North Eighth Street,
Richmond, VA 23319
Phone: (804) 726-7604
Website: www.fact.state.va.us
E-Mail: familyandchildrens.trustfund@dss.virginia.gov



Politics, religion a bad mix By MICHAEL PAUL WILLIAMS

Either we need to elect an atheist as president, or we need to push the preachers and piety out of politics.

Politics and religion are an unholy alliance, to say the least. But political candidates have become convinced that they can't win unless they thump a Bible and pump up the volume on their faith bona fides.

The nasty falling-out of the Rev. Jeremiah Wright Jr. and Democrat Barack Obama illustrates the pitfalls of mingling politics and the pulpit.

Heading into tomorrow's primaries in Indiana and North Carolina, Obama again sought to distance himself from Wright's remarks last week at the National Press Club, describing them as "divisive hateful language" on NBC's "Meet the Press" yesterday.

"These connections between religion and a specific campaign are fraught with peril," said the Rev. Barry W. Lynn, executive director of Americans United for Separation of Church and State.

What's not clear, Lynn said, is whether the public wants to know as much about a candidate's faith as is being revealed.



They shouldn't. It's irrelevant. The two most pious U.S. presidents of the modern age are the born-again Democrat Jimmy Carter and Republican George W. Bush.

The two worst presidents of that era not nicknamed "Tricky Dick"?

Carter and Bush.

If a politician is moral, ethical, competent and wise, why should we care whether he's got religion

or not?

But Wright isn't the first minister to be politically incorrect.

In the aftermath of the Sept. 11 attacks, the Rev. Jerry Falwell pointed the finger of blame at pagans, feminists, the ACLU, and gays and lesbians, among others.

The Rev. Pat Robertson concurred. And politicians continued to seek their blessing.

More recently, John McCain, the presumptive Republican nominee for president, has largely gotten a pass on his endorsement courtship of the anti-Catholic televangelist, the Rev. John Hagee, who called Hurricane Katrina God's punishment to a sinful New Orleans.

Obama, meanwhile, can't win. Some of the same religious bigots who called him a

closet Muslim and conflated him with Osama bin Laden and Saddam Hussein are gleefully damning him for his association with the Christian Wright.

It needs to stop. Politics and religion are both diminished by their association with each other.

Frankly, I don't care what Hillary Rodham Clinton's favorite Bible verse is. Faith is not a legitimate political issue.


"When you think about it, there's no reason for presidential candidates to have religious advisers," Lynn said. "Presidents don't do anything about religion. We have a secular country."

Lynn said only one question about religion really matters: How, if at all, will a presidential candidate's religious beliefs affect his or her policies?

There's only one correct answer, as far as he's concerned. A president should build policies within the constraints of the Constitution, "which essentially means you can't impose your religion's beliefs on others."

If you can't do it while president, please don't do it during your campaign.

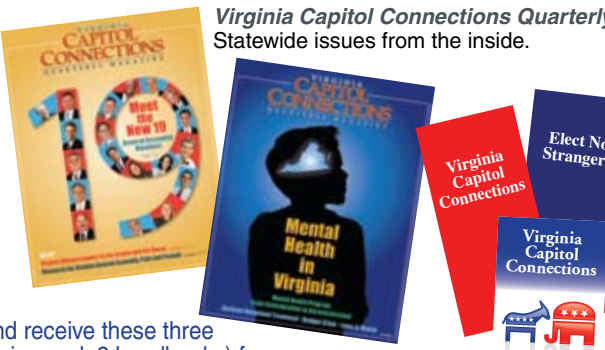
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issued 417 informal opinions concerning FOIA provisions to local government, media, and citizens. However, how many citizens actually know that they can contact the staff of the FOIA Advisory Council year-round if they have questions about their rights under FOIA? More Virginia citizens need to be aware of these rights and need to be willing to question when rights are denied. After all, FOIA and its subsequent amendments serve the citizens of Virginia. If citizens don't utilize their rights under FOIA, who will ensure that Virginia government remains open?

Erin Bender, a 2008 graduate of Randolph-Macon College, served as an Intern with David Bailey Associates from February to May 2008.



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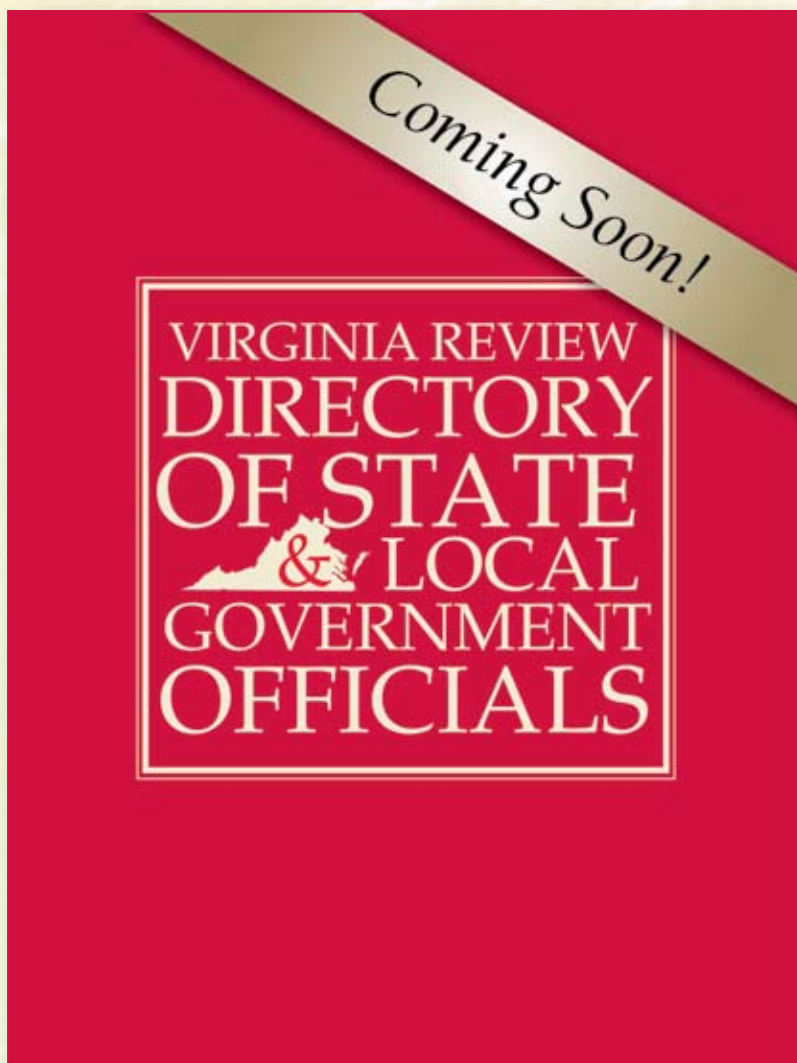
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New Market Tax Credits: Successful Development Funding in Virginia

By LAWRENCE P. MALONE

At \$18 billion dollars, the New Market Tax Credit (NMTC) program is one of the federal government's largest community development incentive programs. However, the program is not well known, and to those not familiar with it, it can appear both complicated and daunting. Despite the complications, for qualifying projects, the benefits of NMTC financing can be dramatic: often being the difference between a project that is financially feasible and one that only remains an interesting idea. Across Virginia, NMTC funding is beginning to have a real impact on communities. Furthermore, the Virginia Department of Housing and Community Development (DHCD) has taken steps to help potential borrowers work their way through the program complications.

Favorable loan terms

Through the NMTC program, qualifying community development projects can receive funding on very favorable terms. Typically the loans are structured with interest rates significantly below market rates—often the rates are about half of the rate a commercial bank would charge. The loans generally have a seven year term with *interest only payments*. In some cases, at the end of the seven year period the borrower is only required to repay approximately 75% of the loan amount.

Most businesses—both for-profit and not-for-profit—are eligible NMTC borrowers. Government entities are not eligible NMTC borrowers. Generally the NMTC loans can be used for land acquisition and improvements, and construction and/or renovation. In general, the loans are not available for operating or working capital or for equipment purchases.

There are two primary criteria that determine project eligibility for a NMTC loan: The project must be in a qualifying census tract and the project must have a significant benefit for low and moderate income populations. Benefits are typically measured in terms of creating or retaining jobs; adding to the local tax base; stimulating further economic and community benefit in the community; and/or providing services such as health care, education, training or basic consumer products such as groceries to low and moderate income populations. A unique aspect of the NMTC program is that unlike most other federal development incentives there are no formulas for measuring benefit. Each potential borrower has the opportunity to make its own case to the lender as to how and why the project will benefit the community.

NMTC loans are made by a new type of financial institution established by the NMTC legislation. These financial institutions are known as Community Development Entities (CDEs). Many, but not all CDEs are affiliated with commercial banks. In Virginia two of the most active CDEs are affiliated with SunTrust Bank and with Wachovia. In addition, the Norfolk Redevelopment and Housing Authority (NRHA) has established a CDE, known as Hampton Roads Ventures, that operates throughout the Commonwealth.

The Department of Housing and Community Development Role

DHCD, recognizing that relatively little of the federal NMTC lending was coming to projects in Virginia, retained Kaufman & Canoles Consulting (KCC) to provide direct technical assistance to any NMTC eligible project in the State to apply for NMTC funding. KCC works directly with eligible projects and with CDEs to help structure transactions and to bring NMTC loans to Virginia businesses.

Sample projects

Currently, KCC is working with Holston Medical Group to arrange approximately \$12 million in NMTC financing for the expansion of a clinic in Duffield, Virginia in Scott County. The clinic expansion will allow Holston Medical to add four additional primary care physicians in this rural and medically underserved community. In addition, the clinic will provide office and diagnostic space for several specialists that will use the facilities on a rotating basis. An additional feature of the project is the construction of an adjacent data base facility that will store and maintain the medical records for thousands of patients in the southwest Virginia / northeast Tennessee region. The data facility will bring approximately 40 high technology jobs to the community. The data facility will take advantage of the fiber optic cable installed in southwest Virginia by the Tobacco Commission. The NMTC funding for this project is relatively complicated, but KCC anticipates that the borrower will receive a below market interest rate and at the end of seven years will only be required to repay approximately 75% of the loan amount. KCC is working with Hampton Roads Ventures on this project. Virginia Community Capital, Inc. (VCC) is also bringing a key portion of the project financing.

KCC helped the CDE affiliated with SunTrust Bank to identify a NMTC project in Salem, Virginia. Through the NMTC program the SunTrust CDE provided financing to the Southwestern Virginia Second Harvest Food Bank, Inc. (www.swvafoodbank.org) to acquire a 98,000 square foot food warehouse it had been leasing. By acquiring the facility, the food bank was able to markedly reduce its monthly operating costs which in turn allowed it to devote more of its resources to acquiring and distributing food through southwestern Virginia. This transaction was structured as a low interest loan, with a rate at about half of what it would have been had it been structured through conventional sources with no origination fees. Without the NMTC financing, the food bank would not have realized the savings that allowed it to continue its operations.

The SunTrust CDE used a NMTC loan to encourage and assist a for-profit company to locate and expand in an economically distressed area of the City of Norfolk near the airport. The SunTrust CDE made a loan of approximately \$10.2 million to BLACK-HAWK! to acquire several acres and to construct a 65,000 square foot building. The loan was made at an interest rate substantially below market rates with no origination fees, and interest only payments for a seven year term. With this expansion, approximately 100 existing jobs have been maintained and 200 new jobs added.

Conclusion

NMTC funding can be complicated and confusing and it is not appropriate for all community development projects. However, for the projects for which it is a good match the results can be dramatic. A project that would not be financially feasible with conventional financing is suddenly doable. Resources are available to help businesses, developers, and communities to determine quickly and easily if the project they have in mind could be a good fit for the NMTC requirements. For further information, please contact Larry Malone. Kaufman & Canoles Consulting 703/709-1066 or lpmalone@kaufcanconsulting.com

Lawrence P. Malone is the Director of Economic Development Financing Strategies at Kaufman & Canoles Consulting. ■



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