

State Legislative Priorities

2021 Session

Virginia General Assembly

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2021 LEGISLATIVE REQUESTS

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LEGISLATIVE REQUESTS

I. Constitutional Amendment ~ Authority to Grant Perpetual Easements to Units of Government.

Amend Article VII, Section 9 of the Constitution of Virginia to allow, definitively, the granting of perpetual easements between public bodies and units of Federal, State, and/or Local government. This amendment would add to Section 9 the following language:

Notwithstanding the foregoing, or any other provision of law, an easement on public property may be granted in perpetuity to a public body, political subdivision, or authority of the Commonwealth of Virginia, or to the United States of America or any of its departments or agencies. The requirement to advertise and publicly receive bids shall not apply to easements conveyed to any of the aforesaid governmental entities.

Questions of local authority to grant such easements occur from time to time and the state regularly requires easements granted to be perpetual despite the current Constitutional language:

“No franchise, lease, or right of any kind to use any such public property or any other public property or easement of any description in a manner not permitted to the general public shall be granted for a longer period than forty years...”

State agencies cite a few Attorneys General opinions suggesting that the intent of Article VII, Section 9 of the Virginia Constitution is to prevent the permanent dedication of publicly owned property to private use, and not to limit easements to other public entities. The opinions suggest that in certain circumstances involving governmental agencies, the 40 year limit does not apply because the easements are not giving rights “in a manner not permitted to the general public,” or that the dedication of a permanent easement is tantamount to a fee simple sale of the property and thus permissible.

The proposed amendment will remove ambiguity and eliminate the need for localities to seek opinions on a case-by-case basis.

LEGISLATIVE REQUESTS

II. Refusal to Sign a Summons ~ Arrest Not Required

Amend sections 46.2-936 and 46.2-940 of the Code of Virginia, Motor Vehicles, to remove the requirement that a law enforcement officer arrest an individual who refuses to sign a traffic summons on a misdemeanor charge.

Section 46.2-936 deals with misdemeanor traffic offenses. It states:

“Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting officer before a magistrate or other issuing officer having jurisdiction who shall proceed according to the provisions of § 46.2-940.”

Section 46.2-940 proscribes when an arresting officer shall take person before issuing authority:

*“If any person is: (i) believed by the arresting officer to have committed a felony; (ii) believed by the arresting officer to be likely to disregard a summons issued under § 46.2-936; or (iii) **refuses to give a written promise to appear under the provisions of § 46.2-936, the arresting officer shall promptly take him before a magistrate or other issuing authority** having jurisdiction and proceed in accordance with the provisions of § 19.2-82. The magistrate or other authority may issue either a summons or warrant as he shall determine proper.”*

Placing an individual under arrest merely for refusing to sign a summons can quickly escalate into a much more dire situation, placing both the officer and the civilian in an unfortunate and unnecessary confrontation. When an individual refuses to sign a summons, the officer should have the option to indicate such refusal on the paperwork, provide a copy to the person, and conclude the incident. The City asks that the above referenced Code sections be amended to no longer require an arrest in this circumstance.

LEGISLATIVE REQUESTS

III. Enabling Legislation ~ Authorize Creation of Youth Court Programs

Amend the Code of Virginia, sections 16.1-260 and other applicable statutes, to allow localities to create and operate Youth Court programs.

Youth Court is a peer sentencing court for first-time juvenile offenders charged with misdemeanors or minor crimes. Youth courts are used as an alternative to the traditional juvenile justice system and provide communities with an opportunity to ensure immediate consequences to youthful offenders through a peer operated sentencing hearing that constructively allows the offender to take responsibility, be held accountable, and make restitution for violating the law. The goal of the program is to Intervene in early criminal behaviors to reduce incidents and prevent the escalation of such behaviors. Youth Court programs allow young people to participate in problem solving and decision making, while gaining pertinent knowledge of the juvenile and criminal justice systems. The philosophy behind youth court is that young people who are fairly judged and sentenced by their peers and who actively take responsibility for their actions are significantly less likely to re-offend. Youth court volunteers serve as advocates and jury members and an adult (usually a sitting judge or attorney) serves as judge. The adult judge presides over the hearings and approves of any sanctions recommended by the jury.

IV. Budget Language ~ Amend Item 462 to reflect the 2010 Consolidation of Langley Air Force Base and Fort Eustis into Joint Base Langley Eustis.

Amend Paragraph A, number 4, line b by striking the title “Langley Air Force Base” and adding the title “Joint Base Langley Eustis”. The joint base was established in 2010 in accordance with congressional legislation implementing the recommendations of the 2005 Base Realignment and Closure Commission. The legislation ordered the consolidation of the two military installations into a single Joint Base under Air Force control.

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1. **Broadband Access and Affordability**

Now more than ever, the commonwealth must insure that all Virginians have access to high-speed internet. Broadband has become the backbone that supports how we work, learn, care for ourselves, and participate in our government and in the economy. COVID has underscored the urgency to attain access for all, but the need will only continue to grow well beyond the time of the pandemic. Although Virginia has a set goal of universal coverage by 2028 and has prioritized broadband funding and policies to speed deployment, the vast majority of the work towards coverage is directed at building infrastructure. Broadband grant programs like the Virginia Telecommunication Initiative (VATI) help to build much-needed projects and connect Virginians in unserved areas of the state. However, providing infrastructure is only part of the problem.

Even where infrastructure is present, many families cannot afford internet service that will allow them to participate fully in online education, telemedicine, telework, government, or e-commerce. What seems to be missing from the commonwealth's plan are resources and tools to address broadband affordability. The General Assembly should address the issue of broadband affordability with the same zeal with which it approaches infrastructure. Some suggestions for doing so include: (1) fund a State grant program to address affordability in areas of the commonwealth where infrastructure is in place, (2) amend the State code to allow localities to provide broadband service, (3) create an incentive program for public/private partnership that address affordability, and/or (4) expand or bifurcate the existing grant programs to include affordability as an acceptable use of funds.

2. **Local Regulatory Authority**

The City of Newport News urges the General Assembly to preserve local authority and to oppose legislation that preempts the authority of localities to determine the regulatory framework that best serves their community. This request applies to all legislation whether the issue is wireless infrastructure, ride-sharing, home-sharing, fireworks or any other. Although Virginia adheres to the Dillon Rule which gives

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localities only those powers expressly granted by the Commonwealth, it is a generally accepted principle that “what works” in one City or area of Virginia may not work in others. However, there is a persistent trend in recent legislation to remove or restrict local government authority, particularly in the realm of zoning and land use decisions. Such bills are typically drawn without regard for the local impact or unintended consequences that can occur to the health, welfare, and safety of the community. In some cases, compromises have been reached to balance the interests of all concerned. In other cases, the outcry of multiple stakeholders has been insufficient to prevent the blanket application of one-size-fits-all legislation. Newport News welcomes new and innovative technologies and businesses and tries to do so in a way that best serves the community as a whole. The General Assembly should support localities by not enacting legislation that erodes local regulatory authority.

3. State and Local Fiscal Relationship

Local governments are the unit of government closest to the people. Cities have locally-elected governing boards and provide most of the direct services to citizens. Public expectations of services continue to increase while local revenue streams, which are heavily dependent on property, sales, and other taxes, are limited. In order to maintain the efficient and effective delivery of services, local governments must rely on sound policy and practice at the state level. With that in mind, the City asks that the General Assembly:

- ♦ Refrain from creating unfunded mandates
- ♦ Not adopt tax relief programs that use local revenues
- ♦ Fully meet the State’s financial commitment to programs and services it deems essential; and
- ♦ Reject legislation that will negatively impact local government revenue streams and/or cause the tax burden to be shifted to citizens

A very specific case of utmost importance to Newport News involves local business taxes. Every year Virginia lawmakers consider the supposed benefits of eliminating

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business taxes such as BPOL and Machinery and Tool tax. However, these are sources of LOCAL revenue; in Newport News, these two generate approximately 8.8 percent of the City's General Fund. In FY20 the City collected approximately \$26.3 million in Machinery & Tools taxes and \$18.4 million in BPOL. However, the burden to most businesses is relatively small: two-thirds of Newport News businesses pay a flat fee of either \$30 or \$50, based on their annual gross receipts. Only one-third of the City's businesses pay a tax based on their business activity and the tax rate for that activity. To offset the loss of BPOL and M&T revenue, the City would have to increase the real estate tax rate by a minimum of 28 cents. So, in order to compensate for the loss of local business taxes, which cost most businesses \$30 to \$50 annually, a home owner in the City's median home value range of \$182,757 would see increased real estate taxes of about \$570 annually. City residents should not be expected to bear the full burden for the cost of City services, such as public safety and education, which equally benefit residents and businesses.

Also, the General Assembly should fully meet their financial commitment to programs and services. A timely example of this is State Aid to Public Libraries. A formula for SATPL was established in 1943 but has been fully funded only twice, in 1989 and 2001. If fully funded this year, Newport News Libraries would have received approximately \$305,000 but instead received about \$189,900. The difference in funding could have provided 150 Wi-Fi hotspots that were desperately needed in underserved communities, especially now as COVID has left families reliant on internet access for education, healthcare, and employment. Finally, legislation that is designed to encourage developing technologies or industries should not include blanket exemptions from local taxation. Lessons learned from previous industries show that the developing science of today can become routine tomorrow. Exemptions erode the future tax base by shifting the burden to what become declining revenue streams.

4. K-12 Education

In its regular 2020 session, the Virginia General Assembly passed a budget that made significant investments in K-12 education. Unfortunately, the economic fallout from the COVID pandemic necessitated a rollback of those investments, leaving K-12 with many

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of the previous challenges and, as a result of the pandemic, a few new ones. In the 2021 General Assembly session, the legislature should:

- ♦ Provide hold harmless funding to offset declines in sales tax revenue which supports K~12
- ♦ Address school construction needs

In 2021 and beyond, it is very important that the General Assembly continues to make progress towards improving teacher salaries in the commonwealth. According to the National Education Association, Virginia ranks 32nd in teacher pay in the nation. And, teachers are paid 21.4% percent less than similarly educated and experienced professionals, according to a recent Economic Policy Institute (EPI) report. In 2017 the General Assembly voted for legislation that established a goal for Virginia teachers to be paid at or above the national average. The Newport News City Council encourages the State to develop a timeline for reaching the national average on teacher pay.

School Construction Funding - According to a 2018 report by the General Assembly Subcommittee on School Facility Modernization, it will cost \$3 billion to \$4 billion to modernize the State's schools. With many localities unable to provide adequate school construction funding, school divisions struggling to maintain facilities have been forced to divert money that could be used for student instruction to repairing aging roofs, windows, HVAC systems and more. The needs continue to grow and far exceed the resources available to address them. The General Assembly should fully support and fund the work of the Commission on School Construction and Modernization, created by SB888 which was approved in the 2020 Session. Additionally, the City supports amending the Code of Virginia to allow all localities the option of increasing local sales taxes specifically for the purpose of school construction and major renovation. Currently only Halifax and Mecklenburg Counties have this authority.

5. Communications Sales and Use Tax

The City of Newport News supports amending the Communications Sales and Use Tax (CSUT) to allow taxation of streaming and post-paid calling services. The City also

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supports increasing the CSUT to the prevailing State tax rate of 5.3 percent. The CSUT was implemented in 2007 and replaced most of the previous State and local taxes and fees on communications services. The 5% tax is generally collected from consumers by their service providers and remitted each month to the Virginia Department of Taxation who then distributes it to localities. The City of Newport News receives approximately \$11 million annually from the CSUT. Since its implementation, revenue each year has generally decreased. The decline may be attributed to the growing popularity of streaming services, which are not subject to the tax, and the exemption for pre-paid calling services. Eliminating these exemptions would not only increase the revenue generated by the tax but would also level the playing field for cable and cell phone service providers. The General Assembly should also consider aligning the CSUT rate, currently 5%, with the State's tax rate of 5.3% - a change which would generate an estimated \$24 million in additional revenue annually.

6. Economic Development and Redevelopment Incentive Programs

The City of Newport News asks that the General Assembly increase funding for existing economic development/redevelopment incentive funds such as the Commonwealth's Opportunity Fund and the Transportation Opportunity Fund. These incentives play a pivotal role in attracting, retaining, and expanding business. Programs that support redevelopment ~ such as the Industrial Revitalization Fund, Port Host Communities Revitalization Fund, and the Brownfields Restoration and Economic Redevelopment Assistance Fund ~ are especially important for Newport News because we are an urban City that is virtually fully developed. Grant programs that assist with redevelopment and rehabilitation will continue to be essential as we work to repurpose and redevelop strategic properties in the City.

Two programs that have been used frequently and with great success in Newport News are the Enterprise Zone Program and the Virginia Jobs Investment Program (VJIP).

Enterprise Zones ~ The General Assembly should provide sum-sufficient funding for the Enterprise Zone program. This program creates an improved climate for private sector

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investment, development and expansion in targeted areas by providing state grants and local tax relief. Two grant-based incentives are available, Job Creation Grants and Real Property Investment Grants. Newport News consistently ranks as one of top Enterprise Zones in the state, regularly placing at or near the top in grant dollars leveraged and total number of qualifying businesses. In the most recent grant year, Newport News businesses received 14 Real Property Improvement Grants totaling over \$1.4 million which generated over \$40.1 million in private capital investment in real estate. When the General Assembly fails to provide sufficient program funding, grants are then prorated across the board. In the most recent grant year, grants were funded at 83.9% of the original commitment. This proration significantly impacts the effectiveness of the program. The City of Newport News urges the General Assembly to provide the amount of funding needed to fully honor grant awards and maintain the effectiveness of this important economic development tool.

Virginia Jobs Investment Program (VJIP) - The General Assembly should provide funding of \$5 million for VJIP in FY21. VJIP provides services and funding to companies creating new jobs or experiencing technological change to reduce the human resource development costs for new companies, expanding companies, and companies retraining their employees. VJIP provides valuable assistance supporting workforce development at the local level and allows flexibility to meet specific needs of businesses. In Newport News, companies such as Huntington-Ingalls, Printpack, Muhlbauer, Fairlead Boat Works, Target Flavors, Ferguson, and S23 Holdings, LLC, have used the program to help meet their workforce needs and facilitate their expansion and growth. Given the competitive labor market in Virginia, it is vitally important that the General Assembly restore the \$5 million funding level.

7. Stormwater Local Assistance Fund

The City of Newport News supports an allocation of State funding of \$50 million annually for the Stormwater Local Assistance Fund (SLAF). Stormwater management is one of local government's most pressing infrastructure challenges. The SLAF, managed by the Department of Environmental Quality, supports the efforts of local jurisdictions

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to reduce polluted runoff by providing funding for matching grants. It also provides an effective path forward to improve water quality by maintaining a strong partnership between the Commonwealth and local governments. The SLAF prioritizes cost-effective, low-impact practices and projects which are structured, when possible, to attract additional private investments. From 2014 to 2019, the City of Newport News received SLAF grants totaling almost \$4 million to fund 10 projects. Continued investment in SLAF is needed to assist localities in developing effective stormwater controls on urban lands to reduce the flow of excess nutrients and sediments to local streams, rivers and the Chesapeake Bay.

8. Hampton Roads Transit Oversight

The Transportation District Commission of Hampton Roads (TDCHR) was established in accordance with Chapter 45 of Title 15.2 of the Code of Virginia, as amended, to provide reliable and efficient transportation services and facilities to the Hampton Roads Community. As the governing body for Hampton Roads Transit, TDCHR is currently comprised of 13 members: six Council representatives of the component cities, one citizen Commissioner from each component government, appointed by the Governor, and the Chairperson of the Commonwealth Transportation Board, or the Chairperson's designee. The City of Newport News supports TDCHR's request to add legislative members to the commission. Specifically, the City supports adding three legislative members, two from the House of Delegates and one from the Senate, to the Transportation District Commission of Hampton Roads. The City also supports TDCHR's request that expertise and experience in transportation, public budgeting and finance, corporate communications, or other fields relevant to supporting effective governance and oversight be considered when making gubernatorial appointments to the commission.

9. Hampton Roads Regional Jail

As a member jurisdiction of the Hampton Roads Regional Jail (HRRJ), the City of Newport News asks that the General Assembly increase funding for healthcare and

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mental health care in regional jails. The City strongly supports HRRJ's request for 20 additional jail officer positions each year for the next 4 years. Adding jail officers will increase the safety and security of the general population as well as the serious mental health inmates (SMIs). Both of these requests are based on a US Department of Justice agreement that requires HRRJ to increase its security guard force and to provide increased services for SMIs housed at the facility. Because hiring and retaining well-qualified jail officers can be a challenge, the City asks that the General Assembly support funding for competitive salaries for jail officers.

The State must also reimburse local and regional jails for the full cost of housing state responsible inmates. The current per diem rate for housing state-responsible inmates in local and regional jails is \$12, which does not approach the true cost of housing these inmates. The true cost, including staffing, is approximately \$124.23 per day according to the Compensation Board's FY17 Jail Cost Report. Furthermore, localities and regional jails should be included in discussions should the Commonwealth consider changing current practice regarding state-responsible inmates and their time served in local and regional jails. The Commonwealth should also fully fund regular jail per diem payments. Additionally, the Board of Corrections is considering enhanced behavioral health care regulations to apply to every local and regional jail in response to legislation approved by the 2019 General Assembly. The City supports necessary health care services and urges the State to provide needed funding for such services through either enhanced jail per diem payments or another funding mechanism that covers the additional costs to serve inmates with serious behavioral health needs.

10. State Assistance to Local Police Departments ~ HB 599

The City of Newport News asks that the General Assembly provide financial assistance to localities with police departments ~ HB599 funding ~ according to the distribution formula set in the Code of Virginia §9.1-165, et seq. Although the Code of Virginia sets out a distribution formula for calculating the amounts for eligible localities, in recent years the General Assembly has instead specified in the Appropriations Act that localities' allocations in a given fiscal year are to be based on a standard, across-the-board percentage increase or decrease from the previous fiscal year's allocations. The

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codified distribution formula has been superseded by the instructions in the Appropriations Act, resulting in funding levels far below what would occur from calculating HB 599 funds on even the anticipated revenue growth since 2000.

11. Hampton-Newport News Community Services Board

Newport News City Council supports the legislative requests of the Hampton-Newport News Community Services Board (H-NNCSB), including:

- ♦ STEP-VA ~ Restore \$30.2 million from the general fund in the second year of the biennium for services as part of STEP-VA.
- ♦ MARCUS Alert Programs ~ Provide \$3.0 million from the general fund in the second year of the biennium to fund grants to implement mental health awareness response and community understanding service alert system programs and community care teams in each of the Department of Behavioral Health and Developmental Services' five regions.
- ♦ Statewide Discharge Assistance Plans ~ Restore \$7.5 million in the first year and \$10.0 million in the second year of the biennium to fund statewide Discharge Assistance Plans (DAP).
- ♦ Allow Telehealth and Virtual Learning for Certain DD Waiver Services
- ♦ Restore DD Waiver provider rates for Group Homes, Sponsored Residential and Group Day Support using updated data ~ Restore \$10.7 million in the first year and \$22.0 million in the second year of the biennium from the general fund to increase group home, sponsored residential and group day support rates effective January 1, 2021.
- ♦ Restore DD Waiver rates for Community Integration Services ~ Restore \$3.7 million in the second year of the biennium from the general fund to increase Medicaid rates for community integration services.
- ♦ Restore Mental Health Provider Rates ~ Add \$2.4 million from the general fund in the second year of the biennium to restore funding for Medicaid rate increases for mental health service providers to 110 percent of Medicare rates.



The City of Newport News is a voting member of the Hampton Roads Planning District Commission, the Hampton Roads Transportation Planning Organization, and the Hampton Roads Transportation Accountability Commission. Unless otherwise stated, the City of Newport News supports the legislative agendas of these organizations.
