

ITEMS FOR CONSIDERATION
IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM
2021 VIRGINIA GENERAL ASSEMBLY
OCTOBER 27, 2020
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ITEMS FOR INITIAL CONSIDERATION

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PUBLIC SAFETY – STATE FUNDING FOR COMMONWEALTH’S ATTORNEYS

PROPOSAL:

Update and modernize state funding for Commonwealth’s Attorneys to reflect the goal of improving the criminal justice system.

SOURCE:

Fairfax County Board of Supervisors
September 22, 2020

BACKGROUND:

In Virginia, Commonwealth's Attorneys are Constitutional officers of the Commonwealth, elected directly by the voters. The Office of the Commonwealth's Attorney is charged primarily with the prosecution of crime (including criminal, traffic, delinquency, and felony cases). The Fairfax Commonwealth’s Attorney is elected by the voters of Fairfax County and Fairfax City, and is not an officer or employee of the County.

However, the overall underfunding of Virginia’s court system continues to place additional burdens on localities and the judicial system. Providing sufficient funding for the salaries of court personnel, including clerks, magistrates, Commonwealth’s Attorneys, public defenders, district court employees, and probation office employees, among others, is a critical state responsibility, but for years the Commonwealth has failed to adequately fund court personnel, instead relying on localities to ensure the efficient and appropriate administration of justice. As a result, the County provides substantial funding for additional personnel and salary supplements for state positions – for example, while the state provides only \$21.5 million for the Offices of the Circuit Court Clerk, Commonwealth’s Attorney, and Sheriff, the County provides more than four times as much local funding (\$95.7 million) for personnel in these offices.

Once the state determines how much total funding to provide, the Virginia Compensation Board then determines the budgets for all Constitutional offices, including the Commonwealth’s Attorneys. The Compensation Board’s current funding formula for Commonwealth’s Attorneys’ offices is divided into multiple categories, including, but not limited to, officer salaries, office expenses, and office equipment. When considering the factor of caseload size, localities are categorized as small, medium, large, or super – Fairfax County is the only jurisdiction in the state categorized as “super,” disadvantaging the County in the funding formula, in spite of a caseload that is one of the highest per prosecutor in the Commonwealth. The main issues with the formula pertain to how the Compensation Board determines appropriate staffing levels for the office. The staffing formula was developed from recommendations provided by the Virginia Association of Commonwealth’s Attorneys and was subsequently approved by the Compensation Board.

Even more critical is the need to update and modernize state funding for Commonwealth's Attorneys to reflect the goal of improving the criminal justice system and policing. The current formula combines the number of felony defendants who are indicted into Circuit Court and the number of felony sentencing events in Circuit Court and divides that by caseload size. Using the number of felony indictments and sentencing events in Circuit Court as a major factor in funding is antithetical to the goal of increasing diversion programs and utilizing specialty dockets (such as the ones used in Fairfax courts for mental health and veterans), which are aimed at keeping people out of the criminal justice system or keeping them from felony sentencing consequences. While diversion programs and specialty dockets require significant prosecutorial resources, often more than are required for convictions, a Commonwealth's Attorney's office does not receive state funding for that work because the formula does not account for it – in fact, the current formula essentially discourages such efforts.

Additionally, the move towards police body-worn cameras as an accountability tool for law enforcement has exacerbated the issue of state underfunding. The review of police body-worn camera footage by Commonwealth's Attorneys' offices and public defenders' offices, among others, creates additional workload issues for those offices and the court system. During the 2020 special session, an amendment to the 2020-2022 biennium budget adopted by the GA includes \$6.4 million over the biennium for the Virginia Department of Criminal Justice Services to administer a one-time grant program to assist law enforcement agencies in purchasing body-worn camera systems (requiring a local match) – this could help localities purchase such cameras but does not address the corresponding workload issues.

Figure 1: Commonwealth's Attorneys' Office Staffing Funding Formula

Formula:

$$\# \text{ Attorneys} = \frac{\text{Workload Total (3-Yr AVG felony defendants + 3-Yr AVG sentencing events)}}{\text{Factor}}$$

Key:

- **3-Yr AVG felony defendants** – The average number of felony defendants in the Circuit Court for each locality for the three most recent calendar years, as reported by the Supreme Court.
- **3-Yr AVG sentencing events** – The average number of felony sentence events in the Circuit Court for each locality for the three most recent fiscal years, as reported by the Virginia Sentencing Commission.
- **Factor** - To account for the benefits of economies of scale for larger offices, the overall workload is divided by a factor based on the size of the office. Office sizes and their corresponding factors are catalogued in Table 1.

Table 1: Office Sizes and Factors

Table 1 details the relationship between office sizes and factors.

Office Size	Range of Workload Totals per office size (AVG Defendants + AVG Sentencing Events)	Factor
Super	3,000 +	125
Large	1,000 to 2,999	100
Mid	300 to 999	84
Small	0 to 299	70

RECOMMENDATION:

Direct staff to work with the Office of the Fairfax Commonwealth's Attorney to initiate legislation to update and modernize the distribution of state funding for Commonwealth's Attorneys' offices, to improve the criminal justice system and outcomes for those who interact with it.

LAND USE – ECONOMIC REVITALIZATION ZONES

PROPOSAL:

Consider legislation to expand authority for the application of economic revitalization zones.

SOURCE:

Fairfax County Board of Supervisors
September 15, 2020

BACKGROUND:

In 2017, the Virginia General Assembly (GA) passed **HB 1970** (Landes), which provides for regulatory flexibility and financial incentives to encourage the private sector to assemble property for economic development purposes. Any incentives authorized by this legislation may extend for a period of up to 10 years from the date of the initial establishment of the economic revitalization zone. Pursuant to that legislation, along with previously existing law, Fairfax County crafted a program to provide an economic development opportunity to the private sector consistent with the legislation.

On September 15, 2020, the Board adopted an ordinance establishing incentives to encourage economic growth through the creation of an Economic Incentive Program (EIP) that will offer a number of regulatory incentives (concurrent processing of development applications and associated Comprehensive Plan amendments, inclusion of development applications in the Land Development Services (LDS) Project Management Program, a fee reduction of 10 percent for site plan review, and a partial real estate tax abatement to private sector developers who assemble and develop properties in accordance with the ordinance and consistent with the vision of the Comprehensive Plan). The EIP will apply to all five of the County's Commercial Revitalization Districts (CRDs) – Annandale, Baileys Crossroads/Seven Corners, McLean, Richmond Highway and Springfield, and the County's Commercial Revitalization Area (CRA) of Lincolnia (it is envisioned that the Lake Anne Village Center CRA will come back at a future date). Two of the Economic Incentive Areas (EIA) – Richmond Highway and Springfield – include additional areas. The Richmond Highway EIA includes all of the Suburban Neighborhood Areas (SNA) between the CRD nodes as well as Land Units R and Q of the Huntington Transit Station Area (TSA). The Springfield EIA includes the Franconia-Springfield TSA except those areas planned for single-family residential development.

However, the state law providing authority for such a revitalization program has some limitations. On September 15, the Board directed staff to examine three issues with the state law raised by the Northern Virginia chapter of NAIOP, to be discussed at Legislative Committee in advance of the 2021 GA session.

Those issues are:

- Extension or removal of 10-year abatement period limitation – The 10-year abatement period that exists in state law makes it difficult for most projects to receive a full 10-year abatement. The time limit also restricts the County’s ability to craft effective policy decisions. This is because current law states that the incentives may extend for a period of up to 10 years from the date of the establishment of the economic revitalization zone. A project approved nine years after the establishment of the economic revitalization zone would receive one year of incentives.
- Expansion of eligibility for the EIP program for previously approved projects – The enabling legislation makes it clear that it applies only to projects approved after the implementation of the incentive program in a particular area, in order to incentivize private entities to purchase real property and assemble parcels suitable for economic development. Expanding eligibility retroactively to projects that have already been approved requires a change to the enabling legislation.
- Expansion of authority for local governments to consider incentives for single parcels – The current enabling legislation requires that at least two parcels be joined in order to qualify for the economic incentives in the program. Expanding this program to single parcels would potentially open the program to every parcel within a zone, which would substantially broaden the application of this program.

RECOMMENDATION:

Direct staff to monitor for introduction of legislation in the 2021 GA extending or removing the 10-year abatement period in order to bring such legislation to the Legislative Committee for the Board’s consideration. Do not recommend seeking state legislation expanding eligibility to previously authorized projects, as it is contrary to the intent of the original legislation to encourage the purchase of real property to assemble parcels suitable for economic development, by potentially permitting existing developments to enter the program and would have potentially significant impacts to the General Fund. Do not recommend seeking state legislation expanding eligibility to single parcels, for the same reason as stated previously – as the specific intent of the enabling legislation is to foster consolidations for redevelopment. Any legislation modifying this code section should be local option, allowing localities the flexibility to implement this program in a way that works best for individual communities and their economic development efforts.

LOCAL AUTHORITY – BOARDS, AUTHORITIES, AND COMMISSIONS

PROPOSAL:

Analyze existing state enabling authority governing appointments by the Fairfax County Board of Supervisors to County boards, authorities, and commissions, including consideration of whether additional flexibility for such appointments is needed.

SOURCE:

Fairfax County Board of Supervisors
September 15, 2020

BACKGROUND:

Fairfax County has a long history of encouraging citizen participation in local government. As a result, the County offers the public many opportunities to contribute to their community by serving on a board, authority, or commission (also known as BACs). With over 80 BACs addressing a wide variety of issues, these bodies play a very important role in County government. Some BACs serve in purely advisory capacities, while others are authorized by state and/or federal law to directly fulfill or support specific governmental functions. Serving on a BAC also comes with important responsibilities, as members are expected to comply with state laws governing public bodies, as well as County ordinances and policies. Some BACs have significant fiduciary responsibilities, including the ability to issue bonds or make substantial land use decisions.

Virginia Code §15.2-1411 provides general local government authority for the establishment of purely advisory BACs. The Board of Supervisors has significant flexibility over the creation of BACs established pursuant to this code section, including over the appointment and removal of members, as the code states that “members shall be appointed to serve at the pleasure of the governing body.” Based on initial research, it appears that approximately half of the County’s BACs were established pursuant to this authority, giving the Board of Supervisors substantial flexibility over such appointments. Some examples include the Commission on Organ and Tissue Donation and Transplantation and the Health Care Advisory Board.

However, numerous other County BACs were established pursuant to other code sections, which often include specific requirements for appointments that must be met – for example, the requirements for appointments to the Planning Commission are substantially dictated by state law, including a requirement that each magisterial district must have one appointee. Additionally, the Community Policy and Management Team (CPMT) also has very specific requirements in state law – appointments must include at least one elected official or appointed official or his designee from the governing body of a locality that is a member of the team, and the local agency heads or their designees of the following community agencies: community services board, juvenile court services unit, department of health, department of social services, and the local school division. The team must also include a representative of a private organization or association of

providers for children's or family services if such organizations or associations are located within the locality, and a parent representative. Because numerous code sections provide this enabling authority, there is no one statute that governs the Board's authority for all BAC appointments. Additional staff research would be required to more thoroughly examine the membership requirements of BACs authorized by individual state code sections to better determine what flexibility might be useful in specific cases.

Another avenue for consideration could include an examination of BAC by-laws. In general, County BACs operate under a set of by-laws that are adopted by the Board, which typically set forth the official purpose of the BAC, outline its responsibilities, organizational structure, and membership (including procedures for appointment, removal, or replacement of BAC members), and the requirements for participation and attendance. These by-laws are periodically updated, and as such updates take place, the Board could consider incorporating new language to reflect updated County policies or procedures, like One Fairfax. Additionally, last month the Board directed the County's Chief Equity Officer to circulate the One Fairfax policy and a training video to all BAC members. Development of the video is in progress.

RECOMMENDATION:

Do not recommend pursuing legislation at this time, as further research is needed to determine where additional flexibility may be helpful. Direct staff to more fully examine the state requirements for appointments to individual BACs, and to report back to the Board as needed. Additionally, direct staff to continue to ensure that BAC by-laws are routinely reviewed and updated according to an appropriate schedule, so that new County policies and procedures are included as often as practicable.

ECONOMIC DEVELOPMENT – EXPANDING MEMBERSHIP ON THE FAIRFAX COUNTY ECONOMIC DEVELOPMENT AUTHORITY**PROPOSAL:**

Consider legislation to expand the number of members on the Fairfax County Economic Development Authority board from 7 to 9.

SOURCE:

Fairfax County Economic Development Authority

October 22, 2020

BACKGROUND:

Fairfax County has created a strong business climate, with a fair and competitive tax structure, excellent schools, an educated workforce, and services and amenities that attract new businesses every year. An important part of those efforts is the work of the Fairfax County Economic Development Authority (FCEDA), which provides a wide array of free, confidential services and information to assist new, expanding and relocating American and international businesses. The mission of the FCEDA is “to promote the competitive advantages of Fairfax County and influence the growth of a diverse and innovative ecosystem that enhances the tax base, creates demand for commercial space, and supports an extraordinary and equitable quality of life across Fairfax County.” Headquartered in Tysons, Fairfax County’s largest business district, the FCEDA also maintains offices in major technology centers around the world: Bangalore/Mumbai, Berlin, London, Los Angeles, Seoul and Tel Aviv.

The General Assembly (GA) created the FCEDA in Chapter 643 of the 1964 Acts of Assembly (the 1964 Act) in order to foster and stimulate the development of industry within the County. The 1964 Act came before the GA adopted the Industrial Development and Revenue Bond Act and is more expansive. The members of the FCEDA are appointed by the Board of Supervisors, and include County residents and business and community leaders representing the economic interests of the County. The enabling legislation gave the County the authority to appoint seven members to the FCEDA board, and that number has not changed in more than 50 years. However, during that time the County has experienced tremendous growth – the number and size of companies has increased, as have the industry sectors, employee base, and tax base represented by that development. That growth also includes substantial increases in the number of women-owned, veteran-owned, and minority-owned businesses, as well as the expansion of businesses into new and diverse industry sectors. Today, 11 Fortune 500 companies are headquartered in Fairfax County. The Inc. 5000 list of the nation’s fastest-growing firms includes 113 Fairfax County companies (seven of which are on the top 500 list).

Increasing the number of FCEDA board members to nine could further diversify participation from the County's business community, while maintaining their focus on the County's traditional business base (including government contracting and IT services). Because the FCEDA was specifically authorized in state code, a state legislative change would be needed to increase the size of the FCEDA board. Of the localities whose economic development authority was created by the 1964 Act (or added by amendment), only one locality has been granted authority for an EDA board larger than seven members – in 2003, the GA passed legislation allowing the City of Virginia Beach to expand its economic development authority board to 11 members.

RECOMMENDATION:

Board discussion.

GENERAL GOVERNMENT – CONTINUITY IN GOVERNMENT

PROPOSAL:

Consider legislation to amend Virginia Code § 15.2-1413 to allow ordinances adopted to assure continuity in government to remain in effect for a period not exceeding twelve months after any disaster.

SOURCE:

Fairfax County Board of Supervisors
October 2, 2020

BACKGROUND:

Virginia Code § 15.2-1413 authorizes localities to adopt an ordinance that will “provide a method to assure continuity in its government” in the event of a disaster. An ordinance providing for continuity in government must be limited in its effect to no more than six months after the disaster, and it must provide a method for the resumption of normal government authority by the end of the six-month period. Prior to 2020, such emergency ordinances were generally envisioned to apply to natural disasters, or potentially terrorist attacks like September 11, which typically last a relatively short period of time before recovery and a return to normal government operations.

The COVID-19 pandemic has forced a reexamination of the types of tools governments need to appropriately react to and recover from long-term, ongoing disruptions that threaten operations in ways that have not previously existed or been anticipated. The World Health Organization declared COVID-19 a global pandemic on March 11, 2020, and on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a National Emergency beginning March 1, 2020. On March 12, 2020, Governor Ralph Northam issued a Declaration of a State of Emergency due to Novel Coronavirus (COVID-19). The Governor declared the emergency “to continue to prepare and coordinate our response to the potential spread of COVID-19, a communicable disease of public health threat,” and he found that “[t]he anticipated effects of COVID-19 constitute a disaster as described in § 44-146.16 of the Code of Virginia.” On March 17, 2020, the Fairfax County Director of Emergency Management, with the consent of the Board of Supervisors, declared a local state of emergency due to the potential spread of COVID-19. The local Declaration of Emergency remains in effect until the Board of Supervisors takes appropriate action to end the declared emergency.

Seven months later, it remains unclear when the emergency will end, as the United States is experiencing a new wave of COVID-19 cases. The Board has adopted several ordinances to ensure that public business related to continuity in government may continue during the pandemic, but the long-term nature of this emergency is creating particular challenges for the County’s business community at a time of great economic

uncertainty. In order to continue operations while following requirements for social distancing, County businesses must invest in new ways of doing things, but without certainty about how long they will be able to operate in such a temporary environment (for example, investments in outdoor heating and seating for restaurants where it is not typically permitted). Accommodating their needs through the normal zoning process would require an untold number of applications, triggering countless hours of staff time and public hearings – and would ultimately risk the County’s ability to carry out its essential functions.

The adverse effects and economic recovery from a disaster may linger for longer than six months after the disaster has ended. It is not clear when the current pandemic will end; however, it is likely that the economic recovery will continue well after the health emergency has concluded. Residents and business owners look to the County for guidance and certainty in times of disaster. Permitting emergency ordinances to remain in effect for twelve months after the end of the disaster could provide additional time to recover from the disaster before returning to normal governmental operations.

RECOMMENDATION:

Board discussion.

UTILITIES – OVERHEAD HIGH VOLTAGE LINE SAFETY ACT

PROPOSAL:

Consider legislation or a pilot program to assist homeowners with the financial burden of removing tree debris/logs from their property after a utility has removed trees close to a power line, if the tree removal was done at the homeowner's request.

SOURCE:

Fairfax County Board of Supervisors
September 22, 2020

BACKGROUND:

The purpose of the Virginia High Voltage Safety Act is to promote the safety and protection of persons engaged in work or activity in the vicinity of overhead high voltage lines, and to define the conditions under which work may be carried out safely. In addition, the law outlines the safety arrangements and notification requirements that must be followed by a utility when work is performed in the vicinity of overhead high voltage lines.

An electric utility, like Dominion Energy, is required to appropriately maintain vegetation around its power lines, because trees, brush, and vines can threaten public safety and the safety of utility workers if they grow too close to power lines. Vegetation also causes power outages and limits a utility's access to its lines to make necessary repairs. Dominion Energy manages trees and plants adjacent to its rights-of-way to maintain safe and reliable electric service, and to provide quicker access for its crews during service restoration and maintenance work. Virginia Code § 59.1-410 (B) requires that the actual expense incurred by the owner of a high voltage line in taking precautionary measures to protect utility lines shall be paid for by the party responsible for the work (for example, as the owner of high voltage lines, if construction is taking place near Dominion's lines and Dominion has to take precautionary measures to protect those lines, then the party responsible for the work would have to pay Dominion for those protective measures). The Virginia High Voltage Safety Act provides that the scope and cost of debris cleanup shall be negotiated by the property owner and the utility, with the utility covering the first \$1000 in actual expenses in cases of property used for residential purposes.

Because performing tree work near high voltage lines (beyond what is required of a utility under state law for maintenance) is dangerous, homeowners are required under the Act to request that a utility perform tree trimming near such lines; however, under those circumstances the utility is not responsible for removing the debris that remains on the homeowner's property. Though Dominion indicates on their website that they remove pruning debris and brush associated with their own maintenance activities in residential areas, as well as occasionally removing smaller limbs and debris when they cut diseased, dead, dying, or leaning trees or limbs near power lines, when an individual requests

assistance with trees close to Dominion's power lines in accordance with the Virginia High Voltage Safety Act, the debris remains the responsibility of the property owner.

Additionally, it is important to note that Dominion's access to its power lines is often governed by easements recorded in the land records. Easements can have a significant impact on a landowner's ability to use their property and, as a result, it is important for a landowner to know whether an easement encumbers the property and, if so, what restrictions apply to the landowner's use of the property. Because the legal rights and obligations between Dominion and property owners are likely set out in the easement, addressing such issues legislatively could be challenging. The Fairfax County Department of Public Works and Environmental Services (DPWES) receives several requests each year from property owners to collect trimmings and debris left on the property. Within sanitary districts, when the property owner can get the material to the curb, solid waste staff will remove the trimmings. Sanitary districts only account for 10 percent of Fairfax County's solid waste service. In the remaining 90 percent of the County, residents will have to work with their private waste collection companies. In addition, the Fairfax County Department of Cable and Consumer Services has also assisted property owners in reaching out to Dominion to resolve similar issues.

RECOMMENDATION:

Do not recommend pursuing legislation at this time. Direct staff in the Department of Cable and Consumer Services to work with property owners and Dominion Energy to address individual issues related to tree debris removal, and provide updates to the Board as needed.