

## 2010 Fairfax County Preliminary Draft Legislative Program

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In order to remain a competitive state and an attractive place for economic development, Virginia must invest the resources necessary to educate its citizens at all levels, ensure the rule of law, protect its natural resources, provide for the basic needs of the less fortunate and build a sound infrastructure.

### Priorities

#### Funding Core Services

Unfortunately, it has increasingly become the practice of the Commonwealth to significantly underfund core services, leaving localities to fill funding gaps with local revenues in order to maintain essential services. The critical state-local funding partnership must be restored so that the Commonwealth can weather the current fiscal crisis and emerge even stronger, as an investment in Virginia will pay dividends for years to come. While all core services are important, Fairfax County's two funding priorities for the 2010 General Assembly are K-12 education and transportation.

#### 1.) K-12 Funding (REGIONAL)

**It is essential that the state fully meet its Constitutional responsibility to adequately fund K-12 education.**

Critical gaps continue to exist between state SOQ funding and the actual costs of providing a high quality education faced by localities. Fairfax County and other Northern Virginia localities more than meet their responsibilities for K-12 education through large contributions to the State General Fund, strong local effort, and the effect of high local composite indices, which diverts State funding away from this region.

Fairfax County and other Northern Virginia localities support full funding for the biennial rebenchmark of the Standards of Quality (SOQ), and strongly oppose formula changes which further weaken the partnership between the state and localities, including but not limited to, any reduction in the current 55 percent State share of SOQ costs, capping state funding for support costs and the elimination or reduction of cost of competing funding to Northern Virginia localities. Any state funding cuts contemplated for the current of 2010-2012 biennium must be temporary, avoiding changes in methodology and any further erosion of the state's financial responsibility that result in a shift of K-12 funding from the state to the localities. *(Revises and updates previous education position.)*

#### 2.) Transportation Funding (REGIONAL)

**Major new revenue sources for transportation must be enacted during the 2010 General Assembly session.**

What was once a crisis in Northern Virginia and Hampton Roads is quickly becoming a catastrophe for the entire Commonwealth. There is no viable transportation solution that does not include long-term, dedicated, sustainable, new multimodal revenues.

Over the past two years, the Commonwealth Transportation Board has cut **\$3.7 billion** from the Six Year Program, and projections indicate that another \$900 million cut will be necessary to further reduce the Program to match current revenue projections. Secondary and urban system construction funds have essentially been eliminated, despite the fact that the secondary roads are a Commonwealth responsibility. In addition, the growth in maintenance spending has been reduced from 4% to 3%, even though maintenance costs are increasing overall. The

Commonwealth is risking serious disinvestment in its existing transportation infrastructure that will be more difficult and more expensive to correct in the future. Today, approximately \$1 billion is needed to address existing deficient pavement conditions, and approximately \$3.7 billion is needed to fix the Commonwealth's deficient bridges. Very shortly the Commonwealth will be unable to ensure that the required matches are available for the federal transportation funds the Commonwealth receives. Should this happen, Virginia would have to return these federal funds, further compounding the crisis.

Northern Virginia jurisdictions continue to support additional state and regional transportation funding for highway, transit, bicycle and pedestrian improvements, and have taken actions to increase funding locally. In 2006, the region's TransAction 2030 Long-Range Transportation Plan estimated that Northern Virginia alone needs \$700 million per year in new transportation funding to address the region's transportation problems. This figure has increased since then, because most of the major HB 3202 revenue sources have been eliminated.

The Northern Virginia jurisdictions seek reinstatement of exclusive Northern Virginia revenues in the range of at least \$300 million annually, as well as 100 percent of Northern Virginia's contribution of additional statewide revenues, to address transportation needs not originally covered by the HB 3202 funding approved for Northern Virginia. Both the regional and statewide revenues should be provided from stable, reliable, proven and permanent source(s).

The General Assembly must adopt new statewide transportation revenue sources to bolster existing highway and transit revenue sources that are not generating sufficient funding to meet the Commonwealth's critical highway needs or meet the Commonwealth's statutory 95 percent share of eligible transit operating and capital costs (net of fares and federal assistance). This additional transit funding alone would require approximately \$166 million annually in new funds for the limited transit projects and eligible operating costs included in the Six Year Program. Additional funds to dramatically increase Secondary Road investments are also needed.

Any funding solution must ensure that dedicated funding for Washington Metropolitan Area Transit Authority capital improvements and for Virginia Railway Express capital and operating expenses are addressed.

Existing state General Fund revenue streams (almost half of which now go to localities) are required and used for core services of the Commonwealth, such as education and public safety. These historically underfunded, locally provided core services are already experiencing significant cuts, due to reduced General Fund revenues, and shifting the state's transportation funding responsibility to localities by using the General Fund increases local budget pressures, without providing a true transportation solution. *(Revises and updates previous transportation funding position.)*

### **Governance**

Each level of government has unique strengths. As the form of government closest to the people, local government must be provided the flexibility to serve the needs of residents, which can vary greatly from one part of the Commonwealth to another. Taxation and land use are key areas in which local government needs sufficient authority and flexibility to govern effectively, and, as such, are the County's two Governance priorities.

### **3.) Taxation**

**The local tax structure, which has become outdated and over-reliant on property taxes, must be modernized.**

Local government revenues must be diversified, including the provision of equal taxing authority for counties and cities, without state mandated restrictions on use or caps on capacity. Currently, about 90 percent of Fairfax County's revenues are capped, restricted or controlled by the state, which forces a dependence on the local real estate tax and prevents the creation of a more

flexible tax base, structured to reflect the local economy and the core needs of County residents.

The decline of state revenues and subsequent state budget cuts passed on to localities will exacerbate this imbalance. Where possible, the state should consider updating state and local taxes to reflect changes in the economy or technology; avoid any expansion of revenue-sharing mechanisms controlled by the state; avoid any new state mandates while fully funding and/or reducing current requirements; and lessen restrictions currently imposed on local revenues; or lessen current restrictions on the use of state funds now provided to localities for shared responsibilities. *(Revises and reaffirms previous revenue capacity and core local needs position.)*

**4.) Land Use (Possible REGIONAL)**

**Local land use authority must be preserved, as appropriate community solutions differ significantly from one area of the state to another.**

Local government is the level of government best suited to equitably and effectively deal with these issues, ensuring orderly and balanced growth or redevelopment while providing meaningful and the most direct public participation and accountability in this critical process.

Existing local authority to accept cash and in-kind proffers from developers to assist localities in providing the capital facilities and infrastructure needed to serve new development must be retained without restrictions. Any proposal for replacing such proffer commitments with development impact fees must be at the option of each locality. *(Revises and expands previous proffer position.)*

## **Initiatives/Action Statements**

### **General Laws -- Building Code Violations**

Initiate legislation to provide that criminal fines imposed by the General District Court for Building Code violations prosecuted by the local building department be remitted to the locality. Currently, such fines are remitted to the Commonwealth, even though the Virginia Code provides that Building Code requirements governing construction and rehabilitation are the responsibility of the local building department.

Initiate legislation that would authorize the General District Court to require abatement of all Building Code violations on nonresidential properties where the violation remains uncorrected at the time the court assesses civil penalties. Under current law, if a Building code violation concerning a residential unit remains uncorrected by the time a civil penalty case reaches the court, the court is required to order the violation to be abated or otherwise remedied, as part of the court's assessment of a civil penalty.

### **Housing – Overfinancing of Affordable Dwelling Units**

Initiate legislation that would amend the state foreclosure statute to give a redevelopment and housing authority, or local governing body where no such authority exists, the right to purchase any affordable dwelling unit (ADU) at foreclosure during the control period for the maximum control price in order to preserve affordable housing. The fact that the dwelling unit in foreclosure is an ADU and is subject to restrictions and limitations governing ownership and resale would have to be a matter of record in documents included in the chain of title to the unit, recorded in the circuit court land records.

### **Land Use – Transfer of Development Rights**

Initiate legislation to amend the urban county executive form of government to include the same Transfer of Development Rights (TDR) enabling authority granted to the county manager plan of government. The details of a County TDR program would be set forth in the zoning ordinance, and could also be included in special exception development conditions or rezoning proffers.

### **Public Safety – Computer Trespass**

Initiate legislation to update current laws related to computer trespass in order to capture new technologies not covered by current law. Current law makes it a Class 6 felony to install computer software to record keystrokes made on a computer without the owner's permission and with malicious intent. However, the current Code language does not address the use of hardware devices in such activity, nor does it include the capturing of "screenshots," which are digital images or video of the contents of the user's screen.

**Position Statements**

***Environment***

**Endocrine Disruptor Compounds**

Support legislation and funding to implement a statewide strategy to address the potential health and environmental impacts of Endocrine Disruptor Compounds (EDCs) present in Virginia's waterways. Budget language adopted in 2009 directs the Board of Pharmacy, the Secretary of Health and Human Resources, and the Department of State Police to develop a program to ensure the proper disposal of unused pharmaceuticals, including the identification of funding sources to implement the program. *(Updates and reaffirms previous position.)*

**Global Climate Change**

Support efforts to reduce greenhouse gas (GHG) emissions through conservation, use of renewable fuels, regulations, and market-based or other incentives. As a signatory to the Cool Counties initiative, support the reduction of GHG emissions to 80 percent below current levels by 2050, which translates to an average annual reduction of 2 percent per year.

Support enhanced state efforts to reduce GHG emissions, through implementation of strategies set forth in the Virginia Energy Plan, including: a 10 percent reduction in energy consumption by 2022; establishment and expansion of energy research and development programs; funding of renewable-energy grant programs; and incentives to assist the development and growth of energy-businesses and technologies.

Support legislation mandating the reporting of certain greenhouse gas (GHG) emissions from stationary sources already required to report emissions of other air pollutants; and from fleets of motor vehicles.

Support opportunities for consumers to purchase renewable energy.

Support state legislative or executive action for Virginia to join the Regional Greenhouse Gas Initiative (RGGI), if a national cap-and-trade system for GHG emissions reductions is not implemented. The RGGI is a regional cap-and-trade program for carbon dioxide emissions from power plants in the Northeast and mid-Atlantic.

Support legislation which would provide state income tax incentives for businesses or residents to defray a portion of the cost of new construction or improvements which save energy and mitigate adverse environmental impacts.

Support legislative or regulatory action strengthening energy efficiency standards for new homes. Virginia has not yet adopted the 2009 International Code Council energy provisions. Those provisions are currently under review by the Virginia Board of Housing and Community Development. *(Reformats and reaffirms previous positions.)*

**Land Conservation**

Support the preservation of open space to meet the goals of the Chesapeake Bay 2000 Agreement, under which signatories pledged the protection of 20% of the watershed by 2010. Additionally, support the Governor's goal for preservation of 400,000 acres statewide. Finally, support prioritizing the Virginia Land Preservation Tax Credit to encourage the preservation of land for public use. *(Updates and reaffirms previous position.)*

**Reducing Environmental Contamination from Plastic and Paper Bags**

Support legislation or other efforts which would encourage the use of reusable shopping bags, consistent with the County's waste reduction goals and environmental stewardship efforts. As in previous sessions, it is anticipated that legislation to ban plastic bags or impose a fee for their use is likely to be introduced again in 2010. Such legislation would need to be examined by the County for efficacy, cost, and ease of administration. *(New position.)*

***Funding***

**BRAC**

Fairfax County is being significantly impacted by the 2005 recommendations of the Base Realignment and Closure Commission (BRAC) with over 19,000 personnel from numerous Department of Defense (DOD) agencies and commands being moved into Fort Belvoir and the Engineer Proving Ground (EPG) in the County. As a result, Fairfax County is facing significant shortfalls in the capacity of current transportation and school infrastructure to support the additional military and civilian jobs.

While federal American Recovery and Reinvestment Act funding is making possible the long-anticipated completion of the Fairfax County Parkway, overall federal assistance has been insufficient to ensure the appropriate increase in transportation capacity needed for such a large influx of personnel into an already congested area. The lack of federal assistance is compounded by cuts in state funding to the County's secondary road program, adversely affecting projects that could improve the BRAC transportation impacts at Fort Belvoir and the Engineer Proving Grounds. The 2010 General Assembly is requested to provide state assistance to mitigate these significant effects. *(Reaffirms and revises previous position to focus on the County's issue.)*

**Lyme Disease**

Support funding initiatives that will advance research, surveillance, reporting, and diagnostics for Lyme disease. Cases of Lyme disease have been on the rise in Virginia, with over 800 cases reported to the Centers for Disease Control and Prevention in 2008. *(New position.)*

**Public Safety/Courts Funding**

Public safety is a core service for the Commonwealth, as it is for localities. Protecting the Commonwealth's residents and ensuring the successful operation of the justice system requires appropriate state funding for the state-local partnership, including sufficient state support for all stages—law enforcement, courts, and jails/corrections.

To that end, Fairfax County supports adequate funding for the following:

- **Excess Court Fees** – The 2010 GA should reverse the diversion of local funding to the Commonwealth. During the 2009 General Assembly, the 2008-2010 biennium budget was amended to change the state share of excess court fees (paid to local courts for administrative expenses associated with home sales, home refinancings, wills, and other matters) from one-third to two-thirds – a funding loss that disproportionately affected higher cost Northern Virginia localities. *(New position.)*
- **HB 599** – This critical funding, provided to localities with police departments, must be maintained. Approximately 65 percent of all Virginians currently depend on local police departments for public safety services. This program strives to equalize state funding between counties in which the sheriff provides law enforcement and those cities, counties and towns with police departments. *(Reaffirms longstanding Board position.)*
- **Jails** – The Commonwealth should adequately compensate localities at a level which is commensurate with the State's responsibility for local jail operations. A 2005 report by the Compensation Board stated that only 20 percent of Fairfax County's jail operations

funding comes from the state. Local governments in Virginia have historically borne a disproportionate burden of supporting jail confinement costs, as a result of significant underfunding by the Commonwealth. State actions to address current state budget concerns should not result in the transfer of state prisoners to local jails, which would exacerbate the funding imbalance. *(Updates and reaffirms previous position.)*

- **Courts** – The Commonwealth should adequately fund Virginia’s courts, to ensure a well-functioning judicial branch. The underfunding of Virginia’s court system places additional burdens on localities. In the case of magistrates, for example, low pay remains a serious statewide problem, leading to a high turnover rate and the pressure for local supplements to keep the system operational. *(Reaffirms previous position.)*

### **Sex Offenders**

Support sufficient State General Funds for the Virginia State Police’s Sex Offender Investigative Unit (SOIU) to carry out its mission of thoroughly monitoring the Sex Offender Registry (SOR), including an equitable distribution of SOIU officers for Fairfax County. *(Reaffirms previous position.)*

## ***General Laws***

### **Absentee Voting**

Support legislation to allow “no-excuse” absentee voting, allowing any registered voter to vote absentee without requiring that the voter state a reason for his/her desire to vote absentee. Support legislation that would provide for extended polling hours statewide to allow voters additional time to reach polling places. Monitor consideration of an option for local governments to extend polling hours in the case of an emergency. *(Reaffirms previous position.)*

### **Building Code Violations**

Support legislation that would increase the maximum amount of civil penalties for all types of Building Code violations to make them the same as civil penalties for zoning ordinance violations. Under current law, the maximum civil penalty for any one Building Code violation is \$100 for the initial summons and \$150 for each additional summons, with a cumulative maximum of \$3,000 in civil penalties arising from the same operative set of facts. In contrast, Va. Code §15.2-2209 allows for a maximum civil penalty of \$200 for an initial summons for a zoning ordinance violation and \$500 for each additional summons, with a cumulative maximum of \$5,000 in civil penalties arising from the same operative set of facts.

### **Fiscal Transparency**

Support legislation necessary to enable the disclosure of certain local government financial transactions, provided that issues of privacy are addressed. Work is currently underway on the County’s financial software that will provide more detailed budget and expenditure data to the public when the Enterprise Resource Plan project is completed. *(New position.)*

### **Sexual Orientation**

Support legislation to permit the County, as an urban county executive form of government, to prohibit discrimination in the areas of housing, real estate transactions, employment, public accommodations, credit, and education on the basis of sexual orientation. Fairfax County has already taken actions pursuant to existing State enabling legislation in the preceding areas on the basis of race, color, religion, sex, pregnancy, child birth, and disability. *(Previously a Board initiative; included as position statement.)*

### **Signs in VDOT Rights-of-Way**

Support legislation that would amend Va. Code §33.1-375.1 to provide that: (i) all penalties and costs collected as part of local enforcement of illegal signs within VDOT rights-of-way shall be

paid to the County; and (ii) other signs and advertising not specified in subsections (C) (1) and (2) of the statute may remain in the right-of-way during certain specified times.

#### **Videoconferencing of Advisory Boards**

Support legislation to establish a limited exception to provisions of the Virginia Freedom of Information Act that would permit certain local citizen boards, authorities, and commissions to conduct meetings via videoconferencing, which would serve several goals, including (1) increasing volunteerism, especially among senior citizens, (2) reducing time commitments and long commutes on congested roads that now serve as impediments to those persons who serve on advisory panels, and (3) conserving fuel and lowering greenhouse gas emissions. Such a proposal should be crafted to apply only to entities that meet in an advisory capacity and are not required by statute. *(Reaffirms previous position)*

### ***Human Services***

#### **Child Care**

Support state child care funding for economically disadvantaged families not participating in TANF/VIEW, known as "Fee System Child Care." Particularly during periods of economic downturn, a secure source of General Fund dollars is needed statewide to defray the cost of child care, protecting state and local investments in helping families move off of welfare and into long-term economic stability.

Research clearly indicates that the employment and economic independence of parents is jeopardized when affordable child care is outside of reach. Parents may be forced to leave work to care for their children; to begin or return to welfare programs; or to maintain their employment, may choose to place their children in unregulated and therefore potentially unsafe child care settings. Without subsidies to meet market prices, low-income working families may not access the quality child care and early childhood education that helps young children arrive at kindergarten well prepared to succeed. In the Fairfax community, where the median annual income of families receiving fee-system child care subsidies is \$24,756, the average cost of full-time preschool child care ranges from \$8,000 to \$12,000 per year. These families are truly 'the working poor' who require some assistance with child care costs in order to help them achieve self-sufficiency. *(Revises and reaffirms previous position.)*

#### **Employment Support for Working Families**

Support budget and statutory changes allowing localities to provide the matching funds necessary to draw down emergency federal funds for low-income families needing assistance to navigate the national recession.

The American Recovery and Reinvestment Act (ARRA) made available up to \$79 million for Virginia to provide increased spending on cash assistance, non-recurrent short-term benefits and employment assistance for families receiving Temporary Assistance for Needy Families (TANF). TANF is designed to help needy families achieve self-sufficiency, and the current economic crisis is threatening that self-sufficiency, through the loss of jobs and permanent housing. However, the use of these one-time federal funds requires a 20 percent match, which the state is unlikely to provide, due to Virginia's budget crisis. Rather than forfeiting this important federal funding opportunity, localities should be permitted to provide the matching funds if they are able, in order to assist those most vulnerable through current economic hardships. *(New position.)*

#### **Mental Health**

Support the continuation of efforts for mental health reform at the state level, by ensuring that the hundreds of Fairfax County residents with serious mental illness and disabling substance dependence receive intensive community treatment following their initial hospitalization or incarceration. To that end, support additional state funding, as part of the promised down

payment of such funding to improve the responsiveness of the mental health system. *(Revises and reaffirms previous position.)*

## ***Land Use***

### **Adequate Public Facilities Ordinance**

Support legislation to give localities authority to adopt an adequate public facilities ordinance that would permit localities to adopt provisions for deferring the approval of subdivision plats or site plans when it is determined that existing schools, roads, public safety, sewer or water facilities are inadequate to support the proposed development. Such legislation should not require localities to construct the necessary infrastructure within a timeframe established by the General Assembly. *(Reaffirms previous position.)*

### **Rights-of-Way**

Oppose any reduction, preemption, or circumvention of VDOT's authority to manage and oversee highway rights-of-way or the County's rights as a property owner. Oppose any attempt to eliminate local governments' rights to charge, on a non-discriminatory basis, fair and reasonable compensation for use of its public property. *(Revises previous telecommunications position.)*

### **Urban Development Areas (REGIONAL)**

Support changes to the Urban Development Area statute that encourage "smarter" growth planning and reasonable planning horizons while preserving local flexibility to implement this mandate, and oppose amendments that limit flexibility, including any establishment of unrealistic minimum density thresholds for residential and commercial development within the UDA. *(New regional position.)*

### **Utility Fees (REGIONAL)**

Support the existing authority of localities or locally created authorities to impose connection fees and rates adequate to support the full cost of water and wastewater utility systems, and oppose any legislation that would limit that authority. *(New regional position.)*

## ***Public Safety***

### **Dangerous Weapons in Public Facilities (REGIONAL)**

Support legislation to allow local governments to prohibit the possession of dangerous weapons in or on any facility or property owned or leased by the locality, with certain exceptions, including any person who has been issued a permit to carry a concealed handgun. Violation of such an ordinance would be punishable as a misdemeanor. It is particularly important that the County have such authority for any facility or property owned or leased by the County serving large populations of youth under the age of 18. Current law permits private property owners to decide whether or not to permit dangerous weapons on their property. *(Previously a Board initiative; included as position statement.)*

### **Ignition Interlock Devices**

Support legislation that would require all persons convicted of Driving While Intoxicated to use an ignition interlock device as a condition to driving for a minimum period of six months. Current law requires the use of such a device for second and subsequent offenses of DWI and for offenses where the offender's blood alcohol content was at least 0.15 percent. *(New position.)*

### **Pedestrian Safety (REGIONAL)**

Support revisions to Virginia's existing pedestrian legislation to clarify the responsibilities of drivers and pedestrians in order to reduce the number of pedestrian injuries and fatalities that occur each year. In particular, support legislation that would require motorists to stop for

pedestrians in crosswalks at unsignalized intersections on roads where the speed is 35 mph or less and at unsignalized crosswalks in front of schools. This issue is of special importance for pedestrians with physical or sensory disabilities, who are at particular risk of injury when crossing streets. *(Reaffirms previous position.)*

### **Teen Driving**

Support legislation to make the following infractions primary offenses for drivers under the age of 18: violation of the ban on use of wireless communication devices while operating a motor vehicle; violation of curfew; violation of limits on underage passengers; and violation of the seat belt law. These acts are currently secondary offenses, which require observations of a primary offense for a law enforcement officer to initiate enforcement action. *(Revises and reaffirms previous position.)*

## ***Taxation***

### **Communications Tax**

In 2007, a new telecommunications tax law repealed a number of local taxes and replaced them with a statewide communications tax. Local governments should be guaranteed, on a locality-by-locality basis, tax revenues equivalent to their FY 2006 percentage share of total statewide telecommunication tax revenues, with the amount of new tax generated for each locality to be equivalent to such telecommunication tax revenue received in FY 2006. While the Virginia Auditor of Public Accounts has determined that statewide collections of the communications tax in FY 2008 exceeded that of the repealed taxes by \$1.9 million, it may not be the case that revenue neutrality for localities has been reached, as the analysis did not factor in tax collections totaling an estimated \$16.3 million that were later discovered to be levied in error, and are to be refunded to the service provider. Additionally, changes in market area, customers served, and new technologies must continue to be examined within the context of the recently-enacted law, to ensure a modern communications tax system for localities which reflects and reacts to an ever-changing landscape. *(Revises previous position.)*

### **Recordation Tax**

Oppose any changes to the basis for calculating recordation and grantor's taxes that would either reduce revenue to the state and localities or increase the possibility for fraud. At the direction of budget language adopted in 2009, a workgroup of stakeholders is currently examining the possible effects of changing the basis for calculation of the tax. *(New position.)*

## ***Transportation***

### **Secondary Road Devolution**

Oppose any legislative or regulatory moratorium on the transfer of newly constructed secondary roads to VDOT for the purposes of ongoing maintenance. Also oppose any legislation that would require the transfer of secondary road construction and maintenance responsibilities to counties. *(Reaffirms previous position.)*