

Office of the County Attorney



FY 2010 LOBS Presentation

December 5, 2008

Agency Mission



- ◆ To provide the best possible legal counsel and representation to County officials and agencies in support of their mission to protect and enhance the community.

Agency Growth Since FY 2001



◆ Growth in Expenditures:

- FY 2009: \$6.57 million - FY 2001: \$5.32 million
 - an increase of \$1.25 million or 23.57%
 - an average annual increase of 2.68%

◆ Growth in Positions/Staff Year Equivalency (SYE):

- FY 2009: 66/66.0 - FY 2001: 64/64.0
 - an increase of 2/2.0
 - Management Analyst II
 - L-5 Strike Force Attorney

◆ Which areas have seen the most growth?

- Increase in number of Zoning Enforcement cases:
 - FY 2009: 265 cases – FY 2001: 33 cases; an increase of 800%
- Increase in number of litigation cases and assignments:
 - Litigation: FY 2009: 1,844 – FY 2001: 646; an increase of 285%
 - Assignments: FY 2009: 3,792 – FY 2001: 3,357; an increase of 13%

◆ What factors are driving the growth?

- Increased Countywide effort to stabilize mature neighborhoods that have been plagued by residential overcrowding and the creation of illegal dwelling units.
- Increase in the number of litigation cases filed both on behalf of and against the County.
- Increase in the number, type, and complexity of legal matters for which County agencies need the services of the County Attorney.

Agency Strategic Focus



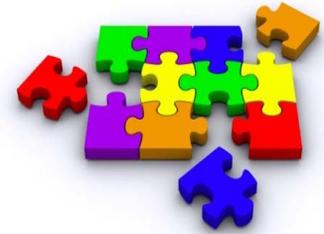
- ◆ Defending claims against the County to a favorable conclusion.
- ◆ Pursuing cases involving the abuse and neglect of children and the elderly.
- ◆ Assisting in the revitalization of older neighborhoods and the creation of housing opportunities for the low-income workforce and aging populations.
- ◆ Assisting the Strike Teams, the Zoning Administrator, and the Property Maintenance Code Official in enforcing the law, including residential overcrowding and multiple dwelling unit violations.
- ◆ Assuming a leadership role in facilitating transit in the Dulles corridor and in developing public-private partnerships to effect major highway improvements.
- ◆ Assuming a leadership role in the National Capital Region in responding to the Federal Communications Commission's order of the Rebanding of the 800 MHz radio frequency spectrum, which is vital to the County's public safety radio networks.
- ◆ Civilly prosecuting delinquent taxes.
- ◆ Preparing multi-jurisdictional agreements and ensuring compliance with federal and state mandates.

Agency Strategic Focus



◆ **Upcoming Challenges:**

- ◆ Continuing to successfully defend claims and potential claims against the County.
- ◆ Continuing to successfully meet the demands of federal and state mandates. For example:
 - In July 2004, the Federal Communications Commission issued a Rebanding Order to reassign the 800MHz radio frequency spectrum used by Sprint Nextel and many local governments, including public safety and public service frequencies used by the County. The County has taken a leadership role in this complicated national rebanding project. This Office, now working on its eleventh contract for this project, has expended over 1,300 hours in this effort so far. The Office is tasked with continuing this work until the estimated end date of August 2011.



◆ Upcoming Challenges:

- This Office prepares multi-jurisdictional agreements, participates in meetings, and answers legal questions pertaining to federal and state mandates such as the National Incident Management System, the Clean Water Act, the Virginia Nutrient Credit Exchange Program, and the Clean Air Act.
- This Office participates in meeting the demands imposed upon the County by federal and state mandates, such as the Americans with Disabilities Act and the Health Insurance Portability and Accountability Act.



◆ Upcoming Challenges:

- ◆ Continuing to meet the legal needs of the County despite attrition of experience and institutional knowledge.
 - This Office has 15 employees (10 attorneys, 5 support staff) currently eligible to retire in FY 2009, 4 of whom are in DROP.
 - 1 Senior Assistant County Attorney is scheduled to retire on December 31, 2008.
 - 1 Deputy County Attorney is in DROP and has an end date of December 7, 2010.
 - 2 Assistant County Attorneys are in DROP and have end dates of June 6, 2009, and July 15, 2011.
 - 1 Deputy County Attorney, 2 Senior Assistant County Attorneys, and 3 Assistant County Attorneys are currently eligible to retire.
 - Since September 2007, the Land Use Section lost 3 experienced attorneys as a result of retirement or departure to a neighboring jurisdiction.
 - By the end of FY 2012, an additional 13 employees will be eligible for retirement.
 - Within the next 3 years, this Office faces a loss of 42% of our current workforce.



◆ **Upcoming Challenges:**

- ◆ Continuing to provide quality legal service to our clients despite an increased workload.
- ◆ Continuing to provide proactive and specialized training to County agencies, including the Criminal Justice Academy, the Department of Public Works and Environmental Services, the Department of Planning and Zoning, and the Department of Taxation, to ensure compliance with the law.



◆ Upcoming Challenges:

- ◆ In a down-turned economy, history shows that there will be a substantial increase in erroneous tax assessment claims. Currently, 1,617 cases have been filed in FY 2008 and are pending before the Board of Equalization. Many of these cases may be filed as lawsuits in court, which this Office will need to defend. Moreover, if the economic crisis continues, even more erroneous tax assessment claims may be filed and will need to be defended. For example, in the economic crisis in the early 1990s, this Office was required to defend in excess of 200 erroneous tax cases in which a potential revenue loss of \$53,320,785, plus applicable interest, was at issue. Because there are currently more cases before the Board of Equalization than were before the Board of Equalization during the 1990s' crisis, it is logical to presume that the County will again be faced with a large influx of erroneous tax cases during these tough economic times.

LOBS Summary Table:

FY 2008 Adopted Budget Plan Data

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<i>Number</i>	<i>LOB Title</i>	<i>Net LOB Cost</i>	<i>LOB Number of Positions</i>	<i>LOB SYE</i>
17-01	Legal Service/Representation	\$5,502,190	57	57.0
17-02	Tax Collection	\$607,371	8	8.0
TOTAL		\$6,109,561	65	65.0

1/1.0 SYE additional position, an attorney to assist in the Strike Force effort, was added to the Office as part of the FY 2007 Carryover Review to bring the total number of positions to 66/66.0

LOBS Highlights:

LOB 17-01: Legal Service/Representation

◆ What We Do:

- ◆ Provide legal services and representation to the Board of Supervisors and County agencies, including, but not limited to:
 - Acquire property for public use through condemnation and other means
 - Act as the County's legal liaison at Virginia legislature
 - Advise Board members on constituent inquiries
 - Advise Bond Committee on legal sufficiency of developer applications
 - Advise on adoption of budget and setting tax and utility rates
 - Advise on contracts, leases, deeds, and covenants for the ADU and workforce housing programs
 - Advise on emergency management matters
 - Advise on financial matters and bond issues
 - Civil prosecution of abuse and neglect cases
 - Civil prosecution of delinquent tax cases
 - Civil prosecution of developer default cases
 - Civil prosecution of housing program violations
 - Civil prosecution of the termination of parental rights
 - Draft and file comments with state and federal regulatory agencies
 - Draft and review multi-jurisdictional public safety agreements
 - Draft and review multi-jurisdictional sewer and solid waste agreements
 - Draft and review multi-jurisdictional transportation agreements
 - Draft and review proposed legislation and County ordinances



◆ What We Do:

- Draft retirement ordinance amendments and advise the retirement systems
- Defend civil rights claims
- Defend claims before the Virginia Employment Commission
- Defend claims before the Workers' Compensation Commission
- Defend claims under the Fair Labor Standards Act
- Defend construction claims
- Defend discrimination claims
- Defend erroneous tax assessment claims
- Defend flood claims and sanitary sewer claims
- Defend grievances before the Fairfax County Civil Service Commission
- Defend personal injury claims
- Establishment of guardianship in Adult Protective Services cases
- Ensure compliance with the Blight Abatement program
- Ensure compliance with the Building Code
- Ensure compliance with the Chesapeake Bay Act
- Ensure compliance with the Clean Air Act
- Ensure compliance with the Clean Water Act
- Ensure compliance with conflict of interest laws
- Ensure compliance with election laws
- Ensure compliance with Erosion and Sediment Control Ordinance
- Ensure compliance with federal telecommunication laws
- Ensure compliance with HIPPA
- Ensure compliance with immigration laws

◆ What We Do:

- Ensure compliance with the National Incident Management System
- Ensure compliance with the Noise Ordinance
- Ensure compliance with the Property Maintenance Code
- Ensure compliance with the Public Facilities Manual
- Ensure compliance with the Subdivision Ordinance
- Ensure compliance with state comprehensive animal laws and County ordinance
- Ensure compliance with taxi cab regulations
- Ensure compliance with Virginia Consumer Protection Act
- Ensure compliance with Virginia Freedom of Information Act
- Ensure compliance with the Virginia Nutrient Credit Exchange Program
- Ensure compliance with the Zoning Ordinance
- Establish parking districts
- Establish special tax and transportation improvement districts
- Interpret federal and state tax provisions for application by Human Resources
- Negotiate, draft, and close complex, transactional loan documents for the preservation of affordable housing
- Negotiate, draft, and defend County procurement contracts
- Negotiate, draft, and ensure compliance with Cable Television Franchise Agreements
- Negotiate and draft agreements for radio frequency rebanding
- Provide training to ensure County compliance with all applicable laws


 **What We Do:**

- Representation before the Board of Zoning Appeals
- Representation in all matters relating to the Dulles Rail Project
- Representation in matters regarding unclaimed bodies
- Representation in federal bankruptcy courts
- Review and advise on garnishments
- Review bond referendums
- Review Child Support Orders for implementation by Human Resources
- Review Qualified Domestic Relations Orders for legal sufficiency

LOBS Highlights:

LOB 17-01: Legal Service/Representation

◆ Why We Do It:

- ◆ To protect the County and its funds and to ensure compliance with federal, state, and local ordinances and regulations, as authorized by Virginia Code § 15.2-1542.

◆ Benefits and Value of LOB:

- ◆ Immediate and unlimited access to attorneys specifically trained and experienced in local government law that is unmatched in the private sector.
- ◆ Routine review of agency policies and procedures ensures compliance with applicable law and optimizes enforcement.
- ◆ Continuity of legal advice and representation provides the best framework for the Board of Supervisors and County agencies to accomplish their mission.
- ◆ Ability to have attorneys present to address any legal issues that may arise at various agency, commission, board, and community meetings.

LOBS Highlights:

LOB 17-02: Tax Collection

◆ What We Do:

- ◆ Collect various delinquent taxes owed to the County, including real estate, personal property, business personal property, and Business, Professional and Occupational License taxes. Collection is accomplished through a combination of administrative remedies (bank liens, wage liens, DMV holds, boots, and other seizures), court actions, and the pursuit and defense of claims in bankruptcy.

◆ Why We Do It:

- ◆ Pursuant to Virginia Code §§ 58.1-3919 and -3954, the County is required by state law to diligently pursue the collection of delinquent taxes. When delinquent taxpayers leave the jurisdiction, have limited assets, or otherwise evade collection, it is necessary for the County to use legal measures to enforce collection. In order to preserve the County's ability to collect beyond the five-year statute of limitations, this office must file suit and reduce the taxes to a judgment. Currently, all delinquent tax suits and any post-judgment collections are prosecuted by this Office.

◆ Benefits and Value of LOB:

- ◆ In-house collection ensures close cooperation with the Department of Tax Administration. This in turn results in a highly efficient and timely operation that controls collection efforts. It also preserves taxpayer privacy, allows for greater accountability regarding collection methods, and provides responsive reaction to County priorities.

Agency Reduction Priorities

Reduction Philosophy



- ◆ Shift from an Office with a comprehensive approach to legal representation and enforcement, providing both offensive and defensive litigation, to one defending claims against the County and advising the County on legal mandates.

Agency Reduction Priorities

Reduction Summary

Priority Ranking	Reduction Description	Positions	SYE	Net Reduction
1	General Operating Expenses			\$96,688
2	Administrative Assistant III	1	1.0	\$47,593
3	L-5 Assistant County Attorney	4	4.0	\$327,129
4	Administrative Assistant IV	1	1.0	\$55,212
5	Paralegals	3	3.0	\$169,891
6	Target Administrative Assistant IV	1	1.0	\$52,668
7	L-5 Target Attorney	1	1.0	\$84,363
8	Target Paralegals	3	3.0	\$193,800
TOTAL REDUCTION		14	14.0	\$1,027,344



LOBS Reduction Impact

Reduction 1: LOB Reduction: \$96,688 from Character 30

- Reduction of \$96,688 from Operating Expenses. This reduction results from a renegotiated legal research contract, the discontinuation of almost all hard-bound legal publications, and a continued effort to minimize litigation costs and fees where possible.

Reductions 2-5: Elimination of 9 Positions

LOB #17-01: Legal Services/Representation

LOB Reduction: \$599,825 9/9.0 SYEs

- The loss of these 9 positions will impact the productivity, efficiency, timeliness, and manner in which this Office responds to requests for legal services, shifting our priority to defending claims against the County and complying with legal mandates rather than providing a full range of legal services.

LOBS Reduction Impact



Impact:

- **LAND USE DIVISION**

- Eliminate 2 L-5 Assistant County Attorney positions dedicated to Zoning Enforcement. This will negatively impact the number of zoning violations that are enforced by this Office. In FY 2008, the number of requests for legal enforcement of zoning violations dramatically increased.

- FY 2006: 86 new legal actions filed
- FY 2007: 94 new legal actions filed
- FY 2008: 265 new legal actions filed

The number of these new legal actions filed does not take into account the additional contempt proceedings required in most cases to clear the violations.

- Eliminate 1 Land Use Litigation Paralegal Position. The loss of this position will require staff attorneys to perform routine research among land records, recordation of land acquisitions documents, and routine legal research, thus resulting in less time spent by the attorneys on substantive legal work.

LOBS Reduction Impact



- **PERSONNEL DIVISION**
- Eliminate 2 L-5 Assistant County Attorney positions supporting the Department of Family Services. These positions civilly prosecute the abuse and neglect of children and the elderly. The loss of these positions will result in delays for court hearings, and social workers may not be able to receive timely legal advice on the emergency removal of a child in need of protective services.
- Eliminate 2 Personnel Paralegals. The loss of these positions will require the attorneys to perform routine paraprofessional tasks such as compiling documents for discovery and trial exhibits in complex litigation in state and federal court. This would also require the attorneys to do routine factual and legal research that is usually performed by the paralegals, thus resulting in less time spent by the attorneys on substantive legal work.

LOBS Reduction Impact



- **GENERAL LAW DIVISION**
- Eliminate 1 Administrative Assistant III. This position acts as a backup to the receptionist, supports the other Administrative Assistants, and makes a daily trip to the Fairfax courts to file pleadings. The elimination of this position would require employees in higher level positions to assume these time-consuming tasks.
- Eliminate 1 Administrative Assistant IV position. The administrative assistants in this Office are required to have specialized legal experience. They perform a wide variety of tasks, including opening assignments and litigation in the database, filing, typing legal memoranda and briefs, and archiving closed cases. The loss of this position will impact the efficiency and timeliness of the tasks performed by the remaining support staff who would be required to absorb the additional workload.

LOBS Reduction Impact



Reductions 6-8: Elimination of 5 Positions

LOB #17-02: Tax Collection

LOB Reduction: \$330,831 Reduction, 5/5.0 SYEs

- ◆ Through administrative remedies and civil prosecution, this Office collects various delinquent taxes owed to the County.
- ◆ In FY 2008, this Office received nearly 700 new delinquent tax accounts from DTA, filed almost 350 lawsuits, and collected more than \$2.8 million in delinquent taxes.
- ◆ This Office also represented the County's interests in over 600 bankruptcy cases: filing and defending claims, and ensuring compliance with the Automatic Stay.
- ◆ Elimination of 1 L-5 attorney, 3 paralegals, and 1 administrative assistant IV, leaving 2 attorneys and 1 paralegal.

LOBS Reduction Impact



◆ **Impact:**

- ◆ Virginia law authorizes the use of outside counsel where taxes are delinquent more than six months. This Office would retain a law firm to collect these delinquent taxes, plus parking tickets, dog license fees, and other charges collected by DTA.
- ◆ Unlike a general collection agency, a law firm would be able to file lawsuits on behalf of the County in order to preserve the ability to collect taxes beyond the five-year statute of limitations.
- ◆ As allowed by law, a law firm would add a charge of 20% to the delinquent tax bill, which must be paid by the taxpayer. Therefore, there would be little or no additional cost to the County for these legal services.
- ◆ This Office would focus on recently delinquent BPOL taxes, high-dollar real estate taxes, and bankruptcy cases.

Questions and Answers

