Back to the Future – New Transportation Planning Focus at the State Level

“Here’s another nice mess you’ve gotten me into!”
— Oliver Hardy

Sharon E. Pandak

Introduction

Obvious - Virginia’s transportation system in many places seriously fails to meet its purpose of moving people and goods in a timely manner. This article is not about where to put out a palm for additional funding or how to conjure up funds out of air for new infrastructure or maintenance. Funding sources are fairly finite: various taxes, fees, tolls, grants, funding, financing with/from taxes, fees or tolls or OPM (other people’s/private money, which comes with strings). The finger pointing for inadequate funding will continue until public tolerance becomes intolerance. (To date this has been a longer period than psychologists might predict as the gizmos in our cars and ears, and those in the ears and eyeshot of our passengers, enable tolerance for double, triple, quadrupling … of travel times.)

This article, rather, is about recent State transportation planning efforts, and this author’s perceptions (perhaps askew) of a sketch, if not a “grand plan,” that may bring the Commonwealth to a better perspective than has existed since Governor Harry Byrd pressed the very audacious Byrd Act into existence. Setting aside significant concerns about State over-reaching or State actions simply to obscure the absence of funding, some important steps have been taken to enable Virginia to have a workable transportation system. With fits and starts, the framework for a better “way” could emerge. I will avoid appending to every thought the phrase “WITH FUNDING,” and presume that the reader understands that its absence trumps any great planning. Indeed from the earliest civilizations the value of funding has been apparent.

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Chairman’s Message

As my first duty as Chairman, I wish to thank the outgoing Chairman, Roderick Ingram, for all of his time and effort. Under Rod’s leadership, we published outstanding issues of the Journal, converted from paper copies to electronic copies, provided an educational session at the Virginia State Bar conference on minority involvement in government contracting, and received additional funds from the Bar to develop a scholarship program. It is my commitment to continue the good work of the Section.

I am pleased to welcome Eric A. Gregory, Powhatan County Attorney, to the Board. I look forward to serving on the Board with Eric and the other Board members Bonnie France (McGuire Woods LLP), Annie Kim (Assistant Dean for Public Service at UVA Law School), Stephen Maclsaac (Arlington County Attorney), Andrew McRoberts (Sands Anderson), Sharon Pandak (Greehan, Taves, Pandak & Stoner, PLLC), Larry Spencer (Blacksburg Town Attorney), Erin Ward (Fairfax County Attorney’s Office), Lesa Yeates (Hampton Senior Deputy City Attorney) and Eric Young (Tazwell County Attorney). At the annual meeting, the members elected Erin Ward as Vice Chairman and Bonnie France as Secretary. I would also like to thank outgoing Board members Blair Mitchell (Warren County Attorney) and Andrea Wortzel (Hunton & Williams) for their service.

I hope you enjoy this edition of the Journal which features an article by my esteemed colleague, Annie Kim, on entering the practice of local government law and local government guru Sharon Pandak’s timely article on transportation planning.

Thanks again for allowing me the privilege to serve as your Chairman this year.

Leo P Rogers
Chairman

Does Anyone Remember What Transportation Is?

“Transportation” is the “system and modes of conveyance of people and goods from place to place.” Contrast this with “park” – “to stop and keep standing for a time on a public way.” As we know, transportation is multi-modal, cars, buses, trains, airplanes, boats, etc. A focus on conveying people and goods in a multi-modal framework, instead of the growing “whatever” attitude, is one genesis of the current emerging effort in Virginia.

When You Put People on Land the Need for Transportation Becomes Imperative

Short of ancient Indian tribes which endeavored for a zero sum effect from their lives on earth, using land has an impact. It is now commonly understood that land use decisions and transportation have reciprocal effects on one another. This makes coordination critical to maintaining the function and purpose of transportation modes, orderly community development, and steady economic development. Post-WWII, there evolved a keen ability to forget this interdependence. Entrepreneurial activity, economic growth, and personal choice resulted in putting more people onto roads or other modes of transportation which were designed for far fewer. As a result, while most acknowledge a successful economy is tied to an effective transportation network, Virginia is increasingly in “park.”

The 1975 General Assembly required that all local governments have a comprehensive plan. In the late 1970’s, the Virginia Supreme Court finally acknowledged the
comprehensive plan as a vehicle for defensible local government land use actions which were beginning to react to the impacts of growth. Countering the local effort, however, was the iron grip of the General Assembly on local taxing powers causing desperate localities to be readily yanked into land use decisions which could overburden transportation in the future by the lure of increased assessments on formerly non-infrastructure-demanding-agricultural property. Add the increased ability of people to desire and buy houses farther and farther from their workplaces, and you have Laurel and Hardy’s “nice mess.” Getting out of this mess requires tradeoffs and planning (and funding). It requires an honest discussion, understanding and cooperation by State and local officials. As the cartoon character Pogo said, “We have met the enemy, and it is us.”

Not a Deus Ex Machina, But a Plan

Governor Tim Kaine’s administration brought indication of a greater understanding of the interrelationship of transportation and local land use through the entity charged with making Virginia transportation policy, the Commonwealth Transportation Board (CTB). As discussed below, those efforts continue but Governor Bob McDonnell’s administration startled localities with threatened devolution because of the continued absence of State funding increasingly for even maintenance, much less new construction. Localities first encouraged but then balked at mandatory urban development areas (UDAs) that were intended to avoid sprawl but morphed into likely sprawl-makers. In the latest Statewide Transportation Plan, VTrans2035 (adopted January 2010), the CTB finally made coordination of state transportation and local land use planning a distinct, long-term goal. That goal became more of a reality when this year the General Assembly enacted House Bill (HB) 1248.

The resulting legislation, and the related regulations that the Virginia Department of Transportation (VDOT) issued, give the Commonwealth a greater role to play in local land use planning. This is accomplished by interjecting state transportation requirements into local comprehensive plans. Indeed, the most recent legislation caps the transformation by giving VDOT and the CTB effective veto power over local plans. While these developments have the potential to devist localities of some of their land use planning authority, it “ain’t necessarily so.” Several localities have developed close working relationships with their local VDOT residency, and are ahead of the curve in this regard. More direct interaction between the State and the localities on the implications and opportunities in land use decision-making can bring real transportation system progress at both the state and local level. It may require persons willing to put aside prejudices and partisanship in a high level parley to bring about this first watershed since former Governor Baliles was able to launch a transportation initiative in 1986.

VTrans2035 and HB 1248 are part of a longer history involving the intersection of statewide transportation and local land use in Virginia. They are also a bit of “back to the future” in their effort to refocus VDOT on comprehensive transportation strategy.

Land Use and Transportation in Virginia – An Historical Perspective Development of the Corridors of Statewide Significance

In Virginia, the Commonwealth controls and operates the State’s primary and secondary roads, with a few exceptions, and the CTB allocates funds for state transportation projects, including but not limited to roads. With the 1932 Byrd Road Act, the State’s transportation policies have steadily become a factor in local land use. Counties adding their roads into the statewide system must relinquish control over them, and the CTB controls funding allocations for the highway system. However, counties retained their authority over local land uses.

The Byrd Act removed all “control, supervision, management and jurisdiction” over the non-primary “public roads, causeways, bridges,
landings and wharves” from boards of supervisors. The goal was to relieve counties and certain cities and towns of the obligation of maintenance and improvements to them. In the wake of the Act, VDOT inventoried streets and roads for which it had become responsible, determined which roads would be subject to maintenance, and when to remove a road from maintenance. It is not surprising, or necessarily troubling, that Virginia is one of four states where the state department of transportation is responsible for most roads. Virginia is first in the nation with 94.62% of its rural roads being owned by the State.

As the Commonwealth grew over the last decade, especially in high-growth areas such as Northern Virginia and Hampton Roads, the issue came into even sharper focus. Rural areas also demanded attention to maintenance of their many unpaved roads.

In 2001, the General Assembly amended Va. Code § 33.1-23.03 and set the stage for VTrans2025, predecessor to VTrans2035. The move required the CTB to prepare a statewide transportation plan after conducting a comprehensive review of statewide transportation needs. When published in November 2004, VTrans2025 introduced the concept of Multimodal Investment Networks (MINs), a step designed to identify CTB funding priorities.

VTrans2035 followed on the heels of novel legislation passed by the General Assembly beginning in 2006 at the urging of the Kaine Administration. In April 2006, the General Assembly approved SB 699 and HB 1513, which require the coordination of state and local transportation planning. Localities must submit new comprehensive plans (or newly adopted portions thereof), comprehensive plan amendments, and proposed rezonings to VDOT for review and comment whenever the former “will substantially affect transportation on state-controlled highways.” Additionally, the legislation required localities to develop a transportation plan as part of local comprehensive plans. While this was a dramatic bend for some localities, others were already seeking the guidance of their local VDOT Residency on land use implications, and were including transportation plans in their comprehensive plans to act as legal bulwarks for their land use decisions should they be challenged, and in seeking provers from developers.

VTrans2035 made the coordination of statewide transportation plans and local land use decisions. While less pronounced, VTrans2035 also attempts to reconcile connectivity issues in Virginia’s rural communities.

VTrans2035 took the next step in determining the Commonwealth’s long-term transportation goals by identifying the important connection between statewide transportation plans and local land use decisions. While less pronounced, VTrans2035 also attempts to reconcile connectivity issues in Virginia’s rural communities.
opment, the report suggested using transportation funds to leverage local land uses.\textsuperscript{33}

Why are the CoSS so important? The 12 CoSS criss-cross the Commonwealth, linking significant areas with other states.\textsuperscript{34} Moreover, they are not just about the secondary road system on which we travel daily, but all forms of transportation -- road, transit, rail, and water. Finally, the CoSS’s improvements goals aim to effectively and efficiently move people and goods.

CoSS #1 - Coastal Corridor, traversing the State via Route 17 from Northern Virginia to North Carolina, offers a separate route for beach traffic, as well as freight and port opportunities. CoSS #2 - Similarly, the North Carolina to West Virginia Corridor provides a route via freight and tourism traffic. CoSS #3 - The Crescent Corridor, running north to south along I-81 on the western end of the State, provides freight opportunities along the roads and by rail.

CoSS #4 - Virginia’s East-West Corridor on I-64 connects important educational, military and port functions in the Hampton Roads region with the western part of the state. CoSS #5 - Similarly, US 460’s Heartland Corridor provides a means for transporting freight shipments of goods through Virginia west to West Virginia and beyond.

CoSS #6 - The Northern Virginia Corridor, running east-to-west, provides commuter access from I-81 into the Beltway region, as well as goods-to-market opportunities, and connection with major airports. CoSS #7 - In Southern Virginia, the Southside Corridor of US 58 also allows for tourist traffic and freight shipment, while CoSS #8 - Western Mountain Corridor provides multiple freight rail opportunities.

CoSS #9 - US 13’s Eastern Shore Corridor provides unique access along Virginia’s coast. There, freight rail and multiple airports provide goods access, while the airports and US 13 allow commuters to travel to the beaches.

CoSS #10 - The burgeoning Seminole Corridor, which follows US 29, provides multiple transportation aspects. In addition to its important commuter functions, the route has produced multiple freight opportunities, both by road and by rail. CoSS #11 - Similarly, the I-95 Corridor, “the Washington-to-North Carolina Corridor,” continues to grow in its commuter and freight importance. This critical eastern spine of Virginia links Northern Virginia, the Hampton Roads area, and points south of Virginia. CoSS #12 - The Northern Virginia North-South Corridor, links Loudoun, Fairfax and Prince William Counties, via I-95, through I-66, to the Dulles Airport,\textsuperscript{35} to address connectivity issues of commuter and goods traffic plaguing this region.

To do accomplish CoSS goals, VTrans2035 identified monetary strategies. The Commonwealth might use a “carrot” based approach, establishing competitive grants for projects with land use patterns that reduce demands on transportation capacity. Alternatively, a “stick” approach would base funding allocations on projects meeting statewide performance measures or developing local comprehensive plans promoting favored development patterns.\textsuperscript{36}

At the same time, VTrans2035 recognized that Virginia’s rural areas faced entirely different challenges: a lack of connectivity coupled with ever increasing congestion pressures from nearby locales.\textsuperscript{37} VTrans2035 emphasized expanded access to intercity transportation modes, such as bus and rail.\textsuperscript{38} It also acknowledged the need for “context sensitive solutions” (CSS) tailored to protect rural, as well as other, environments.\textsuperscript{39} Adopting the Federal Highway Administration’s definition, context sensitive solutions aim to integrate transportation facilities with their settings, physically, environmentally and aesthetically.\textsuperscript{40}

Recent Developments: HB 1248 – Shackles of Control or Part of a Plan?

The most recent chapter is a step beyond the prior legislation. April 9, 2012, Governor Bob McDonnell signed HB 1248 into law, extending further the State’s reach into local land use policy.\textsuperscript{41} This move generated much backlash from localities and other stakeholders who fear just
another “Grendel grab.” HB 1248 can be viewed as not only part of a plan but it mirrors some of the current federal requirements for transportation approval and funding. Imagine congruent government! (if one is not consumed with grousing about federal “overreaching”.)

Answering VTrans2035’s call for greater integration, HB 1248 amends several aspects of the Virginia Code related to transportation and land use. Under amended Va. Code § 15.2-2223, local transportation plans must be “consistent with” the Statewide Transportation Plan (VTrans2035) and the Six-Year Improvement Plan. This means that, if the State plans and builds a road through a locality, the locality must recognize the road in its planning. (Surprising?) Localities must consult with VDOT to assure consistency. Further, localities must submit newly adopted transportation plans, or amendments to existing plans, to VDOT for review and comment as to consistency. If VDOT determines that the local transportation plan is inconsistent with the Commonwealth’s transportation plans, VDOT must notify CTB.

HB 1248 next amends the CTB’s transportation powers “[t]o integrate land use with transportation planning and programming, consistent with the efficient and economical use of public funds.” If the CTB determines the local plan is inconsistent, and the locality does not rectify the situation “after a reasonable time,” CTB can allocate funds away from the “nonconforming” project. These sound onerous until one realizes that localities can provide input into VTrans2035 and the Six-Year Improvement Plan from the ground up with their Residency offices, through their CTB representative and other sources, and at the public hearings required on these documents. These requirements make the CoSS viable. So, not onerous when one recalls that an effective and efficient transportation system links and coordinates.

Moreover, the CTB can require localities to reimburse the costs for projects the locality terminates or fails to advance to the next stage of development. Again this may seem onerous, but remember that federal TIGER grants for transportation have similar conditions, and require consistency with constrained long range plans approved by the MPOs. This practically means that the locality must know where its money is at the front end, and not pursue speculative projects which result in a hoarding of funds with no immediate use while other projects go unfunded, or construction of a “road to nowhere” when funds for completion are not available.

As noted, the negative reaction to the legislation came from many corners and focused on the Commonwealth’s “new” role in land use policy. The Virginia Association of Counties, in a letter to Governor McDonnell, expressed concern that the new legislation would allow state officials to override democratically pursued policy decisions. The Virginia Municipal League stated its fear that the bill ends state participation in funding secondary road construction. In the absence of any substantial funding, the outrage is understandable. Smart-growth advocates, the Coalition for Smarter Growth, and newspapers ran editorials objecting to the State’s new role in local land use decision-making.

Misgivings and suspicion are understandable. Increasingly, Virginia localities have been in the forefront of progressive land use decision-making; some have expended their own limited revenues on transportation because the State has not. However, as previously noted, for years a number of localities have worked cooperatively with their local VDOT Residency. What would happen if localities also put the proverbial hand on the proverbial shoulder of their CTB member to participate in the discussion of how to make transportation work statewide?

The federal government already mandates the establishment of Metropolitan Planning Areas (MPOs) for purposes of federal transportation planning/funding. The State’s refocusing appears to mirror this process. Development of “activity centers” in the National Capital Region is another approach to focusing public services and resources. Transportation technology efforts, like those of VDOT 511 and the District/Maryland and Virginia
transportation system through an interrelated monitoring and planning system known as MATOC (Metropolitan Area Transportation Operations Coordination (MATOC) Program), become more viable to relieve or avoid congestion and accidents for an increasingly internet savvy population. Dealing with demand-related backups when Virginia commuters, school buses, public transit, commercial truckers are all on the roads at the same time, or commuter trains are stuffed by those workers all trying to make the same schedule, becomes possible. Isn’t more focused decision-making about this critical function a better step than preservation of “silos” of transportation decision-making in a world where, as big as the Commonwealth is for us, it is a small, but critical location through which other people and goods travel? How can we positively snare them for economic benefit if they look for out-of-state detours?

Under HB 1248, the CTB could go astray of current statutory formulas or engage in political gamesmanship. However, the CTB has the potential and challenge to begin to get Virginia out of this transportation mess. The CTB is now responsible for focusing transportation policy and funding, and can be a focus for accountability that has thus far eluded transportation decisions. If the CTB rises to the opportunity and ups its ante with the General Assembly, it will magnify the “roar” for new funding. And if localities begin to use the avenues available to and with the CTB, there is an opportunity to collectively and cooperatively work in a new forum.

Consequences?

History shows the trajectory in state-based land use planning, through the imposition of various transportation conditions, points upward. Such measures include funding priorities, conformity, and primary highway access, land use permitting, and secondary road acceptance requirements. This increase in top-down transportation requirements has not resulted in a practical decrease in local land use planning authority. It need not where localities rise to the challenge of 21st century planning and have an equal cooperative relationship with the State. 50

State funding priorities are one of the most obvious ways for influencing local growth patterns; but without any funding, these carrots don’t exist. Also this more coordinated transportation planning will be undermined by State staff reductions in VDOT and DRPT, etc., to cope with reduced funding. The ultimate Funding Specter, then, means localities (and landowners/developers) will either move projects to areas that make funding available or conform projects to the Commonwealth’s requirements to assure the funding. Without the critical local government knowledge and planning understanding, and insufficient State staff, the worst case scenario of a “stick” approach, is no plan at all.

Looking to the future, if the State can credibly promise funding, localities are likely to amend their comprehensive plans to maximize their share of the new funding realities and creatively tailor implementation of their planning goals to do so. This will be especially likely when it comes to funding transportation projects or granting access along the CoSS. As major transportation and economic routes, access to the CoSS means greater vitality for local business and greater access for local families, and, inevitably, increases in local revenue coffers. However, local governments will need to live up to state standards to ensure continued access to the State’s “Golden Goose/Geese.” On the other hand, consider the ability to reliably and safely move one’s loved ones from North Carolina to Northern Virginia on Rt. 29, and predict when they will arrive. Or to reliably move goods from the Norfolk port to Northern Virginia, or parts north and south, and predict when they will arrive. Or to reliably and safely move people and goods from North Carolina to Maryland/West Virginia on I-81, and predict when they will arrive - will have an appeal to our children, and national and international business.

State access requirements and land use permitting will also continue to play a role in transforming local land use patterns. Bearing in mind that the stated goal is to reduce congestion, controlling ac-
cess to primary highways, especially the CoSS, means the Commonwealth simultaneously controls access to land uses along those routes. That is to say, a viable business zone along a primary highway depends as much on its location as it does access from the highway to the location. If the Commonwealth can reduce, alter, or even eliminate, such access over the public rights of way, it forces local governments to plan for alternative means for access, a quintessential effect on local land use. Localities must plan for service roads or other means of ready access or risk losing such businesses. Yet the obvious benefits of smoother transportation in areas which have done such planning may persuade localities – and the businesses which they covet – that a “new” way can be a better way for all.

Within a locality, VDOT controls whether it will accept new streets into the secondary system. This affects the placement and frequency of subdivisions to the extent that any new subdivision fails to meet the standards, such as connectivity. Because most localities loathe taking on the new roads themselves, conformity to state requirements becomes a de facto requirement.51 However, localities can use these requirements to overcome some myopic landowner aversion to through streets which have frustrated fire and rescue and law enforcement response efforts. Growing internal VDOT understanding and development of context sensitive transportation solutions can mitigate adverse impacts or perceptions of the connectivity requirements.52 The conundrum of secondary streets might actually be solved through such planning, coordination, construction which may enable more extensive use of transit.

**Conclusion**

The new trend in the Commonwealth is toward greater consistency between local land uses and statewide transportation requirements. Over the course of the last decade, this trend manifested itself in various pieces of legislation linking the two. The most recent legislation was merely the next step in that process. The increasing connection between land use and transportation could mean less authority for local governments to control the destiny of the land within their jurisdiction. It could alternatively mean that everyone “gets it,” (i.e.) if residents and businesses can get around better and on time, they are happier and more productive. Metaphorically, they grow but their “clothes” fit, not tighten or shrink. Our capital investments can contribute to more like the svelte athlete, not the middle age bulges; and the transportation system can move like the athlete, positively ready for the next challenge.

An opportunity exists for removing the “silos” between State and local transportation functions to create new synergy in State and local planning and implementation. In the 21st century, a relatively small area, Virginia, needs to have a transportation system that allows people and goods to travel around and through the State in order to maintain a quality of life and to be economically sufficient. A universal acceptance of the concept of Commonwealth/commonwealth is critical. Active engagement by local officials with their local VDOT Residency and with the CTB could “pave” the way for moving around a vibrant (not road weary) Commonwealth, its localities and its people. The ghost of Governor Byrd may be guiding this possibility as the premises are the same – increase economic opportunities - a concerted effort to have unified transportation system could make it happen. (remember, General Assembly - with funding.)

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1 The opinions in this article are solely those of the author. I appreciate the excellent research work of Law Clerk, Matthew Roberts, George Mason University School of Law, Class of 2012.

2 “We can change the shape of this conversation,” [Mary] Hynes, of Arlington County, said. “If we are talking only to the General Assembly members, it will not change. It has to be the people in their houses, sitting in their cars, waiting for the train who say – enough.” Debbie Messina, PilotOnline, “Region’s mayors brainstorm at transportation summit,” June 8, 2012.
Intelligent Transportation Society of Virginia, June 6, 1999.

7 Federal officials as well should be part of the discussion, but that is a different article.

8 In medieval plays, which were very long and full of gore and confusion, a mechanical “god” might be suddenly lowered to bring order and the play to a close, i.e. unsolvable problem, suddenly, magically solved.

9 I had the honor of being appointed to serve on that Board as At-Large Urban Member by Governor Kaine, and being reappointed by Governor McDonnell (2009-2010).

10 Va. Code § 15.2-2223.1. The initial laudatory concept was to focus dense development into areas (“UDAs”) where public services existed, especially transportation and public water/sewer. But in its first iteration, the General Assembly mandated localities with large populations, or large population growth (which could be a small locality), to designate at least one UDA in their comprehensive plan with mandated requirements, and that area(s) could not be a town. (April 2007, HB 3202). This year, the General Assembly amended the UDAs requirements so that they are no longer required in local comprehensive plans while retaining progressive planning principles.


12 Notably, cities maintain their roads, and the counties of Arlington and Henrico maintain responsibility for their local roads. See Va. Code §§ 33.1-25 (primary highway system), 33.1-67 (defining the secondary road system), 33.1-69(A) (Commonwealth controls secondary road system); see also Va. Code § 33.1-228 (excepting Arlington and Henrico).


14 See Va. Code § 33.1-69(A) (counties lack authority to control secondary road system); and Va. Code § 15.2-2200, et seq. (authority for local control of land use). It should be noted that local governments also lack the authority to control the airports, rail and seaports.

15 This bifurcation has been noted as a reason for the various perspectives affecting transportation and land use coordination between state officials and local officials. See O’Leary, supra, at 6.

16 The Byrd Road Act is codified as Va. Code § 33.1-69(A).

17 Landing and Road Acquisitions, Final Report of Beale,
Davidson, Etherington & Morris, P.C. to the Middle Peninsula Chesapeake Bay Public Access Authority, at 7 (available at http://www2.vims.edu/seagrant/coastalaccess/resou rces/docs/Protocol_PG1-48.pdf).

18 “Policy Options for Secondary Road Construction and Management in the Commonwealth of Virginia”, Dr. Jonathan L. Gifford. GMU School of Public Policy, p. 1, June 16, 2011.


20 Designed as multimodal transportation corridors, the report identified 11 MINs. Projects within the MINs would receive priority funding if they had a multimodal focus. See VTrans2025: Phase 3 and Final Report to the General Assembly, Framework for Setting Priorities and Decisionmaking, 89, available at http://www.virginiadot.org/projects/vtrans/resources/revisedPhase3Reportforctb.pdf.

21 See Virginia’s Long-Range Multimodal Transportation Plan, Transportation and Land Use: Challenges and Opportunities, at 5, available at http://www.vtrans.org/resources/Land_Use_FINAL.pdf (noting Kaine Administration made most significant changes to land use policy in over two decades).


23 Va. Code § 15.2-2223.


26 See Access Management Regulations, 24 VAC 30-72 (primary arterials), 24 VAC 30-73 (minor arterials); see also Va. Code §§ 33.1-107-108 (control highway access for private and commercial establishments).

27 See Land Use Permit Regulations, 24 VAC 30-151(2010).

28 Va. Code § 33.1-23.03.


31 See Virginia’s Long-Range Multimodal Transportation Plan, VTrans2035 Report to the Governor and General Assembly, supra, at 2; Transportation and Land Use: Challenges and Opportunities, supra, at 6-8, available at http://www.vtrans.org/resources/Land_Use_FINAL.

32 Id. at 86.

33 Id.


36 See id.

37 VTrans2035 Report to the Governor and General Assembly, supra, at iv, 78.

38 A remarkable departure from their more urban sister localities, was the emphasis placed on improving broadband internet connectivity in rural areas. This may be an acknowledgment of the “funding elephant”, choosing a solution that connects rural communities without neglecting them (financially) in favor of the urban and suburban centers. It may also reflect an understanding that the best opportunity to install infrastructure for cable/fiber optics, the cyber connectors, is during road projects.

39 Id. at 63.

40 For an article about changes in other aspects of land use/transportation decision-making as well as some of those mentioned here, see “Making the Land Use/Transportation Connection: Quietly Revolutionizing Land Use in the 21st Century,” by former CTB member Gerald P. McCarthy, 40 ELR 10746 (8-2010).

41 See http://leg1.state.va.us/cgi-bin/legp504.exe?121+sum+HB1248. Its Senate counterpart is SB 639.

42 HB. 1248, codified as Va. Code § 15.2-2223(B).

43 Id.

44 Id. The new powers are designated as Va. Code § 33.1-12(9)(f).

45 Id.

46 Id. Finally, the bill amends Va. Code § 33.1-23.1(B) to provide up to $500 million of transportation revenues for new construction projects. However, the bill directs the CTB to use the money for specific projects, rather than to supply the general transportation fund.

47 Larry Land, VACo Outlines Objections to Governor’s Omnibus Transportation Legislation, County Connection Newsletter, 1,

48 Chelyn Davis, Roads Bill Angers Localities, The Free-Lance Star, April 2, 2012 (quoting Neil Menkes of VML) (available at http://fredericksburg.com/News/FLS/2012/042012/04022012/692181). However, some counties, such as Spotsylvania County, have noted that the current funding levels essentially accomplish the same end. Id.


50 Some localities, like Fairfax, could pursue a nonconforming project at their own cost. However, the specter of the state slamming the door on acceptance of such roads and perpetual maintenance is enough to rattle even this local giant. See, e.g., Chairman Sharon Bulova and Supervisor Jeff McKay, State Shirks Transportation Responsibility, Reston Connection, Feb. 29, 2012 (state has moral and legal responsibility to maintain roads) (available at http://www.connectionnewspapers.com/news/2012/feb/29/state-shirks-transportation-responsibility); see also Davis, supra (quoting county officials that feel road maintenance a state function).

51 Va. Code § 33.1-70.3(A) (locality can only petition CTB to take the road into secondary system if road “developed and constructed in accordance with” the secondary street acceptance requirements).

52 Context Sensitive Solutions is “a collaborative, interdisciplinary approach that involves all stakeholders to develop a transportation facility that fits its physical setting, and preserves scenic, aesthetic, historic and environmental resources, while maintaining safety and mobility. Context sensitive solutions is an approach which considers the total context within which a transportation improvement project will exist.” (Federal Highway Administration, VDOT presentation by Mohammad Mirshahi, P.E., to the CTB, June 16, 2010.)
Entering the Practice of Local Government Law Today

Annie Kim

Introduction

You can hardly pick up a paper these days without finding an article about the state of the legal job market. Most of this coverage focuses on the difficulties new graduates face within the shifting dynamics of the large firm landscape. But in these uncertain times, what can we say about how law students and recent graduates are responding to careers in local government law? Are there steps local government attorneys can take to encourage future members of the field?

This article examines these questions, first, by sifting through the available public data on recent graduate government hiring in Virginia, then by quickly canvassing the features of the local government career path that might attract or discourage current law students. It concludes with five practical recommendations for local government attorneys’ offices with an eye toward what we can do to encourage future generations of local government attorneys.

The Data

While all law schools track placement data for their graduates, they tend to do so based on broad employer categories established by the ABA: firms of different sizes, public interest, government, judicial clerkships and so on. The ABA requires law schools to report employment data for graduates nine months after graduation, making this the most popular benchmark for data gathering.

“Government” employment, as defined by the ABA, includes “all levels and branches of government, including prosecutor positions and positions with the military and all other agencies, such as the U.S. Small Business Administration, state or local transit authorities, congressional committees, law enforcement, and social services.”

Looking at the law school data, then, what can we learn about trends for recent law graduate employment in local government? Unfortunately, we cannot say whether more or less recent graduates are entering local government attorney jobs today than they were five years ago. Since no one entity appears to capture the requisite information, we would need to survey all local government employers to obtain this data. We can, however, draw a few conclusions based on the available snapshots of Virginia recent graduate employment in government employment, as well as the number of recent graduates who start their careers in the Commonwealth.

Government Jobs for Virginia Graduates: Class of 2011 vs. Class of 2008

According to many measures, the law school class graduating in 2011 was the hardest hit by the recession. Nationwide, the percentage of new graduates starting jobs at the largest firms (501 attorneys or more) reached a historic low for the Class of 2011: 16.2%, down more than 25% from figures for the classes of 2008 and 2009. Private sector employment overall sank to just below 50% for this class—for the first time since 1975—compared to normal levels of between 55% and 58%. Broadly speaking, public service jobs (covering all government, public interest and judicial clerkships) stayed relatively stable at 28.8% of all graduate jobs, up from 25.9% in 2009.

Government jobs for graduates of the eight Virginia law schools dropped for the Class of 2011. The mean percentage of graduates holding government jobs was 13.5%, while the median was 13.1%. Though two schools reported modest increases of 2.5 and 3.2 percentage points in government jobs from Class of 2008 numbers, the five other Virginia schools reporting numbers for these classes showed decreases since the Class of 2008, from .2 percentage points to 23.4 percentage points. Even with significant percentage point shifts, however, it should be noted that the raw numbers of graduates involved are small: 50 at the highest and 4 at the lowest. Data for government placements 9-months post-graduation for the Virginia schools is listed on the following page:

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No one factor, in all likelihood, drives this general decrease in government employment. But the budgetary and staffing reductions across the board at federal, state and local government levels must, of course, play a central role.

**Virginia Employment Rates for Graduates, Class of 2011 vs. Class of 2008**

Looking at the 9-month postgraduate data, graduates from Virginia law schools appear to take their first job in the Commonwealth at a healthy rate.\(^7\) For the Class of 2011, the mean percentage of recent graduates working in Virginia was 38.6% and the median percentage was 34.8%. The highest percentage for any school was 77.9%; the lowest was 13.6%. Given that one or two-year judicial clerkships often take graduates out of state, the 9-month data seems a modest predictor of longer term employment in Virginia.

Overall, the Class of 2011 started more of their first jobs in Virginia than did the Class of 2008. Five of the seven reporting law schools saw increases ranging from .6 to 15.6 percentage points, while two saw slight drops of .2 and .4 percentage points. Whether this higher number of graduates will lead to more attorneys staying in-state over the long term is hard to know, but the early snapshot seems promising.

**Interest in Local Government Careers & the Barriers to Entry**

Many of us finished three years of law school without learning about the existence of local government law. Today, seven out of the eight Virginia law schools offer at least one class that focuses on local government law, often an overview of local government or land use law. William and Mary Law School, in particular, offers a broad range of courses: land use, local government law in general, state and local government finance, and an externship in state and local government offices. Students at many schools also have the chance to meet local government attorneys at talks organized by career services offices and at on-campus interviews.

This begs the question, then: how much interest do law students have in becoming local government attorneys? In my own experience, the answer is a lot. When students understand that local government practice allows them to explore a sweeping range of interesting work, both as litigators and advisors, touching policy and legislation and making a real impact on their communities, they get excited. Of course, local government practice does not carry the same prestige for most students as practicing at, say, the United States Department of Justice or the Department of State. And federal compensation can quickly overtake local government pay. The lowest starting salary for entry-level federal government attorneys in the Washington, D.C. metropolitan area at the bottom of the GS-11 ladder is $62,467. Attorneys with one or more years of experience starting at GS-12 will earn at least $74,872. For students intent on practicing in the areas of national security, immigration, intelligence, or antitrust, for instance, or in handling complex interstate litigation, the federal government will be the natural choice.

But the single greatest factor that might dampen student interest in local government is the uncertain and sporadic nature of its hiring. Third-year students focus on their immediate job prospects after graduation. Those who worked as summer associates at large law firms in their 2L year have a good chance of receiving an offer by the late fall of their 3L year. Many federal government agencies have honors programs that hire, though very selectively, unbarred 3Ls and recent graduates working as judicial clerks. A handful of state attorney general’s offices, such as California’s Department of Justice, also hire 3Ls and clerks through honors programs. With the exception of perhaps just the New York City Law Department—which employs over 600 attorneys in 10 offices—local government offices...
do not, and cannot afford to, hire law students who have not yet passed the bar. Virginia firms that specialize in representing local governments are also not likely to engage in yearly 3L hiring for their local government practices.

By necessity, local government attorney hiring must remain decentralized: each locality hires on its own timeline, through its own advertisements. The curious student sitting down to research what the market looks like now has a hard task ahead of her. Virginia’s state job posting site at Virginia.gov does not list local government jobs. Virginia Lawyers Weekly posts only current job postings. If the student knows to search the Local Government Attorneys of Virginia’s employment page, she may get the broadest idea about recent job openings. This is much harder than getting a quick overview of either federal or state government jobs, which can generally be searched on a single database.

Then there is the question of frequency. Imagine a student who wants to live in Richmond and practice local government law. Since he cannot land a job with a local government office before passing the bar, he will need to work in some other setting for at least a year or more after graduation. How long before a job comes open in the region for which he’s qualified? Many, or perhaps all, the in-house Virginia local government jobs that have opened thus far in 2012 have required both the bar and some experience. In short, our hypothetical student does not have a clear or reasonably quick path to reach his goal. And unlike, for instance, U.S. Attorneys, commonwealth’s attorneys and public defender offices which usually see some attrition before retirement, local government offices tend to keep people a long time, or lose them to other local government offices.

What does this mean for students considering internships at local government offices? As first-years, they have some freedom to explore practice areas and offices. As second-years, many focus on how their internship will directly aid their chance of securing a permanent job. Those who go on to judicial clerkships might have the best of both worlds, but clerkships today are highly selective and most do not hire until the fall of third year. Add to all this the fact that most local government internships, like most public service internships in general, are unpaid, and choosing local government becomes difficult indeed.

Considerations for Attracting New Attorneys to Local Government Law

Difficulties aside, if attracting the best and the brightest—those who can not only do the job but can drive the profession forward—matters, then seeds must be sown often and early to ensure a ready harvest in the years to come.

Consider the following 5 recommendations for investing in the next generation of local government attorneys:

Engage Law Schools

Whether it’s your alma mater or a school in your region, think about sending a quick email to the career services office (or the public interest advising office, if the school has one) introducing yourself and offering to speak at a career presentation. Make it a goal to speak at the school or attend at least one employer reception at the school each year. At these events, chat with students and offer to mentor those who are interested in small ways, such as by looking at their resumes or introducing them to network with other local government practitioners.

Create a Well-advertised Internship Program

If your office does not hire interns during the summer, think about creating an internship program. Supervising interns takes time that small offices, in particular, do not have in abundance. But with a little planning, every office can develop some long-term project, some comprehensive research on a topic that attorneys lack the time to finish, to sustain an intern. Participating in client and board meetings, attending court, and updating research for code and policy revisions can also be substantive and worthwhile uses of time. Remember that your program does not need to pay interns to be competitive, though some stipend or gas reimbursement will, of course, be appreciated.

Many offices with internship programs advertise solely in conjunction with law school or regional law school consortium interview programs. Students today cast a wide net for internships, and most do not hire until the fall of third year. Add to all this the fact that most local government internships, like most public service internships in general, are unpaid, and choosing local government becomes difficult indeed.

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at offices that appear to invest in their programs and will, perhaps, one day hire former interns.

Whether you wish to set a hard deadline or give a general one (i.e. “we hire each winter, usually by the end of February”), consider adding a few sentences to describe in broad terms what an intern in your office can expect. Include the name or title of a contact person and a general email account to which inquiries can be sent.

**Recruit Interns through Law School Programs**

While not all law schools host on-campus interviews or participate in law school consortium interviews dedicated to public service employers, all schools do run centralized employment databases for their students. If the law schools you wish to target host on-campus interviews, take advantage of those opportunities. In addition to attracting more students to your office, you may find the time spent talking to law students to be rewarding in itself. If your school does not offer interview programs, at least advertise your internship through their database and plan to do so by January if possible.

**Recruit more Broadly for New Attorneys**

In addition to advertising in the Virginia Lawyers Weekly and in the Local Government Attorneys of Virginia publications, place ads with various Virginia law schools and national websites devoted to public service jobs such as www.PSLawnet.org (soon to be called PSJD). These free resources will expand your candidate pool to those who may not be thinking specifically about local government.

**Consider the Inexperienced**

Though hiring a person with prior local government experience may be ideal for many reasons, it may not necessarily lead to recruiting the best talent or bringing in fresh and diverse perspectives. Especially for recent graduates who started their careers during this recession, local government experience might not be possible. Those who are genuinely interested in local government service deserve a chance to make their start.

**Conclusion**

This is a time of great change and possibility for our profession. More students than ever believe public service to be their calling despite the difficulties of the market. By taking some deliberate steps now to invest in future local government attorneys, we can help to ensure the continued growth of our practice and the number of highly satisfied practitioners serving the public.

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3. Id.
4. Id. at 3. And, as the NALP report notes, “changes may be partly attributable to school programs to provide fellowship and grant opportunities in a variety of settings, including public interest.”
5. This data, and the numbers that follow, was obtained from the publicly released annual reports by each law school to the ABA for reporting years 2009 - 2012, published on the Law School Advisory Council website at www.lsac.org. Individual law schools often report additional employment data on their websites. To ensure a true apples-to-apples comparison, only their ABA-published data were used.
6. Data was not available for Liberty University School of Law’s class of 2009, likely due to the fact that it was first accredited by the ABA in 2006.
7. This data was also obtained from the publicly released annual ABA reports for years 2009 - 2012. Individual law school websites often publish percentages for graduate employment in different regions, which, though likely based on different snapshots in time, would provide additional information.
**Bibliography & Back Issues Notice:** A bibliography of all articles published in the *Journal of Local Government Law* may be accessed at the Section’s website: http://www.vsb.org/site/sections/localgovernment/view/Publications/. Local Government Section members also have website access to back issues at the same site. Section members may contact the Virginia State Bar to obtain the username and password. E-mail barservices@vsb.org and include *Local Government Section Password Request* in the subject line.

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