



ISSUE BRIEF

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This Issue Brief contains descriptions of the issues that appear likely to capture the attention of legislators at the 2004 Session of the General Assembly. It is not intended to be a comprehensive listing of every issue that will be considered. Unanticipated issues will undoubtedly surface, and some of the issues discussed in these pages may not be considered during the 2004 Session. Finally, and most important, these descriptions are *not* predictions of how the General Assembly will respond to any issue.

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Finance/Taxation

Recovering Economy

For the past three years, the U. S. and Virginia economies have experienced a stubborn recession and a long period of very slow economic growth. Virginia's tax revenue went from a period of three years of double-digit revenue growth to a period of three fiscal years with revenue growth averaging less than one percent per year. At long last, the economy is beginning to recover, with the most recent economic data for the third quarter showing a GNP growth of 7.2 percent.

The strength and duration of the economy's recovery is not known; what is likely to happen, however, is that the Commonwealth's revenues, for

at least the short-run, will grow much more rapidly than over the past three years. For the current fiscal year, which is the final year of the 2002–2004 Appropriations Act, revenue must grow 4.6 percent to meet the Appropriations Act's official estimate. After four months, Virginia's general fund revenue has increased 7.9 percent. Clearly, the Governor, later this year, will increase the revenue estimate for the current fiscal year to generate additional general fund dollars to meet the future needs of the Commonwealth.

2004–2006 Budget

The growing economy will be evident when Governor Warner submits his budget bill for the upcoming 2004–2006

biennium. As noted above, the one percent average growth of general fund revenues for the past three years should increase dramatically. Even if the revenue growth accelerates to the level of only a 6.0 percent increase for the next two years, an additional \$700 million in new revenue will be generated in each year of the upcoming biennium to help Virginia meet its needs.

Spending Priorities

Although this may sound like a great deal of new uncommitted revenue, there is also a growing list of priorities that the Virginia General Assembly and the Governor will likely address during the 2004 General Assembly as areas needing more funding:

- The unfunded elementary secondary education SOQ costs in the upcoming biennium are estimated to be in excess of \$500 million.
- The Governor and the chairmen of the General Assembly money committees have pledged to make a significant down payment of at least \$100 million to replenish the Revenue Stabilization Fund (also known as the Rainy Day Fund) in an effort to help shore up Virginia's AAA bond rating, which is currently under review by rating agencies.
- The last three years have seen a significant decline in the assets of the Virginia Retirement System. When the VRS actuary calculates the required state contribution to maintain the soundness of the retirement systems, a significant increase in payroll costs will be required.
- The Governor and General



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Assembly may wish to repeal some of the one-time measures that were used in previous years to help balance the budget. One example is the acceleration in sales tax collections paid by merchants, which has a one-time cost of \$150 million to repeal.

- State employees have received only a very modest 2.25 percent increase in annual salaries during the last three years. Moreover, local teacher salaries also have been an increasingly important priority in recent years.
- The Commonwealth's debt service burden will further increase in the upcoming biennium as bonds, approved in the statewide referendum in November 2002, are issued.

On December 17, the Governor will unveil his official estimate of revenues, as well as his spending blueprint for the upcoming 2004–2006 biennium. Although the Virginia economy has begun to rebound and generate additional dollars, the General Assembly will face a difficult time in the 2004 Session balancing a host of unmet needs and deferred items with the important spending priorities necessary to meet the needs of the Commonwealth in the upcoming biennium.

□ *John A. Garka*

Tax Reform

In the last few years, tax reform has been a popular topic, with the tax structure being examined almost constantly by various entities. A brief review of the work of these entities may be helpful in understanding what issues may arise dur-

ing the 2004 Session and in providing a perspective on their evolution.

On the executive side of government, in 2001 Governor Gilmore formed a commission to study Virginia's state and local tax structure, and in December 2001 that commission issued the Report of the Governor's Commission on Government Finance Reform for the 21st Century. Some of this commission's recommendations included: (i) passing a constitutional amendment that would eliminate the personal property tax on all non-business vehicles and cede 20 percent of the state's individual income tax revenue to localities; (ii) eliminating the BPOL tax; (iii) eliminating the estate tax; (iv) equalizing the taxing authority of cities, counties, and towns; and (v) reducing and simplifying telecommunications taxes. None of these items have been enacted into law, and they therefore could be the subject of bills in the upcoming session.

Then, earlier this year, Governor Warner created a work group to examine what changes should be made to state and local taxes. As of the writing of this article, the Governor's Work Group has not issued any recommendations, but it is likely that the work group's findings will be the basis for some of the Governor's legislative package in the 2004 Session.

On the legislative side, in 2001, after a two-year comprehensive study of Virginia's state and local taxes, a citizens' commission formed by the General Assembly (Morris Commission) issued the Report of the Commission on Virginia's State and Local Tax Structure for the 21st Century (House Document 22, 2001). Some of the Morris Commission's recommenda-

Governor's Tax Plan

On Monday, November 24, 2003, Governor Warner revealed his proposal to reform Virginia's tax system. The key parts of the Governor's plan:

- Increase sales taxes from 4.5 percent to 5.5 percent;
- Reduce sales taxes on groceries from 4 percent to 2.5 percent;
- Increase the cigarette tax by 22.5 cents per pack and allow counties to tax cigarettes;
- Lower income tax rate on first \$20,000 of income and create a new tax bracket of 6.25 percent on incomes over \$100,000;
- Increase the standard deduction to \$4,000 for single taxpayers and to \$8,000 for married taxpayers filing jointly;
- Increase the personal exemption from \$800 to \$1,000;
- Close tax loopholes for corporations;
- Modify the tax deduction for senior citizens;
- Fully implement the car tax refund by 2008; and
- Eliminate the estate tax for working farms and family-owned businesses.

tions included the following:

- The state's **individual income tax** be revised, in a revenue-neutral manner, to effect changes in its tax rates, tax brackets, personal exemptions, and standard deductions.
- The state move to protect the role of its **sales and use tax** in meeting the fiscal needs of the Commonwealth by (a) participating in the Streamlined Sales Tax Project, (b) critically reviewing all current exemptions to the sales and use tax, and (c) extending the tax to certain categories of services and new data/knowledge-related products.
- The **taxing authority of counties** be made commensurate with that of cities,
- The state increase its **support to localities** by (i) substantially increasing financing for both the operational and capital costs of the local school divisions; (ii) assuming the full operational cost for the provision of major mandated services for so-

cial services and jails; and (iii) dedicating at least six percent of the state's annual individual income tax collections to Virginia's localities.

None of the foregoing recommendations has been enacted into law, and therefore any or all of them could be the subject of some type of legislation during the 2004 Session.

In part as a follow-up to the recommendations of the Morris Commission, in 2001 the General Assembly created the Joint Subcommittee to Study and Revise Virginia's State Tax Code, which issued its report in 2003 (House Document 26, 2003). Some of this joint subcommittee's recommendations that passed into law during the 2003 Session were as follows:

- Adopt House Finance Subcommittee Report with standards for charitable organization sales tax exemptions (HB 2525);
- Restore conformity with fed-

eral income tax law, with the exception of accelerated depreciation and carry back loss issues to essentially eliminate fiscal impact. (Budget amendment and legislation: HB 2455/SB1049);

- Permit taxpayers to appeal administrative decisions by the Department of Taxation without having to pay the tax in advance of adjudication (HB 2538);
- Revise property tax appeals process to clarify procedures and standard of proof for taxpayer (HB 2503).

Other recommendations of this joint subcommittee that were introduced during the 2003 Session but were not enacted into law (and likely will arise during the 2004 Session) were:

- Phase out the estate tax; and
- Eliminate the June accelerated sales tax collections from vendors.

In the form of policy statements, the joint subcommittee also recommended:

- Imposing no new unfunded state mandates on localities, and to the maximum extent possible, eliminating existing ones;
- Supporting a moratorium on new sales and use tax exemptions;
- Maintaining the policy of no sales tax on access to Internet and digital downloads; and
- Continuing to work with the national Streamlined Sales Tax Project.

This joint subcommittee concluded its report by acknowledging that many issues remained to be examined and therefore recommended continuation of its work for another

year. So, during the 2003 Session, the General Assembly essentially continued the remaining work of this joint subcommittee in passing SJR 347. As of the writing of this article, the commission created pursuant to SJR 347 has not formulated any final recommendations.

Some of the issues being examined by this commission:

- The estate tax;
- Car tax relief;
- Current exemptions, credits, and deductions in the income tax and the sales and use tax;
- Extension of the sales and use tax to services;
- The BPOL tax;
- The cigarette tax;
- Telecommunication taxes;
- Allocation of funding and service responsibilities between the state and localities;
- Transportation needs and funding;
- The taxing authority of counties versus cities and towns; and
- The Streamlined Sales Tax Project.

Any or all of these may be the subject of legislation in the 2004 Session.

- David Rosenberg*
- Mark Vucci*

Telecommunications Taxation

For the past two years, the Joint Subcommittee Studying the State and Local Taxation of the Telecommunications Industry and its Customers (HJR 209, 2002; HJR 651, 2003) has been reviewing ways Virginia could restructure its telecommunications taxes and fees. It has found that the telecommunications tax

structure has not kept pace with the competitive nature of the industry. It has also found that although the state taxes imposed on the telecommunications customers and industry are extremely low, the local tax rates vary greatly, with a large number of localities imposing a substantial burden on certain segments of the industry and its customers.

A working group of industry and local government representatives was asked to develop a proposal, based on principles adopted by the joint subcommittee, in an attempt to bring some rationality to the telecommunications tax structure and to create a situation where all telecommunications services would be taxed at the same rate. In creating the proposal, the objectives were to (i) reduce the expenses of collecting the myriad of taxes and fees, (ii) reduce consumer confusion, (iii) allow localities to verify the revenues collected, (iv) reduce the competitive advantage of certain segments of the telecommunications industry that are taxed differently from others, and (v) ensure that localities are kept whole by attempting to generate the same amount of total revenues as under the current system.

The working group has recommended a Section 1 bill to be introduced in the 2004 General Assembly Session that outlines a schedule and initiates Virginia's transition to a new system for taxing telecommunications service in the Commonwealth that would become effective July 1, 2005, and would require enabling legislation to be adopted during the 2005 General Assembly Session. This is similar to the approach used in the electric deregulation legislation, which provided for

Virginia's transition to the deregulation of the electric utility industry.

Under the proposal the following taxes/fees would be repealed:

- Local consumer utility tax;
- Local gross receipts tax in excess of 0.5 percent, which is the portion billed directly to the consumer;
- Current E-911 rate structure, which consists of the 911 tax for localities on land lines and the 911 fee imposed on wireless customers; and
- Virginia Relay Center fee.

These taxes and fees would be replaced with a 4.5 percent tax on telecommunications services, a uniform 911 tax on land lines, and a 911 fee on wireless up to \$0.75 per month per line. The taxes and fees would be collected by an authority or third party and distributed to the state and local governments based on a distribution formula still to be created. The intent is to fully replace revenues currently provided to both the state and local governments by the current taxes and fees.

There is some concern about whether the proposal works from a revenue standpoint. The working group has agreed that an independent entity (the Auditor of Public Accounts) should verify the taxes and fees collected by the localities for the fiscal year beginning July 1, 2003, and ending June 30, 2004, and verify that a 4.5 percent tax on all communication services plus the uniform 911 tax/fee will generate an equivalent amount of revenue. In addition, the Auditor of Public Accounts will use the data to calculate the precise 911 tax/fee that will be needed to ensure localities that

they will not suffer any revenue losses. A review by an independent agency will give credence that this is indeed a revenue neutral proposal.

Finally, if the Auditor of Public Accounts determines that the new telecommunications tax

proposal will require a 4.5 percent tax plus a 911 tax/fee in excess of 75 cents, the transition plan would not continue and a different plan would need to be developed.

During the upcoming session, the General Assembly will

have the opportunity to review the work of the joint subcommittee, its recommendations, and the Section 1 bill that would move the process one step closer to changing the way telecommunications are taxed.

□ *Joan E. Putney*

Commerce and Labor

Electric Utility Restructuring

During the 2003 Session, the Senate Commerce and Labor Committee referred SB 891 and SB 892 to the Commission on Electric Utility Restructuring. As introduced, SB 891 would allow industrial and commercial customers, as well as aggregated customers in all rate classes, to switch to a competitive electric service provider without paying a wires charge if they agree to pay market-based prices if they ever return to the incumbent electric utility. Customers who make this commitment and obtain power from suppliers without paying wires charges would not be entitled to obtain power from their incumbent utility.

As introduced, SB 892 would allow any large industrial or commercial customer who is returning to its incumbent electric utility or default provider after purchasing power from a competitive supplier to elect to accept market-based pricing as an alternative to being bound by the minimum stay period (currently 12 months unless otherwise authorized) prescribed by the State Corporation Commission. Customers exempted from minimum stay periods would not be entitled to purchase retail electric energy from their incumbent electric utilities

thereafter at the capped rates unless such customers agree to satisfy any minimum stay period then applicable.

It is unlikely that these bills will be the only proposed revisions to the Electric Utility Restructuring Act that will be introduced for the 2004 Session. The blackout of 2003 has assured that electric utility restructuring is, once again, one of the hottest topics facing federal and state legislators. There probably will be bills introduced during the 2004 Session to revise the act to allow for a smoother transition to competitive markets, while other bills will seek to make radical changes to the act in order to slow down restructuring.

□ *Cindy Norwood*

Workforce Training

On the labor side, a key issue will be workforce investment and training. The U.S. House and Senate are proposing highly divergent and competing legislation for reauthorizing the Workforce Investment Act (WIA), which governs funding and policy for several workforce training programs in Virginia. Earlier this year, JLARC issued a comprehensive assessment of Virginia's implementation of the WIA. HB 2075, passed in the 2003 session, modified certain

aspects of Virginia's implementation in accordance with some of the recommendations in JLARC's report, including decreasing the number of participants on the Virginia Workforce Council and expanding the types of programs encompassed within the coordinated approach directed by the WIA.

Pursuant to HB 2075, each local workforce investment board must enter into memoranda of understanding with entities that administer not just the 11 WIA-mandated programs, but also unemployment insurance, Community Services Block Grant programs, employment and training programs administered by the Department of Housing and Urban Development, and, notably, workforce programs under Temporary Assistance to Needy Families (TANF), the Virginia Initiative for Employment, not Welfare (VIEW), and workforce programs under the Food Stamp Act. The 2004 session may see legislation supporting HB 2075 by promoting program coordination further. Over the course of the year, the Commission on Unemployment Compensation will explore implementation of HB 2075 and whether there are specific impediments blocking efforts to coordinate program resources.

□ *Ellen Bowyer*

Constitutional Amendments

Pending Amendments

The 2003 General Assembly passed three constitutional amendments for consideration by the 2004 General Assembly. If the 2004 General Assembly approves identical amendments, the proposed changes will be put on the November 2004 election ballot for final approval by the voters.

- **Restoration of civil rights for felons.** Should there be an alternative to the governor's clemency powers for the restoration of civil rights to ex-felons? The 2003 General Assembly proposed that the General Assembly should be able to provide by general law for the restoration of civil rights for persons convicted of nonviolent felonies who meet the conditions prescribed by law.
- **Effective dates of decennial redistricting measures; vacancies.** Should current provisions be clarified? The 2003 General Assembly proposed changes to make it clear (i) that a member in office when a decennial reapportionment law is enacted shall complete his

term of office and continue to represent the district from which he was elected for the entire term and (ii) that any vacancy occurring during a term will be filled from the preexisting district; i.e., the same district that elected the member whose vacancy is being filled.

- **Succession to the office of Governor.** Should the list of successors to the governor be expanded for emergency situations that prevent the House of Delegates from meeting to elect a governor? That list now includes the Lieutenant Governor, Attorney General, and Speaker of the House of Delegates. Additional successors would include successor speakers, the President pro tempore of the Senate, and the majority leader of the Senate. The successor would be Acting Governor until the House of Delegates could convene to elect a Governor.

Additional Amendments

The 2004 General Assembly can be expected to propose other amendments. Past proposals

give an indication of some areas of interest:

- **Successive terms for the governor.** Virginia is now the only state that prohibits the governor from serving two terms in succession. Whether or not successive terms could lead to too strong an executive will be a topic for discussion.
- **Protections for special funds.** The General Assembly will almost certainly examine ways to protect the existing Transportation Trust Fund and other special funds so that the revenues placed in the funds are used for the purposes specified in creating the funds.
- **Redistricting commissions.** As is usual following the decennial redistricting process, there will be measures put on the table to modify the redistricting process and possibly establish a bipartisan or nonpartisan redistricting commission or procedure.

□ *Mary R. Spain*

Courts

Tort Reform

At the federal level, legislative efforts to address class action asbestos litigation (e.g., S.1125, the Fairness in Asbestos Injury Resolution Act of 2003 (FAIR Act)) appear to

have stalled, as have other "tort reform" initiatives such as limiting attorney fees in medical malpractice actions. The 2004 General Assembly may pursue legislation proposing to reform various aspects of Virginia civil litigation practice.

Child Support

Legislation proposing to overhaul the schedule governing child support payments and make several policy changes to the guideline pursuant to recommendations of

the 2001-2002 Secretary's Triennial Child Support Guideline Review Panel passed in the Senate but failed in the House in 2003. The Secretary's Triennial Review Panel is charged under federal and Virginia law to examine Virginia's child support guideline and develop recommendations for presentation to the Secretary of Health and Human Resources and to the General Assembly.

The policy changes in the failed 2003 legislation included the following:

- ❑ Gross income shall not include income received by the payor from self-employment or from overtime income that the payor parent earned in a good faith effort to pay off arrearages in child support.
- ❑ Parent must pay in proportion to their income any unreimbursed medical and dental costs in excess of \$250 annually in addition to other child support. Replaces provision requiring parents to pay unreimbursed expenses in excess of \$100 per illness or condition. Expands the definition of medical expenses to include orthodontics and developmental disabilities services.
- ❑ Child support obligation shall not reduce the residual income of noncustodial parent to less than 150 percent of poverty level, while ensuring that re-calculation would not reduce/create support obligation that would seriously impair economically either party.
- ❑ Income from a second job or overtime added as a fac-

tor a court may consider in rebutting the presumptions established by the guideline.

- ❑ "Deviations necessary to accommodate local prevailing wages and costs" added as a factor a court may consider in rebutting the presumptions established by the guideline.

The House Courts of Justice Committee proposed formation of the Ad Hoc Subcommittee Studying the Child Support Guideline to provide more thorough consideration of the failed legislation. The subcommittee will meet twice in 2003 and report on its activities at the start of session. The report is expected to provide a guide to help legislators assess any legislation that may be offered in 2004.

Statutes of Limitations

The United States Supreme Court held that application of a California statute that authorized criminal prosecution of cases involving sexual abuse of a child after expiration of a previously applicable three-year statute of limitations violated the Ex Post Facto clause because the statute was enacted after the statute of limitations applicable to the defendant's crime already had expired, and operated to revive a previously time-barred prosecution. This holding appears to block application of subdivision 6 of Virginia Code § 8.01-249—which establishes the accrual date for sexual abuse of minors—to cases alleging abuse committed prior to 1989, and to limit the scope of a constitutional amendment permitting the General Assembly to make retroactive changes in accrual dates for

intentional torts against minors.

With respect to § 8.01-249 (6): A 1991 retroactivity provision (contained in the Acts of Assembly, not the statute) provided that the new subdivision 6 would "apply to all actions filed on or after July 1, 1991, without regard to when the act upon which the claim is based occurred." Consider a case in which a victim suffers a final act of abuse in 1970, then reaches her majority in 1975. Under the pre-1991 law, the statute of limitations would have expired by 1977—14 years before § 8.01-249(6) was enacted. If the 1991 retroactivity provision is given effect today, that same victim conceivably could file suit in 2003, so long as "the fact of the injury and its causal connection to the sexual abuse" had not been communicated to her any earlier than 2001. The defendant affected would be one for whom the statute of limitations had expired 14 years prior to enactment of § 8.01-249(6). The statute thus would operate retroactively in a constitutionally impermissible way.

With respect to the Constitution: Article IV, § 14 of Virginia's Constitution explicitly seeks to empower the General Assembly to extend statutes of limitations for intentional torts to minors against individuals for whom the statute already has expired. Any future use of this constitutional provision to enact legislation applicable to persons for whom a statute of limitations already has expired may be unconstitutional, as would any subsequent similar provision governing other torts or crimes.

❑ *Ellen Bowyer*

Health

Many of the health issues that arose during the past year have surfaced many times in the past. Examples are disease detection and prevention, the costs of malpractice insurance, designer drugs, end-of-life decisions, and women's health issues. Although these themes may be familiar, each issue has evolved over time. Health issues almost universally have some connection to funding, either as an incidental consequence or because the problems addressed involve the addition of services, expanded eligibility for services, or enhancement of existing benefits or services. Therefore, as the Commonwealth struggles with fiscal exigencies, many health issues may require innovative approaches in the coming session. Among these issues are:

□ **Testing of newborns for various metabolic disorders.** Across the nation, advocates are pushing for expanded testing of newborns for the ever-growing list of enzymatic disorders caused by inborn errors of amino, organic or fatty acid metabolism. These disorders are detectable at birth or shortly thereafter and will result in chronic physical disabilities, mental retardation, or even death if not treated through special diets. The number of individuals, while small, is growing because of advances in testing technology. Implementation of many of such tests requires the purchase of tandem mass spectrometers, which are technologically advanced analytic instru-

ments that can be used to test newborns for more than 20 treatable metabolic disorders by sorting molecules in blood samples according to weight in a similar fashion to machines that sort coins. These machines and the experts to operate them are expensive.

- **The escalating costs of malpractice insurance.** Throughout the United States and in Congress, bills relating to tort reform and containing the costs of malpractice insurance have been considered. Generally, the approaches have been to place limits on the total malpractice award and/or to restrict awards for non-economic damages, which are commonly known as pain and suffering, and punitive damages. In Virginia, a cap on malpractice awards has been in place for nearly 30 years. This cap is presently set at \$1.7 million as a result of statutorily established incremental increases, which will cease on July 1, 2008. The Code of Virginia also limits the award of punitive damages to \$350,000.
- **End-of-life decisions.** An intense Florida case that has been publicized across the country involves disagreement between the next of kin on the removal of a feeding tube and hydration from a young woman who has been in a persistent vegetative state for some years. This case illustrates the deep personal conflicts involving re-

ligious beliefs, the putative statement of the patient who does not have an advance directive, and the grief of any family when losing a child or a sibling. This case resulted in legislative action to authorize the Governor of Florida to order the tube replaced. Legal actions in this case are still anticipated and legal experts continue to disagree about its outcome.

- **Designer drugs.** In recent weeks, the Anti-Doping Agency has announced that several ranking athletes tested positive for a designer steroid identified as THG, which was manufactured to avoid detection with standard testing methods. The use of anabolic steroids, which increase stamina, speed, and muscle mass and shorten injury recovery times, have been banned for use by athletes; however, nutrition products are being and have been used by many big names in sports, especially track stars, which may include THG or other designer steroids. The use of anabolic steroids is considered dangerous to the user's health and may result in serious illness or even death.
- **Emergency contraceptives.** In Virginia and other states, emergency contraceptives, commonly known as the "morning-after pill," have become an issue relating to health services on college and university campuses. In one instance, the Board of Visitors prohib-

ited the dispensing of emergency contraceptives by the campus health clinic. Emergency contraceptives have been used for some years as a means of preventing pregnancy after unprotected sex. The pills prevent implantation of a fertilized egg. The controversy stems from differences in beliefs concerning when human life begins.

□ *Norma Szakal*

Prescription Drug Costs

Payment for prescription drugs is the fastest growing segment of health care expenditures, both at the national level and in the Common-

wealth. An estimated one to two million Americans buy drugs in Canada, where they are up to 50 percent cheaper because of price controls. Purchasing prescription medications from abroad is illegal, but many local and state governments say that importing drugs from Canada could be a cost-effective way for them to slash health-care costs by hundreds of millions of dollars. Illinois, Michigan, Iowa and Minnesota recently announced that they are exploring the option of purchasing drugs from Canada for insured state workers because rising drug costs are forcing them to cut other services. Wisconsin is exploring innovative ways to increase access to lower price

Canadian drugs for all Wisconsin citizens, including seniors on fixed incomes, while assuring the highest level of safety. Drug companies argue that foreign price controls cause U.S. consumers to pay premium prescription prices and that the extra money Americans pay for their medicine goes to fund research and development programs. The Food and Drug Administration prohibits importing drugs from countries where the agency has no jurisdiction and opposes a move to legalize drug imports from Canada because of potential safety issues.

□ *Amy Marschean*

Local Government

Growth Issues

The local government committees will continue to see many proposals in the areas of planning and zoning. Specifically, many localities can be expected to push for greater local authority to control growth through measures such as impact fees and adequate public facilities ordinances.

An impact fee is a fee allowed to be imposed by a locality to offset all or a part of the cost for public infrastructure improvements that are necessary to provide services to its citizens. Currently, impact fee authority exists for certain localities, primarily in Northern Virginia, and applies only to roads. Previous proposals have attempted to expand this authority to additional localities and to other types of infrastructure, such as schools.

An adequate public facility ordinance would allow a locality to determine whether public facilities are adequate to support the services that will be required by a proposed subdivision or site plan. Approval of a proposed subdivision or site plan may be made contingent upon a finding by the governing body of adequate public facilities. Such authority currently does not exist in Virginia.

Partly due to the number of such bills during the 2003 Session, the Commission on Growth and Economic Development was continued in order to give additional study to these issues. The commission created a subcommittee that was charged with trying to find some common ground, specifically on the issues of impact fees and adequate public facilities ordinances. Although

the commission is unlikely to put forward a legislative proposal in 2004, there were many ideas debated that will likely be introduced or promoted by other parties.

Richmond Mayor

There are likely to be one or more bills introduced during the 2004 Session related to the direct election of the City of Richmond mayor. Voters in the city approved a proposal on the November ballot to directly elect the City's mayor and grant such mayor additional powers. Specifically, the proposal provides that, beginning in November 2004, the person receiving the most votes in each of at least five of the nine City Council districts shall be elected mayor. Should no one be elected, a run-off election shall be held between the two persons receiving the

highest total of votes citywide. No one may be elected mayor for three consecutive terms. The mayor shall appoint the chief administrative officer subject to the advice and con-

sent of a majority of the members of City Council. The chief administrative officer shall be responsible solely to the mayor and serve at the pleasure of the mayor. The mayor will be

a full-time position with salary and expenses set by the City Council.

□ Jeffrey F. Sharp

Public Education

Although state budgetary constraints will likely continue to temper the development of any new public education initiatives requiring state funds, the General Assembly may nonetheless address a variety of complex education issues in the 2004 Session.

Standards of Quality

On June 25, 2003, the Board of Education adopted proposed changes to the Standards of Quality that would:

- Increase from one half-time to one full-time principal in elementary schools with fewer than 300 students;
- Provide one full-time assistant principal for each 400 students in each school, regardless of grade level;
- Require five elementary resource positions per 1,000 students in kindergarten through grade five for art, music, and physical education;
- Lower the pupil-teacher ratio from 25:1 to 21:1 in middle and high schools to ensure the provision of scheduled teacher planning time;
- Reduce the required speech pathologist caseload from 68 to 60 students;
- Require one full-time reading specialist for each 1,000 students in average daily membership;

- Require two technology support positions per 1,000 students in kindergarten through grade 12 division-wide; and
- Modify the current funding mechanism for remediation.

The board's proposal also reorganizes the standards and includes a number of technical changes. Because the Virginia Constitution grants the General Assembly "ultimate authority" over educational policy and provides that the standards are to be "prescribed from time to time by the Board of Education" but are subject to revision "only by the General Assembly," legislation would be necessary to enact the board's proposals.

Educational Accountability

The enactment of the federal No Child Left Behind Act (NCLB) in January 2002 has prompted many states to strengthen—and, in some cases, establish—educational accountability in public education. Invoking requirements for standards, assessments, and consequences, the federal law has challenged states to adopt annual testing practices, hire highly qualified instructional personnel, and improve the academic achievement of all students. Having estab-

lished educational standards for its public schools more than 30 years ago, and, in the past decade, strengthened accountability for public schools by implementing regular assessments for its Standards of Learning and revising the Standards of Accreditation for public schools, the Commonwealth stands in good stead to maintain its eligibility for the federal education funds provided by the NCLB Act. While the federal law requires the Commonwealth to make modifications to its assessment policies and procedures prescribed in its current accountability system, its Consolidated State Application Accountability Workbook for NCLB funding was approved by the U.S. Department of Education (USDOE) in spring 2003.

Still unclear are the costs of implementing NCLB. While Congress has provided \$24 billion in 2003 to assist states in complying with the act, the states may have to supply an estimated combined total of \$1.9 billion to \$5.3 billion to implement only one portion of the act—its annual testing provisions. Although Virginia has already implemented many initiatives required by the act, it remains unclear how much money the Commonwealth will have to spend to obtain the compliance-contingent federal funds for public education. Of particular concern are

the potential costs of additional assessments, the training and employment of highly qualified teachers and instructional paraprofessionals, and enhanced data collection and reporting systems. The 2004 Session may be asked to consider budget and other initiatives addressing NCLB implementation in Virginia.

Funding for Public Education

Because the Commonwealth’s ongoing budgetary woes are not limited to state-level programs and initiatives, the General Assembly may also be asked to revisit local public education responsibilities and Virginia’s current method of apportioning the state and local share for public education programs meeting the Standards of Quality. Findings from the 2002 report of the Joint Legislative Audit and Review Commission (JLARC) on public education funding

may also continue to prompt the introduction of legislation in 2004.

Educational Leadership

The work and recommendations of the HJR 20/SJR 58 Commission to Review, Study and Reform Educational Leadership may also confront the 2004 Session. The two-year, 21-member commission was directed to

- (i) evaluate the policy environment for educational leadership;
- (ii) propose necessary statutory amendments or changes based on research, surveys, analysis and review of pertinent laws, guidelines, policies, regulations and practices;
- (iii) communicate regularly to the Board of Education any relevant findings with recommendations for needed regulatory action; and
- (iv) provide a forum for educational leaders to report to the commission the chal-

lenges of, and impact on, their work.

In its second year, the commission has closely examined various local, regional, and state initiatives addressing the preparation and continuing development of education leaders, whether through the creation of principals’ academies or internships and mentoring. The work of the Task Force to Evaluate and Redesign Preparation Programs and Professional Development for School Leaders, focusing on professional development initiatives, and examining potential methods of ensuring effective preparation and ongoing professional development for school leaders, also figured prominently in the commission’s study. Recommendations from the commission may result in legislation for consideration by the 2004 Session.

□ Kathleen G. Harris

Miscellaneous

Transportation

Child Restraints

The 2002 Regular Session enacted legislation requiring children less than six years old to be secured in child restraints when being transported in most motor vehicles. Previously, this requirement applied only to children less than four years old. This two-year change had a particularly unwelcome impact on operators of various kinds of child

care facilities, who transport young children in vans and similar vehicles. Some of these operators feel that the law was not intended to apply to them, because transportation of children in buses and school buses is exempted. Others have tried to comply with the law by purchasing various kinds of child restraints. Many concerned parties are actively looking for a legislative “fix” for this situation, but there seems to be little consensus about just what needs to be fixed, or how.

Transportation Construction and Maintenance Financing

The 2002 Regular Session also approved legislation that provided for referenda in Northern Virginia and Hampton Roads on increasing the sales tax to provide additional revenue to finance construction of highways and other transportation facilities. Both of those referenda failed. Voter dissatisfaction with highway congestion, air pollu-

tion resulting from that congestion, the level of highway maintenance, and the general state of the Commonwealth's transportation system has continued to grow. The 2004 Session will very likely see some further efforts to "find" more money for transportation without increasing taxes or user fees. Given the Commonwealth's budget situation, this is likely to be very difficult.

□ *Alan B. Wambold*

Campaign Finance and Election Law

Legislation will likely surface on contribution limits, random audits of campaign reports, mandated electronic filing of campaign reports, and other refinements in Virginia's Campaign Finance Disclosure Act.

There will be a review of the federal Help America Vote Act for possible revisions needed in Virginia election laws to meet new federal requirements.

□ *Mary R. Spain*

Adult Protective Services

Adult protective services (APS) are provided in the Commonwealth through the 120 local departments of social services to the elderly and adults with disabilities who have been abused, neglected, or exploited or are at risk of abuse, neglect or exploitation. In fiscal year 2003, local departments investigated more than 11,000 reports of adult abuse, neglect, and exploitation; over 60 percent of all cases were found to need services. The

services provided protect the adult and prevent further occurrences. Such services assist vulnerable adults to remain in the home and prevent premature and more costly institutional care. The local departments collaborate with other human services agencies to provide necessary services to keep vulnerable adults safe. These partner agencies include, but are not limited to, the area agencies on aging, community services boards, and local health districts.

According to the Department of Social Services (DSS), the older population is growing faster than any other age group. In fact, the population of Virginians aged 60+ is expected to be 25 percent of the population by 2025, when there will be two million in this age group. DSS also notes that mandated reporters often fail to report adult abuse and there is underreporting of such abuse.

An APS Advisory Committee was established last year by DSS to craft legislation for introduction to the 2004 General Assembly session to establish enhanced protections for Virginia's vulnerable adult population, to clarify roles and responsibilities of APS, and to establish best practices in APS for the Commonwealth.

□ *Amy Marschean*

50th Anniversary of *Brown v. Board of Education*

Fifty years ago on May 17, 1954, the United States Supreme Court struck down the doctrine of separate but equal in *Brown v. Board of Education*. The re-

verberation of this landmark decision altered the legal landscape in public education and civil rights, gave birth the civil rights movement, and permanently changed the social order in the nation. To commemorate this historic decision, Congress, on September 18, 2001, enacted P.L. 107-41 to establish the National *Brown v. Board of Education* 50th Anniversary Commission to encourage and provide for the commemoration of the 50th anniversary of the decision throughout the nation.

Virginia was a party to this landmark Supreme Court decision and played a key role in the aftermath of the decision. Leading the states in the organization of efforts to commemorate the 50th anniversary of the decision, the 2003 General Assembly passed SJR 316, directing the Dr. Martin Luther King, Jr. Memorial Commission to lead, plan, organize, and coordinate all commemorative activities and events throughout the Commonwealth. To assist the commission in this task and to ensure that citizens across the Commonwealth will be able to participate in this historic event, a steering committee has been appointed.

"Commemorating the 50th Anniversary of *Brown v. Board of Education*: Virginia's Redemptive Moment," the poignant theme for this historic occasion, is designed to recognize the past while embracing reconciliation, equality, and justice, and to proclaim and realize "One Day—One People—One Future." The official 18 month-long celebration in Virginia will begin on January 15, 2004.

□ *Brenda H. Edwards*