

***City of Portsmouth, Virginia***

2018 Virginia General Assembly

Legislative Package



Adopted

October 24, 2017



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*The Honorable Paige D. Cherry, Vice Mayor*  
*The Honorable William E. Moody, Jr.*  
*The Honorable Elizabeth M. Psimas*  
*The Honorable Dr. Mark M. Whittaker*  
*The Honorable Lisa Lucas-Burke*  
*The Honorable Nathan J. Clark*

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# Portsmouth City Council 2018 State Legislative Package

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## Preface

The Portsmouth City Council respectfully submits the 2018 State Legislative Package for your review, consideration, and support of the legislative items contained within. The legislative items thoroughly vetted by City Council and the city's administration. A unanimous vote by City Council to adopt the legislative package by a resolution taken on October 24, 2017. The issues addressed in this package reflect City Council's 2017 Vision Principles:

- ***Prosperous Port***
- ***Lifelong Learning***
- ***Safe and Friendly***

City Council seeks your support for this legislative package and with other legislative and budgetary matters having an impact on the city of Portsmouth that arises during the 2018 state legislative session.

The results of Virginia's recent November elections resulted in major changes in the state legislature's political canvas. This new balance of power renews the hopes for passage and implementation for many of the public policies we advocate. Although we are hopeful, we remain mindful of the public policies, budget and regulatory decisions impacting states by the current United States Congress and the President Trump Administration.

Major changes in public policies and associated programs' funding, passes from the federal government to the state government, and from the state government to local government doorsteps. After programs initiated by the federal and state government, that are either fully or partially funded, eliminated or seriously scaled back, the city must identify how to continue providing services and programs to our citizens.

Preparing for an uncertain future requires cautionary planning and having stalwart financial acuity of revenues. We have been very conservative in our planning and spending as reflected in our FY2018 Budget and will continue this conservatism as we plan our FY2019 Budget. While we understand similar precautions with the state's finances; we remain optimistic there are opportunities to address funding issues presented in this package.

Thank you for the kind considerations and support you provide to our city, and look forward to continuing a progressive partnership on matters of importance to our city. The Portsmouth City Council, administrative leadership, and staff stand in support of your efforts. We are available to advocate with you for our issues, and, as needed, assist you. Again, thank you.



**A RESOLUTION ENDORSING THE CITY'S 2018 GENERAL ASSEMBLY LEGISLATIVE PACKAGE.**

**WHEREAS**, the Virginia General Assembly deals with a broad range of issues that affect local government both directly and indirectly; and

**WHEREAS**, the City of Portsmouth has certain concerns that deal with both Portsmouth specifically and local governments in general; and

**WHEREAS**, these concerns need to be made known to Portsmouth's General Assembly delegation so that they may be transmitted for consideration by the Legislature.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Portsmouth, Virginia, that it hereby endorses the positions listed on Exhibit A hereto for inclusion in the Legislative Package for the 2018 General Assembly session.

**BE IT FURTHER RESOLVED** that the City Manager is directed to provide a copy of this Resolution and the 2018 Legislative Package to each member of the City's General Assembly delegation.

**BE IT FURTHER RESOLVED** that the City Manager and/or her designee(s) are hereby authorized and directed to provide necessary input and clarification during the 2018 Virginia General Assembly session and to carry out other activities as needed to assist in attaining the goals and objectives contained in the City's 2018 Legislative Package.

**ADOPTED** by the Council of the City of Portsmouth, Virginia, at a meeting held on October 24, 2017.

Teste:

City Clerk



# 2018 Legislative Requests



## A. JLARC Study Request

**Request:** The Portsmouth City Council requests the Joint Legislative Accountability and Reporting Commission (JLARC) review and update the 1999 Study “*Review of The Impact of State-Owned Ports on Local Governments*”. The results of this report will be used to support and justify the host cities request to either update the current Payment In Lieu of Taxes (PILOT) fee formula, or for full funding of the formula passed in 2000.

### **Justification:**

The 1999 JLARC Study regarding the impact of state-owned Ports on Local Governments is a detailed and in-depth economic analysis of the Port’s impact on its host localities. The study concluded that the host cities “*suffer a substantial economic loss as a result of lost revenues and infrastructure costs.*” Other findings from this study were:

- While the State as a whole benefits from the operation of the Port terminals, the business development benefits of the host localities is limited due to being fully developed older core cities with little undeveloped land left for new buildings.
- Total services provided by the host cities of the VPA are not currently recognized by the state for reimbursement (except for some limited fire protection services).
- The host cities bear significant costs for the maintenance of the streets and roads. The truck traffic is tremendous and results in significant wear and tear and increased cost for road maintenance by the locality.
- The host cities forego “a substantial amount of direct revenue” due to the fact the VPA terminals are located on very valuable property and are exempt from local taxation.
- The host localities do not receive the benefit from the Ports that do go to other Virginia localities. Ten of the VPA’s 20 largest Virginia based customers are located in communities that are in close proximity to the VPA terminals, but only one is located in a host city.
- The fiscal conditions of the host cities of the VPA intensifies the impact. All of the host cities are classified by the Virginia Commission on Local Government as experiencing high fiscal stress, compounding the problem of VPA’s tax-exempt status.
- The growth of the VPA terminal and its land acquisition have further exacerbated the problem of land being removed from the tax rolls. “...because the host communities are land locked, every time the VPA terminals expand, property that is part of the cities’ tax base shrinks.”



- The 1999 JLARC Report finally stated that “additional reimbursement could be provided to the VPA host localities based on some measure of the business activity at each terminal. However, the potential impact on the VPA’s current business environment must not be overlooked.”

The findings from this study provided the basis for the introduction and passage of SB 752 during the 2000 session of the General Assembly. This legislation provided a new more equitable formula of payment to the host cities of the VPA. The bill passed the Senate by a vote of 38-Yes, 1-No, and the House by a vote of 81-Yes, 17-No. It also was re-referred to Senate Finance where it passed out of that committee on a vote of 11-Yes, 3-No and 1-Abstention. It was sent to the House Appropriations Committee and passed out of that Committee by a vote of 20-Yes, 8-No. Generally, while this legislation was supported by the majority of the legislators, unfortunately, it was never funded in the state’s budget. Instead over the past 18-years, the state’s sole focus has been on VPA’s business environment at the expense of its host cities. Business development associated with the VPA terminals is still limited for the host cities’ since they are “built out”. Services provided by the host cities of the VPA continue to be undervalued, and the advent of the tolls on the Midtown and Downtown tunnels which escalates every year for 58 years, further compounds the negative economic impact that the state’s predatory activities are having on the host cities of the VPA; and in especially the City of Portsmouth.

The consolidation of the ports in Norfolk, Newport News and Portsmouth took place in the 1970’s. An important provision in this consolidation were the PILOT fees the Port pays to its host cities that gave up their taxable properties and control of their ports for the good of the state’s economy. *The rate of payment was prescribed in the 1981 legislation that created the Port of Virginia, and it has not changed in over 35 years.* Yet the costs of doing business has continued to grow; the Port terminals continue to expand along with their business volume; and the state’s use of tolls on bridges, tunnels and roadways in Hampton Roads further exasperates business development and retention for these three fiscally stressed localities.

The City Council of Portsmouth fully anticipates that in having JLARC review and update this study, it will become blatantly clear that the findings from 18 years ago still hold true, with the impacts being more dire as they are now compounded by the events that have transpired with the economy of the host cities, the growth of the VPA, and their ever increasing business volumes.

The results from this review and update will in turn be used by the host cities of the VPA to justify our requests that the General Assembly either update the existing PILOT fee bringing it more in line with today’s costs, or better still, fully fund the 2000 formula.



## **B. Budget Amendment - Item 464 of Chapter 836**

**Request:** The City of Portsmouth requests a \$5 million increase in the State's funding for roadway maintenance activities for the host cities of the Virginia Port Authority.

### **Justification:**

The 2007 General Assembly, at the behest of former Delegate Johnny Joannou passed HB 2785 which authorized funds to the host cities of the Virginia Port Authority via the Commonwealth Transportation Board using the Commonwealth's Transportation Fund or purposes of addressing highway maintenance and repair needs created by or associated with port operations in these localities.

The bill's accompanying budget amendment for \$1 million was approved by the General Assembly. However, due to the advent of the 'great recession' Governor Kaine reduced the amount to \$950,000. Although the downturn in the economy had passed, and the VPA business activity continued to grow, this amount remained the same for nine years.

In 2016 the City of Portsmouth, supported by the other host cities of the VPA advocated for an increase in the budget line bringing it up to the original \$1 million that was assigned to in in 2007. After extensive lobbying efforts, the Virginia legislature and Governor McAuliffe approved the \$50,000 increase.

The Port of Virginia is a tremendous economic engine that adds value to the Commonwealth; however the majority of that value accrues to localities that are not host cities. Also, the VPA is a commercial business enterprise, which distinguishes it from any other State owned properties. We feel strongly that the economic benefits derived from the VPA's operations, which support the entire Commonwealth of Virginia, should support the localities that make that possible.

For more than thirty (30) years we have requested State funding to offset the impact of the Port's presence in our localities. Foregone property taxes and the wear and tear on local roads and bridges add-up to millions of dollars each year. In fact, the 1999 JLARC study of the Port's economic impact to the host cities confirmed that we "suffer a substantial economic loss" as a result of lost revenue and other costs. When you compound this loss with the reality that 3 of the 4 host localities are older, core cities with aging infrastructure and very little land available for Port-related economic development, the recipe that you have is the recipe for fiscal distress.

Year after year we have attempted to recoup some revenue by asking that the General Assembly fund a PILOT program, economic development incentive, or transportation infrastructure initiative of some type. We met with limited success in 2000



when the General Assembly passed SB752 which set into law a new PILOT funding formula based on locally-held VPA property values and the percentage of tonnage shipped from the locality. However, the new formula has never been funded. It is particularly difficult for us to understand why our concerns continue to be set aside now that the Port is enjoying unprecedented economic successes.

Instead of attempting once again to beseech the legislature to create some other pot of money for our benefit, we are requesting an increase in this budget line item. Like you, we are always striving to be good stewards of the resources that our constituents have entrusted to us. We would be remiss in our stewardship to ignore the perpetual loss of significant revenue and not to try to avoid the fiscally unsustainable position that could easily occur.

### **C. Constitutional amendment abolishing forfeiture of voting rights by people convicted of felonies**

In Virginia, persons convicted of a felony (non-violent and violent) automatically lose their civil rights, which includes their right to vote. In order to have these rights restored, the ex-offender has to go through a process of filing a petition with the Secretary of the Commonwealth requesting restoration. Traditionally, this petition had to be accompanied by character statements from highly regarded persons within their community who would attest to the improvements the ex-offender has made in their lives. Also, all fines and fees owed to the Commonwealth of Virginia related to the offense had to have been paid prior to the submission of the petition. There was no stated period of time that had to evolve before the ex-offender could even begin this process. It was up to the sitting Governor of Virginia to review the petition and decide whether or not to restore these rights.

This process proved to be very onerous on ex-offenders, and consequentially many people were discouraged from pursuing restoration of their rights. The collateral consequences from criminal arrests and convictions in Virginia became the hallmark theme for a Study and legislation that ensued in the last years of Senator W. Henry Maxwell's tenure as a member of the Virginia General Assembly (2002 – 2003). Due to his efforts and the efforts of several other legislators hence, several changes were made to address these collateral consequences including restoration on one's civil rights. Currently the process to have ones rights restored is as follows: (taken from the Secretary of the Commonwealth's webpage):

*"If you have lost the right to vote as a result of a felony conviction in a Virginia court, a U.S. District or a military court, you must have your rights restored in order to qualify for voter registration. The restoration of rights restores the rights to vote, to run for and hold public office, to serve on juries and to serve as a notary public. It does not include the right to possess or transport any firearm or to carry a concealed weapon.*



*In order to be eligible for restoration of rights by the Governor, an applicant must:*

- *Be a resident of Virginia, and/or have been convicted of a felony in a Virginia court, a U.S. District court or a military court*
- *Be free from any sentence served or supervised probation and parole for a minimum of two years for a non-violent offense or five years for a violent felony or drug distribution, drug manufacturing offense, any crimes against a minor, or an election law offense.*
- *Have paid all court costs, fines, penalties and restitution and have no felony or misdemeanor charges pending.*
- *Not have had a DWI in the five years immediately preceding the application.*
- *Not have any misdemeanor convictions and/or pending criminal charges 2 years preceding the application for non-violent felonies or five years for a violent felony or drug distribution, drug manufacturing offense, any crimes against a minor, or an election law offense.”*

Although some improvements have been made in this process, there are still many hurdles that one must overcome prior to having their civil rights restored. For several-years legislators such as former Senator Yvonne B. Miller submitted legislation requesting a Constitutional amendment for automatic restoration of the civil rights for non-violent felony ex-offenders once their debts to the Commonwealth had been fulfilled. Unfortunately, these bills never passed into law. To date, the disenfranchisement of many citizens continues to exist. Numerous initiatives have sprung up over the years easing the process for reentry of ex-offenders back into our communities, including the recent actions attempted by Governor McAuliffe which was challenged in the Virginia Supreme Court and invalidated by the judges. This disenfranchisement of Virginia’s citizens still largely exists and needs to be remediated. Taxation without representation was outlawed during the Revolutionary War, but vestiges of this concept still exists in Virginia’s methodology of addressing this matter.

The Portsmouth City Council would therefore request that legislation be introduced, and fully supports any legislation that would provide a Constitutional means by which felons who have been stripped of their civil rights can have them restored once they have paid their debt in time and money to the Commonwealth of Virginia

#### **D. Amend HB 1547 (2017) AA Gravesites**

**Request:** The Portsmouth City Council requests the Virginia General Assembly to amend and reenact § 2.2-1505 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-2211.2, relating to historical African American cemeteries and graves to include respective gravesites in Portsmouth, Virginia.



## Justification:

The 2017 Virginia General Assembly approved passage of HB 1547 and its associated budget amendment which directed “...*the distribution of funds appropriated for caring for historical African-American cemeteries and graves to qualifying nonprofit organizations that preserve historical African-American cemeteries established before 1900. The funding formula is \$5.00, or the average cost of routine maintenance, multiplied by the number of graves, monuments, and markers of African American who lived at any time between 1800 and 1900 and are interred in the cemetery.*”<sup>1</sup> “*Additionally, subject to appropriations of funds for such purposes, the bill authorizes the distribution of a grant to such cemeteries to perform extraordinary maintenance, renovation, repair, or reconstruction of its historical cemeteries or graves.*”<sup>2</sup>

This bill listed two cemeteries, East End Cemetery in Henrico County and Evergreen Cemetery in the City of Richmond, Virginia for a total of 6,975 gravesites. The enabling legislation included \$34,875 general fund support for the routine maintenance in FY18, with the projected budget appropriations through FY2023.

“*In addition to establishing a program to provide for the routine maintenance and care of historical African-American cemeteries and graves, the bill establishes a grant program for grants to qualified organizations to perform extraordinary maintenance, renovation, repair or reconstruction of any or their respective historical African-American cemeteries and graves. These grants would be subject to appropriation of funds for this purpose by the General Assembly.*”<sup>3</sup>

The precedence for authorizing state funding to assist or the care of historical African-American graves was set by the 1950 Code of Virginia, Code Section 2.1-206.1 which has been recodified several times prior to 1950, and lastly in recodified in 2016. Virginia State Budget Item 376 (Chapter 836) provides funding for Confederate graves and for the United Daughters of the Confederacy for which millions of dollars have been expended in the last century as well as in this millennium. HB 1547 provided for the historic preservation of African-American graves in Virginia with the initial funding level of \$34,875. Furthermore, the 2017 Virginia State Budget Bill (Chapter 836) Budget Item 4-1.02 includes language designating which items a Governor will not withhold allotments for appropriations when pursuing a budget reduction plan due to a declared revenue “*shortfall in budgeted revenue that impedes or limits the ability to spend appropriated moneys, regardless of the mechanism used to effect such withholding*”<sup>4</sup> are “*Confederate and historical African American dead.*”<sup>5</sup>

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<sup>1</sup> Department of Planning and Budget 2017 Fiscal Impact Statement – HB 1547

<sup>2</sup> Department of Planning and Budget 2017 Fiscal Impact Statement – HB 1547

<sup>3</sup> Department of Planning and Budget 2017 Fiscal Impact Statement – HB 1547

<sup>4</sup> Virginia State Budget – 2017 Session (Chapter 836) subsection a

<sup>5</sup> Virginia State Budget – 2017 Session (Chapter 836) subsection 6.c



In the same vein as the commonwealth has and is identifying, quantifying and funding the maintenance and renovation of Confederate gravesites, the African-American Historical Society of Portsmouth (a non-profit organization) has initially identified approximately three hundred (300) historic African-American gravesites that qualify for a grants “to perform extraordinary maintenance, renovation, repair or reconstruction of any or their respective historical African-American cemeteries and graves.” All of the gravesites identified have toppled or damaged grave markers. Of that number 200 of the gravesite markers need resetting, and 100 need repairing. Estimates for “repair of a single broken stone can cost anywhere between \$500 - \$1,000 for the repair depending on the nature of the break(s), and resetting a stone averages around \$200 per stone.”<sup>6</sup> These gravesites should be included in the count of the initial 6,975 identified in HB1547 bringing the count to 7,275.

Addressing the repair and resetting of the grave markers and stones for the Portsmouth gravesites requires a budget amendment providing funding for the grant. Based on the aforementioned repair/resetting estimates, a budget amendment in the amount of either \$120,000 (low estimate) to \$220,000 (high estimate) is needed.

### **E. Amend VA Code Section 58.1-648**

**Request:** In an effort to increase revenue to local governments’ due to the increasing loss of state and federal financial support, the Portsmouth City Council requests the VA Code Section 58.1-648 – Imposition of sales tax; exemptions be amended to allow for the taxation of streaming services, post-paid calling services, and increase the Communications and Sales Use Tax (CSUT) to prevailing rates.

**Justification:**

Prior to 2007 CSUT was charged and collected by each municipality in the commonwealth of Virginia. Industry complained about the inconsistency in the amount of tax being charged by each locality. The industry lobbied the General Assembly to repeal this process and instead provide a process by which the tax levied statewide did not vary, as well as exempting from taxes certain services that were being developed by the industry.

The 2006 General Assembly passed legislation providing that customers of communication services would pay a flat 5% sales tax which would be collected by the state instead of the localities, and distributed to each locality on a pro-rata basis. The

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<sup>6</sup> Michael Trinkley, Ph.D., Director - Chicora Foundation, Inc.  
P.O. Box 8664 Columbia, SC 29202 -8664/ (803) 787-6910



bill also provided for the tax-exempt status or several services related to this industry to include streaming services and post-paid calling cards<sup>7</sup>.

Eight years hence, the 2015 General Assembly directed the Virginia Department of Taxation via HJR 635<sup>8</sup> to conduct a study to:

- Evaluate the overall performance of the CSUT:
  - Determine whether the competing communications services are being taxed on an equal basis
  - Identify any communications services receiving a competitive advantage by not being taxed
  - Determine whether the tax is structured so that it applies to new methods of communications

The agency's findings<sup>9</sup> included:

- Since 2007, revenue deposited into the CSUT fund has decreased
  - The number of telephone landlines has decreased by an estimated 21.1%
  - 91.1% reduction in gross receipts from satellite radio services
  - Streaming audio and video services and prepaid calling services (currently not taxable) have become more popular

The agency's recommendations included:

- Increasing the CSU rate to 5.3% or 6%:
  - At 5.3% - an additional \$24.1M would have been available for distribution
  - At 6% - an additional \$80.3M would have been available for distribution
- Removal of the tax exempt status places cable providers, streaming, and video service on a level playing field. The current exemption for prepaid calling services puts similar services sold on a postpaid basis at a competitive disadvantage. Between 2012 and 2014:
  - The amount of prepaid wireless E-911 Fee revenues was estimated to grow by 18.4%
  - The amount of postpaid wireless E-911 surcharge grew by only 1.7%

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<sup>7</sup> HB568 – 2006 Virginia General Assembly (Chapter 0780)

<sup>8</sup> HJR 635 – 2015 Virginia General Assembly

<sup>9</sup> Report of the 2015 Communications Sales and Use Tax Study (HJR 635, 2015) To the Governor and the General Assembly of Virginia



**LOCAL / REGIONAL / STATEWIDE  
PUBLIC POLICY  
ISSUES**



## 1. State Debt Capacity – Elizabeth River Crossings, LLC (ERC) Buy-Out

The City of Portsmouth encourages the Virginia General Assembly to either include in its debt capacity funding to buy out the Elizabeth River Crossings, LLC, or significantly buy down the tolls. The Midtown/Downtown Tunnel Project, was a \$2.1 billion project with a fifty-eight (58) years contract. 2070 is the anticipated year for ERC to turn the facility over to the Virginia Department of Transportation. Included in this ill-conceived contractual agreement is a provision providing a 3.5% annual toll hike beginning in 2018, or the rate of the Consumer Price Index (CPI), whichever is the highest. In exchange for operating and maintaining the roads, ERC gets an average annual profit of 13.5 percent over the period of the contract.

*“The Commonwealth’s agreement with Elizabeth River Crossings permits ERCO to increase tolls by 3.5 percent annually, or the growth in the consumer price index over the trailing 12 months, if that is higher. [...this means that the \$1.84 peak-time toll for passenger cars would increase to \$11.79 in 2070 if tolls increased at only 3.5 percent annually, but would jump to \$21.56 if the growth in the CPI between now and 2070 matched what was true between 1956 and 2014. During that 58-year time period, the annual growth in the CPI was higher than 3.5 percent on 24 occasions. Specifically, past CPI growth suggests that tolls will increase at an average of 4.66 percent per year, not 3.5 percent. Thanks to the miracle of compound growth, this would increase ERCO’s total revenue by slightly more than 82 percent over the 3.5 percent scenario. [...reveals that the \$7.36 peak-hour toll that trucks will pay in 2016 will grow to \$47.17 if tolls increase at only 3.5 percent annually, but to a stupendous \$86.24 if they grow at the aforementioned 4.66 percent annually. It is not difficult to envision a scenario in which such tolls inhibit economic activity in Hampton Roads.”<sup>10</sup>*

The commonwealth’s initial investment in this project was \$408 million. Under Governor McAuliffe’s Administration, and additional \$165.5 million was placed on the debt in an effort to delay the initial tolling prior to the opening of the new tunnel, and removal of the tolls intended for the Martin Luther King flyover. In total, the state’s investment to date is \$573.5 million. ERC has also pledged to donate \$5 million over a ten-year (10-years) to assist low-income Portsmouth residents reduce their toll bills.

Although the citizens of Portsmouth and users of these facilities are grateful for this relief, unless significantly more relief is provided, by some accounts, in the out years these tolls will be extremely onerous for the average commuter in the Hampton Roads region, and seriously untenable. Compounding this issue, is the “non-compete” clause included in the contract whereby if any other tolls are implemented in the Hampton Roads region which are lower than those imposed by ERC, and ERC can show that the competition is negatively impacting their revenues, ERC can sue the commonwealth for the loss of business. With the advent of the Third Crossing (Patriot’s Crossing) and the HOTV lanes being included on I-64 on the Peninsula and the new spans of the Hampton Roads Bridge tunnel, and in other areas in the region, those tolls would have to

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<sup>10</sup> The Impact of Vehicle Tolls on Hampton Roads – The State of the Region – 2014



be equal to those charged by ERC in order for the commonwealth not to default on its contractual agreement with this company. Thus creating quite a quagmire for the Commonwealth Transportation Board, the Virginia Department of Transportation, and ensuing Governor's and General Assembly members and the Hampton Roads commuters.

## **2. Pay Day Lending Act**

The Virginia General Assembly created the Pay Day Lending Act in 2002 via House Bill 940. It became law in the commonwealth July 1, 2002. Since its inception there have been serious concerns regarding the high interest rates and onerous late fees associated with these loans. Also, it has been noted that many of these businesses locate in or near low-income neighborhoods, thus making their business practices predatory. The issue with these loans became so prominent, that in 2005 The Virginia General Assembly passed HB1156 "Law-Military Protections Given" capping the interest rate at 36%, with Congress following closely behind passing the Military Lending Act of 2006 (32 CFR – Part 232) with a 36% interest cap.

Similar protections has been sought for Virginia's civilian consumers of these loans. Over the past fifteen (15) years, forty-one (41) bill have been introduced at the Virginia General Assembly aimed at either reducing and or limiting the interest rates and fees charged by this industry. Unfortunately, all of them failed to pass through the legislative process. The Portsmouth City Council urges our state legislators to revisit this matter and provide the same amount of protection for the citizens of the commonwealth that has been provided to members of our military services.

## **3. Retain Local Land Use Authority in Implementation of Small Cell Infrastructure**

The Portsmouth City Council is supportive of the implementation and expansion of the new small cell infrastructure and deems it of paramount importance that this service is expanded to all residents of Virginia. However, it is as important to us and to all Virginia municipalities that we retain the right and ability to exercise our current land use authority. Losing the ability to control our local rights-of-way, which are public property, reduces public safety through the elimination or reduction of our ability to manage and maintain these properties. Local right-of-ways are public property and our authority should not be usurped for private purposes giving them the right to use these spaces without local government's permission.

Furthermore, Virginia Municipalities have communication infrastructure located within their public rights-of-way, which has the potential of frequency interference from small cell infrastructure. Without adequate information or the ability to review infrastructure placement they would jeopardize public safety servants and life critical communications equipment. Lastly, the Virginia General Assembly should reexamine the cap placed on fees localities are able to charge for telecommunication operators



permits. This cap places an unequal fiscal impact on fiscally stressed municipalities compared to localities that are not fiscally challenged.

#### **4. Increase Public Transit Funding – Hampton Roads Transit (HRT) & Statewide**

Transit funding is an important regional priority policy issue. As such, it should be an eligible expense for existing and future regional transportation funding. The existing funding for HRT overwhelmingly relies on local general funds. This over reliance hinders HRT's ability to plan and deliver a robust regional transit system that can support our region's economic competitiveness and mobility. Furthermore, it limits the ability of local governments' to make investments across a broad range of municipal needs, including transportation, public education and public safety.

A few critical points that should be addressed to assist transit funding in this session of the General Assembly are:

- Establish the same or similar protective floor to the wholesale price per gallon that is used to compute state wholesale fuel taxes for Northern Virginia and Hampton Roads transit systems
- Identify and establish a dedicated regional funding source for public transit in Hampton Roads to address the State of Good Repair
- Replace the Capital Projects Revenue (CPR) bond funding that is set to expire in FY2019
- Identify, and secure State of Good Repair funding for the Washington Metropolitan Area Transit Authority

We also support state funding for HRT's CORE 20 project. Implementation of this project will provide a new and robust transportation service that will enhance current transit services offered by HRT by offering a new service with expeditious connectivity to key employment and business centers in the localities that HRT services. This new overlay of services would provide:

- More reliable bus service between the cities serviced
- Targeted routes, improving ridership to work, schools, health and shopping centers
- Provide businesses and the military installations a reliable and cost efficient means of transporting employees, enlistees, and customers
- Mitigate road congestion and air quality due to reduction of personal vehicles on our roads

#### **5. Revisit the Use of Hampton Roads Transportation Accountability Fund**

Virginia Code Section 33.2-2600 – Hampton Roads Transportation Fund is the enabling legislation directing the creation of the "Fund" and directing how the proceeds are to be expended. Paragraph 3 of this Code Section states "*The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to*



*calculate or reduce the share of federal, state, or local revenues otherwise available to participating localities.”* However, it is apparent that this legislative intent is not being met due to the fact that local funds are being used as the majority contribution for projects, with less state funding being commingled. It appears that this is being done to increase the amount of State funding available for diversion to “Smart Scale” projects. The inadvertent results of these actions on the part of VDOT and the CTB has shifted the focus away from how the “Fund” was intended to be used.

For example, the Virginia Department Transportation and the Hampton Roads Transportation Planning Organization identified the Hampton Roads Bridge Tunnel as the #1 transportation priority in the Region. The current funding scenario for project depicts about 81% local funds. It was widely discussed (acknowledged) that the HRTAC funds would be used to leverage state and local funds to acquire additional federal funds for transportation. The current strategy relies on HRTAC and Smart-Scale funding for these regional Megaprojects. While more projects are moving forward to construction, overall less projects are being funded. Would this be the case if the original strategy were employed in lieu of relying so heavily on local funds?

In addition, local assistance programs have been modified such that localities have less flexibility with certain decisions causing funds to be reallocated to the Smart-Scale pool under certain scenarios. Smart-Scale received additional funds from federal earmarks that could have been repurposed for local projects, and will receive urban funds that are being reconciled prior to the end of the calendar year.

## **6. K-12 Education Funding**

The Portsmouth City Council stands with our Portsmouth Public School Board in opposing any funding methodology that results in further shifting funding responsibility from the state to localities. We support a Joint Legislative and Audit Review Commission’s (JLARC) study to determine how the Standards of Quality (SOQ), Standards of Learning (SOL), and Standards of Accreditation (SOA) requirements may be revisited and adequately funded.

We furthermore support any adequacy and equity studies for K12 state funding. Recent studies and articles addressing this issue include:

- “JLARC: Va. Spending drop squeezes schools” Richmond Times Dispatch – September 14, 2015
- JLARC Study – *Low Performing Schools in Urban High Poverty Communities* – June 2014 – Recommendations: *More grants, teacher residency programs*
- USDOE Office for Civil Rights letter – October 1, 2014 – *The problem of unequal access to Educational Resources*
- Center on Budget and Policy Priorities – May 20, 2014 – *Most States Funding Schools less Than Before the Recession*



*As soon as practicable, we ask that you restore the SOQ Support Cost Reductions which have been in place since 2007. Finally, please fully fund the cost of K12 Rebenchmarking.*

## **7. Host Cities of the Virginia Port Authority (VPA) Equitable Funding**

For more than thirty (30) years, the City of Portsmouth, along with the other host cities of the VPA have campaigned for more equitable funding from the State, to address the impact the VPA has on our respective jurisdictions.

While we are pleased to have the VPA operating in Portsmouth, and we have been good business partners for 66 years, the fact remains that its daily operations comes at a tremendous cost to our City. More than 800 trucks a day enters and exits from these facilities. VPA's business enterprise occupies 1,170 acres of nontaxable prime waterfront property in three host cities. In Portsmouth, the total assessed land and building value for VPA property for FY15 is \$126,476,870. If this property was taxable it would have generated well over \$1.6 million in Real Property taxes.

*The Portsmouth City Council requests that the General Assembly and the Governor address this matter by either fully funding the new formula it approved in 2000 or devise another method in which payments to the host cities is much more equitable than the current outdated methodology.*

## **8. Decriminalization of Marijuana**

Decriminalization is not legalization. It merely removes criminal penalties for possessing small amounts of marijuana for personal use. States that have done this place parameters around the amounts that can be in one's possession and dictate how and where the substance cannot be used. Violation of the criteria results in a civil fine rather than a criminal offense. Also, marijuana remains a prohibited substance.

Following the 2017 Virginia General Assembly session, the Virginia Crime Commission received a letter request from Senator Norment, as well as two bill referrals from Senate Courts of Justice (SB 908 – Senator Lucas and SB 1269 – Senator Ebbin) to review the decriminalization of possession of small amounts of personal use marijuana. The Virginia Crime Commission presented their report to the members of the Commission and the public on October 30, 2017.<sup>11</sup>

While no recommendations were made in the report, nor by the Crime Commission on that date, a few important points were made:

- 68% of the 5,565 public comments received supported decriminalization
- The vast majority of arrests for possession of marijuana in Virginia are for first offenses

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<sup>11</sup> Virginia State Crime Commission – October 30, 2017 presentation  
[http://vscc.virginia.gov/VSCC\\_FINAL\\_Decrim%20Marj%20Present.pdf](http://vscc.virginia.gov/VSCC_FINAL_Decrim%20Marj%20Present.pdf)



- Males, young adults, and Blacks are overrepresented in the total number of arrests for possession as compared to their overall general population in Virginia
- Virginia law does not include a specific quantity limit in relation to possession of marijuana
- Even an infinitesimal amount constitutes possession in Virginia with strict penalties to include;
  - \$700 to \$800 in legal fees
  - 6 months loss of driver's license
    - 2017 legislation removed loss of driver's license pending FHW approval that funding received by Virginia for opting out of suspending enforcing drug laws would be lost. This approval has not been received.
    - Opting out could reduce Virginia's federal highway funds by 8%
  - \$500 fine (first time offender)
  - Possible 6 months jail time
  - 1 year of random drug testing
  - Misdemeanor criminal arrest and conviction record

“Twenty-nine states and the District of Columbia currently have laws broadly legalizing marijuana in some form.”<sup>12</sup> “Thirteen states have moved toward decriminalizing marijuana but not legalizing it — so possession of small amounts no longer carries criminal penalties like prison time, but possession of larger amounts and trafficking, including sales for recreational purposes, remain criminally illegal”.<sup>13</sup> The Portsmouth City Council agrees with the Virginia Municipal League in their support to change the Code of Virginia making simple possession of no more than 0.5 ounces of marijuana for personal use a civil rather than criminal penalty. Persons under 21 years of age found in possession should still be required to undergo drug screening, participate in a treatment or education program as a condition of suspension of their conviction if it is deemed appropriate.

## 9. Mental Health Funding & Programs

### OPIOIDS, HEROIN, SYNTHETIC 57 DRUGS 58

VML supports an intergovernmental and interdisciplinary partnership to address the epidemic of opioid and heroin overdoses in Virginia. Further, VML urges the federal government to actively address the public health threats posed by any emerging

<sup>12</sup> Governing: The States and Localities “State Marijuana Laws in 2017 Map”

<http://www.governing.com/gov-data/state-marijuana-laws-map-medical-recreational.html>

<sup>13</sup> Vox “The Spread of Marijuana Legalization” May, 2017

<https://www.vox.com/cards/marijuana-legalization/what-is-marijuana-decriminalization>



synthetic drugs that that pose a similar addiction/overdose threat. VML supports the Commonwealth's policy framework that targets the following:

- 1) prevention – reduction in the supply legal opiates, and tracking and reduction of the supply of illegal opiates such as heroin and synthetic substances;
- 2) harm reduction – active intervention until treatment is available and accepted;
- 3) treatment – for those who are addicted, and support/recovery resources for family members of people in treatment; and
- 4) culture change - discourage use/overuse of legal opioids, change pain management expectations, and remove stigma regarding addiction treatment and recovery.

### **10. Increased 599 Program Funding**

State Assistance to Local Police Departments (HB 599)

Almost 70 percent of Virginians live in communities served by police departments. The state created a program of financial assistance to local police departments, but has increasingly de-emphasized this funding obligation as a priority. VML calls for the state to honor its commitment to public safety by funding the program in FY16 and onward as stipulated in the Code of Virginia.

### **11. Virginia Port Authority – Dredging Authority**

The Portsmouth City Council is in support of the Virginia Port Authority's request for financial assistance from the Commonwealth of Virginia to begin dredging of the Elizabeth River in preparation for the larger vessels coming into port.

### **12. Local Stormwater Assistance Fund/ Water Quality Improvement Fund/ Chesapeake Bay Act**

The General Assembly needs to provide sufficient appropriations to the Water Quality Improvement Fund (WQIF) to fulfill point source upgrade contracts with local governments as well as cost-share payments to farm operators for the implementation of agricultural best management practices. Additionally, the city requests the General Assembly to provide sufficient appropriations, including dedicated revenues to the Stormwater Local Assistance Fund (SLAF) to address costs associated with permit requirements tied to federal Municipal Separate Storm Sewer Systems (MS4) and new EPA regulations.



## 2018 General Assembly Legislative Package Endorsements



## **2018 Legislative Packages Endorsements:**

***The Portsmouth City Council endorses and supports the legislative packages and initiatives of several organizations to include, but not limited to those listed below. We furthermore empower our City Manager and her designee/s to represent the City's interests on all matters pertaining to these and any other legislative and budgetary initiatives that impact the City of Portsmouth:***

- **Hampton Roads Planning District Commission**
- **Hampton Roads Transportation Planning Organization**
- **Hampton Roads Transit**
- **Tidewater Community College**
- **Treasurers' Association of Virginia**
- **Virginia First Cities**
- **Virginia Library Association**
- **Virginia Municipal League**
- **Virginia Port Authority**
- **Virginia School Boards Association**



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