

City of Alexandria, Virginia

MEMORANDUM

DATE: NOVEMBER 18, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *ps*

SUBJECT: ADOPTION OF PROPOSED CITY LEGISLATIVE PACKAGE FOR THE 2005 GENERAL ASSEMBLY SESSION

ISSUE: Adoption of the City's Legislative Package for the 2005 General Assembly Session.

RECOMMENDATION: That City Council adopt items 1.A through 1.I, 2.A. through 2.N, and 3.A. through 3.D as positions in the City's Legislative Package for the 2005 General Assembly Session. Note that items 1.I, 2.N, and 3.D have been added to the Package since it was originally proposed.

1. Requests for Legislation to Be Proposed

1.A. Commitment Hearings

Propose or support legislation to allow commitment hearings to be conducted by video or audio systems.

1.B. Clean Smokestacks Legislation

Propose legislation which would either (1) establish a schedule by which investor-owned public utilities that own or operate coal-fired generating units in Northern Virginia are required to reduce by specific amounts their emissions of oxides of nitrogen, sulfur dioxide, mercury, and particulates; or (2) require such a utility to cease operations by a given date in lieu of reducing its emissions.

1.C. Privileged Communications: Sexual Assault & Domestic Violence Victims

Propose legislation to prohibit a court from compelling a domestic violence or sexual assault advocate to disclose any communication between the advocate and a victim.

1.D. Remedy for Civil Rights Violations

Propose legislation to amend the Code to suspend (or toll) the statute of limitations on private rights of action under Virginia law until a local human rights commission has acted on a case.

1.E. Amending Authority to Levy an Admissions Tax

Propose legislation to allow the City to charge a tax on movie theater admissions.

1.F. Child Day Care Funding

Propose budget amendments to require DSS to serve Northern Virginia families with incomes that fall between 185 and 250 percent of the poverty level; direct DSS to conduct a market survey in 2005, set new rates in 2006, and continue such a biennial process every two years thereafter; and include language in the budget directing the Commonwealth to continue to draw down and use all possible federal funds for child day care funding, and to implement policies that increase access to child care services for the working poor.

1. G. Funding for the Virginia Preschool Initiative

Propose legislation to base state support formulas on the actual cost of a typical Virginia Preschool Initiative preschool program and to increase funding to serve all previously unserved at-risk four-year-olds.

1.H. Failure to Pay Day Laborers and Other Workers

Propose legislation that would make an employer guilty of embezzlement if he refuses to pay an employee for labor the employee provided in accordance with a compensation agreement.

1.I. Early Voting

Propose legislation, or a study if considered necessary prior to the introduction of legislation, that would authorize early voting in the Commonwealth.

2. Requests for Legislation to Be Supported

2.A. Elimination or Extension of the Sunset Clause in the Red Light Camera Law

Support legislation to extend or eliminate the sunset provision in the right light camera law.

2.B. Increase in Sales Tax on Motor Fuels in Northern Virginia

Support an increase to the sales tax on motor fuels in Northern Virginia to help pay for transit costs.

2.C. Dedicated Revenue for the Washington Area Metropolitan Transit Authority (WMATA)

Support additional dedicated revenue sources for the system, such as increases to the Northern Virginia motor fuels sales tax, or new authority and revenue repayment sources for bonds.

2.D. Statewide Transportation Funding

Support any reasonable proposals by the General Assembly to increase statewide transportation funding.

2.E. Education Funding

Support: (1) additional funding for Standards of Quality revisions recommended by the state Board of Education in 2003; (2) additional funding for the increases recommended by the General Assembly's Joint Legislative Audit and Review Commission (JLARC); and (3) funding to implement HB 1013 (2004), the At-Risk Student Academic Achievement Program and Fund.

2.F. Small Business Development Centers

Support legislation to restore the \$1 million reduction in Small Business Development Center funding.

2.G. Restoration of Civil Rights for Felons

Support legislation to amend the state Constitution to authorize the General Assembly to provide by statute for the restoration of a felon's rights.

2.H. Section 1115 Waivers

Support efforts to expand and make permanent Virginia's pilot Medicaid waiver program for uninsured persons who are still working but in need of Medicaid services because of HIV/AIDS and other progressive diseases.

2.I. Undocumented Students

Oppose any proposals to restrict access to higher education by undocumented aliens, unless it includes safeguards such as those proposed by Governor Warner in the 2003 Session.

2.J. Issues Endorsed by the Alexandria Commission on Aging

Support the legislative platform of the Northern Virginia Aging Network (NVAN).

2.K. Community Action Agencies

Support budget amendments to increase general fund appropriations for Community Service Block Grants; pre and post-incarceration services offered by Virginia CARES; and Project Discovery.

2.L. Renewable Energy

Support legislation that would promote the development and use of renewable energy, such as that produced by the Waste-to-Energy plant.

2.M. Car Tax

Support full funding of the car tax program at the level of \$950 million for each calendar year.

2.N. “Flush” Tax

Support a “flush” tax, which would produce additional revenue to improve water quality in the Chesapeake Bay and other Virginia waters.

3. Requests for Legislation to Be Opposed

3.A. Virginia Housing Development Authority Loan Eligibility

Oppose legislation that would prohibit VHDA from making loans to unrelated individuals.

3.B. Living Wage

Oppose legislation to repeal the City’s authority to adopt a living wage ordinance.

3.C. Telecommunications Taxes

Oppose legislation that would reduce existing City revenues from telecommunications, or significantly lessen the reliability of such revenues, now and in the future.

3.D. Tax Credits for Donations of Open Space or Lands Important to Conservation

Oppose legislation that would limit state tax credits that are available under §58.1-512 of the Code to those who donate land to public or private conservation agencies for preservation or conservation purposes.

DISCUSSION: On October 26, staff presented to Council the City's 2005 Legislative Package proposals. On November 13, Council held a public hearing on this Package. Since the Package was first presented, the following items have been added to the Package:

- a proposal to pursue legislation, or a study leading to legislation, that would authorize early voting in Virginia;
- support for a "flush" tax, which would provide revenue to clean up the Chesapeake Bay and other Virginia waters; and
- a position in opposition to legislation that would limit state tax credits that are available to property owners who donate land to public or private conservation agencies to preserve or protect open space or historic resources, or to promote related conservation purposes.

Early Voting (Councilman Macdonald). All states provide, through absentee voting, for voters who will be unable to go to the polls on election day. In Virginia, a resident may cast an absentee ballot if he is: a student attending school away from home; out of town on business or vacation; working more than 11 hours while the polls are open on election day; disabled or ill, or a care giver for a family member who is disabled or ill; in jail awaiting trial or serving a sentence for a misdemeanor; an election official; on active duty in the armed services; temporarily residing outside the U.S.; or unable to go to the polls because of a religious obligation.

In recent years, over half the states have eliminated such restrictions on the use of absentee ballots, and allow any registered voter to vote a given number of days prior to the election, either in person or by absentee ballot. Senator Mary Margaret Whipple (Arlington) introduced legislation in 1998 that would have allowed any voter to vote by absentee ballot for any reason. This bill was never reported out of committee. Councilman Macdonald recommends that the City ask its legislative delegation to pursue similar legislation in the 2005 Session.

"Flush" Tax (Councilman Macdonald). For over a quarter of a century, Virginia, Maryland, Pennsylvania, and the District of Columbia have been implementing programs to restore water quality in the Chesapeake Bay and its tributaries. In spite of these efforts, significant pollution remains. Nitrogen pollution in particular has been identified as the cause of algae blooms that kill underwater grasses and rob the water of oxygen, resulting in fewer finfish and shellfish in the Bay. Scientists believe that this nitrogen pollution comes primarily from sewage treatment plants (STPs) and farm runoff in the Bay watershed. STPs must be upgraded with modern, nitrogen-reducing technology, and farmers must implement new farming practices to reduce nitrogen in the Bay.

Upgrading STPs and implementing new methods of farming can be very costly. STP upgrades in Virginia are expected to cost between \$600 million and \$1.2 billion, and there is no ready source of funding for the upgrades.

The Chesapeake Bay Foundation (CBF) has proposed a dedicated fee (commonly referred to as a “flush tax”) on Virginia households and industries that use sewage treatment plants or septic systems (Attachment 1). The proposed annual fee is \$52 for households and \$1,200 for industries. CBF estimates that such a fee (which has already been adopted in Maryland) would generate \$160 million per year, which CBF says is enough to pay for most of the STP upgrades and many improvements to reduce farm runoff. The CBF proposal seeks to have localities collect this user fee, as an add-on to sewer bills, real property tax bills, or other methods. It also recommends that localities be given authority to withhold a small amount of the fee revenues to pay for administrative costs, and that localities be given authority to establish criteria to exempt low-income residents.

The Virginia Municipal League supports new funding for nutrient reductions, but opposes the imposition of any state fee, tax, or surcharge on water, sewer, solid waste, or other local government services.

CBF has provided copies of its proposal to Governor Warner and Secretary of Natural Resources Tayloe Murphy. Staff was advised that the Governor and the Secretary are reviewing the proposal, but have not yet taken a position on it.

Councilman Macdonald recommends that the City ask its legislative delegation to support this proposal in the 2005 Session.

Tax Credits for Land Preservation (Councilman Krupicka). Legislation passed in 1999 allows a landowner to take a state tax credit when he donates, to a public or private conservation entity, land (or an interest in land, such as a conservation or preservation restriction) for agricultural and forestal use, open space, historical preservation, or conservation purposes. The amount of the credit is fifty percent of the fair market value of the land. A taxpayer cannot claim more than \$100,000 credit in any tax year, but he can carry any unused credit over to the following five tax years. Total credits available for a parcel of land is not limited under the legislation.

Some members of the General Assembly are concerned that this program has cost the state too much in lost general fund revenues, and say that the law was really meant to preserve open space in rural areas, not intensely developed Northern Virginia with its high land values. In response to this concern, Senator Emmet Hanger (Augusta County) introduced legislation last Session that would limit total tax credits for any single parcel of land or for contiguous parcels of land to \$600,000 in aggregate. This legislation was opposed by many conservation organizations and did not pass. Senator Hanger recently indicated to representatives of the Northern Virginia Conservation Trust, the Nature Conservancy, and other conservation organizations that he expects to reintroduce this legislation in 2005.

If this legislation were enacted, it could significantly limit future donations of land for open space or preservation in Alexandria, with the City’s high land values. For this reason, Councilman Krupicka has asked that the City oppose this legislation if it is reintroduced.



Virginia Clean Rivers, Clean Chesapeake Legislation

The Problem – Polluted Water:

- Nearly 7,000 miles of rivers and streams in Virginia -- more than half of all those monitored by the state -- are polluted and listed on the Clean Water Act's "dirty waters" list, including parts of Virginia's major rivers -- the Potomac, James, Rappahannock, York, Shenandoah, New, Chowan and Roanoke.
- Virginia's entire portion of the Chesapeake Bay and the tidal parts of its major Virginia rivers are listed as "dirty waters" due to excess nitrogen pollution. Nitrogen pollution causes algal blooms that close beaches, kill underwater grasses and rob the water of oxygen.
- Huge "dead zones" of oxygen-starved water that kill fish, crabs and oysters have become common summer occurrences in the Bay and Virginia rivers. Last year's "dead zone" was among the largest on record and covered 40 percent of the Bay.
- Virginia and the Bay states have until 2010 to clean up the Bay and its rivers or the federal government will impose sanctions. As a signatory to the regional Chesapeake Bay 2000 agreement, Virginia has pledged to reduce nitrogen pollution by 28 million pounds per year by 2010.
- The biggest sources of nitrogen pollution in Virginia are sewage treatment plants and industrial facilities. Cost estimates to upgrade treatment plants with modern, available nitrogen-reduction technology range from \$600 million to \$1.2 billion.

The Solution – The Virginia Clean Rivers, Clean Chesapeake Legislation:

- The Virginia Clean Rivers, Clean Chesapeake legislation will fairly, equitably and comprehensively finance the cleanup of Virginia's rivers and Chesapeake Bay through a dedicated user fee on Virginia households and industries that utilize sewage treatment and septic systems. The proposed fee is \$1 a week per household and less than \$25 per week per industrial facility. Localities may exempt low-income households, and funds for local administrative costs will be provided. Spread statewide, the user fee would substantially reduce the cost to the average ratepayer for required sewage plant upgrades.
- The fee would generate approximately \$160 million per year for the Virginia Water Quality Improvement Fund, with 70 percent of the revenues dedicated to modernizing sewage treatment plants and 30 percent to providing incentives to farmers to reduce polluted runoff, the second-largest source of nitrogen pollution in Virginia. The fee would fund nearly all the costs of modernizing individual treatment plants. The Clean Rivers, Clean Chesapeake legislation will also financially encourage public-private partnerships as available under Virginia law.
- By upgrading the state's sewage treatment plants with modern nitrogen-reduction technology, Virginia can achieve 70 percent of the nitrogen pollution reductions needed to meet the 2010 cleanup goals. The result will be cleaner rivers, a cleaner Bay, a healthier seafood industry, enhanced recreation, fishing and tourism opportunities and a legacy of clean water for future generations of Virginians.
- Two-thirds of registered Virginia voters support paying an additional \$1-a-week fee dedicated to cleaning up Virginia's rivers. This overwhelming support cuts across all demographic and geographic areas of the state.

For more information, contact the Chesapeake Bay Foundation at 804-780-1392.

CLEAN RIVERS, CLEAN CHESAPEAKE LAW

SECTION 1. DEFINITIONS

A. Definitions--as used in this article, unless the context requires a different meaning:

1. "Industrial user" means a facility that is connected to a municipal sewage system and discharges more than 50,000 gallons per month to a municipal sewage system as determined by the Department of Environmental Quality. This definition does not include public facilities such as, but not limited to, publicly owned and operated schools, universities, prisons, jails, hospitals, and research facilities.
2. "Locality" means a county, municipal corporation, sanitary district, or other state or local public entity that has authority to own or operate a facility, and includes any combination of two or more of such entities when acting jointly to construct or operate a facility.
3. "Multi-family residential user" means a facility that incorporates more than one residential user under a single ownership.
4. "Residential user" means a room or group of rooms occupied as living quarters by an individual, single family, or other discrete group of persons with facilities that are used or intended to be used for living, sleeping, cooking, and eating, including but not limited to an apartment unit, a condominium unit, a cooperative unit, a townhouse, a mobile home, or a house, and not including a hospital, hotel, motel, inn, boarding house, dormitory, school, college, or similar seasonal, institutional, or transient facility.
5. "Municipal sewage system" means a sewage collection system consisting of pipelines or conduits, pumping stations and force mains and all other construction, devices, and appliances appurtenant thereto, or any equipment, plant, treatment works, structure, machinery, apparatus, interest in land, or any combination of these, not including an onsite sewage disposal system, that is used, operated, acquired, or constructed for the storage, collection, treatment, neutralization, stabilization, reduction, recycling, reclamation, separation, or disposal of wastewater, or for the final disposal of residues resulting from the treatment of sewage, including but not limited to: treatment or disposal plants; outfall sewers, interceptor sewers, and collector sewers; pumping and ventilating stations, facilities, and works, and other real or personal property and appurtenances incident to their development, use, or operation.
6. "State of the art nutrient removal technology" means technology that will achieve at least a 3 - 4 mg/L total nitrogen concentration in effluent discharges.

SECTION II. POLICY

- A. Pursuant to the duties and responsibilities established in Article XI of the Constitution of the Commonwealth of Virginia, it shall be the policy of the General Assembly to apply, use and dedicate any funds obtained as a result of the implementation of this Chapter to the reduction of nitrogen and phosphorus pollution discharged to the waters of the Commonwealth from municipal sewage systems and agricultural lands, as a priority, and thereafter to ensuring that the water quality of the surface and ground waters of the Commonwealth is such that levels of pollution contained therein shall not violate water quality criteria and standards adopted pursuant to the

Federal Clean Water Act Section 303 (33 U.S.C. § 1313) and the State Water Control Law Section 62.1-44.15(3)(a).

SECTION III. CLEAN RIVERS, CLEAN CHESAPEAKE DEDICATED USER FEE

- A. For each residential user that is connected to a municipal sewage system, there shall be a Clean Rivers, Clean Chesapeake fee of \$52.00 per year collected and paid.
- B. For each multi-family residential user that is connected to a municipal sewage system, there shall be a Clean Rivers, Clean Chesapeake fee of \$52.00 per year per residential user collected and paid.
- C. For each residential user that is not connected to a municipal sewage system and utilizes a septic system or other on-site wastewater treatment system, there shall be a Clean Rivers, Clean Chesapeake fee of \$52.00 per year collected and paid.
- D. For each industrial user there shall be a Clean Rivers, Clean Chesapeake fee of \$1200.00 per year collected and paid.

IV. COLLECTION AND PAYMENT

- A. Every locality shall collect the Clean Rivers, Clean Chesapeake fee and shall remit the monies generated from the fee to the State Treasurer, for deposit in the Water Quality Improvement Fund established by Section 10.1-2128. Payments shall be made within 30 days of the end of the fiscal year for the Commonwealth with the first remittance due July 30, 2005.
- B. Each locality may withhold up to \$50,000 or three percent of the amount due, whichever is less, for the purpose of covering administrative costs associated with the collection and remittance of the fee, including the development and distribution of public education materials explaining the Clean Rivers, Clean Chesapeake fee. The locality may collect the fee through personal property tax assessments, real estate assessments, municipal sewage system bills, contracts with municipal sewage system authorities, or any other reasonable and lawful method. State and local agencies and authorities shall provide assistance and cooperation as requested by a locality.
- C. Subject to the approval of the Advisory Committee (Section VI), each locality may establish criteria to exempt from collection and remittance any residential user able to demonstrate substantial financial hardship as a result of the Clean Rivers, Clean Chesapeake fee.

V. DISTRIBUTION AND USE OF CLEAN RIVERS, CLEAN CHESAPEAKE FEE

- A. The monies generated from the fee deposited in the Water Quality Improvement Fund shall be distributed in the following manner:
 - 1. Through the year 2010, seventy percent shall be administered by the Department of Environmental Quality through grants or through distributions to the Virginia Resources Authority for the sole purpose of designing and installing state of the art nutrient removal technologies at municipal sewage systems. The Virginia Resources Authority may utilize the monies it receives to issue bonds for the design and installation of state of the art nutrient removal technologies for municipal sewage systems. Funding for any state of the art nutrient removal technology shall not exceed ninety percent of the cost of designing and installing such technology. The monies shall also be available when the design and installation of state of the art nutrient removal technology utilize the Public-Private Education Facilities and Infrastructure Act (Section 56-575.1 et seq.). Notwithstanding

any provisions to the contrary, when utilizing the Public-Private Education Facilities and Infrastructure Act (Section 56-575.1 et seq.), one hundred percent funding for the cost of designing and installing such technology shall be available. Localities seeking to utilize the Public-Private Education Facilities and Infrastructure Act (Section 56-575.1 et seq.) shall also be eligible to obtain funding to cover the costs of legal advice for contract negotiation and development with the private partner. Monies generated by this Chapter and dispersed through grants or bonds shall be available to municipal sewage systems without regard to the existence of any permit requirements imposed on the discharge of nitrogen pursuant to the State Water Control Law (Section 62.1-44.2 et seq.) and as contained in a Virginia Pollution Discharge Elimination System (Section 62.1-44.15(5)) permit. In no single year shall the monies be used exclusively in or exclusively out of the Chesapeake Bay watershed.

2. Through the year 2010, thirty percent shall be administered by the Department of Conservation and Recreation through distributions to the Virginia Agriculture Best Management Practices Cost-share Program for the sole purpose of implementing best management practices that reduce nitrogen and phosphorous pollution from agricultural lands. In no single year shall the monies be used exclusively in or exclusively out of the Chesapeake Bay watershed.
3. Beginning in 2011, fifty percent shall be administered by the Department of Environmental Quality and fifty percent by the Department of Conservation and Recreation. At that time, an additional priority to be considered by both departments shall be the design and implementation of technologies that will substantially contribute to the removal of Category 5 impairments from waters listed as having such impairments in the Virginia Water Quality Assessment 305(b)/303(d) Integrated Report prepared pursuant to the Federal Clean Water Act (33 U.S.C. §§ 1313 and 1315). The Department of Environmental Quality shall also apply no less than ten percent of any funds to the installation of technologies to assist in the cessation of combined sewer overflows.

VI. ADVISORY COMMITTEE

- A. There shall be created a Clean Rivers, Clean Chesapeake Advisory Committee. The Committee shall review, comment and advise the Department of Environmental Quality and the Department of Conservation and Recreation on the implementation of the Clean Rivers, Clean Chesapeake Law and monies received hereunder. The Committee shall also review and approve or disapprove any proposed criteria established by a locality pursuant to Section IV. C.
- B. The Committee shall consist of one member of the Senate, selected by the Senate Privileges and Elections Committee, two members of the House of Delegates, selected by the Speaker of the House, and four citizens, selected by the Governor.

Nonlegislative citizen members of the Committee shall serve for terms of four years and shall not be eligible to serve more than two consecutive four-year terms. Appointments to fill vacancies shall be for the unexpired term and shall be made in the same manner as the original appointment. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for appointment. Legislative members shall serve terms coincident with their terms of office and may be reappointed for successive terms.

Members shall receive no compensation for their services, but shall be reimbursed from the proceeds of the Clean Rivers, Clean Chesapeake fee for all reasonable and necessary expenses as provided by Sections 2.2-2813 and 2.2-2825 incurred in the performance of their duties. The Division of Legislative Services shall be reimbursed for the costs, as shall be approved by the Committee, incurred in providing administrative assistance to the Committee.

- C. The Committee shall select a chairman and vice-chairman from its legislative membership by vote of the Committee. A majority of the members of the Committee shall constitute a quorum. The Committee shall meet at least one time each year, and additional meetings may be held at the call of the chairman.
- D. The Department of Environmental Quality and the Department of Conservation and Recreation shall report annually to the Committee concerning grant applications, grant approvals and denials, the status and outcome of previously approved grants, and such other information as the Committee may deem useful and necessary to its purpose.
- E. Administrative assistance to the Committee shall be provided by the Division of Legislative Services.

VII. REFUNDS

- A. Should the General Assembly in any year directly appropriate any other monies from any other sources to the Water Quality Improvement Fund for the specific purposes contained in Section V of this Chapter, the State Treasurer shall refund to localities on a pro rata share any monies collected from the Clean Rivers, Clean Chesapeake fee and remitted to the Treasurer in excess of the difference between \$160 million and the direct appropriation from other sources.

Attachment 2

City of Alexandria 2005 Legislative Package Proposals

1. Requests for Legislation to be Proposed

- 1.A. Commitment Hearings
- 1.B. Clean Smokestacks Legislation
- 1.C. Privileged Communications: Sexual Assault & Domestic Violence Victims
- 1.D. Remedy for Civil Rights Violations
- 1.E. Amending Authority to Levy an Admissions Tax
- 1.F. Child Day Care Funding
- 1.G. Funding for the Virginia Preschool Initiative
- 1.H. Failure to Pay Day Laborers and Other Workers
- 1.I. Early Voting

2. Requests for Legislation to be Supported

- 2.A. Elimination or Extension of the Sunset Clause in the Red Light Camera Law
- 2.B. Increase in Sales Tax on Motor Fuels in Northern Virginia
- 2.C. Dedicated Revenue for the Washington Metropolitan Area Transit Authority (WMATA)
- 2.D. Statewide Transportation Funding
- 2.E. Education Funding
- 2.F. Small Business Development Centers
- 2.G. Restoration of Civil Rights for Felons
- 2.H. Section 1115 Waivers
- 2.I. Undocumented Students

2.J. Issues Endorsed by the Alexandria Commission on Aging

2.K. Community Action Agencies

2.L. Renewable Energy

2.M. Car Tax

2.N. "Flush" tax

3. Requests for Legislation to be Opposed

3.A. Virginia Housing Development Authority Loan Eligibility

3.B. Living Wage

3.C. Telecommunications Taxes

3.D. Tax Credits for Donations of Open Space or Lands Important to Conservation

EXHIBIT NO. 2 ²²
11-23-04 ~~12~~
City of Alexandria, Virginia ~~11-13-04~~ ~~15~~
~~10-26-04~~

MEMORANDUM

DATE: OCTOBER 20, 2004
TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: PHILIP SUNDERLAND, CITY MANAGER ^S
SUBJECT: RECEIPT OF PROPOSED CITY LEGISLATIVE PACKAGE FOR THE 2005
GENERAL ASSEMBLY SESSION

ISSUE: Receipt of proposed City Legislative Package for the 2005 General Assembly Session.

RECOMMENDATION: That City Council:

- (1) receive the proposals for the City's 2005 Legislative Package;
- (2) schedule the legislative package proposals for public hearing on Saturday, November 13; and
- (3) schedule adoption of the Legislative Package for Tuesday, November 23, following Council's work session with the General Assembly delegation.

DISCUSSION: Over the past several months, legislative and funding proposals for the City's 2005 Legislative Package have been submitted by Council Members, City departments, and boards and commissions. Twenty-four such proposals are described below for your consideration as 2005 legislative package proposals. Section 1 contains legislative proposals that staff recommends the City seek to have introduced by our delegation; Section 2 contains legislative proposals that staff recommends that the City support; and Section 3 includes proposals that staff recommends that the City oppose. All the proposals are also summarized in the list entitled "City of Alexandria 2005 Legislative Package Proposals" (Attachment 1).

The 2005 General Assembly Session will be a "short" 46-day Session, beginning January 12, and ending February 27. On December 17, 2004, Governor Mark Warner will submit his proposed amendments to the current biennial budget, which appropriates funds for the period from July 1, 2004 through June 30, 2006. Major issues likely to come before the 2005 Session include:

- initiatives to provide new resources to fund transportation needs;
- revisiting tax reform (opponents of last year's legislation that increased taxes will seek to roll back some of the increases); and

- revisiting the car tax (efforts will be made by some to increase state funding for the car tax program, and by others to revise the major changes made to the car tax law last Session).

Legislative Director Bernard Caton will represent the City in Richmond again this year, and we will report to you regularly on the status of legislative and budget issues that arise during the 2005 General Assembly Session.

1. Requests for Legislation to Be Proposed

1.A. Commitment Hearings (Community Services Board)

With the closure of the inpatient psychiatric unit at Inova Alexandria Hospital, involuntary psychiatric patients temporarily detained at hospitals outside of the City now have to be transported from a facility outside the City back to the Alexandria courthouse for commitment hearings, or a court-appointed hearing officer must travel outside the City to the hospital where the individual is a patient. Either of these options is very expensive and time-consuming for City staff and court staff.

To avoid these costs and related difficulties, the Alexandria Community Services Board and the Chief Judge of the General District Court recommend that the Virginia Code be amended to allow these hearings to be conducted by video or audio systems. The City already uses a two-way audiovisual system for arraignments that are conducted by Alexandria judges in the courthouse for inmates who are at the City jail.

City staff has been advised that Delegate Phil Hamilton may be introducing legislation that would authorize the CSB's electronic hearing proposal. If he does so and if it addresses the City needs, we ask that the delegation support his bill. If Delegate Hamilton does not introduce this legislation, we recommend that the City's delegation do so.

1.B. Clean Smokestacks Legislation

Last year the City supported legislation aimed at lowering air emissions from existing coal-fired power plants, such as the Mirant plant in north Old Town. Under the federal Clean Air Act, these older plants do not have to meet the same clean air standards that new plants do. House Bill 113, introduced by Delegate Marian Van Landingham, would have required any coal-fired electric generating facility in a severe non-attainment area (i.e., Northern Virginia) to significantly reduce sulfur dioxide and nitrogen oxide emissions by January 1, 2009, or agree to cease operations by 2014. Similar legislation, introduced by Delegate Jack Reid of Henrico County, would have required coal-fired generating units statewide to reduce their emissions of nitrogen oxide, sulfur dioxide and mercury by specific amounts over a period of several years beginning in 2008. Both these bills were carried over to the 2005 Session.

Staff believes that it is still appropriate for the state to require significant emission reductions from coal-fired power plants, and recommends that the City continue to propose or support legislation which would either (1) establish a schedule by which investor-owned public utilities that own or operate coal-fired generating units are required to reduce by specific amounts their emissions of oxides of nitrogen, sulfur dioxide, mercury, and particulates; or (2) require a utility to cease operations by a given date in lieu of reducing its emissions.

1.C. Privileged Communications: Sexual Assault & Domestic Violence Victims
(Commission for Women)

The Alexandria Office on Women has a strong and caring program in which it supplies advocates to assist victims of sexual assault and domestic violence. These victims and advocates often discuss some of the most personal and confidential information about the victim's life and the sexual assault or domestic violence directed against the victim. In recent years, these Alexandria programs, as well as similar programs around the Commonwealth, have experienced an influx of subpoenas for confidential records, or for the advocates to testify about the information they have received from the victims.

Although victims have spoken to their advocates with the belief that any information they give will be held in confidence, there is no Virginia statute that protects the confidentiality of communications between these advocates and victims. Without this confidentiality, those who have been assaulted are further victimized and their willingness to participate in the legal process may be hindered. In addition, when staff members are subpoenaed, the efficacy of these advocates is severely compromised. Furthermore, responding to subpoenas requires advocates to spend scarce time researching records and testifying in court – time that should be spent in support of victims. At least thirty-three other states, including North Carolina and Alabama, protect confidential communications between clients and their advocates.

The Commission for Women believes that Virginia law should protect the confidentiality of communications between victims and advocates. Last Session, SB 665 was introduced, at the City's request, to prohibit a court from compelling a domestic violence or sexual assault advocate to disclose any communication between the advocate and a victim. This prohibition would not have extended to matters relating to child or adult abuse and neglect, or to potentially exculpatory information that a Commonwealth's Attorney is required to disclose in a criminal case.

The legislation was passed by the Senate, but died on a close (10-12) vote in the House Courts of Justice Committee. The Commission for Women recommends that the City seek to have this legislation reintroduced during the 2005 Session. Staff concurs with the Commission's recommendation.

1.D. Remedy for Civil Rights Violations (Human Rights Commission):

Alexandria's Human Rights Commission hears cases of alleged discrimination by employers who often are not covered by federal or state human rights programs (i.e., employers of 15 or fewer employees). Unfortunately, it is not always clear at the outset of a case which level of government has jurisdiction. The number of employees in a firm, for instance, may be in dispute and could ultimately affect whether the case will be heard by the Alexandria Human Rights Commission or the U.S. Equal Employment Opportunities Commission. In some instances, a victim of unlawful discrimination may miss statutory deadlines to take legal action if he or she is unknowingly pursuing the case at the wrong level of government.

The Human Rights Commission recommends that this problem be addressed in the Virginia Code by suspending (or tolling) the statute of limitations on private rights of action under Virginia law until the local commission has acted on a case. This will allow victims of unlawful discrimination to file suit raising state law claims in state court once it is clear that there is no federal jurisdiction in the matter. Staff concurs with the Commission's recommendation.

1.E. Amending Authority to Levy an Admissions Tax

All Virginia cities and towns, as well as some counties, currently have authority to charge admissions taxes. Under current law, admissions taxes can be charged on the following categories of events: (1) events which are held solely to raise funds for charity; (2) school-sponsored events; (3) entry into museums, botanical gardens, and zoos; (4) fees for participants at sporting events; and (5) major league baseball games or events held at major league baseball stadiums. A locality can charge a different admissions tax, or no admissions tax at all, for each of these categories.

A locality can also charge an admissions tax on all other events (movies, concerts, lectures, plays, musical recitals, football games, etc.), but the locality must tax all these events (those events not included in the 5 categories above) at the same rate. In past years, when the City has considered charging an admissions tax on all eligible events, representatives of non-profit musical, theater, and related organizations have recommended against such a tax, saying that it could jeopardize their existence.

In the past, the City has considered charging an admissions tax on movie theaters, which are not included in a separate category under current state law. If a separate category for an admissions tax on movie theater tickets were added to the law, localities would be able to levy an admissions tax on movies without taxing other entertainment events, including those sponsored by non-profit organizations.

Staff estimates that each percent admissions tax on movie theater tickets in Alexandria would provide \$220,000 annually. An admissions tax could also be levied on a per ticket basis, such as 50 cents per ticket.

The City unsuccessfully sought authority to tax movie admissions from the 2003 General Assembly. In order to further diversify City revenue sources, staff recommends that the City again seek such authority in the 2005 Session. City Council has asked its Budget and Fiscal Affairs Advisory Committee (BFAAC) to study whether an admissions tax should be implemented and, if so, what its structure should be. BFAAC is currently working on this study. If the Virginia Code is amended so that a locality can tax movies only, developing a proposal for possible implementation becomes a simpler task.

1.F. Child Day Care Funding (Early Childhood Commission)

For several years now, and with some success, the City has sought additional state funding for child day care. In response to requests of the City, the Virginia Department of Social Services (DSS) has recently given localities the option to use local dollars to draw down federal funds to provide child day care services to families with incomes that are up to 250 percent of the poverty level. Until this recent change, the maximum income for Northern Virginia families receiving state financial assistance for child day care was 185 percent of the poverty level. In response to other City recommendations, last month DSS (using findings from a survey of actual provider charges that was completed in 2002) increased the Maximum Reimbursable Rates for Alexandria's child care centers and locally regulated family child care providers.

In spite of this progress, unmet needs still exist, and staff recommends the following child day care proposals to the 2005 General Assembly.

1. As noted above, DSS has given localities the option to use local dollars to draw down federal funds to provide child day care services to families with incomes that are up to 250 percent of the poverty level. DSS has advised local social service agencies, however, that the federal funds to serve families with incomes that fall between 185 and 250 percent of the poverty level would be available only so long as the state does not need these funds for other programs. The Early Childhood Commission (ECC) believes that, due to the high cost of living in Northern Virginia, the state should continue to fund all child day care programs in the region at this level and recommends that budget language direct DSS to do so.
2. While the ECC commends DSS for increasing the Maximum Reimbursable Rates for Alexandria's child day care programs, the DSS is required to conduct a market survey every other year, and revise the rates based on the survey findings. To ensure that DSS adjusts these rates on a regular basis in the future (it has not done so in the past), the ECC recommends that language be included in the 2005 budget directing DSS to conduct a market survey in 2005, set new rates in 2006, and continue such a biennial process every two years thereafter.
3. The ECC also recommends that language be included in the budget directing the Commonwealth to continue to draw down and use all possible federal funds for child day care funding, and to implement policies that increase access to child care services for the working poor.

Staff concurs with the ECC recommendations.

1. G. Funding for the Virginia Preschool Initiative (Early Childhood Commission)

The Virginia Preschool Initiative (VPI) is a state program that provides financial assistance to local governments to help them provide quality preschool programs to previously unserved at-risk four-year-olds. In Alexandria, these funds are used to support at-risk children in private child care centers that are accredited by the National Association for the Education of Young Children. VPI dollars may not be used to help fund pre-existing full-day Head Start programs. As a program of the Virginia Department of Education, the VPI funding formula is based on the composite index and requires that Alexandria provide an 80 percent match.

While last year's General Assembly increased state funding for VPI, the ECC recommends that next year's General Assembly earmark additional appropriations for this program. More specifically the ECC recommends that the General Assembly base its support formulas on the actual cost of a typical program: \$7,600 for a 40-week school year in Alexandria. At this time, the state does not support program costs above \$5,400 annually, a reimbursement level set in 1994 when the program began.

The ECC also recommends that the General Assembly increase funding to serve all previously unserved at-risk four-year-olds. The Commonwealth currently appropriates sufficient funding to serve only 90 percent of unserved at-risk four-year-olds.

Implementation of the ECC's two recommendations to VPI funding would increase state VPI funds for Alexandria residents by an undetermined amount.

Staff concurs with the ECC recommendations on VPI funding.

1.H. Failure to Pay Day Laborers and Other Workers (Human Rights Commission)

A 2002 report from the General Accounting Office (GAO) found that the day laborer work force is prone to workplace abuses, including the non-payment of wages. The GAO study, and other studies cited by GAO, found that this is a problem with large number of day laborers—probably a majority of them. In a recent Fairfax County survey of day laborers, 55 percent of respondents reported that on one or more occasions they had been paid less than agreed upon, 26 percent had received bad checks at least once, and 53 percent had worked one or more jobs where they had not been paid at all.

Workers have the right to be paid minimum wage and overtime. If they do not recover all of the wages for time actually worked, they have a right to recover those wages. Current state law allows an individual to file suit in civil court to recover such wages. Because of the relatively small sums involved (day laborers are seldom paid much above minimum wage), language barriers, lack of knowledge about the court system and procedures, and the need to take time off

from their jobs to pursue a suit, few individuals pursue such suits. Even those who do, if successful, provide little threat to employers since the civil penalties against them are not significant enough to encourage them to pay the wages they owe. Judgments in civil cases are difficult to collect because employers who fail to pay workers can avoid payment by changing a company's name, transferring the company to another family member's name, or transferring funds so the company has no assets to pay the judgment. The Virginia Code also provides for prosecution of a contractor or subcontractor who fails to pay persons performing labor or furnishing materials, but only if the Commonwealth's Attorney can prove an "intent to defraud"—a standard of proof which makes this statute ineffective.

The Human Rights Commission recommends that the City pursue legislation that would make an employer guilty of embezzlement if he refuses to pay an employee for labor the employee provided in accordance with a compensation agreement. Under existing law, embezzlement of more than \$200 is a felony; less than that is a misdemeanor. The Commonwealth's Attorney supports the Commission's proposal. City staff also supports this proposal.

2. Requests for Legislation to Be Supported

2.A. Elimination or Extension of the Sunset Clause in the Red Light Camera Law (Northern Virginia Regional Position)

Alexandria initiated a pilot red light camera enforcement program in 1997 to reduce the number of red light violations. Under this program, a private vendor under contract with the City photographs motor vehicles that run red lights at four intersections (Patrick and Gibbon, Duke and Walker, Seminary and Nottingham, and Duke and West Taylor Run). The vehicle's owner is then identified, using Virginia Department of Motor Vehicles records, and the owner is sent a notice of violation and is required to pay a \$50 fine. Under the state law, no points are assessed against a vehicle owner's driving record. This program has been very effective in helping to reduce red light violations in the City.

In recent General Assembly Sessions, some legislators have tried unsuccessfully to extend the program's 2005 sunset provision. Without changing or eliminating the sunset provision, Alexandria and other localities¹ will no longer be able to operate their programs after June 30, 2005. Staff expects one or more bills to be filed in the upcoming Session that will extend the sunset to 2007, and recommends that the City support legislation to extend or eliminate the sunset. Other Northern Virginia localities are expected to adopt this or a similar position.

¹Red light camera programs have been implemented in the cities of Alexandria, Fairfax, Falls Church, and Virginia Beach; the Counties of Arlington and Fairfax; and the Town of Vienna. Loudoun County and the City of Richmond also have red light camera authority but have not implemented a program. Except for towns in Fairfax County and possibly Loudoun County, no other localities in Virginia can use red light cameras.

2.B. Increase in Sales Tax on Motor Fuels in Northern Virginia (Northern Virginia Regional Position)

Motorists in Northern Virginia pay a two percent sales tax on all motor fuel purchases. This tax was enacted by the 1980 General Assembly to provide a revenue source for the Metrorail system. Revenues originally were collected on all fuel purchases in those localities which belonged to the Northern Virginia Transportation Commission, or NVTC (the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington and Fairfax). In 1986, the tax was extended to the localities belonging to PRTC (Potomac-Rappahanock Transportation Commission, which is made up of the cities of Fredericksburg, Manassas, and Manassas Park, and the Counties of Stafford and Prince William), where it is used to pay for a portion of the costs of VRE (Virginia Railway Express) and other transportation programs. The tax has been assessed on motor fuel sales in Loudoun since that county jointed NVTC in 1990.

Since the tax is based on the cost, and not the amount, of fuel purchased, total revenues can vary considerably from year to year. Total NVTC revenues from this sales tax grew from \$17.2 million in FY 2000 to \$21.2 million in FY 2001, but they fell to \$18.4 million in FY 2002. In FY 2003, they rose to \$20.9 million, and then to \$21.6 million in FY 2004.

NVTC motor fuels sales tax revenues for WMATA compact members (all NVTC localities except Loudoun) are used exclusively to pay for WMATA expenses (the law allows the revenues to be used for the capital and operating costs of both bus and rail). Each locality is generally credited with the amount of tax revenue raised from actual fuel sales in the locality, and this credit reduces the WMATA subsidy owed by the locality. Loudoun uses its motor fuels tax revenue for its own transit and transportation needs.

State taxes on motor fuels in the region are: Virginia: \$0.175/gallon (not including the two percent regional motor fuels sales tax); District of Columbia: \$0.20/gallon; and Maryland: \$0.235/gallon.

In FY 2004, \$1.8 million of the motor fuels sales tax revenues were credited to the City of Alexandria. If the rate had been 4 percent, rather than 2 percent, revenues from motor fuel sales would have been more than \$3.6 million, which would have been credited toward the City's WMATA obligations.

2.C. Dedicated Revenue for the Washington Area Metropolitan Transit Authority (WMATA)

The WMATA transit system provides subway and bus service to the entire Washington area. A recent study by the Brookings Institution² found that WMATA's lack of a dedicated funding source has made it vulnerable to recurring financial crises. The study noted that "unlike virtually

²Robert Puentes, *Washington's Metro: Deficits by Design*, The Brookings Institution, June, 2004.

every other major transit system in the nation, WMATA receives no dedicated stream of revenue each year for capital or operational costs.” Instead, it relies on voluntary annual operating subsidies from its member jurisdictions to pay for costs not covered by its fares, parking fees, and advertising revenues. While revenues from the sales tax on motor fuels levied in Northern Virginia are used to support WMATA, they only cover a small portion (approximately 12 to 15 percent) of the subsidy owed by Virginia localities. The State of Maryland fully funds the WMATA capital and operating costs for Montgomery and Prince George Counties.

In response to concerns about WMATA revenues and budget shortfalls, the Metropolitan Washington Council of Governments (COG) has appointed a blue ribbon panel (formally known as the Panel on Analysis of and Potential for Alternate Dedicated Revenue Sources for the Washington Area Metropolitan Transit Authority) to research alternative funding options for WMATA. The Panel is scheduled to issue a report in mid-December recommending alternative revenue sources. Staff expects that the Blue Ribbon Panel’s recommendations will form the basis for legislative recommendations on funding for WMATA.

The recently approved Metro Matters capital program includes City contributions totaling \$40.7 million over the next 6 years, and \$82.5 million over the next 20 years. In addition, the City is providing WMATA with an annual operating subsidy of \$16.2 million.

Staff recommends that the City support additional dedicated revenue sources for the system, such as increases to the Northern Virginia motor fuels sales tax, or new authority and revenue repayment sources for bonds.

2.D. Statewide Transportation Funding

Prior to and during the 2004 General Assembly Session, a number of proposals were made to increase funding for transportation throughout the Commonwealth. Among these were increases to the state motor fuels tax (currently 17.5 cents/gallon), increases to other transportation related taxes or fees (e.g., titling tax and registration fees), and the transfer of other transportation-related general fund revenues (from insurance taxes) to the Commonwealth’s Transportation Trust Fund. Unfortunately, none of these efforts was successful. Transportation is seen as the one area that was not addressed in a year that the General Assembly provided significant new money for education, social services, and other needs.

Many legislators have already announced their intention to provide additional revenue for transportation in the 2005 Session. Unfortunately, these legislative proposals vary significantly (some would like to transfer general funds to the transportation trust fund, while others appear to support new or increased fees or taxes), and the General Assembly runs the risk of adjourning before any consensus develops.

Staff will follow transportation legislation closely during the 2005 Session, and highlight these bills and budget proposals in any reports to Council. Staff recommends that the City support any reasonable proposals by the General Assembly to increase statewide transportation funding.

2.E. Education Funding

Alexandria has paid more than its allotted share for K-12 education funding, while the state has paid less than its share. While the state significantly increased funding for education in the 2004 Session, additional state revenues are needed to end the shortfall in the state's contribution, and existing education programs must not be eliminated to fund this shortfall. To address this shortfall, staff recommends that the General Assembly seek to increase education funding as follows:

- Provide additional funding for Standards of Quality revisions recommended by the state Board of Education in 2003 (among other things, the Board recommended additional revenue for art, music, physical education, speech pathologists, technology assistants, reading specialists, and remediation specialists).
- Provide additional funding for the increases recommended by the General Assembly's Joint Legislative Audit and Review Commission (JLARC). In 2002, JLARC completed a study on the costs and funding of K-12 public education in the Commonwealth, and recommended a number of ways in which state funding should be increased. Most, if not all, of these proposals (including funding additional resource teachers, smaller class sizes, etc.) would provide additional funding for Alexandria public schools.
- Provide funding to implement HB 1013 (2004). Prior to the 2004 Session, the Virginia Municipal League (VML) developed an initiative to significantly increase state funding for schools and students most at risk of failing the Standards of Learning (SOLs). This at-risk funding would be distributed among localities without using the Composite Index (which results in Alexandria having to match every \$1 of most state education funding with at least \$4 of local funding). The VML proposal would distribute these funds based on the number of a locality's free lunch students, as well as the concentration of such students, and would require the locality to provide \$1 for each \$4 in state funding. VML estimates the annual cost to the state for this program at \$300-400 million in new money (some existing funding for similar programs would also be transferred into this program). While staff is unable to estimate the amount of money which the City would receive under such a program, it would be substantial, since 51 percent of City students receive free lunches.

Legislation (HB 1013, the At-Risk Student Academic Achievement Program and Fund) was enacted in the 2004 Session to establish the Fund for at-risk students. Staff recommends that the City support General Assembly action to appropriate money to the Fund in the 2005 Session.

2.F. Small Business Development Centers

Throughout Virginia, 29 Small Business Development Centers (SBDCs) provide professional one-on-one business counseling, small group training seminars, conferences, workshops and other information resources to assist and strengthen Virginia's small businesses. One of these 29 SBDCs has been located in the City of Alexandria since 1996, when it was begun in part with \$25,000 in seed money from the General Assembly.

SBDCs use a combination of federal, state, and local funds to support their programs. In 2003, as a result of state budget reductions that were made to address serious state revenue shortfalls, state SBDC funding was reduced by 30 percent, or \$1 million. As a result, SBDCs have been unable to provide many of the services that were available prior to this.

Since the Virginia economy has recovered and tax revenues are growing, the Virginia Small Business Development Centers Network, made up of the 29 SBDCs and hosted by George Mason University, will be asking the 2005 General Assembly to restore the \$1 million reduction. A portion (the specific amount is undetermined) of the new money would come to the Alexandria SBDC. Staff recommends that the City support this request.

2.G. Restoration of Civil Rights for Felons (Human Rights Commission)

Under Virginia law, any person convicted of a felony forfeits certain civil rights for life, including the right to vote. The Virginia Constitution reserves to the Governor the power to restore these rights. Virginia's process for restoring rights is one of the most restrictive in the country. In recent years, there have been increased complaints about the difficulties felons in Virginia face if they try to have their rights restored. They often have no idea how the process works, and have found it difficult to determine the status of their requests to have their rights restored.

Legislation (HB 1080) passed by the 2000 General Assembly addressed some of these problems. It required the Virginia Department of Corrections to explain to felons, at the completion of their prison sentence, the state process for restoring civil rights. HB 1080 also directed the Secretary of the Commonwealth (who prepares, for the Governor, the paperwork on the restoration of rights) to notify felons once a completed application for the restoration of rights has been received. Finally, the bill required the Secretary of the Commonwealth to notify an applicant of the Governor's decision (whether or not voting rights will be restored) no later than 90 days after that decision had been made.

Governor Mark Warner has made further changes to streamline the process by which those convicted of non-violent felonies, other than drug distribution offenses and voting fraud, may regain their civil rights (including the right to vote, to hold public office, to serve on a jury and to serve as a notary public). Under the Governor's policy, these offenders may apply for a

restoration of rights three years (as opposed to the existing policy of five years) after completing their sentence, as well as any suspended sentence, probation, parole or supervised release. The application has been reduced to a single page. The Commonwealth will continue to perform a criminal background check on all applicants. Those applicants who have not been convicted of any offense since the conviction which caused them to forfeit their civil rights, and have no pending criminal charges, will have their voting rights restored. The policy also provides for all applicants to receive a decision from the Governor within six months of submitting a completed application.

In the 2003 Session, a Task Force of the Virginia State Crime Commission, chaired by Delegate Brian Moran, recommended that the state Constitution be amended to authorize the General Assembly to provide by statute for the restoration of a felon's rights. If such an amendment is enacted, the General Assembly could provide by statute for the continuation of Governor's Warner revised policies or similar ones. Without such an amendment, a future Governor could retract the Warner process and return to the earlier slower, more cumbersome one. The City of Alexandria supported the Crime Commission proposal. The Crime Commission's legislation was passed in 2003, but defeated in 2004 (like all Constitutional amendments, it had to be enacted in two separate General Assembly Sessions).

If similar legislation is introduced in the 2005 Session, the Human Rights Commission recommends that the City support it.

2.H. Section 1115 Waivers (Human Rights Commission)

Section 1115 of the Social Security Act gives the United States Secretary of Health and Human Services authority to waive provisions of the federal Medicaid statute. One of the "waivers" that the Secretary can allow enables states to extend Medicaid eligibility to certain low-income persons not otherwise covered by Medicaid.

Virginia's Medicaid program currently does not provide coverage for a number of persons who have HIV/AIDS and other progressive diseases because they are still working and have income levels and assets that prevent them from qualifying for the program. Some of these people do not have access to health insurance, and the only way they are able to qualify for Medicaid is to quit their jobs and spend down their assets. If they had access to good medical care through the Medicaid program, they could continue working and providing for their non-health related needs. Early medical treatment would also improve these individuals' chances for full or long-term recovery.

The Virginia Department of Medical Assistance Services, which administers the state Medicaid Program, is implementing a pilot program for up to 200 Virginians to participate in the state Medicaid program through the 1115 Waiver Program. The Human Rights Commission recommends that the City support any efforts that are made to expand this program and make it permanent.

2.I. Undocumented Students (Human Rights Commission)

Some members of the General Assembly attempted to enact legislation in the 2003 and 2004 Sessions that would have explicitly prohibited any alien who is unlawfully present in the United States from being eligible for in-state tuition at Virginia's colleges and universities. The 2003 legislation passed both the House and Senate with substantial majorities, but was returned to the General Assembly by the Governor, who proposed to amend it so that it would not apply to students who:

- resided with their parents or guardians in Virginia during high school;
- graduated from a Virginia high school;
- had resided in Virginia for at least 5 years prior to high school graduation;
- had filed for and were pursuing permanent residency in the United States; and
- had paid (or had at least one parent or guardian who had paid) Virginia income taxes for at least three years prior to the date of enrollment.

The General Assembly rejected the Governor's amendment, so he vetoed the legislation, noting that his amendment "would have allowed a small but deserving group of students to receive the benefit of in-state tuition." He went on to explain that these students "were brought to this country by their parents through no fault of their own . . . are now - and . . . in all likelihood will continue to be - a part of our communities," and that the amendment was "fully consistent with federal law."

Similar legislation (HB 156), to restrict illegal aliens from enrolling in state colleges and universities, was considered by the 2004 Session. It passed the House but was defeated in the Senate. The Human Rights Commission recommends that the City oppose any legislative proposals in the 2005 Session that would restrict access to higher education by undocumented aliens, unless it includes safeguards such as those proposed by Governor Warner for the 2003 legislation. Staff concurs with the Commission's recommendation.

2.J. Issues Endorsed by the Alexandria Commission on Aging

The Alexandria Commission on Aging regularly asks Council to endorse the legislative platform of the Northern Virginia Aging Network (NVAN). The Commission then testifies in support of the platform during the General Assembly Session. Council has followed this process since 1997 (authorizing the Commission to support the NVAN platform).

This year NVAN's platform (Attachment 2) asks that the General Assembly provide funding and legislation that will assist older Virginians in a number of areas, including:

- Taking action to assure that Virginia's assisted living residences provide quality care;

- Increasing state support for community-based services;
- Establishing and funding a pilot congregate housing and services program at four sites throughout the Commonwealth;
- Strengthening the quality of care in nursing homes; and
- Expanding funding for the public guardianship program.

The Commission recommends that the City support the NVAN legislative platform. Staff concurs with the Commission's recommendation.

2.K. Community Action Agencies (Economic Opportunities Commission)

The Economic Opportunities Commission has asked the City to support the following priorities of the state's Community Action Agencies (CAA):

Community Services Block Grants. The City of Alexandria, through the Department of Human Services, provides a wide range of emergency services, crisis intervention, housing and shelter assistance to low-income residents. Much of the financial support for these programs comes from state Community Services Block Grants (CSBGs). Over the past several years, most of the state general funds used for CSBGs have been replaced with TANF (Temporary Assistance for Needy Families) funds. One of the shortcomings of TANF funds is that they cannot be used to match other federal funds for which these programs may be eligible. The CAA plans to propose budget amendments to replace \$2 million of TANF funds with state general funds, and to increase general fund appropriations to the CSBGs by \$300,000.

Pre and Post-Incarceration Services. Since 1977, the Virginia CARES Network has provided services to help over 50,000 prisoners make the transition back into society, and prevent them from returning to prison. Virginia CARES estimates that it costs over \$20,000 a year to keep a person in prison, but only \$300 (a one-time cost) for this organization to provide the assistance that helps to keep a person from returning to prison. Virginia CARES provides pre-release and post-incarceration services to persons who are ready to be released, or have recently been released, from prison. This includes general counseling, assistance with job placement, and substance abuse counseling.

The state has provided funding for Virginia CARES for a number of years. In recent Sessions, the General Assembly has replaced state funding for this program with federal (Byrne program) funds. These federal funds may not be available after FY 2006. In addition, the federal funds require a 50 percent state or local match beginning next year. The CAA will seek an amendment in the biennial budget to increase state general funds for these pre and post-incarceration services by \$2.2 million.

Project Discovery. Project Discovery is a drop-out prevention program that helps students become the first members of their families to attend college or technical school. Through workshops, trips to colleges and enriching experiences, students learn how to achieve educational goals, select a college, manage time, improve study skills, and apply for financial aid. The program focuses on academic achievement, and promotes education as the primary means to break the cycle of poverty. Project Discovery serves 49 school districts in Virginia, including Alexandria (state funding is provided through the Department of Human Services). In recent years, over 80 percent of Alexandria's Project Discovery graduates went on to post-secondary education.

Like many other programs, Project Discovery's state funding was reduced in recent years in response to the state's fiscal woes. The CAA plans to propose budget amendments to increase Project Discovery funding by \$496,000 to restore prior cuts and initiate small program expansions.

Staff concurs with the Commission's recommendation to support these three budget initiatives as proposed by the CAA.

2.L. Renewable Energy

The Arlington-Alexandria Waste-to-Energy (WTE) facility, jointly owned by the City and Arlington County, serves the localities' solid waste disposal needs for post-recycling materials by burning the solid waste and producing enough electricity to meet the ongoing energy needs of approximately 23,000 homes. Prior to its construction, each locality operated an incinerator without any energy recovery.

When the facility was built, localities commonly used "flow control" authority to require all refuse produced within their jurisdiction to be taken to municipal facilities such as the WTE plant. This enabled a locality to design a waste facility for a known amount of waste and to ensure that the facility received this waste along with fees appropriate to operate the facility. Once localities lost this "flow control" authority as a result of a 1994 Supreme Court decision, facilities such as ours began to lose customers and revenue, even though our costs remained relatively constant. Additional federal Clean Air Act requirements have forced the Arlington-Alexandria WTE facility to make expensive capital improvements, which were financed with a \$46.1 million bond issue. These combined financial pressures – lower revenues from tipping fees, and higher costs for expensive capital improvements – have resulted in the need for Alexandria and Arlington to search for new ways to support the facility financially.

Currently, a state legislative commission monitoring electric utility deregulation is considering ways to encourage (financially) renewable energy production, such as waste-to-energy. To date, no specific proposals have emerged, but one or more is expected prior to the 2005 Session. Staff recommends that the City support legislation that would promote the development and use of renewable energy, such as that produced by the Waste-to-Energy plant.

2.M. Car Tax

In 1998, the General Assembly enacted the Personal Property Tax Relief Act, which requires the state to pay a portion of the tax on personally-owned (i.e., non-business) passenger cars, motorcycles, pickup trucks, and panel trucks. During the first year of the program, the state paid 12.5 percent of the tax owed on the first \$20,000 of a vehicle's value (the state paid the full tax on vehicles valued at \$1,000 or less). State payments increased in subsequent years to 70 percent of the first \$20,000 of a vehicle's value, the rate since 2001. The program was designed so that the state would eventually pay 100 percent of the tax on the first \$20,000 of a vehicle's value, but provisions in the law relating to revenue growth and the amount of general fund monies that can be devoted to the program have prevented this from happening.

The 2004 General Assembly focused its attention on the Commonwealth's tax and budget problems. Of concern to many legislators was the cost to the state of car tax relief. During the 1997 gubernatorial campaign, proponents had estimated that it would cost about \$650 million annually for the state to fully implement their proposed car tax program (i.e., pay 100 percent of the tax on the first \$20,000 of a vehicle's value). By FY 2005, when the state was paying the tax on 70 percent of a vehicle's value, the state's actual cost was already \$950 million. Paying the entire tax on the first \$20,000 of a vehicle's value would have increased this cost by several hundred million dollars, and grown considerably in later years as the number and value of cars increased.

Consequently, part of the tax restructuring package passed in 2004 significantly rewrote the car tax relief program. The General Assembly froze the appropriation at \$950 million annually. These funds will be allocated among Virginia's cities, counties, and towns on the basis of their car tax reimbursements for FY 05 (i.e., if a locality gets \$20 million in FY 05, it will receive the same amount of money in FY 06 and thereafter; no adjustment will be made for the growth in the number or value of cars in a locality).

While the revised car tax program has attracted opposition for a number of reasons (e.g., proponents of the car tax program say the state is backing away from a promised tax relief program; the revised program is administratively cumbersome), and there will undoubtedly be attempts in 2005 to revise or roll back the 2004 changes, one issue is of particular concern to local governments. While the statute says that the state will provide \$950 million annually beginning in calendar year 2006, there is a shortfall of approximately \$270 million in that year's state appropriation. How this shortfall will be allocated among local governments is unclear at this time, but all local governments are potential losers.

The Virginia Municipal League and the Virginia Association of Counties are asking the General Assembly to address this shortfall in the upcoming Session (it is a top priority for both organizations). Staff concurs and recommends that the City support full funding of the car tax program (at the level of \$950 million/year) in the 2005 Session.

3. Requests for Legislation to Be Opposed

3.A. Virginia Housing Development Authority Loan Eligibility (Human Rights Commission)

The Virginia Housing Development Authority makes loans for affordable housing to first-time home buyers with low and moderate incomes. VHDA loans are more attractive to home buyers because they generally require a lower down payment, a lower interest rate, or both.

For some years now, a VHDA regulation has required that persons borrowing jointly for a single residence must be “related by blood, marriage, adoption or legal custodial relationship.” This has precluded unrelated couples, including engaged couples and same-sex couples, from receiving VHDA assistance. On July 25, 2003, VHDA repealed this provision. Now, anyone, or any couple, who satisfies its standard criteria and requirements (e.g., a satisfactory credit report and sufficient income) will be eligible for its loans. The City has endorsed this VHDA action in past legislative packages.

During the 2004 Session, legislation was introduced to reinstate the earlier VHDA requirements for a relationship by blood, marriage, adoption, or legal custody; this legislation (HB 187) was defeated. The Human Rights Commission has asked the City to oppose such legislation if it is reintroduced in 2005. Staff supports the Commission recommendation.

3.B. Living Wage

In June 2000, Alexandria adopted a living wage ordinance. This ordinance requires those firms that are awarded certain City service contracts to pay their workers a wage that meets or exceeds the federally established poverty guidelines (currently \$18,850 for a family of four). The purpose of the living wage ordinance is to help these private sector employees who furnish services to the City, so that they can better provide for themselves and their families while contributing to society as productive workers.

The living wage ordinance is also helpful in furthering the goals of welfare reform. One of the problems that individuals here face when they enter the work force and leave government subsidies is that their wages are insufficient to pay for the bare necessities—food, shelter, transportation, child care, and medical care. The City’s living wage ordinance is an attempt to help workers afford these necessities. Since the City’s action, Charlottesville and Arlington have also adopted living wage ordinances.

In the 2001 and 2004 Sessions, legislation was introduced to repeal the City’s authority to adopt a living wage ordinance. After considerable work by the City and other living wage supporters, this legislation was defeated. Staff recommends that the City oppose any such legislation if it is introduced in 2005.

3.C. Telecommunications Taxes

As a part of its efforts to restructure state and local tax policy, a General Assembly subcommittee is reviewing existing state and local telecommunications taxes. At the subcommittee's request, local government representatives have been meeting with industry representatives and General Assembly staff for over two years to discuss ways the current telecommunications tax structure might be changed. A proper restructuring of telecommunications taxes could be helpful to local governments by allowing their tax policies to better respond to changes within the telecommunications industry (e.g., the trend toward wireless phones and away from land line phones).

The industry, with the concurrence of the legislative subcommittee, has proposed a new tax structure based on the following principles:

- Local government telecommunication tax revenues (for each locality) immediately following a restructuring of the tax system should be equal to what the revenues were prior to the restructuring;
- All telecommunications services (including long distance) should be taxed at the same rate, and at a rate approximately equal to the state sales tax;
- The current E-911 taxes (land line and wireless) should be levied at a rate estimated at \$.50 to \$.75 monthly (depending on how much is needed to make localities "whole"); and
- All existing local telecommunications taxes, including the consumer utility tax, an "extra" license (BPOL) tax, and existing E-911 taxes and fees should be repealed in lieu of the new taxes described above.

Local government representatives have told the industry and the legislative subcommittee that localities would be willing to consider a restructuring proposal, but that certain local government principles must be addressed in any proposal:

- Local governments must be ensured that any new telecommunications tax and revenue distribution system will not result in a decrease in revenues for local governments at the time of its adoption and in the future;
- Since local governments would have to rely on FY 2004 revenues as the base for the industry proposal, localities insist that the state should undertake a third party audit of FY 2004 data (this audit is being done and is near completion);
- The General Assembly must not be able to "capture" a portion of the revenues to make up for shortfalls in state general fund revenues.

Staff recommends that the City oppose any legislation that would reduce existing City revenues from telecommunications or lessen the reliability of such revenues, now and in the future.

STAFF:

Bernard Caton, Legislative Director

Michele Evans, Assistant City Manager

ATTACHMENTS:

Attachment 1. Summary list entitled "City of Alexandria 2005 Legislative Package Proposals"

Attachment 2. 2005 NVAN (Northern Virginia Aging Network) State Legislative Platform

Attachment 1

City of Alexandria 2005 Legislative Package Proposals

1. Requests for Legislation to be Proposed

- 1.A. Commitment Hearings
- 1.B. Clean Smokestacks Legislation
- 1.C. Privileged Communications: Sexual Assault & Domestic Violence Victims
- 1.D. Remedy for Civil Rights Violations
- 1.E. Amending Authority to Levy an Admissions Tax
- 1.F. Child Day Care Funding
- 1.G. Funding for the Virginia Preschool Initiative
- 1.H. Failure to Pay Day Laborers and Other Workers

2. Requests for Legislation to be Supported

- 2.A. Elimination or Extension of the Sunset Clause in the Red Light Camera Law
- 2.B. Increase in Sales Tax on Motor Fuels in Northern Virginia
- 2.C. Dedicated Revenue for the Washington Metropolitan Area Transit Authority (WMATA)
- 2.D. Statewide Transportation Funding
- 2.E. Education Funding
- 2.F. Small Business Development Centers
- 2.G. Restoration of Civil Rights for Felons
- 2.H. Section 1115 Waivers
- 2.I. Undocumented Students
- 2.J. Issues Endorsed by the Alexandria Commission on Aging

- 2.K. Community Action Agencies
- 2.L. Renewable Energy
- 2.M. Car Tax
- 3. Requests for Legislation to be Opposed
 - 3.A. Virginia Housing Development Authority Loan Eligibility
 - 3.B. Living Wage
 - 3.C. Telecommunications Taxes

**2005 State Legislative Platform
Northern Virginia Aging Network (NVAN)**

Commissions on Aging: Alexandria, Arlington, Fairfax, Loudoun
& Prince William; Falls Church Senior Citizens Commission
Northern Virginia Regional Commission
7535 Little River Turnpike, Suite 100
Annandale, Virginia 22003 www.novaregion.org/nvan/
Phone: 703-642-0700



I. Upgrade Assisted Living Quality. NVAN urges the General Assembly to take a series of actions to assure that Virginia's assisted living residences provide quality care. These actions include:

- **Disclosure** – Require information for all prospective residents for “comparison shopping.” Information to include services provided; fees (basic and additional); criteria for admission, transfer between levels and discharge; general number and qualifications of staff on each shift; activities available to residents; complaint procedures.
- **Staffing** – Establish licensure requirement for administrators; require personal care staff to be Certified Nursing Assistants; require medication aides to be CNAs and have additional training on medications; and establish a minimum staffing standard.
- **Compliance & Oversight** – Establish system of graduated fines for noncompliance and increase maximum fine from \$500 to \$10,000; establish expedited suspension of licensure; create mechanisms to prevent closure when feasible, such as temporary management; increase number of DSS inspectors; relate frequency of inspections to compliance history and turnover of administrator; and assure consistent statewide training for inspectors.
- **Funding** – Make Auxiliary Grant state-funded only (delete requirement for 20% local payment); increase Auxiliary Grant rate by 50% for residents at “residential level,” i.e., receiving help with up to 1 activity of daily living (from \$1,028 per month in Northern VA to \$1,542); increase Auxiliary Grant rate by 100% for residents at “assisted living level,” i.e., receiving help with 2 or more activities of daily living (an additional \$514 per month to \$2,054 in Northern VA); provide funding to Community Service Boards (CSBs) for service to residents of assisted living and consultation to staff; increase funding for long-term care ombudsman program to allow for one staff per every 2,000 beds (\$1.5 million).

II. Support Community-Based Services

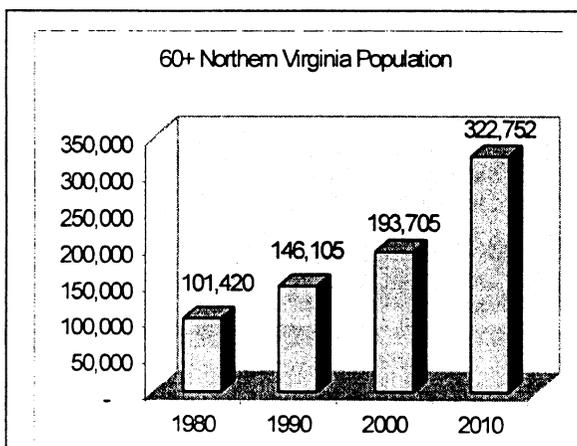
A. Restore and Increase Home & Community-Based Care Funding. NVAN urges the General Assembly to respond to the documented unmet need of older Virginians for critical services such as personal care, home delivered meals, transportation, care coordination, and adult day/respite care by appropriating an additional \$4.6 million in each of the next 5 years to the Department for the Aging for services provided through the Area Agencies on Aging. \$1 million in the first year will complete the restoration of the funding cuts made since FY 2002. These funds would total \$23 million by FY 2010.

B. Additional Support for Independence and Well-Being

1. Funding for the Virginia Insurance Counseling & Advocacy Programs (VICAP) for Prescription Drug/Medicare Outreach & Education.
2. Funding for hearing assistive technology (including hearing aids and other communication devices) through the Virginia Department for the Deaf and Hard of Hearing or the Department of Rehabilitative Services.

III. Support Congregate Housing + Services. NVAN supports the establishment and funding of a pilot Congregate Housing and Services Program and evaluation for 4 sites throughout the Commonwealth to provide supportive services for residents of publicly funded congregate housing who require assistance to remain independent.

IV. Strengthen Nursing Home Quality of Care. NVAN urges the General Assembly to: (1) develop a long-term care staffing standard; (2) increase minimum training requirements for nursing assistants to 160 hours, including training in appropriate feeding techniques and dementia/Alzheimer's Disease; and (3) to support additional training, compensation, and a career ladder for all direct-care staff.



V. Additional Items. NVAN also supports additional measures to maximize independence and promote services for older Virginians, including: (1) Appropriations as provided in the Olmstead Implementation Report (Rec. #160) to expand the **public guardianship** program; and to fund evaluation of the program; (2) Assistance in opening doors for elders with serious mental illness and dementia who need psychiatric placement and **mental health** services; (3) Support for additional **home modification** opportunities; (4) Development of a **pain management** standard in long-term care facilities; and (5) Expansion of **Medicaid** financial criteria & eligibility.