

City of Portsmouth, Virginia

2014 Virginia General Assembly

Legislative Package



Adopted

October 22, 2013

Amended

December 18, 2013



Portsmouth City Council

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The Honorable Paige D. Cherry., Vice Mayor
The Honorable William E. Moody, Jr.
The Honorable Marlene W. Randall
The Honorable Curtis E. Edmonds, Sr.
The Honorable Elizabeth M. Psimas
The Honorable Danny W. Meeks

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Portsmouth City Council 2014 State Legislative Package

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Preface

The Portsmouth City Council respectfully submits to our General Assembly Delegation our 2014 State Legislative Package for your review, consideration and support of the items contained within. On October 22, 2013, by a unanimous vote, this package was formally adopted. The information contained within is in accordance with and reflects the City Council's 2030 Vision Principles:

- *Change and New Directions*
- *Leading Maritime Center*
- *Neighborhoods and a Sense of Community*
- *A Robust Economy for Working Men and Women*
- *Lifelong Learning Community*
- *Quality of Life*
- *Efficient, Responsive Government*
- *A Proud Military Community*
- *Pride of Past*

This year's elections will bring many changes to our 2014 – 2016 State government's administration. These changes include a new Governor and his cabinet. We look forward to establishing new and productive relationships with the incoming Administration, and it is our sincere desire to work with our State leaders in the shaping of our great Commonwealth's future. However, in doing so, please remember that it is extremely important that the municipalities of Virginia have a seat at the public policies' and budgetary decision tables.

The tumultuous years of national, state and local governments' economic downturns are slowly fading away. The financial picture continues to improve for the nation and for Virginia. Years of prudent and oftentimes painful budget-belt-tightening at all levels of government in this Commonwealth has resulted in several years of State General Fund surpluses. On August 19, 2013, at the Joint Money Committees meeting, Governor McDonnell announced that FY2013 closed with a total budget surplus of \$585 million, the largest since FY2005. In September, Governor McDonnell announced that revenue collections had increased by 2.6 percent. He further stated that on a year-to-date basis, total revenue collections rose 2.8 percent through September, ahead of the annual forecast of 1.5 percent growth. He will announce in December, to the money committees of the General Assembly in his final address that Virginia's Rainy Day Fund is projected to exceed \$1 billion by the close of FY 2016.

This is all wonderful information, and we commend you for the tough budgetary decisions that had to be made during this period of time. However, these surpluses could not have been realized without the assistance of your local governments. The City of Portsmouth, as well as all municipalities suffered through those financially tight years with the State, refunding portions of our State Aid to Local Governments back to the State to help balance your budgets. Over the six years that the reductions were in place,



Portsmouth lost approximately \$6.3 million in financial support from the State. This amount is equivalent to salary, benefits, training, uniforms and equipment for 83 new public safety officers. These funding cuts in State aid were not accompanied by any changes in State requirements for service offerings. In addition, the Commonwealth took steps to shift costs to local governments during this same period of time; for example, the state shifted the cost of paying for state-mandated Line of Duty benefits for local public safety officers to localities.

While we are grateful that you approved in FY2014 the elimination of the across-the-board cuts in State Aid, it is extremely important that your local governments continue to share in your economic recovery. Although we were among the first to lose funding, we are the last to rebound. It is extremely important that you begin ratcheting up funding levels to many of the State's mandated, locally implemented programs and services such as public safety, K-12 education, and community services which were all cut during the economic downturn. In fact, local aid appropriations from the State have declined 44% over the past five years, from a high of \$8,285.6 in FY2009 to a low of \$7,908.5 in FY2014 (up slightly from FY2013 by \$189.90).¹

In that vein, we implore you to ensure that no cuts or revisions are made to revenue streams that we have become dependent upon, such as the Business, Professional and Occupational License Tax (BPOL) and the Machinery and Tools Tax (M&T). Although these are unpopular taxes with the business community, they have been in existence for over 200 years, and they have become a reliable source of revenue for local governments. For FY2012-2013, these two tax sources alone generated approximately \$6.9 million in revenue for the City of Portsmouth. Losing this revenue source would be equivalent to raising our real estate property taxes by eleven cents (0.11) bringing the amount to \$1.38 per \$100 of value. An increase of this type is not only unacceptable to this City Council, but also to the citizens and business owners of this City.

In our package you will also note that we have included a policy position for more equitable funding for the host cities of the Virginia Port Authority. For more than twenty years in an effort to seek increased revenue for the City of Portsmouth, the City has sought help from the Legislature for a more equitable source of revenue in the form of payment in lieu of taxes for the presence of the Virginia Port Authority. In 2000 the host cities of the Port were successful in having legislation passed that changed the formula for reimbursement. However, the State has never funded that formula. A step in the right direction came to us during the Kaine Administration. At that time we were successful in having a million dollars added to the State's budget for maintenance of our roads due to the impact of truck traffic related to VPA activities. However, due to downturns in the economy leading to budgetary constraints, the State has twice reduced this amount. The proper legislative, and or, administrative attention to this issue has not yet taken place and it is long overdue. We strongly believe that this matter must receive the appropriate legislative, and or, administrative attention and action. We highly recommend that a

¹ "Virginia's Economic and Revenue Outlook" – Fiscal Analytics, Ltd. – VML Legislative Committee - 6/6/13



portion of the increased State General Fund be earmarked for the host cities. One such action would be the restoration of Budget Item 457 (Authority: Title 62.1, Chapter 10, Code of Virginia – Subsection A). As mentioned earlier, the State has reduced these funds to \$950,000 from the original \$1,000,000 initially appropriated.

In closing, please know that the City of Portsmouth remains vigilant in our actions and optimistic in our viewpoints. We have painfully, yet successfully, weathered the economic storm and continue to rise from it as a new more vibrant City. We continue to be mindful of our revenues and resources; however, we still need your help. Due to the great recession, we now rank as the twelfth most fiscally stressed locality in Virginia. The increase in our ranking from fourth to twelfth in no way reflects strong economic growth on our part, but more so to the number of localities that have been extremely hard hit due to the recession. Economic support from the State for its municipalities is a must. Working in concert with one another, we can ensure that Virginia remains a top destination for businesses to locate, provide the necessary support for our military forces – active and retired, for families to reside and raise their children, for our youth to obtain a world-class education and find gainful employment, and for our retirees to find a comfortable and affordable lifestyle in their golden years.

As always, we thank you for all of the kind considerations and support you have provided to our City in the past, and we look forward to a continued progressive partnership on matters of importance to Portsmouth in the future. Again, thank you.



A RESOLUTION ENDORSING THE CITY'S 2014 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

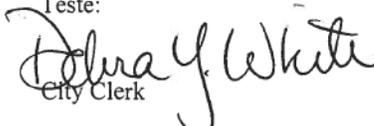
WHEREAS, these concerns need to be made known to Portsmouth's General Assembly delegation so that they may be transmitted for consideration by the Legislature.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Portsmouth, Virginia, that it hereby endorses the attached legislative proposals for the 2014 General Assembly session.

BE IT FURTHER RESOLVED that the City Manager is directed to provide a copy of the 2014 Legislative Package to each member of the City's Virginia General Assembly delegation.

BE IT FURTHER RESOLVED that the City Manager and/or his designee(s) are hereby authorized and directed to provide necessary input and clarification during the 2014 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 2014 Legislative Package.

ADOPTED by the Council of the City of Portsmouth, Virginia, at a meeting held on October 22, 2013.

Teste:

City Clerk



**STATEWIDE AND REGIONAL
PUBLIC POLICY
ISSUES**



1. General Assembly Legislative Fix to Toll Suit

The City of Portsmouth joined with the citizens and business owners of Portsmouth who are very concerned about the impending tolling of the Downtown Tunnel, Midtown Tunnel and the Martin Luther King Expressway.

The contractual agreement entered into under the Public Private Transportation Act (PPTA) by the Virginia Department of Transportation (VDOT) and the Elizabeth River Crossings Group (LLOC, ERC) was challenged in the law suit Meeks vs. VDOT.

This case was heard in Portsmouth Circuit court on May 1, 2013. At that time Circuit Judge James A. Cales, Jr. ruled “*that the state’s \$2.1 billion Public-Private Midtown Tunnel deal and its tolls are unconstitutional*”² Judge Cales “*said in his ruling that the General Assembly exceeded its authority in giving VDOT “unfettered power” to set toll rates under the 1995 Public-Private Transportation Act.*”³

The lawyer for the opponents of this contract argued three points in this case:

1. Tolls are taxes because they are revenue generating
2. The tolls will be imposed on the users of one facility in order to pay for a separate independent facility, and
3. The setting of tolls involves true legislative discretion in order to balance out several factors, and not just the cost of the facility.

This ruling was appealed to the Supreme Court, which heard the arguments on September 11, 2013. It is anticipated that the Supreme Court will post their ruling later this year or early next year. In the event that the Supreme Court upholds the lower court’s decision, we understand that there have been preliminary discussions between the Administration and some legislators of a possible legislative fix.

Should this occur, the City Council of Portsmouth requests that our delegation use all legislative means possible to insure that any such fix does not disproportionately impact the citizens of Portsmouth, as well as any and all users of these facilities.

²Virginian Pilot – “Judge: Midtown Tunnel toll deal is unconstitutional” May 2, 2013

³Virginian Pilot – “Judge: Midtown Tunnel toll deal is unconstitutional” May 2, 2013



2. Elimination/Restructuring of BPOL & M&T Taxes

Over the past several General Assembly sessions, legislators have introduced several bills proposed to eliminate the Business and Professional Occupational License (BPOL) tax and the Machinery and Tools (M&T) tax.

These taxes have been imposed by the majority of cities and towns throughout the Commonwealth of Virginia since they were originally instituted to pay for the War of 1812. In FY 2012 these taxes “provided approximately \$899 million in revenue to localities.”⁴ In Secretary Brown’s September 18th presentation to the Joint Meeting of the Manufacturing Development Commission and the Small Business Commission, he stated that:

“The replacement of those three local business taxes (\$899 million in local revenues) would be equivalent to:

- *An additional 0.85% local retail sales and use tax (Approximately \$894.6 million in FY 2012)*
- *A local income tax of 0.5% (an estimated \$844.5 million), or*
- *A broadening {of} the existing sales tax base.⁵*

If these taxes are eliminated and not replaced dollar for dollar, the City of Portsmouth would have to increase its Real Property Tax Rate by \$0.11. In FY 2014 these three tax revenues sources generated \$6,915,070. Currently, for Portsmouth, \$0.01 equates to \$677,782 which in turn equates to a real property tax rate of \$1.27 per \$100 of value. Portsmouth is rated as the twelfth (12th) most fiscally stressed municipality in Virginia, and therefore, we cannot impose such a burden on our citizens.

The business community supports removal of these taxes “because it is like sales taxes that are levied at every point along the production chain.”⁶ The Virginia Retail Federation asserts that these taxes negatively impact business growth, lead to tax pyramiding, and are blind to a business’s ability to pay a tax (does not factor in whether or not a business was profitable). The proponents for changes in how these taxes are administered are pushing to have the formula changed from the tax being placed on gross receipts to net receipts. Unfortunately for local governments that rely on these tax revenues in this economy, many businesses will be operating at a loss; therefore a change of this nature without an offset by the State is not acceptable.

The Portsmouth City Council urges the General Assembly to not make any changes to these taxes unless the changes made are absolutely revenue neutral for local governments that are heavily reliant upon them.

⁴ Local Tax Revenue Replacement – Presentation – Secretary Richard D. Brown –September 18, 2013

⁵ Local Tax Revenue Replacement – Presentation – Secretary Richard D. Brown – September 18, 2013

⁶ Virginia Retail Federation – Presentation – September 18, 2013



4. Street Maintenance Formula Changes

The Commonwealth Transportation Board (CTB) has been considering making changes in how to calculate street maintenance payments to localities. In 2012, the CTB board members requested that the Virginia Department of Transportation (VDOT) assemble a subcommittee to perform analyses on the condition of interstates, primary and secondary roads and locally maintained urban roadways. CTB members contend that local governments are not properly expending the funds provided to them from the State for street maintenance purposes, citing the condition of local roads as proof. The CTB board members stated that they felt that VDOT should have the ability to exert more oversight in how local governments prioritize maintenance spending.

The formula that VDOT uses to calculate maintenance payments is over 50 years old. Infrastructure, especially in an urban setting, has become significantly more complex in the last half century. Localities, like Portsmouth, that maintain their own roadways are responsible for *all* public infrastructures within the right of way. This includes:

- Pavement (concrete and flexible)
- Traffic signals, pavement markings, roadway signage and street lights
- Drainage to include curb and gutter, catch basins, drop inlets, manholes, and storm sewer pipe
- Water and sanitary sewer lines
- Vegetation maintenance

These are factors that must be taken into consideration prior to determining if a local road can be paved. Not only do localities have to spend funds efficiently but, unlike VDOT maintained roadways, they must consider current and future activities on a local road. At the June 2013 CTB Workshop, VDOT presented its findings which supported previous analyses indicating that the overall maintenance spending by urban localities on their roadways and on VDOT maintained roads was substantially different. VDOT's subcommittee further determined that it is difficult to make a direct comparison between its spending and local spending needs. *VDOT reported to the CTB that localities spend significantly more on their roads than VDOT provides for maintenance.*

The City of Portsmouth has 886.49 lane miles of roads (188.87 lane miles = State arterials; 697.62 lane miles = Collector and local roads). For FY 13-14 the City's allocation from the State for these roads was \$11,181,738. As a host city of the Virginia Port Authority, the City receives an additional supplement of \$201,030 bringing the total to \$11,382,768. However, for this same period of time the City expended \$17,701,077 to maintain these roads, which is a delta of \$6,318,309 or 36%. This percentage is in line with VDOT's findings for all locally maintained roads statewide.

The Portsmouth City Council requests that the General Assembly insure that changes are not made to the formula that will further lessen its contribution to local road maintenance.



5. Public Transit Funding – HRTA

A recent article in The Atlantic Cities – entitled “Public Transit is Worth More to a City Than You May Think”⁷, it stated that “the hidden economic value of transit could be worth anywhere from \$1.5 million to \$1.8 billion a year.” Mr. Daniel Chatman of the University of California at Berkley concluded this by using the principle of “agglomeration”, which means more people living in the same place. According to Mr. Chatman “As more people collect in a city center, more jobs cluster there too, boosting both wages and economic productivity over time.”⁸ The key to this, he contends, is public transportation.....*transit*.

Transit funding should be a regional priority policy issue. Funding should be an eligible expense for existing and future regional transportation funding. The existing fund for Hampton Roads Transit Authority (HRTA) 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.

Unlike Northern Virginia which has been granted the ability to use a portion of the revenues raised from the increased taxes and fees included in HB 2313, Hampton Roads’ HRT system was not provided the same ability. According to the language in this bill, all new revenues raised by these taxes and fees in Hampton Roads are to be dedicated solely for new construction projects on new or existing roads, bridges and tunnels.

HB 2070 created a radical overhaul of transit funding, and created the Transportation Service Delivery Advisory Committee (TDAC). This group was charged with identifying new performance measures that will be used to distribute new revenue realized by HB 2313. Any revenue realized over \$160 million will be distributed by the measurements developed by this Committee. While this is a great and sorely needed revenue stream for HRT, it still falls short of having a reliable, reoccurring, consistent revenue stream that can not only be used for planning, and operations, *but to also reduce its reliance on its local government partners general fund revenues.*

The Portsmouth City Council supports this region’s request for the Joint Legislative Audit and Review Commission (JLARC) to conduct a study to review the equity of transportation funding. However, we further submit, that HB 2313 should be amended to provide that a portion of the new revenues be used for transit in Hampton Roads. The mega projects in Hampton Roads are so expensive that it will take time compile enough funds to address them. However, in the short term, increased transit would aid in mitigating congestion and increase “agglomeration” for our region.

⁷ The Atlantic Cities/ Place Matters – “Public Transit Is Worth More to a City Than You Might Think” – August 16, 2013

⁸ The Atlantic Cities/ Place Matters – “Public Transit Is Worth More to a City Than You Might Think” – August 16, 2013



5. Host Cities of the VPA – Equitable Funding

For more than thirty (30) years the City of Portsmouth, along with the other host cities of the Virginia Port Authority have fought for more equitable funding from the State for the impact that the Port's presence has in our respective jurisdictions.

During the 2000 session of the General Assembly, Senator Quayle successfully patroned legislation that set into law a new funding formula for payment in lieu of taxes to the host cities of the Port. Senate Bill 752 (now Chapter 737 in the Acts of the 2000 Virginia General Assembly) states “*The service charge rate for each county, city or town shall be determined by adding: 1. The assessed value of the Virginia Port Authority real property in each county, city, or town divided by the total assessed value of real property owned by the Virginia Port Authority in all counties, cities, or towns; and 2. The Virginia Port Authority cargo tonnage shipped through each county, city, or town divided by the total Virginia Port Authority cargo tonnage shipped through all counties, cities, and towns. Such service charge rate for each county, city, or town shall then be applied to the product of the total Virginia Port Authority cargo tonnage multiplied by \$0.25.*”⁹

These funds were to be paid out of the State's General Fund and would offset, to the point of eliminating, the old service fee that VPA currently uses to calculate payment in lieu of taxes to its host cities. Unfortunately, the General Assembly never funded the new formula. In 2007, the host cities were awarded \$1,000,000 (reduced to \$950,000 due to the recession) for roadway maintenance to address activities related to port operations. In FY 2013-2014, Portsmouth's share of this amount was \$201,030. Portsmouth received \$399,254 in FY 2012 for payment in lieu of taxes based on the old service fee charge. However, if the new formula were fully funded, the City would have received \$542,273 (a delta of \$143,019).

The VPA is a commercial enterprise. This distinguishes it from any other State owned properties, including parks and universities. The economic benefits derived from the VPA's operations support the entire Commonwealth of Virginia. The Joint Legislative Audit and Review Commission (JLARC) reported in 1999 that the Port generates more than \$61 million in state and local tax revenues with one-half going to the state and two-thirds of the remainder to localities outside the host cities.

There has been a tremendous cost impact on Portsmouth's local transportation system with more than 800 trucks a day entering and exiting these facilities. VPA's business enterprise occupies 1,170 acres of nontaxable prime waterfront property in three host cities. If taxed in Portsmouth alone, over \$2 million would be generated in real estate taxes.

The Portsmouth City Council supports any legislative or budgetary actions that would either aid in addressing fully funding the new formula, or at least provide more equitable funding for the host cities of the Virginia Port Authority.

⁹ SB727 – 2000 Virginia General Assembly/ Chapter 737 of the Code of Virginia



6. Opportunity Educational Institution

During the 2013 General Assembly session, the passage of SB 1324 passed and an accompanying budget amendment created the Opportunity Educational Institution (OEI). This Institution is patterned after initiatives in Louisiana and Tennessee. The OEI will be governed by 4 legislators appointed by the General Assembly and 5 citizens appointed by the Governor. The Governor will also appoint an executive director. It is premised that OEI will contract out the actual operation of schools in its jurisdiction.

Under this bill, any school that is denied accreditation shall be transferred to the OEI with the transfers occurring after the 2013-2014 school year. In addition, the OEI board may elect to transfer schools that are accredited with warning for 3 consecutive years to state control. The OEI board may elect, but is not required; to transfer control of the schools back to the local board after the schools has achieved full accreditation. There are no provisions governing what happens should the schools under the OEI continue to be low-performing. In Virginia, budget language overrides legislative language. Therefore, in the budget that was approved, the language states that schools that are denied accreditation for two years will be transferred.

Against the protests of local governments across the Commonwealth of Virginia and their professional organizations (Virginia Municipal League, Virginia Association of Counties and Virginia First Cities), this Institution was created to address schools in Virginia that have been denied accreditation for two years. The legislation states that all state and local funding associated with a student in a school operated by the OEI will be transferred to the OEI. This includes discretionary or “aspirational” funding that exceeds the required local share. There is no guarantee in the legislation that these aspirational dollars would be spent on the local students acquired by the OEI.

Numerous problems are associated with the OEI and its funding scheme, as well as the fact that there are constitutional questions regarding the legality of the creation and operation of a statewide school board. Constitutional amendments to create a statewide division failed in both Houses of the General Assembly. Currently the Virginia School Boards Association and the City of Norfolk Public Schools have announced their intention to file a lawsuit questioning the constitutionality of the Act.

In Hampton Roads this year, under the new Standards of Learning, 69 schools in South Hampton Roads failed to reach accreditation. In Portsmouth, 10 of 19 schools are not fully accredited. Under this Act, if these schools do not achieve accreditation in 2 years, more than half of Portsmouth’s schools could be taken over by the OEI, along with all associated K-12 funding. *The Portsmouth City Council supports delay for OEI’s implementation. A Joint Legislative Audit and Review Commission (JLARC) report on options for improving low-performing schools will be released in June of 2014. It would be prudent for the State to await this report and the results of the legal actions being taken before moving forward with school take overs.*



7. Enterprise Zones (EZ)

Enterprise Zones, otherwise known as EZ was established by the General Assembly in 1982. This program is a State and local partnership, and has proven to be one of the most effective methods of using incentives to stimulate the economy. Under the current regulations for this program, a community may have up to 3 zones. A zone has a defined geographic boundary:

- It may consist of 3 non-contiguous areas, and
- It may cover up to 7% of a locality

Currently, there are 57 zones across the State of Virginia. In 2005, the General Assembly limited the total number of zones to 30, thus weeding out some expiring zones. In 2015 Lynchburg, Hampton and Roanoke will lose zones. Applying for a zone designation is a competitive process based on an application's scoring of 1500 points:

- Distress Criteria = 750 maximum points
- Strategy, incentives and capacity = 750 maximum points

The Virginia Department of Housing and Community Development predetermines a community's distress level based on their unemployment rate, median adjusted gross income and percentage of students receiving free/reduced price lunch.

Over the past three General Assembly sessions, there has been a push to expand this program to include localities that are not distressed. Between 2011 and 2013 there were several legislative attempts to allow for status based on distress factors in a particular area (census tract) of a locality, rather than locality-wide distress.

Under the current program, Portsmouth's Distress Criteria = 533 points. The State awarded Portsmouth its current zone in 2010 and amended it in 2012. The designation is for 10 years with two 5-year renewals. In 2013 there were 4 new zones available and there was significant competition from 11 applicants representing cities and counties from across the Commonwealth. Portsmouth submitted an application and was one of the 4 approved in October. In 2014, ten zones will be available for competitive bids. Applicants for Enterprise Zones greatly exceed the number of available zones now. Expanding this program to include distressed census tracts will magnify the situation.

This program has been very successful in distressed communities such as ours. To expand this program, without increasing funding for the program will greatly diminish its viability.

The Portsmouth City Council urges the General Assembly to not expand this program without also increasing the funding levels. We further recommend that if this program is expanded, it should be made into a two-tier system, one for distressed communities, and the other for communities with distressed areas located within them.



Legislative Requests



A. Economic Relief for Portsmouth Downtown Businesses

In May of this year, Portsmouth's Circuit Court Judge Cales ruled that the tolling aspect of the Midtown Tunnel/Downtown Tunnel/Martin Luther King Expressway project is actually a tax. His ruling further stated that the Virginia General Assembly over extended its authority. However, the Elizabeth River Crossing OOC, LLC (ERC) and the Virginia Department of Transportation (VDOT) have continued with their work on this project.

Part of the project requires that improvements be made to the Downtown Tunnel. To make these improvements, ERC began in August of 2013 to shut down the westbound lanes beginning on Friday evenings and remaining closed until Monday morning. Despite the City's request that they consider making one tunnel bi-directional while they work on the other, ERC has refused to consider altering their mode of operations. These closures are scheduled to continue for approximately 24 weeks, after which, they will close the eastbound lanes for 46 weeks.

These weekend closures were originally scheduled to be in October, at the end of the tourist season, but for some reason ERC escalated the timing for these closures. On August 14, 2013 we sent a letter to our Portsmouth General Assembly Delegation regarding the closures of the westbound lanes of the Downtown Tunnel and the negative impacts these closures were having on our downtown businesses. In this letter, we expressed our deep concerns regarding the potential magnitude of these closures on our fragile economy and requested that the manner in which these closures are being handled be addressed; as well as identification of a means by which the State would offset the losses to our businesses due to these closures.

Although our concerns regarding the weekend closures were heard, and those closing have since been adjusted, the impact these closures had on the business in our downtown sector still remain. We have spoken directly with seventy-two (72) of the eighty (80) businesses open for weekend business in our downtown business district and these business owners have indicated that during the weekend closures they experienced an approximate 27% decrease in business activity. Furthermore, 54 of these businesses have a dismal outlook for the survival of their establishments.

This is an alarming report for our City, the twelfth most fiscally stressed locality in this Commonwealth. The potential loss of over 50% of our "main street" small businesses will have a devastating impact on this city's ability to realize sorely needed revenue that pays for programs and services for our citizens, including those mandated, but not funded by the State.

Therefore, the Portsmouth City Council is requesting that the General Assembly identify a method in which these business losses can be addressed. As a suggestion, this could possibly be accomplished by the General Assembly establishing a \$20,000 grant program with a one-year sunset date. The program could be administered through the State Department of Economic Development. Impacted businesses would justify the amount of their losses in applying for these funds. The maximum amount a business could receive is a magnitude of 50% of their actual losses capped at \$1,500 per business.



B. Public-Private Partnership Transportation Act

In recent years, the Commonwealth of Virginia has begun relying heavily on the use of the Public-Private Partnership Transportation Act (PPPTA) to address sorely needed transportation projects in Virginia. As the PPPTA was initially designed by the General Assembly, it was to be used as a tool to leverage public sector funding through attracting private sector to risk capital and to bring private sector creativity and efficiency to the task of addressing large projects within the Commonwealth of Virginia.

However, little evidence exists to substantiate that private sector capital will be attracted to a significantly expanding pool of transportation revenues. Instead, the PPPTA projects (also known as P3s) are largely being funded with either traditional transportation funds or municipal bonds, with these bonds being backed by the use of tolls, or other public tax sources which are supplemented with standard state and federal transportation revenues. This point was recently substantiated in a November 2013 article written by Mr. Ryan Holeywell appearing in the magazine *Governing* (The States and Localities). Mr. Holeywell pointed out in this article that "... what the governments' [federal] accountants say about P3s – namely that they are unlikely to solve the country's infrastructure funding gap and, in some cases, may carry risks for state and local governments. Mr. Holeywell included in this statement a quote from Cate Long, a municipal finance blogger for Reuters stating "Whenever I see advocacy [for P3s], I look for real economic analysis that justifies privatization... It's never there".

The article then goes on to point out some of the successes that have occurred nationally with P3s, but also those that were not as successful leading to negative impacts to the locality and state that entered into the comprehensive agreement. Portsmouth's experiences with these agreements could certainly be added to those that have had a negative impact on the locality. In the past four years, Portsmouth has been, and is being negatively impacted by these P3 agreements. First, with the Midtown/Downtown Tunnels and the Martin Luther King Expressway project and the impending tolls that will be placed upon these important thoroughfares in our City. The second instance came about with the unsolicited proposals that were under consideration to privatize the Virginia Port Authority (VPA). After a great deal of legislating, negotiating and politicking, the Executive Board of the VPA chose not to move forward with these unsolicited proposals. However, in doing so, the General Assembly provided the VPA the ability to seek proposals to privatize their operations. If privatization were to take place, it would lead to the loss of approximately \$6.5 million in real property taxes from the presence of the APM Maersk Terminal in Portsmouth. Therefore, in the short-term Portsmouth will not be negatively impacted by an action of this nature, but the threat still exists.

Therefore, the Portsmouth City Council requests that the General Assembly amend and reenact the appropriate Section or Sections of Title 56 of the Code of Virginia requiring that future PPPTA projects above \$1 billion dollars, approved by the Governor, that would substantially and adversely impact local tax revenues, or which would substantially and adversely increase the taxes, fees, or expenses borne by the residents of one or more affected localities, must also be approved by the General Assembly prior to the Virginia Department of Transportation entering



into any comprehensive agreements. In so doing, it is less likely that future large PPPTA deals will substantially negatively impact any locality in Virginia as the Midtown/Downtown Tunnel and Martin Luther King Expressway deal is poised to impact the citizens and business operators of Portsmouth.



E. Churchland Bridge Replacement

In the City of Portsmouth, Virginia, the Churchland Bridge is part of a major thoroughfare connecting two sectors of the City by way of High Street. High Street runs the entire north to south stretch of the City to include the City's downtown business corridor. This street and bridge are very heavily traveled on a daily basis.

The Churchland Bridge is approximately 50-years old and sorely in need of being replaced. This bridge project is part of the current Six-Year Plan and has previously received funds for both the PE (design) and RW (right of way clearance). The Hampton Roads Regional Bridge Study by the Hampton Roads Transportation Planning Organization (HRTPO) indicates that the Churchland Bridge "*is among the most traveled, structurally deficient bridges in Hampton Roads.*" The current project schedule has an advertisement date for construction in June 2015.

The Churchland Bridge project will replace existing northbound lanes, High Street (Route 17) over the Western Branch of the Elizabeth River. The existing structure is a multiple span, multiple-unit structural steel bridge with a suspended (pin-and-hanger type) span over the navigation channel. The first phase of design, the Bridge Concept Study, is complete. This will become the basis for the Type, Size and Location Study and the final design. The right of way documentation and environmental assessments are 90% complete.

Project Funding

Churchland Bridge Total Cost	\$29,500,000
Revenue Sharing for Design (VDOT)	\$ 1,250,000
Revenue Sharing for Right of Way (VDOT)	\$ 1,000,000
Funding to Date (City)	\$ 5,822,697

Funding needed **\$21,427,303**

This bridge will experience a substantial increase in traffic when the new Martin Luther King Expressway Extension (MLKE) opens. The MLKE is part of the Midtown Tunnel/Downtown Tunnel project and *all three portions of this project are scheduled to have tolls placed upon them.* Due to these impending tolls, the volume on this bridge, which is the main un-tolled north-south route for local traffic, will pick up a greater volume of vehicular activity as motorists attempt to avoid the tolls on the MLKE, adding greater stress to this structure. As this is a grave public safety issue, it is a major concern of the City.

Therefore, the Portsmouth City Council respectfully requests that emergency construction funding be provided for this project.



F. Casino Gaming

Gaming in any form has a “*long established tradition in both Virginia and the Nation, with a strong majority (85%) of adults who approve of casino gaming.*”¹⁰ The staff of the Hampton Roads Transportation Planning Organization (HRTPO) and the Hampton Roads Planning District Commission (HRPDC) at the request of the Senate Committee on General Laws and Technology conducted an analysis of casino gaming in Hampton Roads, Virginia. Within this report “Casino Gaming in Hampton Roads” completed and released in September 2013, is the following statements:

- “*The median estimate for gross gaming receipts resulting from casino gaming in Hampton Roads is \$375 million, which is consistent with estimates from casino development companies, where estimates range from \$357 to \$550 million.*”¹¹
- “*In spite of the fact that casino gaming has been the subject of numerous in-depth studies, there is little consensus with respect to the social and economic impacts of gaming.*”¹²

Also, in September 2013, the case of *Meeks vs VDOT and Elizabeth River Crossings OPCO, LLS (ERC)*, was disposed by the Virginia Supreme Court. The State’s high court ruled that the imposition of tolls on the Midtown/Downtown Tunnels and Martin Luther King Expressway were legal. The initial burden of over \$1,000 per year on the average commuter begins February 1, 2014, escalating annually over the next 58 years. This ruling negatively impacts the citizens of Portsmouth that frequently use these crossings, and for the businesses in the City that heavily rely on traffic that travels across the Elizabeth River by way of these facilities,. Further exacerbating this problem is the fact that there are no expedient non-tolled alternatives for crossing between the cities of Norfolk and Portsmouth without having to travel over 20 miles out of one’s way. The negative impact of these tolls is especially harmful on this region due to the lower wages paid in this vicinity. According to the U.S. Bureau of Labor Statistics “*workers in the Virginia Beach-Norfolk-Newport News Metropolitan Statistical Area had an average (mean) hourly wage of \$20.59 in May 2012, about 6 percent below the nationwide average of \$22.01.*”¹³

Senate Bill 19, patroned by Senator L. Louise Lucas, provides means to not only pay down the cost of this project thereby reducing the burden of the tolls, but also provides for employment opportunities for many of the unemployed persons within the City of Portsmouth. This is significant to the City Portsmouth on two fronts. First, because the City’s unemployment rate as of October 2013 was 7.7%, a rate higher than Hampton Roads (6.0%), the Commonwealth of Virginia (5.6%) and the nation (7.5%). Secondly, Portsmouth also has the lowest per capita income (\$23,363) of its respective Metropolitan Statistical Area (MSA) of \$39,518.¹⁴

¹⁰ “Casino Gaming In Hampton Roads” September 2013 – HRTPO/HRPDC (Page 1)

¹¹ “Casino Gaming In Hampton Roads” September 2013 – HRTPO/HRPDC (Page 1)

¹² “Casino Gaming In Hampton Roads” September 2013 – HRTPO/HRPDC (Page 1)

¹³ U.S. Department of Labor – Bureau of Labor Statistics – www.bls.gov

¹⁴ U.S. Department of Commerce – U.S. Census Bureau – www.census.gov



Based on the terms of Senate Bill 19, if casino gaming were legalized in the Commonwealth of Virginia, not only would the majority of the taxed revenue from the establishment go to paying down the cost of the Midtown/Downtown Tunnels and Martin Luther King Expressway project, but it would also bring a sorely needed source of revenue to its host city, Portsmouth, from the 10% of the taxes imposed on the establishment that would be awarded to this City.

Therefore, as evidenced by the Resolution adopted on December 18, 2013 (see page 24), the Portsmouth City Council supports and endorses the legislative efforts of Senator Lucas to have the General Assembly pass legislation allowing casino gaming within the city's limits. This Council further supports the provisions of Senate Bill 19 that provide that the revenues from casino gambling can be used to help mitigate the costs of the tolls on the Midtown/Downtown Tunnels-Martin Luther King Expressway project, provide revenue to the City of Portsmouth, and employment opportunities to our citizens.



A RESOLUTION BY THE COUNCIL OF THE CITY OF PORTSMOUTH, VIRGINIA IN SUPPORT OF SENATOR L. LOUISE LUCAS' SENATE BILL 19 PRESENTED TO THE 2014 GENERAL ASSEMBLY.

WHEREAS, the Virginia Supreme Court's ruling in *Meeks vs. VDOT and Elizabeth River Crossings OPCO, LLC*, allows the imposition of an initial tolls burden of over \$1,000 per year on the average commuter through the Midtown/Downtown Tunnels and the Martin Luther King Expressway beginning in February 2014 and the siphoning of a huge amount of funds out of the Portsmouth and Hampton Roads economies; and

WHEREAS, the tolls' burden on citizens and businesses that use the project facilities and the funds being removed from the Hampton Roads economy will increase annually by 3.5% for 58 years; and

WHEREAS, during the 2014 General Assembly Session, Senator L. Louise Lucas has introduced Senate Bill 19 (SB19) relating to the Virginia Toll Relief Act; Virginia Casino Gaming Commission to allow casino gaming within the Commonwealth of Virginia under certain conditions, and

WHEREAS, under the proposed new Virginia Code of Sections 59.1-577 and 59.1-578 in Article 7 of SB 19, 90% of the proceeds from the taxes imposed on gaming establishments will be paid into a Toll Mitigation Fund to offset the tolls imposed for the construction and maintenance of the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project, with the remaining 10% collected to be placed in the State Local Casino Gaming Proceeds Fund; and

WHEREAS, under the provisions of the proposed new Virginia Code Section 59.1-580, in Article 7 of SB 19, the proceeds from the taxes imposed on gaming establishments will be paid into the State Local Casino Gaming Proceeds Fund to pay each locality in which casino gaming establishments are located and in which admission taxes are collected.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Portsmouth, Virginia, that it supports and endorses the legislative efforts of Senator Lucas to have the General Assembly pass legislation to allow casino gaming within the City by which by which revenues from casino gaming can help mitigate the cost of the tolls thereby reducing the severe financial burden and negative impacts on the citizens and businesses in Portsmouth and the entire region; and

BE IT FURTHER RESOLVED that the City Manager is directed to forward a copy of the forgoing Resolution to Senator L. Louise Lucas and the other Portsmouth General Assembly delegation.

ADOPTED by the Council of the City of Portsmouth, Virginia at a meeting held on December 18, 2013.

Teste:

Delray White
City Clerk



2014 Legislative Packages Endorsements:

The Portsmouth City Council fully endorses and supports the legislative packages and initiatives of several organizations to include those listed below. We furthermore empower our City Manager and his designee/s to represent the City's interests on all matters pertaining to these and any other legislative and budgetary initiatives:

- **Virginia First Cities**
- **Virginia Municipal League**
- **Hampton Roads Planning District Commission**
- **Hampton Roads Transportation Planning Organization**
- **Hampton Roads Transit Authority**
- **Virginia Library Association**
- **Virginia School Boards Association**
- **Virginia Treasurer's Association**

