

House Appropriations Committee Presentation

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Overview

Legal Issues

- Statutory Authority
- Constitutional limitations

Local and Regional Authorities

Legal Issues – Statutory Authority

- There is limited authority in the Code of Virginia that addresses the Commonwealth's ability to intervene in instances of fiscal stress
- The technical assistance provided by the Commonwealth to Petersburg earlier this year (cataloging liabilities and obligations, determining historic causes of current imbalances, identification of structural problems, review of funds, etc.) was “by invitation”
- Bankruptcy is not authorized for Virginia localities
- North Carolina-style financial control board and Rhode Island program of state overseer, state budget commission and state receiver are not authorized by current Virginia law

Statutory Authority (cont.)

What is permitted?

- State Aid Intercept – Sec. 15.2-2659, Code of Virginia
...If it is established to the satisfaction of the Governor that the locality is in default in the payment of its bonds or the interest on them, the Governor shall immediately make an order directing the Comptroller to withhold all further payment to the locality of all funds, or of any part of them, appropriated and payable by the Commonwealth to the locality for any and all purposes, until the default is cured...
- Consolidation with adjoining locality and Reversion to town status are authorized by Virginia law but must overcome various obstacles and might not fix underlying issues

Legal Issues – Constitutional limitations

The General Assembly shall provide by general law for the organization, government, powers, change of boundaries, consolidation, and dissolution of counties, cities, towns, and regional governments... (Constitution of Virginia, Article VII, Section 2)

- The General Assembly has broad authority to create, organize, alter, or abolish counties, cities and towns
- The General Assembly does not provide by general law a method of county or city dissolution
- **Many of the intervention practices imposed by other states, both preventative and reactionary, would be permitted under the Virginia Constitution with proper legislative enabling authority**

Constitutional limitations (cont.)

However, regarding taxation...

No ordinance or resolution appropriating money exceeding the sum of five hundred dollars, imposing taxes, or authorizing the borrowing of money shall be passed except by a recorded affirmative vote of a majority of all members elected to the governing body... (Constitution of Virginia, Article VII, Section 7)

Virginia Supreme Court

Section 7 establishes the procedures that must be followed in setting taxes at the local level. The use of any other procedure, even if sanctioned by the General Assembly, would be violative of the Constitution. (Wright v. Norfolk Electoral Board, 1982)

Section 7 establishes the procedures that must be followed in appropriating money at the local level. The use of any other procedure, even if sanctioned by the General Assembly, would be violative of the Constitution. (Collins v. City of Norfolk, 1992)

...and the General Assembly may not delegate its taxing power to a non-elected body such as NVTA. (Marshall v. Northern Virginia Transportation Authority, 2008)

Local and Regional Authorities

- There are obvious negative impacts when members of an authority do not meet fiscal obligations
- There are hundreds of local and regional authorities in Virginia, all created by the General Assembly or pursuant to enabling legislation passed by the General Assembly– and potentially hundreds of different organizational and governing structures and requirements
- Regional authorities generally have flexibility to establish in their incorporating documents, or through other means, requirements for fiscal or budgetary practices of its member jurisdictions relative to the authority
- The General Assembly has authority to statutorily impose certain practices upon member jurisdictions of an authority for the purpose of minimizing the financial risk of its members