

members of the Virginia General Assembly as voting members of NVTa to choose and construct projects, violates the separation of powers provided for in the Virginia Constitution, and (2) the projects chosen by NVTa do not provide the greatest congestion reduction relative to the costs of the projects, as required by Code Section 15.2-4838.1 C.1 which states: “The Authority shall give priority to selecting projects that are expected to provide the greatest congestion reduction relative to the cost of the project and shall document this information for each project selected.”

NORTHERN VIRGINIANS PAY HIGHER TAXES THAN OTHER REGIONS FOR TRANSPORTATION AND ARE ENTITLED TO REAL CONGESTION RELIEF:

Unlike *Marshall v. NVTa* in 2007, the taxes levied this year by the General Assembly for road and other transportation projects in Northern Virginia are not contested here. Should this Court decide to deny the bond validation, the new revenues approved by the General Assembly in 2013 would continue to be applied to transportation projects in Northern Virginia. Not one penny of any of the taxes raised under HB 2313 would be returned to Richmond. Simply, the allocation process would proceed under different terms than those assumed by the NVTa to comply with the statute or the Virginia Constitution.

Northern Virginians will pay an average of \$166 in new taxes, per person per year due to new, taxes designated for Northern Virginia, transportation taxes enacted in 2013 under HB2313. Virginians to the immediate North, West and South who will use Northern Virginia roads or transit facilities will pay an average of \$50 in new taxes per year per person. I estimate that I have spoken to more than four hundred voters in six precincts of the thirteenth district. No one expressed agreement that having different tax rates in Virginia was fair. Roughly half of these citizens who questioned me further unanimously opposed the project selections of the NVTa because they did not believe that the projects would improve their commute.

Officials charged with project selection appear to be more concerned with speed of process than compliance with the statute. Supervisor Marty Nohe and NVTa Chair was quoted as saying, “‘What we hear from a lot of people is that they want to see bulldozers rolling this calendar year,’ Nohe said.” [SoMdNews.com, NVTa Selects Preliminary Project List, Kali Schumitz, May 29, 2013-see attachments] Similar sentiments for rapid project selection were voiced by

Fairfax Board of Supervisors Chair and NVTa member, Sharon Bulova, “‘Let’s put the money to work as quickly as possible so people who are starting to pay taxes and fees can see the results of their investment.’ said Fairfax Board of Supervisors Chairwoman Sharon Bulova (D).”

[Michael Laris, Before New Millions Flow, Final Preparations for Northern Virginia Transportation Authority, The Washington Post, June 21, 2013-see attachments].

My purpose in filing this suit is to ensure that the taxes that were authorized under HB 2313, (hundreds of millions of dollars are expected to be collected annually for the taxes designated for Northern Virginia alone) are spent in conformity with the law and with the most benefit to taxpayers to relieve congestion. If it were not for these taxpayers, these monies could not be collected and spent and therefore those who pay for and use our roads and transit deserve our best efforts to combat traffic congestion by choosing the most efficient projects that affect the most commuters.

NVTa PROVIDED NO DOCUMENTATION THAT SELECTED PROJECTS PROVIDE THE MOST CONGESTION RELIEF

Fairfax state delegate, the Honorable Jim LeMunyon, who had input into the congestion reduction provisions of HB 2313, the new transportation funding law, wrote an op-ed in the *Fairfax Times* taking issue with the project selection process of the NVTa.

“The new law makes clear that the funds designated for NVTa’s regional projects are not just for any kind of transportation improvement, but only for those projects offering the greatest congestion relief. In particular, the new law requires that the NVTa “shall give priority to selecting projects that are expected to provide the greatest congestion reduction relative to cost of the project and shall document this information for each project selected.

“There are two primary purposes for this provision, which I had a hand in drafting in the Virginia House of Delegates. One is to ensure that our region’s biggest problem — congestion — is addressed in the most rapid, cost efficient way. The other is to allow the public to better see how and why tax dollars are being allocated, so that elected officials can be held accountable for these decisions.

“The new funding will pay for more buses, widening Va. 28, and new train cars for the Virginia Railway Express among other improvements. Although there is nothing proposed on the initial list to address gridlock on Interstate 66 or on Va. 7 west of Tysons Corner, somehow walking trails, bus shelters and a trolley will also be funded. None of the NVTA’s publicly available information includes a calculation of congestion reduction relative to cost for any of the projects, which is contrary to the law’s clear requirement.

“Such calculations don’t have to be complicated. Simply estimating, for example, how many automobile trips would be eliminated as a result of a particular new mass transit improvement, along with the project’s cost, would be sufficient. For highways and intersection upgrades, estimating the reduced automobile travel times relative to project cost would have complied with the law.

“Why does the NVTA find it so hard to provide this information? ...

“Trails for walking and biking have a role to play, trolley rides can certainly be fun, and no one likes waiting for a bus in the rain without shelter. But unless it can be demonstrated that such projects exceed all other possibilities in Northern Virginia for congestion reduction relative to cost, such needs should be funded from other budgets established for these purposes, not the NVTA’s budget for region-wide congestion relief.

“The NVTA should redo its work and provide the required congestion reduction information for all 34 projects. Doing so would show the public that the recent tax increase is giving us the biggest bang for the transportation buck — or not. It would also bring the NVTA into compliance with the law and build public confidence that the NVTA is serious about solving our urgent congestion problems on a regional basis.”

[Jim LeMunyon, Transportation Authority Swings and Misses, *Fairfax Times*, August 2, 2013, <http://www.fairfaxtimes.com/article/20130802/OPINION/130809872/1065/transportation-authority-swings-and-misses&template=fairfaxTimes>]

On or about July 25, 2013, I requested of the Honorable Supervisor Marty Nohe NVTA Chair, pursuant to Virginia’s Freedom of Information Act, via electronic communication, that he provide me with: “the appropriate documentation for each project selected and why the projects

selected met the requirement of providing the ‘greatest congestion reduction relative to the cost of the project’ over those projects considered by the NVTA but not approved.”

Also on or about July 25, 2013, I requested of the Honorable Supervisor Marty Nohe, Chairman, Northern Virginia Transportation Authority, pursuant to Virginia’s Freedom of Information Act, that he provide me with: “congestion reduction evaluation documentation for projects requested by public bodies and submitted to the NVTA, but not considered or placed on a tentative project selection list.”

On August 1, 2013, Angela Lemmon Horan, NVTA Counsel of Counsels, provided me with a formal response of the Northern Virginia Transportation Authority to the July 25, 2013 FOI request made by me, which is in the possession of the NVTA.

NVTA, in its multi-page response to me, failed to document that each project selected provided the “greatest congestion reduction relative to the cost of the project.” Instead I was directed to the NVTA’s website, which contains multiple documents of hundreds of pages each, including *Transaction 2040*, its most recent transportation plan. *Transaction 2040* contains more than 350 pages, but after reviewing the document, I am all the more convinced that the chosen projects do not relieve the most congestion.

At NVTA’s July 24, 2013 meeting, NVTA chose many projects which might improve public transit and move some vehicles, but the list includes few projects, if any, which meet the congestion-relieving statutory requirement of the newly enacted transportation law, HB 2313. Several of the NVTA’s chosen projects do not even appear in *Transaction 2040*, its most recent five year plan and the guiding document of NVTA, available on NVTA’s website. (The NVTA is required by law to update its transportation plan every five years. Such a study takes approximately two years to complete according to NVTA.)

The projects NVTA has proposed and approved for funding are broken down into three categories: “Proposed FY 2014 Bond Projects,” “Transit Projects,” and “Roadway Projects.” The bond projects will be paid for with bonds. The other projects are “pay as you go” with revenue also from the new taxes. According to NVTA Chairman, Marty Nohe, and NVTA Vice

Chairman, Chris Zimmerman, all of the projects selected were included in the NVTA *Transaction 2040* Plan. (See news coverage attachments)

However, nowhere in *Transaction 2040*'s "Technical Report" or "Project Descriptions" on NVTA's website, is there any analysis, description or even mention of Roadway #6 Project, which appears on the list of NVTA's FY2014 funded projects. This Project #6, described as a "Grade Separated interchange of Edward's Ferry Road at the Route 15, Leesburg Bypass," is slated to receive \$1,000,000 with the cost to complete figured at \$40,000,000.

Another project that does not appear to be included in *Transaction 2040*, either in its "Technical Report" or "Project Descriptions" on NVTA's website, is Transit Project #7, ART Fleet Expansion, Purchase of 4 ART buses.

The approved Project List also funded a rural section of Route 28 in the Nokesville area of Prince William County, which is approximately ten miles south of the very congested portion of Route 28 through Manassas Park and Yorkshire. The congested portion of Route 28, was not funded, but could have been improved with a simple fix of reversible lanes during rush hours at a cost of \$5.5 Million. This congested portion of 28 becomes a virtual parking lot every weekday during morning and evening rush hours and carries approximately 55,600 cars per weekday. Yet, instead of selecting this portion of Route 28 which shows "red" for congestion on Google Maps every weekday, the rural portion which shows "green" for no congestion during rush hour was chosen to be widened.

The rural portion of Route 28 has had an increase in traffic due to many more newly approved and built homes which feed onto the roadway, but there is still no comparison between the two roads in terms of where the most congestion lies for the greatest number of commuters. (See Google Map attached) To make matters worse, nearly 1400 new homes will soon feed their cars onto the bottlenecked portion of Route 28 in the next few months further increasing traffic congestion for commuters along this corridor.

MOST COMMUTERS USE CARS, NOT MASS TRANSIT, AND THEREFORE ROADWAY IMPROVEMENTS SOULD BE NVTA'S TOP PRIORITY:

While it may be true that improving mass transit might result in a few commuters giving up driving, and therefore presumably improving road congestion, the many transit improvements in the last twelve years do not appear to have increased mass transit use in that twelve year period, according a recent “Commuter Connections” study by the Metropolitan Area Council of Governments <http://www.mwcog.org/uploads/committee-documents/Y11aXFdW20130912133433.pdf> (See attachment.). The study confirms that the great majority (73%) of commuters continue to use cars and roadways. Percentages for 2013 follow: Only 17% of the 2013 workforce uses mass transit (same % as in 2001); 66% drive alone (down from 70% in 2001); 7% use car or van pools (which brings roadway commuters to a total of 73%), 2% use bikes or walk (unchanged from 2001); 8% telework (up from 3% in 2001).

Since most commuters still use cars and therefore roadways, and the NVTA is charged with reducing the most congestion, it would seem reasonable to expect that most of their funds should be allocated to improve congested roadways rather than to improve mass transit, especially since there are already several agencies charged with improving mass transit, including PRTC (Potomac and Rappahannock Transportation Commission), VRE (Virginia Railway Express), METRO, WAMATA (Washington Metropolitan Area Transit Association, and NVTC (Northern Virginia Transportation Commission).

The NVTA’s FY 2014 Project List dated July 8, 2013, lists “Cost to Complete” figures from projects that are scheduled to receive initial funding. While NVTA may decide to not fully fund these projects into the future it is interesting to point out that the “Cost to Complete” totals for Roads is \$158.6 Million while the “Cost to Complete” Transit projects is \$917 Million or 85.3% for transit projects and 14.7% for roadway projects. Again, it is not clear whether NVTA will fully fund these projects into the future since transit projects often attract federal dollars.

MOST NVTA PROJECTS CHOSEN DO NOT APPEAR IN TRANSACTION 2040’S
‘TECHNICAL REPORT,’ THE AUTHORITY’S OWN GUIDING DOCUMENT

“Project descriptions” are descriptions of projects found on the NVTA website. However, the project descriptions do not always clearly correspond to the projects described and scored in the “Technical Report” section (comparative analysis of projects) of *Transaction 2040*. Only four of

the 34 projects chosen on July 24 by the NVTA are clearly listed in the *Transaction 2040* plan “Technical Report” which compares and rates projects according to various criteria cited earlier. The four selected projects which clearly appear in the “Technical Report” are:

VRE, Lorton, Second Platform; Arlington Crystal City Intermodal Center; Herndon Parkway Intersection Improvements at Van Buren; VRE Gainesville/Haymarket Extension (study).

Seven projects on the FY 2014 project list to be funded are unclear as to whether or not they are included in the “Technical Report” section of *Transaction 2040*. The remaining 23 projects appear in the “Project Descriptions” on the NVTA website, but do not appear to be part of the *Transaction 2040* plan. This would appear to indicate that most of the FY2014 projects selected by NVTA to be funded, were not analyzed or compared by NVTA’s five-year study published in their *Transaction 2040* study consisting of over 350 pages.

Some of the projects selected to be funded were not found in either the “Technical Report” of *Transaction 2040* or the “Project Descriptions,” perhaps due to unclear project descriptions. Nevertheless, if most of the chosen-to-be-funded projects have not been included in the “Technical Report,” (comparative study with ratings) and other projects were not included in either the “Technical Report” or “Project Description,” what justification does the NVTA have to select these projects for funding? Further, where is the “congestion relief” documentation for each of these projects that appear to be missing the *Transaction 2040* analysis? But probably most significant is the fact that the most congested roadway bottlenecks have not been funded.

Some projects which received “low” or “medium” ratings in *Transaction 2040* also made the list of projects to be funded by NVTA in FY 2014, presumably because they were “shovel ready.” “Shovel ready” is not part of the statutory language which authorized the new transportation taxes and expenditures. Relieving the greatest congestion per dollar is the statutory mandate.

EVIDENCE THAT ‘SHOVEL-READY’ CRITERIA IS GIVEN PRIORITY OVER STATUTORILY REQUIRED ‘CONGETSION RELIEF’ DOCUMENTATION

In an interview with NVTA Chair, Marty Nohe, conducted by Bruce Depuyt on ABC News Channel 8, August 5, 2013, Marty Nohe said, “step one has been to identify a set of projects that are ‘project ready,’ the phrase we used to use is ‘shovel ready.’ I’ve been told that phrase has

fallen out of favor -- but those things that we can have a high level of project readiness, where the design has been done, perhaps the right of way has already been acquired, now we can move forward quickly with construction. ...”

Excerpts from the same interview by Bruce DePuyt and Marty Nohe confirm project selection not prioritized by congestion reduction:

Bruce DePuyt: “How do you evaluate the projects that get offered up? How do you determine whether spending money here as opposed to here does more for congestion relief, for getting people where they are trying to go?” 18:59-19:14

Supervisor Marty Nohe: “That’s a really good question. It’s actually addressed right in the legislation. The General Assembly put right in the legislation that provided this funding that we have to work with VDOT to do a project prioritization, something that analyzes the traffic impacts of any particular improvement and balances that out against what the costs of it are.

That study began, actually it was supposed to begin about a year ago, but it hasn’t been completed yet. So, the House of Delegates decided to say that in the first year we would forego that step and simply look towards those projects that have already been approved.

Over the last several years the Authority has developed a program called the Transaction Plan, there’ve been, we are on our third generation of them, called Transaction 2040, and it’s the plan that looks at every significant road improvement or transit improvement that may be needed in the region, and identifies the rough costs and the rough impacts. It is not as detailed as we would like it to be, but it gives us a good place to start, so all of the projects that we approved this year and will approve for next year, have already been vetted through the system to determine that these are projects that are considered to be cost effective.” 19:14-20:15

NVTA IGNORED THE MOST OBVIOUS CONGESTION MITIGATION PROJECTS:

The most obvious improvement, widening Route 66 inside the Beltway, would greatly relieve road congestion. Considering the amount of pollution generated by standstill traffic along this roadway, it may be time to rethink the agreement that was contracted over 40 years ago which prevents widening this portion of Route 66.

Many other projects that would clearly alleviate the most egregious bottlenecks in Northern Virginia were not selected by NVT A. These would include the bottlenecks along Route 28 in Prince William County into Fairfax County, the bottlenecks getting onto Route 66 from Route 28, portions of Route 7 among others.

NVT A USED MEASURES WHICH DO NOT HIGHLIGHT THE IMPORTANCE OF CONGESTION RELIEF IN ITS RATING OF ROAD PROJECTS:

Another indication that NVT A did not follow its “congestion relief” mandate is evidenced by the fact that the “Technical Report” section of the *Transaction 2040* plan, which attempts to compare various road projects from nine designated corridors in the Northern Virginia region, uses the following criteria (not in any order that I am aware of) to rank its projects: Freight movement; Improved bicycle/pedestrian outcomes; Multimodal Choices 1, Choices 2; Urgency 1; Urgency 2; Project Readiness; Reduce VMT (vehicle miles traveled); Safety; Person Throughput 1; Person Throughput 2; Reduce Roadway Congestion; Reduce Time Spent Traveling; Environmental Sensitivity; Activity Center Connections; Land Use Supports Transportation Investment; Management and Operations; Cost Sharing; Score Based Project Ranking; Project Cost in Millions of 2011\$; Annual Operating Cost (in thousands of 2011\$); Benefit/Cost Rating (low rating = outline of black circle; medium rating = outline of green circle; high rating = circle colored green entirely). These three broad ratings do not provide for the precision necessary to demonstrate the most congestion reduction.

There is no indication as to how, why, or by whom these particular criteria were chosen as measures to score projects. It is also unclear who determined how the various criteria would be “weighted,” by what method and for what purpose and whether or not a particular ranking improves the project’s chances of procuring funding. Projects also received numbered scores based on the criteria chosen. Only three general categories of grading were published: high,

medium and low “Benefit to Cost” ratio. It is unlikely that the use of these three generalizations for projects, along with so many other criteria for grading projects would result in prioritizing projects that alleviate the most congestion.

Further, only four out of the 18 criteria chosen by NVTa to presumably prioritize projects, can be considered to indicate “congestion relief”: “reduce roadway congestion; reduce time spent traveling, reduce VMT (vehicle miles traveled); person throughput # 1 & 2.” The other criteria, while interesting, do not have as their main focus reducing traffic congestion which is the statutory mandate.

I understand that the NVTa’s *Transaction 2040* plan was completed in 2012, prior to the enactment of HB 2313 in 2013 with its “congestion mitigating” language. Nevertheless, NVTa cannot exempt itself from following the current law, or sidestepping its requirement, which clearly is to choose projects which will reduce the most congestion relative to cost of the project. A public body chosen to improve transportation in Northern Virginia should be primarily concerned with addressing the most egregious bottlenecks on our roadways regardless of whether or not such a statutory requirement exists.

CONSULTANT COSTS HAVE SKYROCKED SINCE VDOT PRIVATIZED THIS FUNCTION, LEAVING FEWER DOLLARS TO FIX AND BUILD ROADS

Updating transportation plans every five years with hundreds of pages of comprehensive studies which according to the NVTa take two years to complete, obviously translates into hundreds of thousands, if not millions of dollars, spent on consultant studies. Prior to the General Assembly passing legislation to “privatize” transportation consulting, VDOT used their own in-house consultants, who had decades of institutional records, studies, memory and experience. After the outsourcing, I asked the General Assembly’s Joint Legislative Audit Review Committee to evaluate the cost savings to Virginia of using outside consultants instead of VDOT engineers. The JLARC study found that outsourcing had caused consulting costs to increase about eight-fold.

Elected representatives of the people are charged with serving their constituents and ensuring accountability that their taxes will be spent wisely. If tax dollars are not spent in the most

efficient manner it will not be long before the cry will be heard for additional transportation dollars requiring additional tax increases, especially burdensome in a down economy. (It is interesting to note that despite having very congested areas in Northern Virginia and Tidewater referenda seeking tax increases to improve transportation was overwhelmingly rejected by voters possibly because taxpayers did not have confidence that roads would be substantially improved.)

If the Court agrees with defendant, that the NVRTA bonds should not be issued because the NVRTA did not follow the legal requirement to choose projects which reduce the most congestion, NVRTA would still continue to function as an entity, but would be forced to address the major hot spots of congestion which can be easily documented on Goggle Maps' stored traffic records.)

As a resident of Northern Virginia since 1976, and former daily commuter, I am not unaware or insensitive to the need to improve transportation in Northern Virginia. Nor do I disagree with the need to find adequate funding sources to improve transportation. In the past, I introduced legislation which became law which removed trucks from traveling in the left hand lanes of our major highways, a measure recommended to me by another commuter. I also introduced legislation (which did not pass) to lock up the Transportation Trust Fund from being raided for purposes other than transportation.

Because I believe that transportation is a key function of government and requires a dedicated source of funding in the Budget, this past session I offered an unsuccessful budget amendment to devote one penny of every budget dollar to transportation which would have produced \$125 million annually without a tax increase. And in the late 1980's I spearheaded an effort with another County resident who had a great idea to build what became known as the Prince William Parkway. Despite initial pushback from the County, the road was approved and continues to serve as a main east-west artery in Prince William County.

THE VIRGINIA GENERAL ASSEMBLY MAY NOT REQUIRE BY STATUTE THAT A SUBSET OF ITS MEMBERS BE INCLUDED AS VOTING MEMBERS OF A POLITICAL SUBDIVISION OF THE COMMONWEALTH CHARGED WITH ALLOCATING TAX FUNDS FOR AND IMPLEMENTATING CONSTRUCTION OF TRANSPORTATION PROJECTS:

The U.S. Constitution provides that, “The United States shall guarantee to every State in this Union a Republican form of Government,” [Article IV, Sect. 4. para. 1]. While state constitutions may be structured to provide for separation of legislative, judicial and executive powers, they are not obligated to do so.

The U.S. Supreme Court has expressly stated that separation of legislative, judicial and executive powers is not required in state governments:

(A) “Moreover, this Court has held that the concept of separation of powers embodied in the United States Constitution is not mandatory in state governments.” [Sweezy v. New Hampshire 354 U.S. 234 (1957)]; and

(B) “Whether the legislative, executive, and judicial powers of a state shall be kept altogether distinct and separate, or whether persons or collections of persons belonging to one department may, in respect to some matters, exert powers which, strictly speaking, pertain to another department of government, is for the determination of the state.” [Dryer v. People of the State of Illinois, 187 U.S. 71 (1902)]

Nevertheless, “Forty state constitutions specify that government be divided into three branches: legislative, executive and judicial.” [National Conference of State Legislatures, Separation of Powers, an Overview, at <http://www.ncsl.org/legislatures-elections/legislatures/separation-of-powers-an-overview.aspx>]

Virginia is one of the states requiring separation of powers:

* “Separation of legislative, executive, and judicial departments; That the legislative, executive, and judicial departments of the Commonwealth should be separate and distinct;” [VA Constitution, Article I, Section 5.]

* “Division of Powers ... Departments to be distinct. The legislative, executive, and judicial departments shall be separate and distinct so that none exercise the powers properly belonging to the others, nor any person exercise the power of more than one of them at the same time; [VA Constitution, Article III, Section 1]

* “Qualifications of senators and delegates. No person holding a salaried office under the government of the Commonwealth, and no judge of any court, attorney for the Commonwealth,

sheriff, treasurer, assessor of taxes, commissioner of the revenue, collector of taxes, or clerk of any court shall be a member of either house of the General Assembly during his continuance in office; and his qualification as a member shall vacate any such office held by him.” [VA Constitution, Article IV, Section 4, Para. 2]

* “Prohibition on bills of attainder ... that the General Assembly shall not pass any bill of attainder.” prevents the General Assembly from exercising judicial powers. [VA Constitution, Article I, Section 9]

The doctrine of Separation of Powers has a long and venerable history in the Commonwealth going back to the federal Convention of 1787 in Philadelphia and the American Revolution with its underpinnings supported by both James Madison and Thomas Jefferson. Madison gave reasons for the separation of powers:

“... It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. ... power is of an encroaching nature ... The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex. ... the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

“ ... It is not unfrequently a question of real nicety in legislative bodies, whether the operation of a particular measure will, or will not, extend beyond the legislative sphere. ...

“ The first example is that of Virginia, a State which ... has expressly declared in its constitution, that the three great departments ought not to be intermixed. The authority in support of it is Mr. Jefferson ... to quote a passage of some length from his very interesting "Notes on the State of Virginia," p. 195. "All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands, is precisely the definition of despotic government. ... One hundred and seventy-three despots would surely be as oppressive as one.” [James Madison, Federalist 48, To the People of the State of New York: The Federalist Papers, Signet Edition, 2003, pages 306-07]

The Northern Virginia Transportation Authority, until the 2013 enactment of HB 2313, largely was pre-occupied with transportation planning only. The granting of powers to the NVTA to allocate constitutionally imposed taxes to fund transportation projects brings into question the constitutional validity of its present governing structure because three members of the Virginia General Assembly are voting members of the NVTA.

As originally established, “In 2002, the General Assembly created NVTA as a political subdivision of the Commonwealth. See Code § 15.2-4830. NVTA encompasses the Counties of Arlington, Fairfax, Loudoun, and Prince William, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park (“the Northern Virginia localities”) which are designated by name in the statute. (See Code § 15.2-4831).

The governing board of NVTA consists of 14 voting members and two non-voting members. (See Code § 15.2-4832).

The voting members of NVTA’s governing board are the chief elected officers of the governing body for each named county and city, two members of the House of Delegates appointed by the Speaker of the House, one member of the Senate appointed by the Senate Committee on Rules, and two citizens appointed by the Governor, all of whom reside in the nine localities embraced by NVTA. (See Code § 15.2-4832).

“ ... Decisions of NVTA must be approved by a ‘super-majority’ of the voting members.” (See Code § 15.2-4834.)

[Published Slip Opinion, ROBERT G. MARSHALL, ET AL. v. NORTHERN VIRGINIA TRANSPORTATION AUTHORITY, ET AL., Record No. 071959 February 29, 2008, OPINION BY S. BERNARD GOODWYN, pages 4-5 hereinafter cited as Marshall v. NVTA]

The NVTA’s “Frequently Asked Questions” dated June 2013, page 3, states:

“Q. How do the Authority representatives vote? How many votes does it take to approve projects? Approval of the FY2014 proposed project list requires a two step process: quorum and voting.

Step #1 — A quorum is required to conduct business at any Authority meeting. A quorum is established using two tests: 1) a simple majority [9 of the 17] Authority members; comprised of 9

jurisdiction representatives, 3 General Assembly representatives, 2 Gubernatorial appointees and 3 non-voting members ...”

“Step #2 — For voting, approval of actions by the Authority requires that three tests be met: 1) two-thirds of the voting members present (i.e. 10 of 14, IF all voting members are present); AND 2) two-thirds of the local government members are present (i.e. 6 of 9 IF all jurisdictions are represented); AND 3) the local government members voting in favor MUST represent two-thirds of the population of jurisdictions embraced by the Authority as of 2010.” (http://www.thenovaauthority.org/PDFs/HB2313%20Working%20Groups/NVTA_FAQ_061213%20FINAL%20JUNE2013.pdf)

As of September 16, 2013 no minutes for the July 24, 2013 NVTA meeting have been posted on its website. And therefore, the public is not made aware as to whether the NVTA project selection votes occurring at that meeting were taken as a voice vote or as a record vote, or if they’ve been certified by a keeper of records for the NVTA and/or filed with the Bond Validation Suit before this court.

Even if all three statutory General Assembly members of the NVTA did not vote on the July 24, 2013 approved list of projects, their presence can be relied upon to meet the quorum requirements. The legal requirement of voting membership of General Assembly members on the NVTA violates the Separation of Powers provision of Virginia’s Constitution. The NVTA Bylaws also provide for the presence of General Assembly members which can also establish a quorum to do business. And, since General Assembly members may vote to pass projects which obligate the expenditure of public funds to execute construction of NVTA’s transportation projects, this appears to violate the separation of powers provision in the Virginia Constitution.

While the NVTA is not an executive agency under the Governor’s direct control, there is no question that it exercises executive, governmental functions. Black’s Law Dictionary notes:

“EXECUTIVE.: “... the executive department is that which is charged with the detail of carrying the laws into effect and securing their due observance.”

“EXECUTIVE ACT: ‘Executive’ and ‘administrative’ duties are such as concern the execution of laws.”

“EXECUTIVE OFFICER: An officer of the executive department of government; one in whom resides the power to execute the laws.

[Black’s Law Dictionary, Fourth Edition, 1951, West Publishing Company]

The Northern Virginia Transportation Authority acknowledges that it exercises executive functions such as implementing transportation projects:

Q. Who created the Authority and why was it created?

The Northern Virginia Transportation Authority (NVTA) was created by the General Assembly in 2002 to offer a common voice for Northern Virginia on transportation and other issues that confront the region. The Authority is tasked with preparing an unconstrained long-range regional transportation plan (the most recent is the *TransAction 2040* Plan) for Planning District 8, including transportation improvements of regional significance. The Authority has significant powers granted by the General Assembly to construct or otherwise implement projects in the adopted plan. These powers include, but are not limited to, the ability to acquire land, impose tolls, and have its bonds validated by Virginia’s courts. “

[NVTA, June, 2013 Frequently Asked Questions, page 1, http://www.thenovaauthority.org/PDFs/HB2313%20Working%20Groups/NVTA_FAQ_061213%20FINAL%20JUNE2013.pdf]

Prior case law establishes that the voting presence of legislators on government authorities like NVTA violates constitutional provisions regarding separation of powers.

For example, in 1928, former President and then Chief Justice Taft, who affirmed the general principle that the state and federal constitutions embody the separation of powers as an integral and fundamental principle of government to avoid despotism, noted:

“The well-known maxim 'Delegata potestas non potest delegari,' applicable to the law of agency in the general and common law, is well understood and has had wider application in the construction of our federal and state Constitutions than it has in private law. Our Federal Constitution and state Constitutions of this country divide the governmental power into three branches. ... it is a breach of the national fundamental law if Congress ... attempts to invest itself or its members with either executive power or judicial power.” [J. W. Hampton, Jr. & Co.. v. United States, 276 U.S. 394 (48 S.Ct. 348, 72 L.Ed. 624) No. 242. Decided: April 9, 1928.]

The most egregious and apparent violation of the principle of separation of powers occurs when members of one branch of government assume authority over the operations of another coordinate branch of government. A prohibited instance of this occurred within the bounds of this Commonwealth and involved a statute enacted by the General Assembly affecting the Metropolitan Washington Airports Authority [MWAA].

A 1987 lease agreement between the US Secretary of Transportation and the MWAA Board concerned a 50 year term and an annual rent payment of \$3,000,000. Subsequently, the MWAA Board adopted bylaws establishing a Board of Review that due to the legislative compact structure of MWAA, required legislative actions by the City Council of Washington D. C. and the Virginia General Assembly. In concluding that the separation of powers had been violated by Congress, the U.S. Supreme Court provided an instructive narrative for Virginia courts with parallel lessons for the present composition of the NVTB Board:

“Virginia and the District of Columbia amended their legislation to give MWAA power to establish the Board of Review, 1987 Va.Acts, ch. 665; 1987 D.C.Law 7-18. On September 2, 1987, the directors appointed the nine members of the Board of Review from lists that had been submitted by the Speaker of the House of Representatives and the President pro tempore of the Senate. ... Moreover, the Board's powers were derived from the legislation enacted by Virginia and the District, as implemented by MWAA's bylaws, rather than from the Transfer Act.”

“The bill ‘also provides for continuing congressional review over the major decisions of the new airport authority. A Congressional Board will still have veto power over the new airport authority's annual budget; issuance of bonds; regulations; master plan; and the naming of the Chief Executive Officer. ...’

“Petitioners lay great stress on the fact that the Board of Review was established by the bylaws of MWAA, which was created by legislation enacted by the State of Virginia and the District of Columbia. ... we believe the fact that the Board of Review was created by state enactments is not enough to immunize it from separation-of-powers review.”

“Congress imposed its will on the regional authority created by the District of Columbia and the Commonwealth of Virginia by means that are unique and that might prove to be innocuous.

However, the statutory scheme challenged today provides a blueprint for extensive expansion of the legislative power beyond its constitutionally-confined role. ...

“As James Madison presciently observed, the legislature "can with greater facility, mask under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments." The Federalist No. 48, at 334. Heeding his warning that legislative ‘power is of an encroaching nature,’ we conclude that the Board of Review is an impermissible encroachment.” [Metropolitan Washington Airports Authority, et. al., Petitioners v. Citizens for the Abatement of Aircraft Noise, Inc. et. al. 501 U.S. 252 (111 S.Ct. 2298, 115 L.Ed.2d 236), No. 90-906, 1991]

Yet, in the present case, there is a statutory provision that three General Assembly members who serve on the Northern Virginia Transportation Authority have nearly identical powers as Members of Congress had in the MWAA case. The US Supreme Court rejected direct congressional voting powers “over annual budget; issuance of bonds; regulations; master plan; and the naming of the Chief Executive Officer. ..." as violating the separation of powers. If Congress could not have its designees on the board of MWAA as voting members pursuant to a Virginia Statute and an ordinance of the District of Columbia, how can the General Assembly require its own members who to have identical voting powers on the Board of the Northern Virginia Transportation Authority?

A bond validation lawsuit is at issue in this case and apparently each of the General Assembly members were present and voted at the NVTA meeting on July 24, 2013 (although minutes are not available on the NVTA website as of this date) to secure a quorum and to begin the process of construction of particular projects with funds raised by the Commonwealth.

The Separation of Powers provisions in the Virginia Constitution prohibits the General Assembly from delegating final or “second-guess” legislative authority over the allocation of a portion of the Commonwealth’s annual budget derived from state revenues and given to the NVTA because NVTA includes among its voting members, a subset of the General Assembly consisting of three members.

Reserving to three members of the General Assembly sitting in a governmental unit exercising executive powers, the prerogatives of allocating a portion of the revenues of the Commonwealth

or to direct that such revenues be used to pay debts of a political subdivision of the Commonwealth gives to those three members powers which amount to a second chance to affect public expenditures in violation of the constitutional requirements for the passage of legislation which involves the appropriation of tax revenues. Further, that second bite at the apple occurs while they are sitting as a part of a governmental entity exercising executive functions.

The Virginia Constitution provides that "[t]he legislative power of the Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Delegates." [VA Const. Article IV, § 1] Other provisions of Article IV specify the necessary steps for a bill to become a law including provisions of a quorum, reporting by a committee, printing in a journal, reading its title or printing its title in a calendar three times on different calendar days, voting for and against with recordation in a Journal and presentment to the Governor. [VA Const. Article IV, § 11]

Moreover, "[n]o bill which creates ... continues, or revives a debt or charge, or which makes, continues, or revives any appropriation of public or trust money or property, or which releases, discharges, or commutes any claim or demand of the Commonwealth, or which imposes, continues, or revives a tax, shall be passed except by the affirmative vote of a majority of all the members elected to each house, the name of each member voting and how he voted to be recorded in the journal." [VA. CONST.art. IV, § 11].

Accordingly, passage of the budget requires the affirmative vote of at least 51 members of the House of Delegates and 21 members of the Senate. The General Assembly could condition the monies in the annual budget to be spent in the area now comprised by the Northern Virginia Transportation Authority for the identical projects approved by the NVTa on July 24. But the Assembly cannot, without breaking its constitutional obligations, delegate to a subset of only three Assembly members, a conditional power to veto or to approve the same monies for the same objects.

Accordingly, I contend that any vote for transportation projects taken while members of the General Assembly are allowed voting powers either by statute or by NVTa bylaws, is null and

void, and must not be allowed to implement the motion for bond validation requested by the Northern Virginia Transportation Authority.

“The principle of severability is also applicable to the various provisions of an enactment. The General Assembly expressly has provided that any unconstitutional provisions of an enactment will be severed from its remaining valid provisions, unless the enactment specifically states that its provisions may not be severed or that the provisions must operate in accord with one another. Code § 1-243;” [Marshall v. NVTa, pages 4-5]

To reject this voting process would not reject the funds made available for transportation in Northern Virginia. None of the taxes raised in Northern Virginia would be repealed or returned to Richmond by an adverse decision on this bond validation suit. Only an unconstitutional process would be repealed. I have made inquiry of attorneys within the Assembly’s Division of Legislative Services. They advise me that no other authority in the Commonwealth requires by statute the voting presence of members of the General Assembly.

On behalf of the taxpayers of Northern Virginia who will undoubtedly question, when they become more aware, why the NVTa chose projects that will not relieve our most congested areas, I humbly ask this Court to reject the Northern Virginia Transportation Authority request for certification of bond validation on two grounds: (1) that the Virginia Constitution does not allow legislators to be present as statutorily required voting members on a political subdivision of the Commonwealth, that is clearly exercising executive authority with regard to project selection and implementation, and (2) that the exercise by NVTa to choose projects which clearly do not document and provide the greatest congestion relief relative to cost of the projects, violates Code Section 15.2-4838.1 C.1.



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent this 17th day of September, 2013 by email to:

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ATTACHMENT A

<http://www.wjla.com/blogs/news-talk/2013/08/marty-nohe-transportation-priorities-in-va-19515.html>

TV NEWS CHANNEL 8 INTERVIEW With NVTA Chair Marty Nohe

News Talk, Bruce DePuyt, ABC News Channel 8, August 5, 2013

Bruce DePuyt: “Let’s begin to talk about what projects get the green light? Now that there is money in the pipe line. Talk about the process for identifying and beginning to actually build the projects that can occur now, because there’s money. 02:59-03:13

Supervisor Marty Nohe: “... we have about \$190 million that has to be used at the regional level for projects that provide significant congestion relief. What we did, and this has had to work very quickly, the General Assembly passed the bill back in Marsh, we immediately began working with the Governor’s office on tweaking the language on that to make sure it worked for our needs here in Northern Virginia. As soon as that was approved we began developing processes by which to prioritize our transportation needs. 03:28-03:54

“... we need to look at what are those projects that provide the most congestion relief ...” 04:48-04:50

“*step one has been to identify a set of projects that are ‘project ready,’ the phrase we used to use is ‘shovel ready.’* I’ve been told that phrase has fallen out of favor -- but those things that we can have a high level of project readiness, where the design has been done, perhaps the right of way has already been acquired, now we can move forward quickly with construction. ...” 05:10-05:28

“The next step will then be, to say ‘ok, now we’ve got these rough and ready projects out the door, how do we begin looking at those bigger projects, those mega projects that will be, the 800 pound gorillas of transportation solutions if you will.” 05:31-05:44

Bruce DePuyt: “ ... you listened to the public ... and then gave the green light to the first set of projects ... talk about that.” 06:41-

Supervisor Marty Nohe: “... we implemented a set of working group subcommittees, if you will, to look at different aspects of implementing the legislation, probably the most important of the most visible those has been the project implementation working group. They solicited recommendations from the various transit agencies, each of the cities and counties and asked for what are the projects that are ready to go, that we believe will provide meaningful congestion relief. ... and *then they chose those that we could get out the door quickly* that we think will actually make a meaningful difference ... we are going to issue debt in order to get some bigger more significantly projects started quickly ...” 06:48-08:00

Bruce DePuyt: “How do you evaluate the projects that get offered up? How do you determine whether spending money here as opposed to here does more for congestion relief, for getting people where they are trying to go?” 18:59-19:14

Supervisor Marty Nohe: “That’s a really good question. It’s actually addressed right in the legislation. The General Assembly put right in the legislation that provided this funding that we have to work with VDOT to do a project prioritization, something that analyzes the traffic impacts of any particular improvement and balances that out against what the costs of it are.

That study began, actually it was supposed to begin about a year ago, but it hasn’t been completed yet. *So, the House of Delegates decided to say that in the first year we would forego that step and simply look towards those projects that have already been approved.*

Over the last several years the Authority has developed a program called the Transaction Plan, there’ve been, we are on our third generation of them, called Transaction 2040, and it’s the plan that looks at every significant road improvement or transit improvement that may be needed in the region, and identifies the rough costs and the rough impacts. *It is not as detailed as we would like it to be, but it gives us a good place to start, so all of the projects that we approved this year and will approve for next year, have already been vetted through the system to determine that these are projects that are considered to be cost effective.*” 19:14-20:15

ATTACHMENT A - continued

Bruce DePuyt: "... the Northern Virginia Transportation Alliance, put out a statement after your recent actions saying, 'this is priorities that lack priorities.' ... what would you say to criticism of your first stab at this?"
20:26-21:02

Supervisor Marty Nohe: "... Some of the folks out there, the Alliance and some other groups, even some members of the General Assembly have expressed a feeling that we should have used a different prioritization process, perhaps a more robust one ... *One of the priorities we did identify and we think it was appropriate was that 'project readiness' needed to be a priority.*" 21:07-21:32

"... Some of the criticism we've heard and I understand it, and think it is actually a legitimate concern is that there are some bigger projects that perhaps we should have put more emphasis on in this first year, that we didn't give strong consideration to. The reason that happened, for the most part, is many of the projects don't have scoping yet. We don't know exactly what they will cost, we don't know what will be involved ..." 21:33-21:54

"We are not in a position to take on these mega projects yet. ... But we do think there is an expectation from the public, in fact, we have heard this from the Secretary of Transportation, they want to see some projects hit the ground quickly, so we really started looking first at those things we think we can get moving on, so *people could start seeing the impact of the money they are investing in roads.*" 22:06-22:22

ATTACHMENT B

<http://www.fairfaxtimes.com/article/20130802/OPINION/130809872/1065/transportation-authority-swings-and-misses&template=fairfaxTimes>

FAIRFAX TIMES

Transportation Authority swings and misses

Friday, August 02,

2013 by Delegate Jim LeMunyon

The Northern Virginia Transportation Authority approved an initial list of 34 transportation projects last week to be paid with the new taxes enacted by the General Assembly earlier this year. How many fewer hours will Northern Virginians spend sitting in traffic as a result of these projects? The NVTA isn't saying, even though it is required to do so by the transportation funding and tax bill, HB 2313.

The NVTA, which consists mostly of local government officials, now has about \$300 million per year in new funding, 70 percent of which is targeted for regional congestion relief. This money is in addition to our region's share of state and federal transportation dollars coming from Richmond and Washington, D.C.

Northern Virginia ranks consistently among the worst congested regions in the U.S. Our traffic problems are often noted as the reason why more job-creating businesses don't move to or expand in Northern Virginia. The new law makes clear that the funds designated for NVTA's regional projects are not just for any kind of transportation improvement, but only for those projects offering the greatest congestion relief. In particular, the new law requires that the NVTA "shall give priority to selecting projects that are expected to provide the greatest congestion reduction relative to cost of the project and shall document this information for each project selected."

There are two primary purposes for this provision, which I had a hand in drafting in the Virginia House of Delegates. One is to ensure that our region's biggest problem — congestion — is addressed in the most rapid, cost efficient way. The other is to allow the public to better see how and why tax dollars are being allocated, so that elected officials can be held accountable for these decisions.

The new funding will pay for more buses, widening Va. 28, and new train cars for the Virginia Railway Express among other improvements. Although there is nothing proposed on the initial list to address gridlock on Interstate 66 or on Va. 7 west of Tysons Corner, somehow walking trails, bus shelters and a trolley will also be funded. None of the NVTA's publicly available information includes a calculation of congestion reduction relative to cost for any of the projects, which is contrary to the law's clear requirement.

Such calculations don't have to be complicated. Simply estimating, for example, how many automobile trips would be eliminated as a result of a particular new mass transit improvement, along with the project's cost, would be sufficient. For highways and intersection upgrades,

ATTACHMENT B continued

estimating the reduced automobile travel times relative to project cost would have complied with the law.

Why does the NVTA find it so hard to provide this information? This kind of legal corner-cutting (to put it politely) breeds public cynicism that the NVTA is attempting to hide the fact that some of its projects really don't do anything to reduce gridlock. It also invites another lawsuit. A few years ago, a legal challenge succeeded (for a different reason) in killing funding for the NVTA and left it virtually penniless until now, while Northern Virginians spent a few more years suffering in traffic congestion.

Trails for walking and biking have a role to play, trolley rides can certainly be fun, and no one likes waiting for a bus in the rain without shelter. But unless it can be demonstrated that such projects exceed all other possibilities in Northern Virginia for congestion reduction relative to cost, such needs should be funded from other budgets established for these purposes, not the NVTA's budget for region-wide congestion relief.

The NVTA should redo its work and provide the required congestion reduction information for all 34 projects. Doing so would show the public that the recent tax increase is giving us the biggest bang for the transportation buck — or not. It would also bring the NVTA into compliance with the law and build public confidence that the NVTA is serious about solving our urgent congestion problems on a regional basis.

Del. Jim LeMunyon, a Republican, represents portions of western Fairfax and eastern Loudoun counties in the Virginia House of Delegates.

ATTACHMENT C

<http://www.washingtonpost.com/blogs/dr-gridlock/wp/2013/06/21/before-new-millions-flow-final-preparations-for-northern-virginia-transportation-authority/>
WASHINGTON POST

Michael Laris, Before new Millions Flow, Final Preparations for Northern Virginia Transportation Authority, The Washington Post, June 21, 2013

[After a long financial drought](#), final preparations are underway for the Northern Virginia Transportation Authority to begin spending millions in new revenues starting this summer.

The authority released [a barrage of new details this week about its draft list of 32 road and transit projects](#) totaling \$187 million for this year, and members heard from business interests, environmentalists, state legislators and local residents.

On Thursday night, the authority also voted to have a financial adviser analyze the financial implications of issuing bonds to try to amplify the authority's impact. The upside of such an arrangement, according to advocates, is that the authority could leverage its revenues to fund more projects more quickly. Among the downsides: such borrowing costs money.

Members of the authority sought to put a realistic gloss on expectations as the body gets going.

"I never thought the day would come when I'd say \$190 million isn't as much as it seems like," said Martin E. Nohe, authority chairman and a Republican supervisor from Prince William County. Addressing Northern Virginia's transportation woes is a multibillion dollar endeavor, he said.

Del. James M. LeMunyon (R-Fairfax) told members at an authority hearing in the City of Fairfax Thursday they would be better off dramatically cutting down their list to just a handful of congestion-relief projects, rather than dozens of smaller projects. "The authority has a limited bandwidth," he said.

Jeff Fairfield, who serves on the Route 28 Highway Transportation Improvement District, pressed to make the roadway a top authority priority. The public-private partnership between government and landowners has made big improvements, but "the success of these efforts has been limited by the current inadequate roadway capacity, particularly in the peak periods," he said. An influx of new dollars would bring about even more private investment, Fairfield added.

"There are very few, if any, projects in the Commonwealth that can demonstrate such a tremendous public benefit for such a small public investment," he said.

Roger Diedrich, the transportation chair for the Sierra Club's Virginia chapter, said he was pleased with the significant transit investments offered in the authority's initial project list.

His group is eyeing impacts on climate change, and he asked the authority to maintain its current split of 42 percent for transit and 58 percent of spending for road projects.

"We're pretty happy with the list. It sort of surprised us," Diedrich said in an interview. "We're worried other parties are going to try to impose some shifts between now and July."

The authority expects to finalize its project list and release its final draft list July 10, ahead of a last public hearing July 24, also at the City of Fairfax's city hall. Then they're expected to take a formal vote. Projects could launch later this year.

"Let's put the money to work as quickly as possible so people who are starting to pay taxes and fees can see the results of their investment," said Fairfax Board of Supervisors Chairwoman Sharon Bulova (D).

ATTACHMENT D - continued

<http://www.wtop.com/index.php?nid=1035&sid=3399923>

WTOP Radio

Congestion-easing transportation project approved in Northern Va.
Thursday - 7/25/2013, 8:17am ET

One of the 32 new transportation projects in Northern Virginia is to widen Route 28 from the Dulles Toll Road to Route 50 from six to eight lanes. (WTOP/Ari Ashe)

FAIRFAX, Va. - Taxes have gone up in Virginia as part of a new transportation package to ease congestion across the region.

And, on Wednesday night, the Northern Virginia Transportation Authority (NVTA) approved 32 road and transit projects to help achieve that decongestion.

"It's a historic night for us because we've approved a package of projects that will definitely make a difference in the lives of people across Northern Virginia," says Fairfax County Board of Supervisors Chair Sharon Bulova.

Fairfax County in particular has several projects that were approved, including two projects to widen Route 28 between the Dulles Toll Road and Route 50 from six to eight lanes. Construction will cost in total about \$31 million for the northbound and southbound lanes and could begin next spring.

Route 28 is a roadway that connects Prince William, Fairfax and Loudoun counties. NVTA Board Chair Martin Nohe says Route 28 was a top priority.

"The impact this has on a per-foot basis is one of the biggest in the region. If you want to look for an example of a shovel-ready project with a big bang for the buck, Route 28 is it," he says.

"It's extremely congested and it can be a parking lot sometimes during the day. By 2015 when this project is complete, it'll help stop the crunch along this stretch of road," Bulova says.

More than 111,000 vehicles use Route 28 each day, according to the NVTA. Transportation officials rate the freeway as a level of service E. Level of service is a grading system similar to a report card from A to F, with A being free-flowing traffic and F being total gridlock. A NVTA analysis says the project will improve it to a grade of D.

Drivers in Chantilly, Va., near the interchange of Route 50 and 28 agree that the freeway could be much better.

"During rush hour, it's terrible. It's bumper to bumper, stop and go. I call it the slinky effect where you stop and then everyone catches up with you," says Mike Freeman of Middleburg, Va.

"Route 28 is pretty bad right now, but that's true all over Fairfax County. Hopefully over the next five years, Fairfax is somewhere you can drive around and you'll have some idea of how long it'll take to get from point A to point B," says Danny Cook of Oakton, Va.

But some say they believe that the NVTA should have paid more attention to other intersections along Route 28 that deserve more attention.

Mark Schuefler of Manassas Park is one of those critics.

"Route 28 improvements in Fairfax County will not provide any congestion relief. You can look on your smartphones right now and there's no congestion. There hasn't been all day. There's no need for that project right now, it's what I would consider a 2025 project," he testified during an NVTA public hearing.

Delegate Bob Marshall, R-Prince William, also believes the NVTA got it wrong.

"The stretch of 28 getting money will not make a big difference in congestion. It's a game of political pork on what projects are getting money," he says.

"They should have funded improvements to 28 at Walney Road-Braddock Road, just before I-66. After that it moves, but, just before it, you are sitting there and you could read Tolstoy."

ATTACHMENT D - continued

Marshall voted against the original transportation bill in the General Assembly. He tells WTOP that he's seriously considering a lawsuit to challenge the authority of the NVTA. Marshall was part of the lawsuit in 2007 that eventually led to a court ruling against the NVTA.

Nohe tells WTOP that those projects aren't shovel-ready like those approved, but the NVTA is working with the Virginia Department of Transportation on fixes to key interchanges near I-66.

"I know these projects are shovel-ready, but if these are the best projects in the queue, I am not sure why there was a dire need to raise the sales tax. Improving congestion on Route 28 should start at I-66," says Schuefler.

Delegate Jim LeMunyon, R-Fairfax/Loudoun, wouldn't go as far in his disapproval, but says he believes the NVTA hasn't done enough analysis to approve projects.

"The law says the [NVTA] has to provide a quantitative analysis of how each project would help save time on commutes. Some of them have good information, but it's hard to evaluate projects along Route 28 because the data is lacking," he says.

Bill Yaust of Vienna echoed those sentiments during his testimony.

"When you try and get out of this area south on I-95 or west on I-66, you cannot ever expect a certain time frame. It can be an hour, it can be two hours or five hours. I think it's absurd we're talking about spot improvements. Score these projects carefully and make sure we understand the impact of spending this money. Otherwise you'll never see the money again from the state," he says.

Arlington County Board Member Chris Zimmerman disagrees.

"We had a very deliberative process and took a lot of time and effort to evaluate each of the projects. This is a very good list and a very comprehensive list," he says.

Others are unhappy that the only Prince William County stretch to get funding for improvements is at Linton Hall Road, pointing to the Yorkshire section of Route 28 as an area that needed funding. But Nohe tells WTOP that many people living in the Yorkshire community oppose the idea.

A full list of the 32 road and transit projects approved on Wednesday is available [here from the NVTA](#).

ATTACHMENT E

<http://www.somdnews.com/apps/pbcs.dll/article?AID=/20130529/NEWS/130529092/0/nvta-selects-preliminary-project-list%26template=gazette&&template=PrinterFriendlysomd>
Southern Maryland Newspapers Online

Published: Wednesday, May 29, 2013

NVTA selects preliminary project list *by [Kali Schumitz](#) Staff writer*

The Northern Virginia Transportation Authority has put forward a preliminary list of projects that could be funded by new local transportation dollars.

The regional planning body is expected to receive about \$190 million in the first year of new taxes and fees state legislators implemented this year.

Fairfax County projects

The preliminary NVTA list includes \$74.2 million for projects in Fairfax County:

- Route 28 widening to eight lanes — northbound from McLearen Road to the Dulles Toll Road; southbound from the Dulles Toll Road to Route 50.
- Innovation Center Metro Station
- Herndon Parkway improvements at Van Buren Street and Sterling Road intersections
- Access improvements around the Herndon Metrorail Station

View the complete list and other information about the decision-making process at thenovaauthority.org.

The proposed project list would spend almost all of that, so it will likely need to be pared down during the course of the public process, said NVTA Chairman Marty Nohe, who is also a Prince William County supervisor.

This demonstrates that “we have more needs than we have money,” he said. “There is not enough funding to solve every problem, and there is certainly not enough funding to solve any problems overnight.”

An NVTA working group developed the fiscal 2014 project list by reviewing projects submitted for consideration by local governments and transit agencies.

“The focus is on regional congestion relief and maximizing the benefit for the cost,” Nohe said.

Although the authority has, to date, existed with very minimal funding, the board and working groups are able to draw on the authority’s past regional transportation planning effort — the TransAction 2040 plan.

This plan is organized by transportation corridor, rather than by jurisdiction, and identifies congestion hotspots that need attention.

“That’s really critical because it allows us to focus on a regional view, rather than allowing our project list to become politicized and based on parochial needs,” Nohe said.

A key consideration for each project is whether it meets the criteria set out in the transportation funding bill. For example, Nohe said, the bill requires the projects are in NVTA member jurisdictions.

For the fiscal 2014 projects, the group also considered whether a project is ready to begin construction quickly or if it is still in the planning stages. Projects that are further along in the planning process are more likely to receive funding this year.

ATTACHMENT E - continued

“What we hear from a lot of people is that they want to see bulldozers rolling this calendar year,” Nohe said.

At the same time, NVTA is working on developing longer-range plans, he said.

NVTA is planning a series of open houses in June, including a June 20 open house and public hearing, to start gathering input on the initial project list. The authority also released the full list of projects that were submitted for consideration, so that people can weigh in on the choices.

“Maybe there is someone out there who is going to make an argument that we haven’t considered,” Nohe said.

Nohe said he expects the authority to begin approving funding for projects in July.

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ATTACHMENT F

<http://www.connectionnewspapers.com/news/2013/jul/30/regional-transportation-projects-questioned/>
Connection Newspapers

Regionality of Transportation Projects Questioned, by Andrea Worker, Tuesday, The Connection Newspapers, 2013

Matthew Kahn, broker/owner of Falls Realty in Falls Church, and Mary Beth Coya, senior VP, Public & Government Affairs for the Northern Virginia Association of Realtors. Kahn spoke on behalf of the organization, acknowledging that traffic congestion was of primary concern to their members and to prospective buyers into the area, but urged the Authority to use the newly available funds “wisely, not quickly.”

“Tonight we acted to address one of the greatest threats to our region: Congestion.” So spoke Marty Nohe, chairman of the Northern Virginia Transportation Authority (NVTA) and Coles District supervisor for Prince William County. Despite numerous calls to slow down the process by speakers at the public hearing before the Authority, on Wednesday, July 24, the NVTA approved the FY2014 proposed regional multimodal project list as presented and vetted by the NVTA’s Project Implementation Working Group (PIWG) headed by Authority member (and Arlington County Board Member) Christopher Zimmerman.

“NVTA’s approval ... is a great first step toward improving transportation in Northern Virginia,” stated Fairfax County Board of Supervisors Chairman Sharon Bulova in a press release. Bulova, who represents Fairfax County on the NVTA added, “Infrastructure improvements are critical to the continued success of our region. This initial package of projects will make a difference in people’s lives across the region.” The Authority approved first year Pay-As-You-Go projects valued at \$116 million, as well as voting for a bond package to fund an additional \$93 million worth of projects.

The NVTA was established by the General Assembly in 2002 to provide a common voice on transportation for the counties of Arlington, Fairfax, Loudoun and Prince William, as well as the cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park. Their mandate includes developing immediate and long-term plans and selecting projects that address the transportation needs of the entire region. Since its creation, there have been plans aplenty, most recently revised and published as TransAction 2040 with page upon page of proposed transportation improvements. The only thing missing was how to pay for the enormous project wish list contained in the well-researched and presented plan.

The Passage of HB2313 earlier during the General Assembly session, with a new sales tax and a variety of other taxes and fee increases earmarked specifically for transportation, finally gave the NVTA, and the residents of Northern Virginia, the means to start tackling the area’s congestion problems as a whole, rather than in a piecemeal fashion. An estimated \$1.9 billion will be dedicated to Northern Virginia transportation needs over the next six years, with 70 percent of the funds to be allocated by the NVTA for regional projects, and the remaining 30 percent going directly to the individual jurisdictions for local projects.

Projects Approved

Some of the projects approved for first year funding include widening sections of Route 28 to eight lanes, the purchase of additional VRE railcars, Herndon Parkway intersection improvements, Innovation Center Metrorail Station, Chain Bridge Road widening and Alexandria DASH bus expansion, representing 59 percent road projects to 41 percent transit/multimodal projects funded by Pay-As-You-Go, and 45 percent road versus 55 percent transit/multimodal for projects to be funded by bonds. The NVTA urges citizens to keep informed by frequently visiting their website at www.thenovaauthor.com, where all of the related documents and a complete list of the approved projects and their costs can be found.

When it became clear that the NVTA would actually be able to fund and initiate transportation projects as early as July 1, the start of Fiscal Year 2014, the Authority went into high gear to solidify plans and solicit public opinion. Hearings were held throughout the region and the public was given opportunities to study the proposals and comment by testimony before the Authority, and by other written and electronic means. Over 200 public comments were received and considered by the PWIG between June 6 and July 22. On the night of the final public hearing, an additional 21 speakers added their testimony before the Authority.

At the previous public assembly in June, many of the speakers used their allotted time to either praise or protest

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specific proposals. At this pre-vote public hearing there was acknowledgement of the efforts of the Authority and the many others who worked to obtain this funding and to bring the projects to the table, but a large number of speakers recommended that the Authority not approve the project list without further study and consideration.

Virginia Delegate Bob Marshall (R-13) was one speaker who advised a slower approach and a clearer explanation of how the projects were chosen and vetted. “I have re-read the law ... the NVTA is not required to spend any funds made available in fiscal year 2014 in the year of 2014. “Marshall’s conclusions suggested that the Authority consider saving funds toward more long-range projects that “could better use the money in terms of efficiency and moving more people.” Marshall also indicated that in a review of the documents on the NVTA website he was unable to find any clear objective scoring by which each project was selected. (Member Zimmerman later remarked that explanations could be found in the appendices of the TransAction 2040 Plan.)

Delegate Jim LeMunyon (R-67) echoed some of the sentiments expressed by his colleague. He praised the cost per benefit substantiation of two of the proposed projects but stated his concern that 95 percent of the proposals did not carry the same level of analysis. “It’s a qualitative ‘yeah, it’ll get traffic moving a little bit better.’” When it comes to stating the benefits of a project, LeMunyon says the Authority is missing a word. “It’s not how will the project reduce congestion. It’s how much,” he said, suggesting that the Authority consider these analyses before approving their final project list. “Until you answer the ‘how much’ question I don’t think you can comply with the law.”

Photos by Andrea Worker/The Connection

Leo Schefer testifies before the Authority on behalf of the Washington Airports Task Force. The entire hearing, as well as the open session of the NVTA’s meeting, was broadcast on City Channel Station 12, and later uploaded to YouTube. A link to the YouTube video can be found on the NVTA website: www.thenovaauthority.org.

Questions were raised about the “regionality” of some of the projects, like bus shelters and improvements to pedestrian pathways. Eileen Curtis, representing the Dulles Regional Chamber asked that a formal definition of the term “regional” be added and applied to the workings of the Authority. Brian Gordon, representing the Apartment and Office Building Association of Metropolitan Washington also called for additional project selection criteria going forward to ensure that chosen projects were truly regional in their scope and impact, as did Leo Schefer, president of the Washington Airports Task Force. Others, like Mark Scheufler of Manassas Park, commented on projects that appeared to benefit locales outside the Authority’s jurisdiction. “Why is the NVTA accelerating the schedule of a funded VDOT project to help a jurisdiction that is not in the NVTA tax district?” questioned Scheufler. “If these are the best projects in the queue,” he added, “I am not sure why there was such a dire need to raise the sales tax in Northern Virginia.”

Several speakers also cautioned the Authority on its plans to fund projects through a bond package. David Birtwistle, CEO of the Northern Virginia Transportation Alliance urged the Authority to wait until long-range plans were reviewed and better defined as regionally significant before moving forward with the issuance of bonds.

When the last speaker concluded his remarks, the Authority listened to presentations from its working groups and consultants. Zimmerman, as head of the Projects Implementation Working Group, took this time to review the history of the NVTA and to defend the regionality and selection process of the projects recommended for implementation in the first year. Zimmerman referred to TransAction 2040, the Authority’s long term planning document, saying that it contained within its technical indices the quantitative measuring methods applied to the more than 200 projects outlined in the plan, with additional information regarding the regional merits of each proposal.

In addition to approving the proposed project list in its entirety, the NVTA also approved the funding methods—both Pay-As-You-Go and by Bond as recommended. They approved the authorization for the initiation of a bond validation proceeding, the appointment of the FY2014 Technical Advisory Committee members, bond counsel, and John Mason, former mayor of the city of Fairfax as the interim executive director. Mason had previously served as the Authority’s executive director in 2007-2008.

ATTACHMENT G

<http://bristowbeat.com/news/nvta-plans-pwc-transportation-projects-with-new-tax-revenues/>
Bristow Beat

Stacy Shaw, NVTA Plans PWC Transportation Projects With New Revenues, Bristow Beat, June 13, 2013

The Northern Virginia Transportation Alliance (NVTA) held a public meeting Wednesday evening to inform Prince William County, Manassas City and Manassas Park residents about new road and transit projects that are planned for next year.

The widening of Route 28 in Nokesville, the Vint Hill Road extension, a study on the Gainesville/Haymarket Virginia Rail Extension (VRE) and a new commuter bus leaving from Gainesville were among the Prince William County projects that Chairman Martin Nohe of the NVTA would like to see begin in 2014, should they gain approval from the NVTA at its July 20th meeting.

Chairman Nohe (R), Supervisor of the Coles District, held the informational meeting at the Old Manassas Court Building the evening of June 12. There, he outlined how Prince William County intends to spend its portion of the new sales tax revenue that will be returned to the local jurisdictions for projects in 2014.

In just 16 days, the sales tax will rise from 5 to 6 percent in Northern Virginia. That is .7 percent above what the rest of Virginia will be paying, since sales tax will rise by .3 percent elsewhere, except in Hampton Roads, where people will also be paying 6 percent, rather than 5.3 percent. New revenue is also being provided for local transportation with a 2 percent statewide tax on hotel rooms and 15 cents per \$100 of property value when a home is sold.

While no one likes to see his taxes rise, the good news is that Northern Virginians should get back the extra money they spend in the form of new transportation projects to ease road congestion in the Northern Virginia region and Prince William County.

Residents browse the map and information posted in the room of the old courthouse. Chairman Nohe told Bristow Beat in a phone interview that the new tax makes transportation funding “more fair.”

“The whole point was that money raised in Northern Virginia had to be spent in Northern Virginia on Northern Virginia problems,” Nohe said.

That is why the money will go directly to the NVTA, which has decided to keep 70 percent of it for regional projects and give the remaining 30 percent back to the jurisdictions. The Commonwealth expects the total revenue for Northern Virginia to average an estimated \$275 million, while the portion that Prince William County will receive amounts to an estimated \$8 million.

According to the NVTA, those funds must be spent on transit projects that will “ease congestion.” After that, projects that already have some funding and have already been vetted by the Virginia Department of Transportation (VDOT) and their jurisdictions are considered ideal. In other words, the NVTA is encouraging “shovel ready” projects for 2014, although Nohe said he hesitates to use that phrase.

Nohe said the widening of Route 28 in Nokesville from two to four lanes and the extension of Vint Hill Road to Route 28 are perfect projects in terms of fulfilling those requirements. The Route 28 widening was approved by referendum in 2006; it already has \$19 million in federal funding. On top of that, there is \$6 million in proffered funding for the project, mainly from the Avondale developers, who also proffered money for adjusting Vint Hill Road. With the extra funding, the road work could be expedited without having to dip into county transportation funds or buying any bonds.

However, residents attending the meeting felt that the widening of Route 28 in Nokesville would benefit Fauquier residents traveling that length of Route 28, while Prince William County and Manassas residents get stuck in worse

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traffic congestion on Route 28 in Yorkshire near the Fairfax line.

Mac Haddow asks a question about transportation.

As discussed in last week's Board of County Supervisor's meeting, Nohe explained that the county is nowhere near ready to address the Yorkshire congestion problem, though they are aware of it, but it is not currently on their Capital Improvement Plan.

In addition, widening the road would impact local businesses. Therefore Nohe believes they would likely need to seek a different solution altogether, perhaps an alternate road. Either way, it is not a good candidate for the NVTA local revenue funds.

As for green-lighting a new VRE station along Route 29 in Gainesville or Haymarket, Nohe said he believes it is something the people want. However, he wants to manage expectations because a new station could not be delivered immediately.

"What we're funding is a feasibility study," Nohe said. "Nothing about this first round of funding will put trains on the track, but we know there is a large community demand."

The road extension at the intersection of Linton Hall Road and Route 29 is currently being built in such a way to allow for a station, Nohe explained. However, in order to ease traffic congestion, a significant number of people who currently drive to work, would have to switch to taking the train from the new station.

In the meantime, the NVTA is considering adding an additional commuter bus to travel from Gainesville to D.C.

Other county projects funded via the new transportation funds are planned for the eastern end of the county. These include the widening of Route 1 from Featherstone Road to Mary's Way. It also includes adding additional cars and a second platform to the Rippon Station VRE to carry more riders and make entrances and exits quicker for the trains.

Many citizens came to find out more information about the Bi-County Parkway, but learned that the NVTA is not approving, nor becoming involved with that road.

Many attendees had questions about the Bi-County Parkway, but Nohe said the NVTA is not involved with that road. It is not on their agenda, and even if they were interested in it, they would not be able to provide the funding for such a massive project.

People expressed their concerns and ideas, which were recorded by the NVTA.

Delegate Rich Anderson (R), Del. Bob Marshall (R), Supervisor Wally Covington (R) and representatives from Manassas, Manassas Park and the Potomac District attended the meeting as did representatives from VDOT.

APPENDIX H:

Metropolitan Area Council of Governments study of “Commuter Connections”

<http://www.mwcog.org/uploads/committee-documents/Y11aXFdW20130912133433.pdf>

