

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

NORTHERN VIRGINIA TRANSPORTATION
AUTHORITY

Plaintiff,

v.

CASE NO. 2013-11988

STATUTORY DEFENDANTS PURSUANT TO
VIRGINIA CODE §§ 15.2-2650, ET SEQ., TO WIT,
TAXPAYERS, PROPERTY OWNERS AND
CITIZENS OF THE COUNTIES OF ARLINGTON,
FAIRFAX, LOUDOUN, AND PRINCE WILLIAM,
AND THE CITIES OF ALEXANDRIA, FAIRFAX,
FALLS CHURCH, MANASSAS, AND MANASSAS
PARK, VIRGINIA, INCLUDING NONRESIDENTS
OWNING PROPERTY OR SUBJECT TO
TAXATION THEREIN, AND ALL OTHER
PERSONS INTERESTED IN OR AFFECTED IN
ANY WAY BY THE PROPOSED ISSUANCE BY
THE NORTHERN VIRGINIA TRANSPORTATION
AUTHORITY OF ITS NORTHERN VIRGINIA
TRANSPORTATION FACILITIES REVENUE
BONDS IN AN AMOUNT NOT TO EXCEED
\$105,000,000.

Defendants.

FILED
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2013 AUG 13 PM 3:44
JUDITH E. FORD
CLERK, CIRCUIT COURT
FAIRFAX, VA

MOTION TO INTERVENE PURSUANT TO VA. CODE ANN. § 15.2-2654

COMES NOW the Board of Supervisors of Fairfax County, Virginia (Fairfax County), by
counsel, and moves this Honorable Court for an order pursuant to Va. Code Ann. § 15.2-2654
permitting it to intervene as an interested party-plaintiff in this action and in support of this motion
states as follows:

1. The Northern Virginia Transportation Authority (the Authority) has filed this action

pursuant to the pertinent provisions of the Public Finance Act of 1991, Va. Code Ann. §§ 15.2-2650 *et seq.*, and the Northern Virginia Transportation Authority Act (the Act), Va. Code Ann. §§ 15.2-4829 *et seq.*, seeking a judicial determination of the validity of Northern Virginia Transportation Authority Transportation Facilities Revenue Bonds (Bonds) to be issued by the Authority; of all proceedings taken in connection with the authorization or issuance of the bonds; of the taxes, fees, other revenues and other means provided for the payment of the bonds; of all pledges of revenues and of all covenants and provisions which constitute a part of the contract between the issuer and the owners of the bonds; of the proposed application of the proceeds of the Bonds; of the provisions of the NVTA Act, the Bond resolution and the Indenture to the effect that the Bonds, when issued, shall not be a debt, liability, or general obligation of the Commonwealth or of any of its political subdivisions other than the Authority; that the enactment of Chapter 766, 2013 Va. Acts of Assembly as it relates to the powers of the Authority and the provisions for the payment of the Bonds was within the legislative power of the Virginia General Assembly; and that the Act as amended by Chapter 766, and Va. Code Ann. §§ 58.1-603.1, 58.1-604.01, 58.1-638, 58.1-802.2, and 58.1-1742, as enacted, do not violate the Constitution of Virginia.

2. The purpose of this statutory scheme for the judicial determination of the validity of bonds is to provide a quick and efficient means of eliminating uncertainty that might make investors reluctant to purchase bonds issued by political subdivisions, agencies, and instrumentalities of the Commonwealth of Virginia (the Commonwealth). *E.g. Harper v. City Counsel of the City of Richmond*, 220 Va. 727, 261 S.E.2d 560 (1980).

3. Fairfax County is a political subdivision of the Commonwealth.

4. The Authority is a duly created and validly existing political subdivision statutorily created in 2002 for the purpose of preparing a regional transportation plan for Planning District Eight (the District), which embraces the Counties of Arlington, Fairfax, Loudoun, and Prince William, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Va. Code §§ 15.2-4830 through 4831.

5. The Act authorizes the Authority to determine long-range transportation plans and projects within the District, to use revenues collected on behalf of the Authority for implementation of the plans and projects, to allocate expenses to localities within the District, and to issue bonds. Va. Code Ann. §§ 15.2-4830 *et. seq.*

6. As set forth in the Motion for Judgment, on November 8, 2012, the Authority approved a regional transportation plan for the District titled "TransAction 2040 Regional Transportation Plan" (the Plan) which sets out long range transportation goals for the region. Many of the transportation projects in the Plan are either located in Fairfax County or directly affect Fairfax County's transportation needs.

7. Effective July 1, 2013, Chapter 766, 2013 Va. Acts of Assembly, introduced as H.B. 2313, made changes to state sales and use taxes and imposed two new state taxes that are only effective in certain Planning Districts, including the District. Specifically related to the District, H.B. 2313 imposed a .7% regional increase in state retail sales and use taxes, a .7% regional increase in the state sales tax on wholesale purchase of tangible personal property to be sold through vending machines, and a .7% regional increase in the state use tax on certain motor vehicles, machinery, tools and equipment brought into Virginia for use in performing contracts. Va. Code Ann. §§ 58.1-603.1,

58.1-604.01, 58.1-614, and 58.1-604.1. The bill also imposed a “regional congestion relief fee” in the form of a state grantor’s tax (\$0.15 per \$100) on real estate transactions within the District and a state-imposed regional transient occupancy tax of 2% applicable in the District. Va. Code Ann. §§ 58.1-802.2 and 58.1-1742.

8. The revenues generated in the District from these new taxes are to be deposited in a non-reverting fund called the Northern Virginia Transportation Authority Fund (NVTAFund) and then distributed to the Authority. The increased revenues from these sources are to be used for transportation purposes benefiting the localities embraced by the Authority. Va. Code § 15.2-4838.1(A). The increased revenue to the District is estimated to be approximately \$300 million per year.

9. Once the Authority receives the funds from the state, the funds are divided. Thirty percent of the revenues received by the Authority are to be distributed to localities on a pro rata basis, with each locality’s share being the total of the revenues generated in or attributable to the locality divided by the total. Va. Code § 15.2-4838.1(B). The localities may use their shares of the revenues for transportation purposes specified in Va. Code § 15.2-4838.1, as determined solely by the applicable locality. Va. Code § 15.2-4838.1(B)(1). Current estimates show that approximately 45% of the taxes that will flow to the NVTAFund will be generated in or attributable to Fairfax County. Therefore, according to current estimates, Fairfax County will receive about 45% of this 30% local share in FY 2014, for a total of approximately \$39 million.

10. The Authority may use the remaining 70% for regional projects approved by the Authority. The Act requires the Authority to expend those funds in such a manner that the long-term

benefit to each locality embraced by the Authority will be approximately equal to the proportion of the total of the taxes that go into the NVTA Fund from that locality. Va. Code § 15.2-4838.1(C)(3). As stated above, current estimates show that approximately 45% of the taxes that will flow to the NVTA Fund will be generated by or attributable to Fairfax County. As a rough indication of the magnitude of the benefit that Fairfax County can expect to see from the 70% over time, Fairfax County's proportionate share for FY 2014 would be roughly \$130 million if calculated on an annual basis.

11. Expenses borne by the Authority, to the extent not paid for by another source, are to be allocated to the component counties and cities on the basis of the relative population. Va. Code § 15.2-4835. As such, Fairfax County is ultimately responsible for approximately 48% of the non-reimbursed expenses borne by the Authority.

12. Based upon the foregoing, Fairfax County has a direct interest in the judicial validation of each and every matter regarding which the Authority seeks judicial validation in its Motion for Judgment.

13. Va. Code Ann. § 15.2-2654 permits interested parties to intervene in actions such as this one upon leave of court.

ACCORDINGLY, Fairfax County asks this Court:

1. To order that Fairfax County may intervene as a party-plaintiff in this action;
and
2. To grant to Fairfax County such other further relief as this Court deems just.

Respectfully submitted,

BOARD OF SUPERVISORS OF
FAIRFAX, VIRGINIA

By Counsel,

DAVID P. BOBZIEN
COUNTY ATTORNEY

By  _____

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion was mailed, postage prepaid, to Robert L. Hodges, Esquire, Robert W. Loftin, Esquire and Jeffrey D. McMahan, Jr., Esquire, McGuire Woods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219, this 13th day of August 2013.

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Corinne N. Lockett