

Update

The newsletter of the
Virginia Municipal League

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U.S. Supreme Court hears eminent domain case

In cases where the power of eminent domain is used to take private property for economic development, should cities and towns adhere to some type of minimum standard to determine public benefit? That issue seemed to be at the heart of questions posed by U.S. Supreme Court justices Feb. 22 when they heard arguments in the case of *Kelo v. City of New London*.

While generally voicing support for the use of eminent domain to bolster depressed economic neighborhoods, several justices probed the standards that are used. "Virtually every taking has a public benefit," said Justice David H. Souter. "Why must there be a limit?"

The Kelo case was brought by several property owners who are challenging the use of eminent domain by the city of New London, Conn., to take their property as part of a proposed 90-acre redevelopment area.

For more than 15 years, New London

has suffered the loss of more than 1,500 jobs as major industries closed. After years of planning, public hearings and outreach, city officials approved the construction of a waterfront development project near historic Fort Trumbull. The four-phase plan will include retail, residential and commercial space, a waterfront hotel and conference center, marinas and other public amenities. The project is expected to bring up to 2,300 jobs to unemployed New London residents and as much as \$1.2 million in tax revenue for improved city services.

The National League of Cities filed a "friend of the court" brief in support of New London, recognizing that any change to the current use of eminent domain could have serious implications for cities, towns and states working to improve economic development and revitalize aging neighborhoods.

Continued on page 2

State legislatures call for changes to NCLB

The federal No Child Left Behind Act (NCLB) has "questionable constitutional underpinnings," according to a recently released report of task force of the National Conference of State Legislatures (NCSL).

The task force noted that the act fails to meet two standards contained in a U.S. Supreme Court decision rendered in *South Dakota v. Dole*. In that case involving the 10th amendment to the constitution, the court placed restraints on how Congress may exercise its powers. The task force reports that NCLB fails to meet two of the tests contained in *South Dakota v. Dole*: its grant conditions are not unambiguous, and the act

uses coercion to get states to participate instead of financial carrots.

The task force report of NCLB also recommended that:

- Congress should conduct a study to determine if the No Child Left Behind Act is an unfunded mandate.
- Congress should remove ambiguity regarding the grant provisions in the law,
- The federal Department of Education should develop a uniform, easily understood process for waiver applications.
- States should have greater flexibility in meeting the goals of NCLB.
- The federal requirements in the Individuals with Disabilities Act should

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IN THE COURTS

Eminent domain arguments continued ...

Justice Sandra Day O'Connor, acting as presiding judge due to the illness of Chief Justice William H. Rehnquist, asked, "In a city that is suffering from an enormous lack of jobs ... is there not a public use benefit?" When O'Connor asked Scott G. Bullock, lead counsel for the plaintiffs, Susette Kelo and other homeowners, what test he would apply in eminent domain cases, Bullock said, "The test should be that the government shouldn't take private property to give over to another private landowner."

Wesley W. Horton, counsel for the City of New London, refuted this suggestion. "Purely taking from one person to give to another person is not a public use," he said, citing a New Jersey court decision that rejected an effort by developer Donald Trump to use the power to build a parking lot. "But this development is a part of a long-range plan by the city," Horton said, "to be developed in phases with due public processes."

Horton argued that there shouldn't be a higher standard for cities that use

eminent domain for economic development than for utilities or for transportation projects. Justice O'Connor appeared to concur, questioning whether the courts should second-guess the duly elected legislature in these instances.

Justice Anthony M. Kennedy noted that any economic development test "would have been easily met" in the Kelo case, given the "distressed community status" of New London. He suggested that a test might only be relevant when one person's private property is given to another.

Justices Kennedy and Stephen G. Breyer also asked Horton if owners should somehow receive a premium price for their property as compensation for condemnation in economic development proceedings, signaling that the issue of ensuring "just compensation" – not ending the use of eminent domain for economic development – might be an area for judicial comment.

In the Kelo case, however, homeowners were not contesting the prices offered for their homes by the city.

At a news conference on the steps of the Supreme Court immediately following the argument, NLC President Anthony A. Williams, mayor of Washington, D.C., urged continued support for retaining the current flexibility in using eminent domain.

"The prudent use of this power to enable cities and towns across America to revitalize communities, create jobs and improve housing must be retained," said Williams. "Clearly it is not a power to be used lightly, but when part of a legislative process involving citizen input and discussion, it is one of the most important tools city officials have to rejuvenate their neighborhoods."

"Where would Baltimore be without the Inner Harbor, Kansas City without the Kansas Speedway, Canton, Mississippi, without its new Nissan plant? The people of New London should have their chance to grow, to get good-paying jobs, as well," he said.

The justices are expected to rule in the case this summer. ❖

IN CONGRESS

Changes to NCLB continued ...



overrule the requirements of NCLB for students with disabilities (there currently are conflicts between the two acts).

- Federal funding for NCLB should be substantially increased.
- The Government Accountability Office should study the costs of complying with NCLB.
- The 100 percent proficiency goals in NCLB should be re-evaluated.
- The financial consequences for states not participating in the law should be re-examined.

In all the task force made 24 specific recommendations. An executive summary of the report can be downloaded at http://www.ncsl.org/programs/press/2005/NCLB_exec_summary.htm; a copy of the complete 87-page report can be found at www.ncsl.org/programs/educ/nclb_report.htm.

The National Conference of State Legislators is a bipartisan association of legislators and legislative staff members. The Task Force presented its report in January.

In an Op-Ed column published in the March 8 edition of the *Richmond Times-Dispatch*, state Board of Education President Tom Jackson called for several changes to NCLB, including:

- counting the passing scores of students who retake the Standards of Learning tests and pass;
- changing the way progress of disabled students is measured;
- preventing high performing schools and school divisions from being labeled as failing; and
- focusing the tutoring and choice provisions contained in NCLB on those students most in need of help. ❖

FROM THE CAPITOL

State K-12 spending projections released



The Superintendent of Public Instruction has released the superintendent's memorandum outlining projected state appropriations for K-12 education for FY05 and FY06. The memorandum can be downloaded at <http://www.pen.k12.va.us/VDOE/suptsmemos/2005/reg001.html>.

There are three attachments to the memorandum.

- Attachment A is a narrative summary of the changes enacted by the 2005 General Assembly.
- Attachment B is a report showing the projected state entitlements and required local expenditures by school division for FY05 and FY06 for the Standards of Quality, incentive and categorical programs.

• Attachment C is an Excel calculation tool that can be used to see the effects of a different Average Daily Membership (ADM) on state entitlements. A school division may have data that shows a different projection for March 05 ADM from that used in the superintendent's memorandum, and may result in a more accurate project of state payments.

Also, note that the superintendent's memorandum says that the basic aid appropriation for FY05 is underfunded by about \$11.7 million (approximately 0.5 percent). If savings are not achieved during the rest of the fiscal year, basic aid payments may have to be reduced. The shortfall is a result of the General Assembly adopting technical corrections to the budget, but failing to provide all the funding for them. ❖

Domestic violence funds available

The Department of Criminal Justice Services (DCJS) announced the availability of a new grant program, the Virginia Domestic Violence Victim Fund (VDVVF), which is designed to support domestic violence, sexual abuse, stalking, and family abuse services.

VDVVF grants are available to state agencies, local units of government, and non-profit programs that provide services to victims of and/or children affected by domestic violence, sexual abuse, stalking and family abuse. Eligible applicants include law enforcement agencies, victims' services programs, and programs that provide civil legal assistance.

Funds awarded during this cycle will be for the 18-month period July 1, 2005 – Dec. 31, 2006. For subsequent funding cycles, applications will be submitted for 24-month periods, and awards will be made on a calendar year cycle (Jan. 1 to Dec. 31).

Copies of the VDVVF guidelines, including the necessary grant application forms and instructions, may be downloaded from the DCJS Web site (www.dcjs.virginia.gov). For further information, visit the Web site or contact Deb Downing at 804/371-8635 or Deb.Downing@dcjs.virginia.gov or Nikole Lewis at 804/786-5367 or Nikole.Lewis@dcjs.virginia.gov. ❖

ETCETERA

IRS delays imposition of motor fuel excise tax regulations

The Internal Revenue Service has backed off regulations that would have changed the procedures under which state and local governments may claim an exemption from federal motor fuel excise taxes and apply for a refund of any taxes paid.

The chairmen of the Senate Finance Committee and the House Ways and Means Committee forwarded a letter to the IRS requesting that they re-issue regulations that would allow fleet credit card issuers to continue administering state and local fuel tax refunds. The IRS responded by granting an extension

until Congress can address the issue legislatively. The regulations were to have taken effect March 1.

The American Jobs Creation Act, which was enacted in 2004, contained provisions that would have changed the procedures. The changes would have affected only refunds for tax paid on gasoline purchased at retail outlets, but not refunds on diesel fuel.

As passed, the tax on gasoline purchased in bulk would have continued to be handled as it has in the past.

Under the regulations issued by the IRS, credit card and fleet card companies

that have been handling the administration of tax refunds on these types of purchases would no longer have been able to do so as of March 1. As a result, local governments would have had to begin collecting information on their retail gasoline purchases so that they could be in position to apply directly for refunds.

The National League of Cities lobbied IRS and Congress on the issue.

Contact Janine Jones (jones-smith@nlc.org) or Nicole Young (young@nlc.org) at NLC if you would like a copy of the IRS's letter. ❖

ETCETERA

Rural housing initiative will rehab 130 homes

The Virginia Department of Housing and Community Development has awarded \$3.6 million in federal HOME funds for critical housing projects in Virginia’s rural communities.

Nineteen grantee organizations will receive up to \$250,000 each for critical and special needs housing rehabilitation projects. DHCD expects to rehabilitate approximately 130 housing units to benefit more than 275 low- to moderate-income Virginians.

The funding is available through the Rural Virginia Housing Rehabilitation Demonstration Program – a flexible, one-time investment program created to fund rural housing projects outside the scope of other major housing rehabilitation programs.

Rural Va. Housing Rehabilitation Demonstration Program grants

Applicant	Project	Amount
Albemarle Housing Improvement	Albemarle County Housing Rehab	\$200,000
Alleghany County	Housing Help in the Highlands	\$123,850
Amelia County	Lodge Court Housing Rehab	\$250,000
Bay Aging	Bay Aging Rural Housing Rehab	\$142,200
Cumberland Plateau Housing Auth.	Handicap-Accessible Homeownership	\$196,000
ElderHomes Corp.	Rural Housing Rehab Program,	\$200,000
Fauquier Housing Corp.	Rural Housing Demonstration Program	\$200,000
Fluvanna/Louisa County Housing,	Pre-1976 Mobile Home Replacement	\$200,000
Housing Partnerships, Inc.	York County Scattered Site Home Repair	\$177,500
James City County	Rural Housing Demonstration Program	\$200,000
Lee County RHA	Housing Rehab Project for Families with Safety and Health Hazards	\$160,450
PEOPLE Inc.	Rural Housing Rehab Program,	\$200,000
Rural Areas Development Assoc.	Scott and Wise Counties Housing Rehab	\$200,000
Smyth County	Pilot Housing Rehabilitation Program	\$200,000
Southside Outreach Group	Halifax County Rehab Pilot Program	\$200,000
Southside Planning District	Pilot Housing Rehab Project	\$200,000
STOP	Rural Housing Rehab Project	\$200,000
Telemon Corporation	Telemon Housing Rehabilitation Program	\$200,000
Waynesboro RHA	Spot Blight Program	\$150,000



REGULATIONS

Intended Regulatory Action

Virginia Water Protection Permit Regulation. The State Water Control Board has proposed action to (i) incorporate changes to the Code of Virginia relating to the emergency permitting of water withdrawal projects; (ii) incorporate the U.S. Supreme Court's ruling in Virginia vs. Maryland; (iii) include changes already made to the general permit regulations that corrected administrative procedures, clarified application and permitting requirements, and allowed for a more efficient application review process; (iv) implement a formal preapplication scoping process for water supply projects; (v) clarify the requirement for cumulative impact assessment for water supply projects; (vi) clarify requirements for alternative analysis for water supply projects; (vii)

investigate ways to simplify, clarify and improve coordination of state agency reviews and comments for water supply projects; (viii) clarify who does and does not need a permit for water withdrawal by more clearly defining certain terms in light of the statutory "grandfathering" of certain withdrawals; and (ix) clarify the process and criteria for establishing minimum instream flow requirements and evaluation of responses during drought conditions. A public hearing will be held. Contact Scott Kudlas, Department of Environmental Quality, at 804/698-4456 or email him at swkudl@deq.virginia.gov for additional information.

Proposed Regulations

Regulation of Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed and Water

Quality Management Planning Regulation. The State Water Control Board has proposed amendments to the regulations to (i) revise the existing point source policy for nutrient enriched waters, to establish technology-based, annual average total nitrogen and total phosphorus concentration requirements for certain dischargers located in Virginia's Chesapeake Bay Watershed and (ii) revise the Water Quality Management Planning Regulation to establish total nitrogen and total phosphorus annual waste load allocations for certain dischargers within Virginia's portion of the Chesapeake Bay Watershed, and authorize a trading and offsets program to assist in the achievement and maintenance of the waste load allocations. Public hearings will be held around the state. Contact John Kennedy, Department of Environmental Quality, at 804/698-4312 for additional information.

POSITIONS

Longer version of job ads posted at www.vml.org

Because of the number of requests it receives to publish job advertisements, VML reduces the length of the position descriptions in Update. A full version of all of the job listings published here for the past two months appears on VML's Web site at www.vml.org. Visit the VML site and click on "Marketplace" to read the complete descriptions.

Planner, Chesterfield County

SALARY: \$31,052-\$53,023 (+) benefits. (Pop. 272,000) Provide info. and assistance to the public and development community in matters relating to planning and ordinance reqs. Assist with special projects, including the use of technology to improve customer service. Complete job description at www.chesterfield.gov/jobs or call 804/768-7777 (24 hour Jobline). County application req. and must be sent to: Human Resource Management, P.O. Box 40, Chesterfield, VA 23832. #05-442 Deadline: March 17. EOE.

Director of Public Works, Lynchburg

SALARY: DOQ (+) benefits. Lead full-service, 300-member dept. with \$33.5 million bdt. Reqs. bachelor's degree in business, public admin., civil engineering or a related field and at least 5 yrs. progressively responsible leadership exper. in public service. Master's preferred. Confidential resume with salary reqs. to: Director of Human Resources, 900 Church St., Lynchburg, VA 24504 or via the Internet at www.lyncburgva.gov. Deadline: May 15 (initial review begins April 15). # 6250-1. EOE.

Planner II, Gloucester County

SALARY: \$34,474 min. to start (+) benefits. (Pop. 35,000) County is in the process of updating its comp. plan. Established subdivision and zoning ordinances provide good foundation for encouraging design standards that enhance quality of life. Min. reqs: Bachelor's in urban planning or closely related field, plus 1-2 yrs. exper. in local planning or equiv. comb. of training and exper. To request application packet, contact the Gloucester County Human Resources Department, 6467 Main St. (P.O. Box 329), Gloucester, VA 23061 or phone 804/693-5690 or visit: www.gloucesterva.info/hr/hrhome.htm. Deadline: April 8. EOE.

Assistant Director of Utilities, Lynchburg

SALARY \$53,518-\$83,033 (+) benefits. Oversees support functions of Utilities Division (water/wastewater) and assists director in managing CIP, operating bdtgs, and design, installation, operation, maintenance and repair of water and wastewater facilities. Reqs. bachelor's degree in civil or environmental engineering and min. 5 yrs. progressively responsible exper. PE preferred. Apply at www.lyncburgva.gov or contact Human Resources at 434/455-4200. Deadline: April 1.

Accountant III (Utilities), Lynchburg

SALARY \$36,524-\$56,680 (+) benefits. Oversees all accounting activities related to water and wastewater operations, including supervision of accounting staff. Reqs. B.S. in accounting or related area and extensive experience in public sector accounting. Apply at www.lyncburgva.gov or contact HR at 434/455-4200. Deadline: April 1.

Chief of Fire and Emergency Medical Services, Stafford County

SALARY: Negotiable. Oversees integrated service delivery by career personnel and volunteers. Work performed under general

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POSITIONS

direction of county administrator. Any comb. of educ. and exper. equiv. to bachelor's degree in fire services, emergency services or related field and 10 yrs. of management and leadership in a public safety agency. Apply at www.co.stafford.va.us. Open until filled. #1077. EOE.

Local Government Affairs Specialist,

SALARY: DOQ. Nationwide organization is seeking a candidate with local government affairs experience to lead an initiative on city/ county council actions. Thorough, technical knowledge of Internet research capabilities is required, as well as a familiarity with local government operations.

Position to be filled immediately. Submit cover letter and resume to: Government Affairs Director at frankr515@hotmail.com.

Finance Director, Manassas Park

SALARY: \$63,207-\$110,835 DOQ (+) benefits. (Pop. 12,500) Direct and coordinate all financial activities, including forecasting and monitoring, accounting and financial reporting, procurement and vendor relations, payroll and benefits administration, vendor payments and general fiscal oversight. Reqs. bachelor's degree in business admin., accounting or finance; min. 5 yrs. highly responsible exper. in accounting or finance admin. or other phases of fiscal mngmnt. CPA req. For application, call 703/335-8040 or send e-mail to: mpayton@cityofmanassaspark.us. Apply to: City Manager, 1 Park Center Court, Manassas Park, VA. 20111. Open until filled. EOE.

Civil Engineer, Manassas Park

SALARY: \$46,093-\$75,000 DOQ. Responsible for contract administration and on-site development plans under general supervision of the public works director. Reqs. graduation from accredited college with bachelor's in engineering, with major course work in civil engineering; at least 2 yrs. exper. in civil, environmental or public works. For application call 703/335-8840 or send e-mail to: rmagnuson@cityofmanassaspark.us. Apply to: Director of Public Works, 1 Park Center Court, Manassas Park, VA. 20111. Open until filled. EOE.

Director of Finance, Poquoson

SALARY: \$54,129 (+) to start DOQ. Plans, organizes and directs dept., including accounting, purchasing, payables, utility billing and collection, payroll admin., fringe benefits program administration, debt mngmnt., and fixed asset accounting. Oversees development and compilation of city's operating bdtg., the accounting system and related LAN, as well as the city hall LAN. Bachelor's degree in business admin., accounting or closely related field (CPA preferable); reqs. min. 5 yrs. exper. and/or training that includes govt. finance. Resumes and applications to: Office of the City Manager, 500 City Hall Ave., Poquoson, VA 23662. Deadline: April 1. EOE.

Project Manager, Springsted Incorporated

SALARY: Negotiable DOQ. Conduct classification and compensation studies in Richmond, Va. office. Send cover letter and resume to: pm.richmond@springsted.com. See www.springsted.com. EOE.

Other positions

NOTICE: The following positions also are listed on VML's Web site at www.vml.org.

Executive Director, Central Shenandoah Criminal Justice Training Academy

SALARY: \$65,000-\$75,000. Deadline: March 31.

Juvenile Services Chief, York County

SALARY: Negotiable DOE/DOQ (+) benefits. Open until filled.

Director of Public Facilities, Bedford County

SALARY: \$41,742-\$51,710 start range (+) benefits. Open until filled.

Criminal Justice Services Director, Prince William County

SALARY: \$68,290-\$88,095 start range. Deadline: March 25.

Assistant Director of Finance, Danville

SALARY: \$56,000-\$85,000 DOQ (+) benefits. (Pop. 48,000) Deadline: March 15.

Executive Director, Brunswick County Industrial Development Authority

SALARY: DOQ/DOE. Deadline: March 18.

Executive Director, Northern Virginia Regional Park Authority

SALARY: Deadline: March 11.

Town Manager, Nags Head, N.C.

SALARY: Negotiable (+) benefits. Deadline: March 31.

Program & Project Coordinator, Herndon

SALARY: \$39,756-\$50,421 entry range. Open until filled.

Director of Planning and Community Development, Ashland

SALARY: \$50,000-\$68,988 DOQ/DOE (+) benefits. Deadline: Open until filled.

Public Information Specialist II, Norfolk

SALARY: \$36,051. Open until filled.

Operations Engineer, Virginia Beach

SALARY: \$72,985-\$109,478. Deadline: March 16.

DEADLINE: *The deadline for placing a job advertisement in the next issue of Update is Friday, March 18. Submit ads via e-mail to David Parsons at dparsons@vml.org. You may also submit via FAX at: 804/343-3758. VML publishes job advertisements at no cost to its local government members. Non-members are charged a flat rate of \$25 per ad per issue, which includes posting on VML's Web site and publication in Virginia Town & City (deadlines permitting). VML edits position descriptions in printed publications because of space limitations.*

CALENDAR

Rural Innovation Forum, March 18, Winchester

One-day conference devoted to rural innovation, showcasing ideas, projects and programs that enhance agriculture and rural business. From 9 a.m.-3 p.m. at the Lee-Jackson Best Western Conference Center. Registration: \$25 covers lunch; info. on-line at www.loudounfarms.org or by calling 703/777-0426. Pre-registration by March 9.

Virginia Rural Water Association 17th Annual Exposition, March 20-23, Williamsburg

Attend VRWA's 17th Annual Exposition at the Marriott Williamsburg where you can chose from 60 sessions, visit more than 80 vendors and renew acquaintances. For more info. visit www.vrwa.org or call 540/261-7178.

Professional Office Training, April 6-8, Virginia Beach

Virginia Rural Water Association classes designed for office professionals who work with customers, managers, supervisors and boards. Topics include: Communication in the Workplace, Keeping Your Computer System Healthy, Frequently Asked Insurance Questions and Fundamentals of Workers' Compensation claims. For information call Myrica Keiser 540/261-7178 or e-mail mwkeiser@rockbridge.net.

Virginia Municipal Clerks Association Conference, April 20-22, Chesterfield County

Hosted by Region IX. For information, contact Lisa Elko at 804/748-1200.

Governor's Conference on Greenways, Blueways and Trails, May 1-4, Richmond

Conference speakers and workshops will address ways in which trail development facilitates public health, economic revitalization, conservation and historic preservation. Expert-led sessions in five tracts: planning and design; construction and maintenance; building capacity; long-term marketing; and maximizing health benefits. General information at: BikeWalk Virginia at www.bikewalkvirginia.org/conference/index.html, info@bikewalkvirginia.org or 757/229-0507.

Delivering Effective Presentations Seminar, May 11, Richmond

Held from 8:30 a.m.-3:30 p.m. at the University of Virginia's Richmond Center. Sponsored by the Virginia Institute of Government. Registration: \$100 (includes lunch). Contact: Jovan Hackley at 804/371-0202, e-mail jh5sr@virginia.edu, or visit www.VaInstituteofGovernment.org.

Myers-Briggs Type Indicator Seminar, June 8, Richmond

Held from 8:30 a.m.-3:30 p.m. at the University of Virginia's Richmond Center. Sponsored by the Virginia Institute of Government. Registration: \$100 (includes lunch). Contact: Jovan Hackley at 804/371-0202, e-mail jh5sr@virginia.edu, or visit www.VaInstituteofGovernment.org.

2005 Transforming Local Government Conference, June 15-18, Sarasota, Fla.

Sponsored by Innovation Groups. For info., contact Tawana Collins at tcollins@ig.org or Bob Hart at 813/622.8484.

Preferred method of submitting items is via e-mail to David Parsons at: dparsons@vml.org. You may also submit via FAX at: 804/343-3758.

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VIRGINIA MUNICIPAL LEAGUE

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CELEBRATING 100 YEARS OF LOCAL
GOVERNMENTS WORKING TOGETHER