

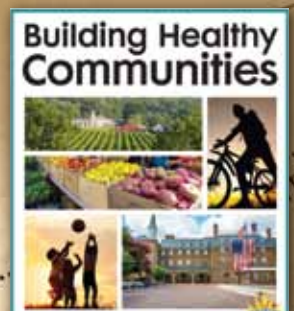
# To be sued

A primer on sovereign immunity protection  
for local government employees

3. The defendant is allowed to collect the costs of service of process, unless the defendant shows good cause to the contrary. Upon failure by the defendant to comply, these costs shall include reasonable attorneys' fees, of any amount. Upon timely return of the requested waiver of service of process, the defendant is not required to collect the costs of service. Other responsive pleading to the complaint or other initial pleading until 60 days after waiver of service was sent, or 90 days after that date if the defendant's address is outside Virginia.
4. The defendant's waiver of service of process in compliance with this request shall constitute a waiver of the jurisdiction of the court over the person of that defendant and shall constitute a waiver of any objections based on inadequacy of process or service of process.

DATE

**Inside:**  
Preliminary Agenda  
on page 13



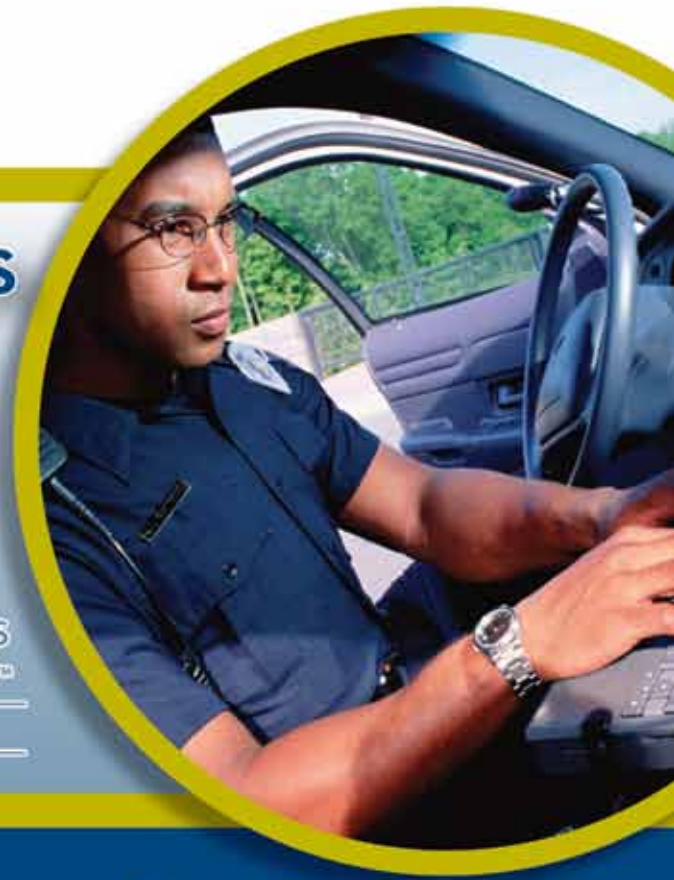
VML Annual Conference  
October 1-3, 2017



## VML Insurance Programs offers Law Enforcement Academy online



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VML Insurance Programs (VMLIP) now offers members with Law Enforcement Liability access to online training designed specifically for law enforcement.

The VMLIP Law Enforcement Academy has been developed in association with PoliceOne.com, FireRescue1.com, EMS1.com, and CorrectionsOne.com.

Courses available include: *Ethics in Law Enforcement, Constitutional Policing, Use of Force, Officer Liability*, and more, as well as various series on topics such as leadership and communication.

FREE online training is just another way VMLIP partners with members for effective risk management.



## About the cover

The benefits of sovereign immunity vary by type of governmental entity and function. Learn the important distinctions and protections available.

By *Michelle Gowdy* Page 15

## Departments

- Discovering Virginia** ..... 2
- Calendar**..... 3
- People**..... 3
- News & notes** ..... 5
- Professional Directory**..... 28

## Features

### VLGMA celebrates 30th anniversary, names Caywood outstanding assistant

Roanoke’s assistant county administrator is honored at the association’s conference which celebrated a memorable anniversary.

By *Janet Areson* Page 8

### VML’s Coiner and Woodbury speak on issues in Washington

Coiner addressed plans to cut the SALT tax while Woodbury testified on the future of work in cities.

By *Brett Bolton, Will Downie, and Kelley Hope* Pages 10 & 11

### Addressing inequities in community health

Across the United States, communities are grappling with the constellation of factors that affect residents’ health. Roanoke and Richmond are among 50 cities participating in a new approach.

By *Liz Ackley and Christina Nuckols* Page 19



### Proceed with caution

Learn how to protect your locality, employees, and the public with risk management planning.

By *Steve Craig* Page 22

### 2017 Supreme Court review for local governments

Although a quiet session, the Court ruled on cases involving police and First Amendment rights which affect local governments.

By *Lisa Soronen* Page 24



### VML policy committees explore a variety of topics

From transit funding to drones, VML policy committees examined a wide variety of issues July 20 and 21.

By *VML staff* Page 26

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# Raise your voice in D.C.

**S**OMETHING A LITTLE DIFFERENT this month. To strengthen our advocacy efforts at the federal level and to bring specific services to our smaller communities, the Virginia Municipal League (VML) Executive Committee has approved participation in the National League of Cities (NLC) Affiliate Membership Program. Under this partnership between VML and NLC, VML member cities and towns with a population of 30,000 and under are automatically affiliate members of NLC.

This program will bring a number of critical services to localities across the Commonwealth, including:

- Participation in NLC “savings and solutions” programs such as the NLC Prescription Discount Card program and the NLC Service Line Warranty program. These programs have saved communities and their citizens millions since their inception.
- Access to the NLC Grants Portal. This site will give localities access to over 7,000 different grant opportunities. <http://www.nlc.org/membership/grant-opportunities>
- Member rates for all NLC conference events
- Unlimited electronic copies of *The Weekly*
- Access to the City Practices database and Sustainability Cities Institute
- Eligibility to serve in leadership position on member councils
- Eligibility for all NLC committee positions requiring membership


It is our sincere hope that cities and towns with a population of 30,000 and under will take advantage of all of these opportunities.

I would like to highlight the importance of participating on NLC policy committees. Through these committees, the advocacy positions of the National League of Cities are developed and vetted. It is critical that localities of all sizes and geographic location be a part of this process.

Scholars across the country are debating the impact of the so-called rural/urban divide. Discussions include socio-economic disparities as well as political differences that vary depending upon one’s locality. Whether the “divide” is real or perceived is irrelevant. What matters is that VML is taking steps to enhance the presence of all of our localities in D.C.

What happens in D.C. truly does affect us all, large and small. And, divide or no, we are all in this together, so let’s stand together in D.C. to make sure that the voices of the cities and towns of the Commonwealth are heard.

Please consider participation in one of NLC’s policy committees and watch for alerts from our newly created Federal Advisory Council. A list of NLC committees can

be found at [www.nlc.org/advocacy/federal-advocacy-committees](http://www.nlc.org/advocacy/federal-advocacy-committees). Applications for serving will be available soon, so please let me know at [kwinn@vml.org](mailto:kwinn@vml.org) if you are interested and I will make sure that you get the necessary materials. 

## Member Benefits



**NLC offers an unparalleled portfolio of benefits. Learn how to save money and time, participate in learning opportunities that help you excel as a leader, and access creative ideas and best practices to resolve your community's challenges.**

Save



By building strategic partnerships with select nonprofit organizations and private sector companies, NLC offers products and services that provide value-added solutions and cost savings to municipalities and their residents.

- NLC Service Line Warranty Program
- NLC Prescription Discount Program
- U.S. Communities Government Purchasing Alliance

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VML connects you with a variety of networking and professional development events. Learn about the opportunities below at [vml.org/events](http://vml.org/events).

- Sept. 18:** Virginia Partnership for Out-of-School Time 2017 conference, Newport News
- Sept. 30 - Oct. 1:** Virginia Mayors Institute, Williamsburg
- Oct. 1-3:** 2017 VML annual conference, Williamsburg
- Oct. 15-17:** Virginia Building and Code Officials Association (VBCOA) school and conference, Virginia Beach
- Oct. 17:** Virginia Leadership Forum, Richmond
- Nov. 15-18:** NLC City Summit, Charlotte, N.C.

## People

### Danville councilman named "Local Legislator of the Year"

The Virginia Chapter of the American Planning Association recently honored



- Vogler -

Danville Councilman **J. Lee Vogler** for initiating legislation aimed to eradicate blight. After Vogler proposed the concept of land banks to Del. Daniel Marshall

(Danville), Marshall sponsored HB 268 in 2016 to allow localities to establish entities for acquiring and selling vacant, abandoned, or tax-delinquent land and property.

After the bill went into effect, Danville established the first land bank program in Virginia. The city created a new organization—Danville Neighborhood Development Corp.—to run the land bank.

For his role in the bill, the Virginia Chapter of APA named Vogler Local Legislator of the Year during a reception at the Taubman Museum in Roanoke. Vogler has served on the city council since 2012.

### Petersburg hires three for top positions

**Aretha Ferrell-Benavides** is the new city manager for the City of Petersburg.



Ferrell-Benavides

Ferrell-Benavides has 25 years of experience in local government, including her most recent position as city manager for Glenn Heights, Texas, a suburb of Dallas. She also has been CEO for the District of Columbia Department of Parks and Recreation and the assistant county administrator for Los Alamos County, New Mexico.

The city's new finance director is **Blake Rane**. Rane comes to Petersburg from Florida, where he had been the finance director of the Town of Lake Park for the last five years. Prior to that, he was finance director and interim city manager for the City of Mulberry, Florida.

Petersburg also has hired **Kenneth Miller** to serve as police chief. Miller was a captain with the Virginia Beach Police Department, where he had worked since 1983. He's a recent graduate of the FBI National Academy and a former Marine.

### New town manager and public works director in Herndon

The Herndon Town Council appointed **William H. "Bill" Ashton II** as



- Ashton -

town manager, effective July 1. Ashton had been serving as acting town manager since February, following the retirement of Art Anselene. Ashton joined the town's staff in 1998 as Herndon's first director of information technology. During his tenure, the town received national recognition as a public-sector technology leader.

**Dana L. Singer** is the new director of Public Works. Singer joined the town's staff in 2001 as a program and projects coordinator in the Public Works department and was most recently the department's deputy director. Singer replaces Robert B. Boxer, who retired after 14 years as the department's director.

**Smith made Norfolk city manager**

Norfolk City Council appointed **Douglas Smith** as Norfolk's city manager. Smith has served as the interim city manager since December 1, 2016. He previously served as deputy city manager in Virginia Beach and Portsmouth. Smith also has been president & CEO of Kaufman & Canoles Consulting, where he counseled national and local developers, municipalities, higher education institutions, and corporations.



- Smith -

**Appomattox hires new town manager**

**Gary Shanaberger** has been tapped to be Appomattox's town manager effective August 1. Shanaberger previously worked as a business analyst at Longwood University's Small Business Development Center and owned and operated an outdoor power equipment company.



- Shanaberger -

Clarence Monday, who has filled the role of interim town manager since January, will stay on for several months to assist Shanaberger during the transition. Monday retired as county administrator for Pittsylvania County in December.

**Dunn appointed Williamsburg police chief**

Williamsburg's new chief of police is **Sean Dunn**. With more than 20 years of experience as a sworn police officer, Dunn worked his way up the ranks from uniform patrol officer to commander (major) in Portsmouth and, most recently, chief of police in Martinsville. Chief Dunn holds a master's degree in Organizational Leadership from Regent University in Virginia Beach. He is a



- Dunn -

graduate of the FBI National Academy and the Police Executive Research Forum's Senior Management Institute for Police (SMIP). Dunn succeeds Dave Sloggie who retired in December.

**Smithfield promotes Howell to chief**

Smithfield Deputy Chief **Alonzo Howell** has been promoted to chief. Howell has served in the Smithfield Police Department in roles increasing in responsibility for more than 24 years. He will be the town's first African American chief of police.



- Howell -

Howell succeeds Steven Bowman, who retired July 1. Bowman's career included service with the Virginia Marine Resources Commission, Virginia State Police, and sheriff's offices in Surry County and Isle of Wight.

**Eastern Shore broadband authority announces acting director**

The Eastern Shore of Virginia Broadband Authority (ESVBA) named **Robert Bridgham** as acting director. Bridgham has served as director of network engineering for the ESVBA since 2013 and was a consultant for the authority prior to that.



- Bridgham -

**Loudoun assistant administrator retires**

After 33 years with Loudoun County, Assistant County Administrator **Julie Grandfield** has retired. She began her career with the county in 1984 in the human resources department. As assistant county administrator, Grandfield oversaw the county's health, family services, and community corrections departments among others.



- Grandfield -

**Sitton appointed Alexandria clerk**

Alexandria City Council has appointed **Gloria Sitton** as city clerk and clerk of council. Sitton has served as Alexandria's deputy city clerk since 2003. Before coming to Alexandria, Sitton worked for the City of Greenville, SC, as the deputy city clerk. Sitton holds a bachelor's degree in political science from Spelman College and a graduate certificate in local government management from Virginia Tech. Sitton succeeds Jacqueline M. Henderson, who retired.



- Sitton -

**Staunton announces two new hires**

**Rodney Rhodes** has been named senior planner for the City of Staunton. With a 26-year career in local government, Rhodes has worked in various planning and zoning roles in Virginia. Previously, he served as the zoning administrator for the City of Williamsburg and the director of planning and zoning and deputy county administrator for Mathews County. Rhodes fills the vacancy left when Director of Planning Sharon Angle retired in December after 29 years of service.



- Rhodes -

**Sarah Skrobis** is the new director of library services for the Staunton Public Library. Skrobis has more than 10 years of career experience in various roles in library services, first working in youth services in Pennsylvania, and then managing a library branch in North Carolina, before working locally for the Augusta County Library in Fishersville. Skrobis succeeds Ruth Arnold, who retired in June after 26 years of service.



- Skrobis -

In Memoriam

# Alexandria's first elected female mayor dies



Senator Ticer with Senator Adam Ebbin (D-30) who succeeded her in 2012.

FORMER STATE SENATOR **Patricia S. "Patsy" Ticer** died Aug. 7 at age 82. She was a member of the Alexandria City Council from 1982 to 1996 and became the city's first elected female mayor. In 1995, Ticer was elected to the Virginia State Senate, where she served four terms. Ticer also was an active participant in VML. While mayor of Alexandria, she was chair of VML's Human Development Policy Committee and a member of VML's Legislative Committee. Ticer was known for her work in improving the health and well-being of infants and young children, sponsoring legislation requiring testing of newborns for birth disorders and hearing levels.

News & notes

## Falls Church rolls out stormwater grant program

THE CITY OF FALLS CHURCH will grant \$10,000 to a non-profit organization that offers assistance to Falls Church residents and business owners interested in installing small-scale stormwater management practices on their property as a part of a stormwater grant program, Rain Smart. The City aims to reduce stormwater runoff and divert stormwater-carrying pollutants (such as oil, bacteria from pet waste and sediment, or lawn chemicals) before they enter local streams.

The grant funds will be awarded to organizations that propose a program that can achieve the following goals: protect and/or improve our natural water resources; provide funds for implementation of stormwater practices to Falls Church residents; reduce stormwater runoff and associated pollutants; and promote smart stormwater management education.

Find a link to more information about the program at [vml.org/vtc-resources](http://vml.org/vtc-resources).



## Buckroe to be a crown jewel for Hampton

THE CITY OF HAMPTON plans to make a 12-acre parcel of beachfront land in Buckroe "a jewel of the East Coast."

The city worked with residents to develop master plan areas and set a course for the future. Described as a "family beachfront community," redevelopment of the property includes housing as a key component, with the potential for beach-oriented retail, restaurants, and a small beachfront inn.

City Manager Mary Bunting noted that this proposal follows other Buckroe projects, with road and landscaping upgrades and a Housing Venture program that has already spurred more than \$1 million in homeowner reinvestment.

Other city efforts, including putting the public beach and park into a conservation easement, "ensure that every resident of Buckroe has the opportunity to have the beach as their back yard," Bunting said. She added that many people are opting for smaller lots and yards in exchange for shared public spaces that provide a major amenity.

The land is owned by the Hampton Redevelopment and Housing Authority, which issued a Request for Qualifications to be a master developer for the land.

Find a link to more information about the program at [vml.org/vtc-resources](http://vml.org/vtc-resources).

## Governor announces newest business-ready grant recipients

PROJECTS IN THREE VML member localities – Ashland, Waynesboro, and Roanoke County – will receive Virginia Business Ready Sites Program (VBRSP) development grants totaling \$346,500 combined.

The three are among eight awarded grants in phase II of the program.

The Town of Ashland will receive \$29,500 for the Holland/Axelle site; Waynesboro Economic Development Authority will receive \$216,500 for the Nature’s Crossing Technology Center in the City of Waynesboro; and Western Virginia Regional Industrial Facility Authority will receive \$100,000 for the Wood Haven Road property in Roanoke County.

Governor Terry McAuliffe announced the grants July 19. Find a link to the news release at [vml.org/vtc-resources](http://vml.org/vtc-resources).




## Capital Project on the Horizon?

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## Martinsville recognized for energy efficiency upgrades



FOR UPDATING MUNICIPAL BUILDINGS to be more energy efficient, the Virginia League of Conservation Voters (VLCV) Education Fund honored the City of Martinsville in June. Working with Trane, the city retrofitted lighting, centralized control systems for better control and monitoring of city buildings, and renovated HVAC systems. From the updates, Martinsville expects to save approximately \$80,000 in utility costs annually. VLCV also recognized Pittsylvania County Public Schools for similar updates.

**City manager Leon Towarnicki accepted a plaque recognizing the city's stewardship of both taxpayer dollars and the environment at an awards presentation at Gretna High School.**

# Home for the Holidays

## Local ornaments for Governor's mansion are back by popular demand



In the past two years, nearly 200 communities created stunning handmade ornaments that adorned the holiday tree at the Governor's Mansion. Thousands of visitors from across the country toured the mansion and viewed the ornaments, learning about the diverse heritage of Virginia's cities, towns, and counties.

The tree was so popular that the Governor's Mansion has asked VML to once again collect local heritage ornaments from cities and towns to hang on the 2017 holiday tree.

To submit an ornament for the coming holiday season, contact Kelley Hope at [khope@vml.org](mailto:khope@vml.org) or 804-523-8527. Visit [www.vml.org](http://www.vml.org) for guidelines for submitting your local heritage ornament.


**Show your hometown holiday pride!**

# VLGMA celebrates 30th anniversary

**T**HIRTY YEARS AGO, the Virginia Section of the International City Management Association (now the International City/County Management Association) and the Virginia Association of County Administrators merged to create the Virginia Local Government Management Association (VLGMA).

The 2017 VLGMA summer conference in Virginia Beach celebrated that 30-year anniversary. Virginia Beach Mayor Williams Sessoms, Jr. opened the conference with the presentation of a proclamation congratulating the Association on its 30th

anniversary and declaring June 22, 2017, as VLGMA Day in Virginia Beach. Later that day, conference attendees and their families attended a celebratory dinner at the Virginia Museum of Contemporary Art that featured remarks from some of the Association leaders and members who participated in the merger in 1987.

The Association also elected a new leadership team and members of the executive committee. Charlottesville City Manager Maurice T. Jones was elected President of the Association, succeeding Abingdon Town Manager Greg Kelly. 



## Officers

**President** – Charlottesville City Manager Maurice T. Jones

**President-Elect** – Chesterfield County Administrator Joseph P. Casey, Ph.D.

**First Vice-President** – Rocky Mount Town Manager C. James Ervin

**Second Vice-President** – Falls Church Assistant City Manager Cindy L. Mester

**Third Vice-President** – Montgomery County Administrator F. Craig Meadows

**Secretary** – Vienna Town Manager Mercury Payton

**Immediate Past President** – Abingdon Town Manager Greg Kelly

## Executive committee members

*Term expiring June 30, 2018:*

Charlottesville Assistant City Manager Leslie M. Beauregard  
Mecklenburg County Administrator Wayne Carter, III  
Gloucester Deputy County Administrator Garrey W. Curry, Jr.  
Gordonsville Town Manager Deborah Kendall  
Botetourt Deputy County Administrator David V. Moorman  
Frederick Interim County Administrator Kris C. Tierney

*Term expiring June 30, 2019:*

Alexandria Deputy City Manager Debra Collins  
Hampton Assistant City Manager Laura Fitzpatrick  
Winchester City Manager Eden Freeman  
New Kent County Administrator Rodney A. Hathaway  
Amherst Town Manager Jack Hobbs  
Staunton Deputy City Manager Steven L. Rosenberg

# Caywood named outstanding assistant

WHEN A JOINT VENTURE was first announced a few years ago to build a 300-mile long natural gas pipeline that would cut through Roanoke County and neighboring counties, it instantly raised community concern. Some questioned its necessity, alignment, and the process for the community to engage with the Federal Energy Regulatory Commission (FERC), which would oversee the project. Roanoke Assistant County Administrator Richard L. Caywood, P.E., stepped up to serve as the county's point person to help navigate the myriad community and regional concerns with the project.



**VLGMA Second Vice President Cindy Mester, Falls Church assistant city manager with winner of the Marcia Mashaw Outstanding Assistant award Richard Caywood.**

Caywood's work on this project was the basis for his recent recognition as winner of the Virginia Local Government Management Association's (VLGMA) 2017 Marcia Mashaw Outstanding Assistant Award.


Roanoke County Administrator Thomas C. Gates named Caywood as staff liaison for an advisory committee consisting of residents, interest group representatives, and members of the business community that would facilitate public communication and information regarding the proposed pipeline construction.

Gates described Caywood's efforts to inform and educate residents on matters related to the pipeline as "exemplary." One of his colleagues described him as someone who "makes things happen" in situations where things seem to be standing still and as someone who could turn problems into solutions.

As a result of working with the advisory committee, Cay-

wood became an expert on the role local governments play in the process with FERC, the federal agency involved with the pipeline project. His diligence and attention to detail led him to discover numerous errors and inconsistencies in the filings with FERC. This expertise helped not just his own community and its advisory committee, but also neighboring jurisdictions, who looked to him for advice and guidance for their own interactions with FERC.

As the chair of the advisory committee wrote, "From attending public input meetings in small rural high schools, to building relationships with state and federal agencies, and most importantly, working with the residents of the county to answer their questions and allay their concerns, Caywood has been the consummate professional."

Caywood has worked for Roanoke County since 2013, where he has served as project manager for major capital improvements in the county, including the construction of a new library and renovation of a social services building. A civil engineer with a master's degree in civil engineering from Virginia Tech and an undergraduate degree in the same field of study from the University of Virginia, Caywood has been a licensed Professional Engineer in Virginia since 1999. Before joining Roanoke County, Caywood worked for a private sector construction company, and before that at the Virginia Department of Transportation for more than 20 years, nine years as the Salem district administrator. 

**About the author:** Janet Areson is VML's director of policy development. She also serves as the executive secretary of VLGMA. She may be reached at [jareson@vml.org](mailto:jareson@vml.org)

**The Marcia Mashaw Outstanding Assistant Award is given each year to an assistant or deputy manager/administrator who has demonstrated outstanding performance to their community, particularly with a special project or during a period of unique conditions or circumstances. The award was created in 1989 to honor the memory of Marcia Mashaw, who was serving as assistant town manager in Blacksburg at the time of her unexpected death in 1986. Mashaw was an active member of the VLGMA, serving on its executive board, and was also active in the International City/County Management Association (ICMA).**

# Coiner takes a stand for state and local tax deduction

CITY AND COUNTY leaders, including VML President Bob Coiner, took to Capitol Hill July 11 to discuss a critical but often overlooked part of the federal tax code: the state and local tax deduction (SALT). The deduction plays a critical role in helping cities provide vital services such as healthcare, infrastructure improvement, and public safety services to their citizens.

Yet the Trump Administration has suggested removing the deduction as a means of offsetting other tax cuts, a move that

**The SALT deduction grants taxpayers the ability to deduct taxes paid to local and state governments from their obligation to the federal government.**

could have negative repercussions for millions of Americans and the cities they call home.

Created in 1913 as part of the original income tax, the SALT deduction grants taxpayers

the ability to deduct taxes paid to local and state governments from their obligation to the federal government. This simple deduction frees up local governments to levy local taxes and raise the revenues they need, without the fear of double-taxing their residents.

Coiner, mayor of Gordonsville, joined local officials from Illinois and Ohio to speak at a Big Seven Congressional briefing to discuss the importance of the SALT deduction in their communities. The panel discussion examined the importance of the SALT deduction in local budgeting processes and dispelled the myth that the deduction is singularly used by wealthy Americans.

According to a newly released Government Finance Officers Association (GFOA) and National League of Cities (NLC) report, “The Impact of Eliminating the State and Local Tax Deduction,” repeal of the SALT deduction would adversely affect almost 30 percent of taxpayers, including individuals in every state and in all income brackets. This is not only a deduction for the upper bracket; in fact, more than 50 percent of SALT deductions went to taxpayers with incomes under \$200,000.


“This is a big deduction for a reason — we do a big job,” said Coiner, who represented NLC at the hearing. “Federal money is dwarfed in local communities by what local governments do. We all have our parts to play, and Washington is viewing this too simplistically.”

“This can affect your deductions for mortgages, healthcare, and other issues. They say that everyone will be getting a

**Local leaders are addressing some of the most pressing challenges of our time, and this briefing demonstrated how local tax authority and flexibility are paramount to their continued success. Their stories and perspectives highlight the importance of local control and the need for a greater open dialogue between federal policymakers and the local elected officials working in city halls across the country.**

deduction, but without this, not many people will be able to reach that cap for a standard deduction,” said Coiner.

Cutting such a foundational component of the federal tax code would change the way local governments budget, tax, and allocate funds. Taxpayers would demand immediate action to lower state and local taxes, resulting in shortfalls in already-strained budgets. That would only make the job of providing vital services to citizens even more difficult for local governments.

Find a link to the report at [vml.org/vtc-resources](http://vml.org/vtc-resources). 

**About the authors:** *Brett Bolton is the principal associate for Federal Advocacy (Finance, Administration, and Intergovernmental Affairs) at NLC. Reach him at [bolton@nlc.org](mailto:bolton@nlc.org). Will Downie is an intern with the National League of Cities’ Federal Advocacy team.*

Originally published July 14, 2017 on CitiesSpeak, the official blog of the National League of Cities (NLC). Reprinted with permission.



# Woodbury speaks at briefing about workforce and business development


**D**R. PATRICIA P. WOODBURY, member of the Newport News City Council and VML president-elect, testified at a briefing July 25 on impacts to the American workforce as described in the National League of Cities (NLC) report “The Future of Work in Cities.” The policy discussion highlighted strategies that can provide support to cities and the economic impacts of workforce development at the federal level.

NLC hosted the briefing in cooperation with Congressman Robert C. “Bobby” Scott (VA-3), Ranking Member of the U.S. House of Representatives Committee on Education and the Workforce.

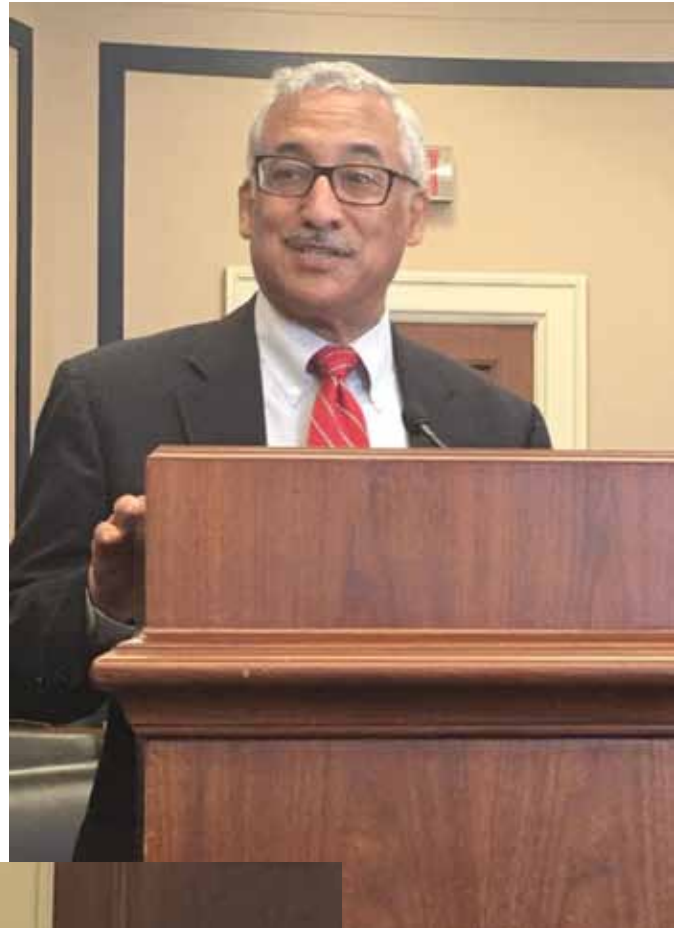
Woodbury has a long history of supporting workforce development programs that increase the employability of citizens within Newport News. Her on-the-ground experience provided an in-depth analysis on the trends and real-world implications of workforce development.

“Investing in our workforce is now more important than ever,” said Scott. “The technological innovations that make our day-to-day lives easier also present a challenge to maintaining job growth in our cities.”

Scott compared the threat to jobs created by driverless cars to similar results after the launch of other automation technology, such as ATMs and airport self-check-in kiosks.

Find a link to the report at [vml.org/vtc-resources](http://vml.org/vtc-resources). 

**About the author:** *Kelley Hope is editor of Virginia Town and City and VML communications specialist. Reach her at [khope@vml.org](mailto:khope@vml.org)*



**Congressman Bobby Scott, who hosted the briefing with NLC, encouraged all levels of government to invest in a workforce development system to prepare workers for a changing labor market.**

**VML President-Elect Pat Woodbury shared her observations on workforce development issues in Newport News as a member of a panel discussing NLC’s “The Future of Work” report.**



# Building Healthy Communities



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## Saturday, September 30

- 8:15 a.m. – 8:30 p.m. Virginia Mayors Institute\*
- 11:00 a.m. – 3:00 p.m. Virginia Leadership Academy FOIA/COIA workshop\*

## Sunday, October 1

- 8:15 a.m. – noon Virginia Mayors Institute\*
- 10:00 a.m. – 6:00 p.m. Registration
- 10:00 a.m. – 6:00 p.m. Exhibit hall
- 1:00 – 3:00 p.m. Mobile workshop
- 1:00 – 3:00 p.m. Solutions session in exhibit hall
- 3:30 – 5:00 p.m. Opening session
- 6:30 – 9:30 p.m. Host City Night
- 9:00 – 10:00 p.m. Outgoing president's reception

## Monday, October 2

- 7:45 – 8:45 a.m. Women in Local Government breakfast\*
- 8:00 – 8:45 a.m. Continental breakfast in exhibit hall
- 8:00 a.m. – 1:00 p.m. Exhibit hall
- 8:00 a.m. – 3:00 p.m. Registration
- 9:00 – 10:00 a.m. General session
- 10:30 – 11:45 a.m. Business meeting
- 11:45 a.m. – 1:00 p.m. Spouse/guest program luncheon\*
- 11:45 a.m. – 1:00 p.m. NBC-LEO program and luncheon\*
- 11:45 a.m. – 1:00 p.m. First Cities luncheon\*
- 11:45 a.m. – 3:00 p.m. VLGMA luncheon and board meeting\*
- Noon – 1:00 p.m. Lunch in exhibit hall
- 1:30 – 5:00 p.m. Workshops
- 6:30 – 7:00 p.m. Reception
- 7:00 – 8:15 p.m. Banquet
- 8:15 – 10:00 p.m. Entertainment
- 9:30 – 10:30 p.m. Incoming president's reception

## Tuesday, October 3

- 8:00 – 10:00 a.m. Continental breakfast and roundtables
- 10:30 – 11:45 a.m. Closing session including
- Recognition of VLA Graduates
  - Presentation of Go Green Certificates
  - Heal Campaign Awards
  - Stairway to Success Awards

# Preliminary Agenda



All conference activities, including general sessions, break outs, and the exhibit hall, will take place at the Williamsburg Lodge, 310 South England Street.

## The VML App with 2017 Annual Conference Resources

Find session descriptions, speaker bios, exhibitor info, schedules, and maps. Available in your device's app store.

Search: **Virginia Municipal League**



# To be sure

A primer on sovereign immunity  
for local governments



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# Quel- ity protection ent employees

By Michelle Gowdy

**S**OVEREIGN IMMUNITY is a legal doctrine that protects government and their employees against some lawsuits, particularly tort liability which is when one unfairly causes another to suffer loss or harm resulting in legal liability.

As described in *Messina v. Burden*, 228 Va. 301, 321 S.E. 2d 657 (1984), the doctrine of sovereign immunity is the “rule of social policy, which protects the state from burdensome interference with the performance of its governmental functions and preserves its control over state funds, property, and instrumentalities.”

However, the benefits of sovereign immunity are not all-inclusive; they vary by type of governmental entity and function. To add to the complexity, specific protections awarding statutory immunity have been incorporated into the Code of Virginia over time.

How well do you understand the hierarchy of degree of immunity? This article summarizes important distinctions of sovereign immunity and statutory immunity that can help local government employees be aware of the protections available.

## Applications of sovereign immunity

The Commonwealth of Virginia has absolute sovereign immunity and is simply immune from most tort suits. However, it can waive this immunity if it desires.

Counties, as “political subdivisions” of the Commonwealth, are entitled to the same level of immunity as the Commonwealth, argue most county attorneys. Cities and towns, however, do not benefit from the same privilege.

Cities and towns have two functions, one governmental (like that provided by a state) and the other proprietary (similar to services provided by private entities). While cities and towns have some degree of sovereign immunity for actions related to their governmental activities, they do not have immunity for actions related to proprietary functions.

“A municipality is immune from liability for failure to exercise or for negligence in the exercise of its governmental functions.” *City of Chesapeake v. Cunningham*, 268 Va. 624, 604 S.E. 2d 420 (2004).

The difficulty lies in unclear definition of functions as proprietary or governmental; one must consider the characteristics of the function for clarity.

## Distinctions for cities and towns

*City of Chesapeake v. Cunningham*, 268 Va. 624, 604 S.E. 2d 420 (2004), held that “governmental functions are powers and duties performed exclusively for the public welfare.” Courts have held that municipalities are immune from tort liability based on allegations of negligence in the planning and designing of roads or streets, hospitals (some functions), ambulance, garbage, emergency street-cleaning, and mental health services.

Examples of proprietary functions include routine maintenance of existing streets or sewer drains. “If the function is a ministerial act and involves no discretion, it is proprietary.” *Id.*

Ironically, snow removal is an example of circumstances affecting which category the function is in. In a case when a government was “responding to emergency weather conditions in opening streets to vital public services,” snow removal was found to be a governmental function. *Bialk v. City of Hampton*, 242 Va. 54, 405 S.E. 2d 619 (1991). However, other cases sug-

## Immunity protection

gest that there is a time when the emergency no longer exists and may no longer be a governmental function. See *Woods v. Town of Marion*, 245 Va. 44, 425 S.E. 2d 487 (1993).

Tables A and B outline various functions that courts have identified as governmental or proprietary in the past. Municipalities can invoke immunity for services or actions in Table A while those in Table B could result in a municipality being liable for negligence.

Streets and sidewalks are two items that should be included in Table B, but need more explanation. “A municipality has a positive and nondelegable duty to keep and maintain its streets and sidewalks in repair and in safe condition for public travel”

per *Votsis v. Ward’s Coffee Shop*, 217 Va. 652, 231 S.E. 2d 236, 237 (1977).

Inevitably, these cases usually are reviewed by the defect at issue: was it minimal, open, and obvious and did the municipality have notice of the defect?

*City of Va. Beach v. Roman*, 201 Va. 879, 883, 114 S.E. 2d 749, 752-753 (1960) states in part that “a plaintiff must show more than that a defect on public property has come into being and caused plaintiff’s injury.” Minimal defects as well as open and obvious defects typically do not rise to the level of negligence; however, there are instances where contributory negligence is assessed.

**Table A**

Governmental function	Example
Police	Operation of the force
Jails	Operation of the jail
Firefighting	Includes interviews and some destruction of property for safety
Water service for fire protection	Provision of a water supply
Emergency response	Tree removal from a street responding to disaster
Snow and ice removal	See above
Animal control	Capture and impound of stray animals
Health and sanitation regulation	Preservation of the public health and care of the sick
Hospitals	Public hospital is not liable for the torts of its servants and agents, <i>maia’s adm’rs v. Eastern state hospital</i> , 97 va. 507, 34 s.e. 2d 617 (1899)
Health facilities	Nursing home services, independent living facility
Ambulance service	Irrelevant that a nominal fee is charged
Day care	By social services
Garbage removal	Public health function
Landfill	Operation and maintenance thereof
Planning, designing and implementation of municipal water, sewer, and stormwater drainage systems (not maintenance or operation)	Maintenance and operation are proprietary functions
Planning	For public facilities and improvements
Streets and sidewalks	Planning and designing such
Traffic signals and other traffic control devices	Determination of need and placement of such
Public transportation	Municipal bus, common welfare of residents
Building code enforcement and inspections	Demolition of a building as a public nuisance
Public buildings – operation and maintenance	Elevator accident
Libraries	Provide a public benefit
Purchase of land	Condemnation for a public purpose
Legislative acts	Includes planning commission

**Table B**

Specific proprietary function	Example
Water	Operation of water department (inadequate experience)
Sewer	Maintenance and operation of a sanitary sewer system
Electric or gas utility	Operation of such
Rental of municipal property	Landlord-tenant relationship
Airport	Operation of / maintenance of runways
Swimming pool	Operation of but see va 15.2-1809
Parking garage	Operation of such

**Sovereign immunity is not an easy topic to discern in the Commonwealth; it is ever evolving and there are numerous exceptions to the rules. Always consult your attorney.**

**Further, always keep in mind that gross negligence will remove any sovereign immunity options. Gross negligence is the conscious and voluntary disregard of reasonable care.**

Case law has solidified the fact that county, city, and town employees as well as school board employees may be immune in some functions of their work. The Virginia Supreme Court has established a four-part test for determining if an employee falls under the sovereign immunity doctrine. *James v. Jane*, 221 Va. 43, 53, 282 S.E.2d 864 (1980)

1. What is the nature of the function the employee performs? It must be a vitally important public function.
2. What is the extent of governmental entity’s interest and involvement in the function? The employing governmental entity must have official interest and direct involvement in the function.
3. To what degree is control and direction exercised over the employee? The governmental entity must exercise control and direction over the employee.
4. Did the alleged wrongful act involve the exercise of judgment and discretion? The act must not be only ministerial.

The Virginia Supreme Court most recently applied these criteria in June 2016 in the case of *Pike vs. Hagaman*, Record No. 151193. The cases vary greatly with the application of this test. Ask your lawyer to review the cases that are relevant to your specific fact pattern.

Table C provides examples of immunity for officials extended under either case law or statute. To determine whether a specific employee is immune because of his or her position or requires separate representation, consult with your attorney once you receive notice of a lawsuit. Refer to VA Code Section §15.2-1405 “Immunity of members of local governmental entities; exception” in the event of a lawsuit.

## Considerations for counties

As discussed, counties have a higher degree of immunity than cities and towns. “Arlington county being a political subdivision of the State, its freedom from liability for this tort may be likened to the immunity that is inherent in the State. It is fundamental and jurisdictional and could not be waived by the Board.” *Mann v. Arlington Cnty. Bd.*, 199 Va. 169, 173-174, 98 S.E.2d 515, 518 (1957)

Furthermore, the governmental-proprietary distinction is not applicable to counties. It is worth noting that the courts have said that county boards act in two capacities: legislative and administrative. County boards act in their legislative capacity when they are creating legislation. In the administrative capacity, there is only qualified immunity. *Isle of Wight Cnty. V. Nogiec*, 281 Va. 140, 704 S.E. 2d 83 (2011).

VA Code §15.2-1243 et. seq. only applies to counties and outlines the requirements for a demand to be presented to the Board of Supervisors prior to filing an action as well as the appeals process.

## Exceptions to sovereign immunity

The exceptions to sovereign immunity are fairly straightforward. The first applies to contractual claims.

If you enter into a contract and breach it, a logical extension is that you are liable. If the act is intentional or grossly negligent (conscious and voluntary disregard of reasonable care) then there is no legal protection.

A public nuisance is also an exception to sovereign immunity but a little more challenging.

“A public nuisance is a condition that is a danger to the public.” *Taylor v. City of Charlottesville*, 240 Va. 367, 372, 397 S.E.2d 832 (1990). In this case, a road was constructed with no guardrails or warnings that it ended on a cliff and stream. Despite complaints to the City regarding the dangerousness of the road, no action was taken. Eventually, a car plunged into the stream on a dark night and the Supreme Court found that this could be a public nuisance and sent the case back to Circuit Court for further proceedings.

The courts have further found that the public nuisance must be either unauthorized by law or created or maintained negligently. *Chapman v. City of Virginia Beach*, 252 Va. 186, 475 S.E.2d 798 (1996).

## Immunity for officers and employees


Numerous doctrines and statutes discuss immunity for officers and employees. Typically, persons who are in the highest levels of government – governors, mayors, judges, legislative bodies, etc., – have been accorded absolute immunity. There is even a case where a planning commissioner was accorded legislative immunity.

**Table C**

Official	Example
Operations	Superintendent of buildings of a community college Chief of operations division of the dept. of public works County building & grounds engineer
Building inspectors	Only for actions taken in good faith and with probable cause
Education	Superintendent, principal, teachers
Medical	State employed physician for public health Hospital admin. at UVA Doctor with state in admin. role
Public safety	Police officers – town/city/county County sheriffs Fire fighters Jail and animal control employees
Motor vehicle operations	Snowplow operator School/municipal bus driver Garbage truck driver
Legal and admin. workers	Attorneys Social workers Treasurers

## Immunity protection

Sovereign immunity, while abstract, provides important benefits to all types of government and its employees. From shielding the public purse to protecting against vexatious lawsuits to encouraging citizens to serve in governmental positions by alleviating concerns of being sued, sovereign immunity promotes the orderly administration of government.

Sovereign immunity is just one of the defenses that a lawyer can use when handling lawsuits against a locality. Do not be afraid to discuss settlement options with your attorney and make the best decision as a steward of taxpayer money. 

**About the author:** *Michelle Gowdy is VML's general counsel. She may be reached at [mgowdy@vml.org](mailto:mgowdy@vml.org)*

# Statutory immunity

Statutory immunity can apply in these three specific areas:

**Recreational facilities** (VA §15.2-1809, §15.2-1809.1) Counties, cities, and towns are immune from simple negligence in the operation of beaches, pools, parks, playgrounds, skateboard facilities, and recreational facilities. Towns and cities are liable for gross or wanton negligence in the operation of these facilities.

**Water control facilities** (VA, §15.2-970) Counties, cities and towns are immune from suits arising out of the design, maintenance, performance, operation, or existence of dams, levees, seawalls, or other structures, the purpose of which is to prevent the tidal erosion, flooding, or inundation of such locality.

**Landowners allowing recreational use of land** (VA §29.1-509) Landowners or “any other person in control of land” are immune from liability for negligence regarding land used for recreational purposes. An example is maintenance of privately-owned property that provides beach access.

## Notice of claim

Virginia Code §15.2-209 “Notice to be given to counties, cities, and towns of tort claims for damages” is the vehicle for a locality to be told that it may be sued. Consult with your attorney about any notice, especially the timeliness of the notice, to whom the notice was provided, and the specificity of the notice.

Should you or your locality be sued, there are several actions that you should consider taking.

- **Notify your self-insurance pool or insurance company and determine whether or not it will provide a defense for the case.**
- **Preserve all of the evidence that you have in your possession, including council or board packets, text messages, emails, etc.**
- **Do not talk with the person who is filing suit unless your attorney instructs you to do so.**



# Addressing inequities in community health

## A national model unfolds in Virginia

**A**CROSS THE UNITED STATES, communities are grappling with the constellation of factors that affect residents' health. Infrastructure, financial stability, and less-tangible factors such as social networks can all have a significant influence on the well-being of residents across a community. In many cities where historical neighborhoods have retained their physical, cultural, and economic assets and barriers, health disparities often reflect the availability of resources for local residents.

In Virginia, neighborhood-level inequities in health are generally measured in terms of chronic disease prevalence or life expectancy. In communities revered for abundant natural resources and outdoor recreational opportunities, childhood obesity rates have been reported at three-times the national average. In our capital city, residents experience substantial differences in life expectancy across neighborhoods separated by just a few miles.

The common denominator? The most daunting health challenges often exist in the city's least affluent neighborhoods, where residents have limited access to infrastructure supporting healthy living.

Confounded by limited resources, mid-sized cities are not well positioned to drive major improvements in resident health outcomes. As such, the need for collaborative, cross-sector engagement is especially important to address the myriad factors that affect community health (e.g., health care, personal finance, housing, employment and workforce development, food access, etc.).

To address this need, the Robert Wood Johnson Foundation and Reinvestment Fund launched the Invest Health initiative in June 2016. Invest Health brings together teams of partners from traditionally disparate sectors within mid-sized cities to develop innovative strategies for reducing neighborhood-level health disparities.

With a focus on enhancing access to healthy foods, opportunities for physical activity, affordable housing, employment, and safe neighborhood environments, Invest Health teams have been engaged in an intensive national learning community to develop innovative cross-sector strategies that align with resident-prioritized needs in their home communities. These criteria are significant, as they promote resident voices in decision making related to

their neighborhoods while maximizing opportunities for collective impact across a broad spectrum of health determinants.

**Residents experience substantial differences in life expectancy across neighborhoods separated by just a few miles.**

Through the 18-month Invest Health process, city teams are charged with developing and aligning around a vision of health equity, using data as a driver for change, and unlocking new sources of investment to improve health outcomes for residents in target neighborhoods.

Roanoke and Richmond are among the 50 mid-sized cities selected to participate in Invest Health. Both teams rely on resident engagement and extensive data tracking to inform their work.

### Roanoke City Invest Health

Nearly a quarter of Roanoke's residents are food insecure and resident health outcomes and behaviors rank among the lowest decile in the Commonwealth with the most compromised health profiles in the city occurring in Roanoke's least affluent areas, the social, cultural, and economic conditions of Roanoke's neighborhoods explain, at least in part, why some residents are healthier than others.



With a focus on Roanoke's northwest neighborhood quadrant, the Roanoke Invest Health team aims to confront systems-level barriers to positive health outcomes related to inequitable availability of healthy food; inequitable access to reliable and efficient transportation; inequitable distribution of



CONNIE SMITH KENNY

**Local Environmental Agriculture Project (LEAP) in Roanoke works closely with community partners to nourish a healthy community and create resilient local food systems. The nonprofit runs three markets, including one mobile option that makes weekly stops in neighborhoods without easy access to fresh produce. To help low-income families afford fresh fruits and vegetables, LEAP's healthy food incentive program doubles SNAP benefits. Maureen Best, LEAP's executive director, is a member of the Roanoke Invest Health team. [www.leapforlocalfood.org](http://www.leapforlocalfood.org)**

built infrastructure promoting access to healthy living; and inequitable access to workforce readiness programs. In recognizing the entanglement of infrastructure and social determinants of health, the team seeks to coordinate a variety of projects

## Nearly a quarter of Roanoke's residents are food insecure.

the Roanoke Invest Health team has been collecting data to identify resident-perceived priorities, which are informing food access initiatives currently in development. At the state-level,

within the neighborhood to maximize collective impact on resident health.

With an early emphasis on improving access to healthy, affordable food,

the team is advocating for legislation to develop the Virginia Grocery Investment Fund and the expansion of incentive programs to support healthy food purchases among low-income residents.

## City of Richmond Invest Health

The life expectancy of an individual living in an economically-struggling neighborhood of the Commonwealth's capital city can be as much as 20 years shorter than a resident in a high-income area.

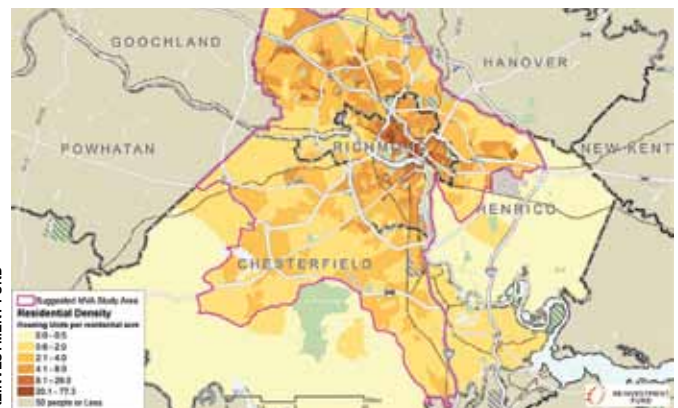


JAY PAUL RICHMOND MEMORIAL HEALTH FOUNDATION

**Health Brigade was the first free clinic in Virginia and is a key part of the safety net for the Richmond Region.**

The Richmond Invest Health team identified three priority areas for their work: research and data analysis; community engagement and outreach; and policy and education.


The research and data component consists of a Market Value Analysis (MVA) of residential housing in the city of Richmond and the counties of Chesterfield and Henrico, which will be completed this summer. The final product will include a series of maps and analyses that can guide coordinated planning and investment decisions in the region to support equitable development and improved health outcomes in low-wealth neighborhoods. Initial maps and findings will be re-



**Study area for the Market Value Analysis (MVA) currently underway as a part of Richmond Invest Health.**

viewed by an advisory committee that includes representatives from the three local governments, as well as financial, health, and housing experts and community residents. The final report on the MVA will be released this fall.

The Richmond Invest Health team will develop a community engagement plan to ensure residents of neighborhoods experiencing transition have the information, resources, and organizational support they need to have a real voice in decisions that affect their communities.

Work on the policy and education component of Richmond's Invest Health initiative will intensify at the same time that community engagement efforts are underway. The leadership team will convene regional experts and community leaders to better understand how local government policies impact housing and to identify opportunities for coordinated approaches that promote equitable housing investment and development involving the public, private, and nonprofit sectors. 

**About the authors:** *Dr. Liz Ackley is an associate professor of health and human performance at Roanoke College. She serves as the project lead for Roanoke's Invest Health team and is the director of the Roanoke Valley Community Healthy Living Index. She may be reached at [ackley@roanoke.edu](mailto:ackley@roanoke.edu). Christina Nuckols is the director of community relations at Richmond Memorial Health Foundation. Reach her at [cnuckols@rmhfoundation.org](mailto:cnuckols@rmhfoundation.org).*

## For more information

Learn more about building healthy communities at VML's 2017 annual conference, October 1-3 in Williamsburg.



VML Annual Conference  
October 1-3, 2017

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# Proceed with caution

## Keep the public, employees, and your finances safe with risk management

**A** HURRICANE CAUSED SUBSTANTIAL damage to a small locality. To clear the roads so that emergency services could get through, the locality gave chainsaws to any employee who would take one. There were no chaps, safety glasses, or reflective vests. There also was no training in safe chainsaw use.

Luckily no one was hurt in the cleanup efforts, but employees were concerned for their safety. Shortly thereafter, the locality began work on its first comprehensive safety manual which included use of chain saw training along with appropriate protective gear.

Local leaders should closely monitor aspects of their organization that present significant risk such as law enforcement, motor vehicles and cyber security. There are many actions that can expose a locality to a costly lawsuit as well as a negative public image: slip and fall injuries from lack of maintenance of sidewalks, water meter covers or public streets; motor vehicle accidents; a cyber breach resulting in the exposure of personally identifiable information; allegations of excessive force by law enforcement officers. Sound risk management practices can help to prevent these types of events and can help to hold down litigation costs should such an event occur.



No locality wants to cause harm to its employees or the public. Risk management planning and tools are necessary to protect everyone.

Governing bodies should provide policy direction for developing general risk management strategies and the manager or chief administrative officer should oversee implementation and daily risk prevention. This includes ensuring periodic reviews of the training and materials being used in the locality.

While a chief administrative officer usually delegates the risk management function, it is imperative that the person be given both responsibility for and authority to meet the locality's risk management objectives. Unfortunately, this is not normally the case with the typical risk manager reporting to either the finance or human resources director without sufficient authority to act across the organization. This results in a siloed approach to risk management, which is both inefficient and, in most cases, ineffective.

### Types of insurance for local government

Localities may purchase a variety of insurance coverages, each offering different protection.

**Public Officials' Liability** – Protects the entity, elected and appointed officials, and employees from lawsuits arising from alleged wrongful acts. The types of claims can range from zoning denials to employee discrimination issues. Typically defense costs and damages, if any, are included.

**General Liability Coverage** – For claims of negligence that result in bodily injury or property damage to non-employees. The most common claim under general liability is for members of the public that are injured on public property. General liability policies typically provide personal injury coverage, which responds to allegations of libel or slander.

**Automobile Liability** – Provides coverage for those operating a motor vehicle on behalf of the locality. In my more than twenty-five years working at VML Insurance Programs (VMLIP), this is by far the most significant exposure faced by local government. About 50 percent of the number of claims as well as the cost are the result of automobile accidents.

**Workers' Compensation & Employers' Liability** – Protects local government employees in the event of an injury or qualified occupational disease such as the various public safety presumptions for heart disease, cancer, and infectious diseases. Workers' compensation and employers' liability coverage are mandatory for local governments with three or more employees. Employers' liability applies to other employment-related incidents that are not covered by workers' compensation. Virginia statute requires prompt reporting of workers' compensation injuries by employers.

**Line of Duty Act** – Protects the locality from liabilities associated with providing statutory death and continued health





insurance benefits for qualified public safety employees and volunteers.

**Flood** – Protects the locality’s property from flood, which is not normally covered under property coverage. For property in flood zones B, C, and X, coverage is widely available. For property in flood zones A or V, coverage may be placed through the National Flood Insurance Plan (NFIP).

**Fidelity/Crime** – Covers loss of money or negotiable securities by both employees and non-employees. No one wants to think that an employee would steal, but unfortunately it happens. Localities should implement strong internal controls to prevent these claims.

**Cyber Security** – A relatively new type of coverage, covers liability associated with a data breach of personally identifiable information such as social security or credit card numbers. Most of us think of rogue hackers breaking into a computer system and stealing data. While that is certainly a risk, a locality’s biggest exposure is its employees. Lost laptops,

sending unencrypted e-mail, and opening e-mails containing viruses are common.

Cyber security policies also cover a locality’s expenses to hire someone to investigate a breach, notify potentially affected customers or employees, provide credit monitoring to those affected, defend claims by state regulators, and to pay fines and penalties. In addition, cyber policies cover liability arising from website media content, as well as property exposures from business interruption, and may provide coverage for data loss/destruction, computer fraud, funds transfer loss, and cyber extortion.

## Assessing and reducing your locality’s risk

The first step in assessing your locality’s risk is to conduct an audit of your risk exposures and existing prevention and management tools. Review your facilities, programs, and policies and document the types of risk management training currently offered.

After that, develop an implementation schedule to address any identified areas of deficiency.

VMLIP works with its members on risk management issues and provides a myriad of consulting services, training, and sample policies and programs. Another resource is the Public Risk Management Association (PRIMA), which provides risk management resources and training. Learn about these or-



## Ensure that all employees are provided ongoing training to mitigate exposure to loss

Types of training to consider:

- Back injury prevention
- Blood-borne pathogens
- Confined space
- Driving
- Fall protection
- Hazardous waste
- Hearing conservation
- Playground safety
- Power tool use
- Property loss prevention
- Safety coordinator
- Sidewalk safety
- Slip and fall
- Special event liability
- Workplace violence

organizations at [www.vmlins.org](http://www.vmlins.org) and [www.primacentral.org](http://www.primacentral.org).

Unfortunately, in our litigious world, risk management needs to be taken very seriously. Not only can claims impact a locality’s financial results, but the negative public perception resulting from serious claims can undermine your broader goals and objectives. To keep everyone healthy and safe, initiate continuous reviews of your locality’s compliance with training and rules that are set out.

**About the author:** *Steve Craig is managing director at VML Insurance Programs.*



# 2017 Supreme Court review for local governments

By Lisa Soronen

**W**HEN IT COMES TO BIG CASES, the most recent Supreme Court term was its quietest in at last half a decade. For local governments though, the Court's term was business as usual. The Court decided a number of police and First Amendment cases which affect local governments directly and indirectly, respectively. Local governments were named parties in a number of cases this term. The biggest Supreme Court cases for local governments are discussed below.

## County of Los Angeles v. Mendez

In a unanimous opinion in *County of Los Angeles v. Mendez*\* the Supreme Court rejected the “provocation rule,” where police officers using reasonable force may be liable for violating the Fourth Amendment because they committed a separate Fourth Amendment violation that contributed to their need to use force.

Police officers entered the shack Mendez was living in without a warrant and unannounced. Mendez thought the

officers were the property owner and picked up the BB gun he used to shoot rats so he could stand up. When the officers saw the gun, they shot him resulting in his leg being amputated below the knee.

The Ninth Circuit concluded that the use of force in this case was reasonable. But it concluded the officers were liable per the provocation rule – the officers brought about the shooting by entering the shack without a warrant.

The Court rejected the provocation rule noting that its “fundamental flaw is that it uses another constitutional violation to manufacture an excessive force claim where one would not otherwise exist.”



## Manuel v. City of Joliet

In *Manuel v. City of Joliet*\* the Supreme Court held 6-2 that even after “legal process” (appearing before a judge) has occurred a person may bring a Fourth Amendment claim challenging pre-trial detention.

Elijah Manuel was arrested and charged with possession of a controlled substance even though a field test and a lab test indicated his pills weren’t illegal drugs. A county court judge further detained Manuel based on a complaint inaccurately reporting the results of the field and lab tests.

Forty-eight days later Manuel was released when another laboratory test cleared him. Manuel brought an unlawful detention case under the Fourth Amendment.

The Seventh Circuit held that such a case had to be brought under the Due Process Clause, which Manuel failed to do.

The Court explained pretrial detention after legal process can be challenged under the Fourth Amendment where, as in this case, legal process has gone forward but “nothing [has been done] to satisfy the Fourth Amendment’s probable-cause requirement.”



## Bank of America v. Miami

In *Bank of America v. Miami*\* the Supreme Court held 5-3 that local governments have “standing” to bring Fair Housing Act (FHA) lawsuits against banks alleging discriminatory lending practices. But to win these claims local governments must show that their injuries were more than merely foreseeable.

Miami claims that Bank of America and Wells Fargo intentionally issued riskier mortgages on less favorable terms to African-American and Latino customers than similarly situated white customers in violation of the FHA. Miami further claims these discriminatory practices caused foreclosures and vacancies which harmed the city by decreasing property values, reducing property tax revenue, and increasing costs to the city.

The Court concluded, based on precedent, that Miami’s claims of financial injury are sufficient to meet the FHA’s standing requirement.

Regarding causation, the lower court concluded that the banks’ alleged discriminatory lending practices proximately caused the city’s economic injuries because



they were the foreseeable result of the banks’ misconduct. The Supreme Court concluded foreseeability isn’t enough to prove causation. Instead, proving proximate-cause under the FHA requires “some direct relation between the injury asserted and the injurious conduct alleged.”

## Murr v. Wisconsin


In *Murr v. Wisconsin*\* the Supreme Court concluded 5-3 that no taking occurred where state law and local ordinance “merged” nonconforming, adjacent lots under common ownership, meaning the property owners could not sell one of the lots by itself.

The Murrs owned contiguous lots E and F, which together are .98 acres. Lot F contained a cabin and lot E was undeveloped. State law and a St. Croix County merger ordinance prohibit the individual development or sale of adjacent lots under common ownership that are less than one acre total.

The Murrs claimed the ordinance resulted in an unconstitutional uncompensated taking.

According to the Court, the question in this case was whether the lots should be viewed as a single parcel when concluding whether a taking took place. The Court applied a three-factor test which led it to conclude that the lots should be viewed as one parcel. First, state law and local ordinance treat the property as one for a “specific and legitimate purpose.” Second, the physical characteristics of the property in this case indicate the parcels should be combined for purposes of takings analysis. Third, the “special relationship of the lots is further shown by their combined valuation.” Lot E appraised at \$40,000; lot F at \$373,000; but the combined lots appraise at \$689,300.

Looking at the parcels as a whole the Court concluded no compensable taking occurred in this case. The Murrs could still build a bigger house on the combined lots, and they cannot claim they “reasonably expected to sell or develop their lots separately given the regulations which predated their acquisition of both lots.”

\*Indicates a case where the SLLC has filed or will file an amicus brief. 



**About the author:** *Lisa Soronen is the executive director of the State and Local Legal Center (SLLC) in Washington, D.C. SLLC files Supreme Court amicus curiae briefs on behalf of seven national organizations representing state and local governments. Learn more at <http://www.statelocalc.org/>.*

# VML policy committees explore a variety of topics

FROM TRANSIT FUNDING TO DRONES, and local fiscal distress to solar energy, VML's six policy committees examined a wide variety of issues during their meetings on July 20 and 21 in Glen Allen, Virginia.

The policy committees meet once yearly to hear presentations on current and emerging issues. They also make sure that VML's policy statements reflect the current local government thinking on those issues.

This year's meetings looked at the multifaceted challenge of addressing opioids in communities; the DMV passenger carrier study; stormwater; solar energy; the development of a tool to measure local fiscal distress; Next Generation 911; and Go Virginia and short-term rentals.

The policy committees also looked at possible recommendations to forward to the VML Legislative Committee for further consideration as part of the 2018 legislative program.

Review a summary of each committee meeting in VML eNews: [vml.org/enews-july-27-2017/](http://vml.org/enews-july-27-2017/).

The proposed updates will be available for review by the full membership before they are addressed at the VML business meeting during the annual conference in Williamsburg.



**Patrick Harrison with the Virginia Division of Motor Vehicles shared information with the Transportation Policy Committee on the 2017 passenger carrier study and its importance for local governments.**



**Jennifer Mitchell, director of the Virginia Department of Rail and Public Transportation, spoke on funding issues facing transit programs in Virginia.**



**Charlie Frye Jr (center), Fredericksburg council member vice chair of the Human Development & Education Policy Committee, introduced Jodi Manz (left) to committee members. Manz, a policy advisor with the Office of the Secretary of Health & Human Resources, updated the committee on policy actions for state and local governments related to opioid abuse issues.**



**Matthew Weaver with the Virginia Department of Housing and Community Development explained community development block grant funding options to members of the Community and Economic Development Committee.**



**Jim Regimbal of Fiscal Analytics (left), Martha Mavredes, Auditor of Public Accounts, and Gene Teague, Martinsville mayor and VML executive committee member, talk about financial challenges facing local governments. Regimbal spoke on education funding. Mavredes shared information about the APA's new tools for measuring fiscal distress.**



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