Virginia Transportation Revenue Initiatives Case Study

Tax measures are more likely to be successful with full and deliberate political participation in the legislative measure. Critical considerations are timing, political leadership involvement and support, and development of champions.

Background
The Commonwealth of Virginia has had mixed success dealing with transportation revenue increases. An initiative introduced by Governor Gerald L. Baliles in 1986 was described as sweeping and dramatically successful¹. More recent initiatives starting in 2004 and extending through 2008 were not successful in actually raising added revenue, although a revenue bill was passed and signed into law. The measure was subsequently declared unconstitutional. In both instances:

- The unmet transportation need for additional funding was well defined
- The elements that drove the need for added funding was compelling
- The loss of purchasing power of the existing transportation revenues was clearly described
- The public attitude toward a transportation tax increase was felt to be supportive
- The governor was personally committed to a revenue increase
- The administrations marketing efforts had similar characteristics

In many ways, the transportation and revenue environments and marketing efforts were similar. This case study compares and contrasts these two initiatives to try to determine why similar marketing efforts were successful in one instance but unsuccessful in the other. What lessons can be learned?


1986
In 1986, Virginia had about 58,000 miles of state maintained highways making it the third largest highway network in the U.S. The “Bird Road Act” adopted in 1932 made the state responsible for construction and maintenance of Primary and Secondary highways. Cities were allocated road maintenance payments if they met certain state imposed standards. An “unmet” needs study was developed by the Joint Legislative Audit and Review Commission (JLARC) that was confirmed by a survey of local jurisdictions. The total estimated shortfall found during that study was about $16 billion.

In his “State of the State” address, Governor Gerald L. Baliles identified transportation as the top priority of his administration. Baliles aggressively set out to address what was
clearly understood to be a transportation “crisis”. He established a “Blue Ribbon” panel, the Commission on Transportation in the 21st Century (COT-21), and charged it to “confirm the critical highway and transportation needs of the Commonwealth; explore alternative means of financing transportation; and examine the feasibility of establishing a separate fund for highway construction.” He announced that he intended to call the General Assembly into special session to consider the COT-21 findings and recommendations.

COT-21 divided the study into four areas: Critical Needs; Financing Options; Legal Issues; and Industry Capabilities. As a matter of strategic importance, President Pro Tem and Chairman of the Senate Finance Committee Edward Willey chaired COT-21 (until his death); Senate Majority Leader Hunter Andrews (who succeeded Willey as Chairman) and Speaker of the House of Delegates A. L. Philpott were selected to lead various parts of the study. Thus began a six month process of establishing the rationale, justification, and support for a transportation revenue increase. COT-21 made several significant recommendations for change. The recommendations for revenue increases addressed both structural and sufficiency concerns. The principal tax measures included:

- A 3/4 percent increase in the Sales Tax dedicated solely to transportation—achieving a new revenue source that would address the tax “structure” problem by keeping pace with inflation,
- The gas tax was increased to $.175 cent per gallon—a one cent increase adding about $44 million to collections that along with a 1% increase in Titling Tax, valued at $150 million, addressed revenue “sufficiency”.
- Two trust funds were established—one for construction (the Transportation Trust Fund (TTF) and another for maintenance (the Highway Maintenance and Operating Fund (HMO).
- Finally, a $1 billion bond authorization backed by a pledge of the State’s total transportation revenue was adopted—along with a required constitutional test case. (The pledge bond was subsequently determined to be unconstitutional.)

During legislative consideration of the revenue increase, fifteen percent of the total revenue of the TTF was, for the first time, set aside for subsequent allocation to Transit, Ports, and Aviation. The remaining 85% was dedicated to highway system construction and maintenance.

The recommendations were adopted by the 1987 General Assembly with one significant change but not without considerable debate and disagreement. The sales tax increase was reduced to a ½% increase. The final agreement raised about $422 million a year.

The arguments during the Special Session about the revenue measure were not so much about how much to raise but how it was to be raised. The principal point of contention was whether to authorize a lottery and dedicate its proceeds to transportation purposes.
The lottery issue took nearly a week of debate before it failed. A second hurdle involved the House and Senate Conference Committee and a ruling of the Lieutenant Governor. The Lieutenant Governor is also the President of the Senate and rules on parliamentary questions. Efforts to include alternative taxes in Conference were dashed when a ruling was made that only tax measures originally part of a House or Senate adopted bill could be considered by the Conference Committee.

2004-2007
Eighteen years later, inflation had eroded the purchasing power of the 1986 revenue gain by about 55%. The $.175 cent 1986 gas tax was now valued at about $.08. Construction costs had rapidly increased during that period. The unmet need for transportation funds in the newest statewide needs analysis put the total at more than $68.4 billion with the highway shortfall at $57.4 billion. Use of the highway system had grown dramatically since 1986 as shown in Figure 1.

Figure 1

[Bar chart showing transportation system use compared to buying power (1986-2004)]
Newly elected Governor Timothy M. Kaine, recognizing a new “crisis” in transportation funding, announced an initiative to raise additional revenue for transportation through what he referred to as a “balanced program”. The description of a balanced program was murky at best but consisted of a collection of various sources of revenue.

The timing could not have been worse. There had been two significant events in the transportation policy environment. Both Northern Virginia and Hampton Roads voters had turned down referenda on transportation tax increases just a couple years earlier. In addition, a transportation tax increase proposed in a Senate sponsored bill in 2004, and strongly supported by the Senate Finance Chairman John Chichester had been dropped from consideration because of opposition of the Republican leadership in the House of Delegates—who stood on philosophical grounds opposing any and all tax increases.

In 2007, after years of contentious debate, the General Assembly finally adopted HB 3202 that permitted the Northern Virginia and Hampton Roads local governments to collectively raise revenues for transportation. In both regions a new local authority was established and was authorized to collect taxes as soon as feasible. As part of HB 3202, the legislature also adopted an “abusive driver” program which was to raise revenue by adding a penalty “fee” on top of driving violation “fines”. There was an immediate negative public reaction to the “abusive driver” program and the General Assembly repealed that portion of the revenue program in the next legislative session and refunded revenue collections.

The nature of the HB3202 tax program was a significant departure from traditional funding where the state imposed taxes for transportation and had responsibility for maintenance of the extensive system of interstate, primary, and secondary roads. In this case, the revenue was to be raised by local officials.

The most significant change in tradition was in the establishment of Urban Transportation Service Districts and Impact Fees. Those counties with populations greater than 90,000 were authorized to create “urban transportation service districts” in areas where density was at least one residential unit per acre. This classification applied to only Northern Virginia and Hampton Roads. The major features and complexity of the tax authorizations are described in the following discussion.

In general terms, the legislation provided that if transportation service districts were created:

- Localities (instead of the state) assumed maintenance responsibility for roads within the service district.
- VDOT would be required to make per lane mile payments to localities that established districts, equal to lane mile rate for cities.
• Localities could impose impact fees for public facilities that were impacted by residential development in areas outside of urban transportation service districts that were zoned agricultural and being subdivided for residential development.
• Localities could take as credit any off-site transportation improvements.
• Impact fees could be charged prior to issuance of a building permit and could be used for direct improvements to new development. 

**Hampton Roads Transportation Authority (HRTA)**

In the Hampton Roads region, HB 3202 created the HRTA as an independent political subdivision consisting of Chesapeake, Hampton, Isle of Wight, James City, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg, York. Implementation of local taxes was made optional. Accomack and Northampton could also become members but only after the Chesapeake Bay Bridge Authority was turned over to HRTA. The HRTA tax measures were to be locally imposed.

**HRTA Revenues**

- 2% retail gas tax
- 2% local car rental fee
- 5% sales tax on auto repairs
- Initial vehicle registration fee of 1% of vehicle value
- Increase vehicle inspection fee by $10
- Increase driver’s license fee by $10
- Created a classification of commercial real estate within the counties of the HRTA and established a commercial real estate assessment rate of 10 cents per $100 of assessed value.
- Imposed a Hampton Roads congestion relief fee based on the sale of property (grantor's tax) equal to 40 cents per $100 of assessed valuation.

Implementation of the local transportation fees required at least seven of the 12 localities (comprising at least 51% of total regional population) to submit a letter of intent to issue taxes prior to December 31, 2007.

It is important to note that each of the major tax increases fell directly on Virginia residents. Interstate travelers were given a “free ride”, quite different than any previous transportation tax discussion.

**Northern Virginia Transportation Authority (NVTA)**

In Northern Virginia, HB 3202 established NVTA as an independent political subdivision with full bonding and tolling authority and established a complex distribution process. Implementation of the local transportation fees required at least 6 of the 9 localities to submit a letter of intent to issue taxes prior to December 31, 2007. The distribution details of this legislation set up a complex process.
NVTA Revenue

- 2% transient occupancy tax
- 2% local car rental fee
- Increase annual driver’s license fee of $10
- One-time 1% vehicle registration fee
- Increase vehicle inspection fee by $10
- 5% sales tax on auto repairs
- Created a classification of commercial real estate within the counties of the NVTA and established a commercial real estate assessment rate of 25 cents per $100 of assessed value.
- Imposed a Northern Virginia congestion relief fee based on the sale of property (grantor's tax) equal to 40 cents per $100 of assessed valuation.

NVTA Fund Distribution Scheme

NVTA bonding authority was distributed 40% to localities and 60% to other NVTA projects. However, of the 40% returned to localities:

- The first 50% was distributed to Falls Church, Alexandria, and Arlington urban and secondary construction and public transportation
- The remaining 50% was for urban and secondary road construction largely at the discretion of the locality.

Of the 60% retained by the authority:

- NVTA was to appropriate debt service on bonds as needed.
- $50 million was to be distributed annually for the contribution to Washington Area Metropolitan Transportation Authority.
- $25 million was to be distributed annually for Virginia Railway Express capital improvements

Development

Assessing Need and Allocating Transportation Revenue

It is important to note again that transportation conditions as well as the need for revenue to address unmet need in 1986 and 2006 were similar in context although the magnitude of needs was substantially higher in the latter year.

The significance of measuring transportation needs in terms of revenue dollars (rather than projects) had been the criteria established in a study made by the Joint Legislative Audit and Review Commission (JLARC). JLARC had gathered data from the Department of Transportation and requested local governments to review and confirm whether the amounts included all known transportation projects in their respective areas. The total was valued at just over $16 billion during the study period. Legislation had also been adopted that unmet needs assessments would be measured and reported to the General Assembly.
every five years. The rationale used was that the appropriation of dollars was the job of the legislature, and unlike the differences in construction projects, it permitted an equitable allocation of dollars among counties, highway systems, and construction districts.

The allocation formula adopted at that time is shown on page 9. Conveniently, all new revenue raised in the 1986 initiative was dedicated for construction and placed in the Transportation Trust Fund (TTF) while all existing revenue was reserved for maintenance and placed into the Highway Maintenance & Operating Fund (HMO). Among other actions:

- For the first time, 15% of revenue was set aside for Ports, Airports, and Transit.
- The Virginia Department of Highways & Transportation was renamed The Department of Transportation (VDOT), and the Commonwealth Transportation Board (CTB) was expanded to 15 members.
- Also new was the authorization of $1 billion in “Pledge Bonds” which pledged repayment from the transportation revenue stream—meaning the first dollars deposited in transportation accounts would be the source of repayment. A court case was also included in the legislation to determine the constitutionality of this new funding mechanism. Subsequently, the “Pledge Bond” authorization was found to be unconstitutional (as was also the case in 1986). Efforts to introduce a constitutional amendment in subsequent years failed.

In 2004, when the Senate’s proposal for a transportation tax was deleted it was clear that philosophical opposition to any statewide tax increase was the hallmark of the House of Delegates leadership. After years of controversy, the political compromise that moved HB3202 was that local governments in Northern Virginia and Hampton Roads were authorized to levy taxes—the philosophical principle had been maintained.

There was no “statewide” revenue increase. Politically, however, it solved two political problems. The Governor was able to take the controversy associated with transportation off his agenda and the leadership of the General Assembly could say they dealt with the issues prior to the fall elections without raising a statewide transportation tax. But the legislation was quickly doomed by violent reaction to one part of the legislation which placed an “Abusive Driver” fee on top of the fines and fees. The balance of the bill was put to rest when the State Supreme Court declared the legislation as unconstitutional because it gave taxing authority to regional authorities composed of both elected and appointed officials. Virginia’s constitution requires any tax increase to be levied by elected officials.
Sponsors and Stakeholders
There was a considerable difference in the number of prominent individuals and organizations involved with the transportation finance issue in 1986 compared to the more recent efforts. With the COT-21 blue ribbon panel, a statewide list of as many as 30 potential “champions” for transportation finance improvements was established. COT-21
was composed of former governors, the Speaker of the House of Delegates, the President Pro Tem and Chairman of the Senate Finance Committee, and prominent citizens. In making these appointments, the Governor increased the likelihood of legislative support and reduced the likelihood of opposition to potential revenue recommendations.

The appointments to COT-21 were not without criticism. No Republican legislators were appointed and some geographic regions of the state were not represented. Two members of the General Assembly issued a statement that said in part “the politics of exclusion is and will not be acceptable. With the current makeup of the Commission, the report which will be received is likely to be viewed by the members of the Republican Party with the same skepticism as the appointments which were announced on Friday.” However, this criticism had little impact on the work of COT-21. COT-21 divided its work into two general emphasis areas—one for maintenance chaired by Speaker A.L. Philpot and one for Construction chaired by the Majority Leader of the Senate, Hunter Andrews.

During the period of development for COT-21, the Governor, Secretary of Transportation and Public Safety Vivian Watts, Transportation Commissioner and Chairman of the Commonwealth Transportation Board Ray Pethtel, and Secretary of Finance Stuart Connock conducted an almost full-time “road show” around the state. At each stop, included in the speeches were lists of projects that would be built with additional funding as well as identification of projects that would not be built unless there was additional revenue.

Governor Baliles also formed a Better Transportation Association, consisting of some of the state’s most influential businessmen. The CEO’s of Dominion Resources, CSX Corporation, Sovran Bank, Wheat First Securities were among the appointees.

Interestingly, and perhaps just as supportive, was the fact that several Republican legislators introduced a tax proposal (an anticipated windfall from federal income tax reform) thereby recognizing the validity of the need for additional funding. Additional Republican political support came from Virginia’s congressional delegation. Senator John Warner, Representatives Stanford Parris, Frank Wolf and William Whitehurst endorsed the roads program along with five Republican congressional district chairpersons.

From 2004 through 2008 campaign efforts were somewhat similar in approach—except that Governor Kaine held “town hall” type meetings (instead of project related meetings) and focused most of his presentations on the general “transportation crisis”. For example, during January 2008 the Governor held sessions in Lynchburg, Falls Church and Virginia Beach. In a fashion similar to the 1986 initiative, Governor Kaine would include references to important and (usually) highly popular road projects that would be built if there were additional funds.
Three transportation lobby groups played a major role in promoting the transportation initiatives.

The Virginia Road and Transportation Builders Association and the Virginia Aggregates Association teamed up in 2004 to fund a massive public-awareness campaign designed to outline the details of the state’s transportation situation and garner citizen feedback based on potential solutions and funding options for the state’s transportation system.

Between the two groups, nearly $1 million was infused into the statewide program, which offered education sessions on the short- and long-term effects of the state’s transportation situation.

A second transportation advocacy organization was also on the scene. The organization was called the Virginians for Better Transportation (VBT). It described itself as a diverse and expanding advocacy group working to implement statewide, multi-modal transportation solutions through increased, dedicated and sustainable funding and responsible business practices. VBT conducted a public awareness campaign to educate Virginians about the Commonwealth’s transportation funding challenges and the essential role transportation plays in the quality of life of all citizens. The tag line used by the organization continues to be “it’s time”—it’s time to address Virginia’s transportation funding crisis.

VBT’s web site carries a number of statements illustrating why Virginia has a “transportation crisis” and includes speeches, PowerPoint presentations, and other resources available to interested individuals. During the 2008 legislative session and up to date, VBT has sent 16 “blast emails” to prominent citizens and key transportation decision-makers.

The Greater Washington Board of Trade also played an important role in Northern Virginia. The Board adopted transportation as its top priority. Its Virginia political action committee met regularly with 18 other business organizations that coalesce around a unified message and strategy for promoting transportation funding. Members of this group met one-on-one with each member of the Northern Virginia legislative delegation asking them to support and sponsor meaningful funding initiatives and to actively work toward their passage. In addition the committee lobbied members of the House and Senate Finance Committees where the bills were considered and voted on.

**Communications/Marketing and Lessons Learned**

From afar, the perspective of the two initiatives looks very similar—yet one succeeded and the other failed. Probably the most important lesson one can learn from the two different transportation revenue initiatives was in the preparation of the 1986 initiative and the philosophical opposition of legislative leaders during 2004-2008.
Preparation
COT-21 gave the administration and its supporters the time to focus attention on all transportation decision-makers. Nearly all issues and questions associated with the efficiency of the administration of the Department, its programs, and its capability to manage such a large program as well as the capacity of the construction industry to add such a sizable construction program were dealt with over the nearly six month period. Everyone who would eventually have to vote on the revenue measure had an opportunity to have their opinions “on the table”. Based on the earlier allocation changes, a majority of members were “winners” in the distribution of funds.

Champions
The 1986 initiative was championed by the Governor, the Secretary of Transportation, the Secretary of Finance, and the Transportation Commissioner each of whom made numerous visits to communities where local transportation projects were needed. Although a record of the total number of visits was not kept, it has been estimated that the number of visits collectively was between 50-75. Many of the members of COT-21 helped champion the need for a tax increase during the course of the initiative and added project relevant local support.

No Surprises
Virtually everyone in each community knew a revenue measure was “on the table” and what they could expect in return for their support. There were no surprises when the legislation was introduced. The COT-21 process was aggressive enough that it gained support from the Speaker of the House of Delegates and the Chairman of the Senate Finance Committee. Any prospect of philosophical opposition was limited to individual legislators—not leadership.

Political Philosophy
During the most recent initiatives, the political philosophy of the leadership in the House of Delegates flatly opposed any statewide tax increase. It just was not the right time to introduce legislation that did not have widespread involvement. According to the House Majority Leader, there was little effort to develop legislation that was built on what individual legislators would find acceptable. As a result, a bill could not be passed until an acceptable compromise could be reached that preserved the principles of the Republican House of Delegates leadership.

Local Projects
During each visit in 1984, the Governor and others identified specific projects that would (or would not) evolve from the transportation revenue. These visits energized the local advocates for transportation improvements. A statewide list of “projects of importance” was developed with legislative and local participation and distributed widely by the statewide and local media. Delegate Raymond Guest, the House Minority Leader noted
that “highway issues traditionally have been decided on the basis of what legislators think is best for their districts, rather than on partisan or ideological lines." However, since the administrations “road show” had identified hundreds of new transportation projects, and since every legislative district gained new road projects, the Republican delegation was effectively co-opted out of its potential role as opponents of the COT-21 program. One Republican legislator commented after the special session that “…constituents can’t see an efficient use of their tax dollars, but they can see new roads”.

Additional References


Nutter, David, Interview by Ray D. Pethtel, Member of the Virginia House of Delegates, Blacksburg, Virginia, (April 20, 2009)


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1 A Status Report on Transportation in Virginia, July 26, 1989, Senate Finance Committee, Virginia General Assembly, Richmond, Virginia
2 Structural issues related to the inability of a cents per gallon gas tax to keep up with inflation and difficulty with cash flow; Sufficiency issues related to raising a substantial revenue sum to address “unmet” needs.
3 [reference is missing]
4 Source: Presentation, Barbara Reese, Virginia Transportation Conference, 2004, from data supplied by Weldon Cooper Center.
5 Transportation Bill Analysis by the Joint Legislative Audit and Review Commission, HB 3202 Governor’s Amendments.
7 Bowman, “The Baliles Transportation Initiative in Virginia”.
8 Bowman, “The Baliles Transportation Initiative in Virginia”.
10 Bowman, “The Baliles Transportation Initiative in Virginia”.
11 Bowman “The Baliles Transportation Initiative in Virginia”