

BACON'S REBELLION

The Op/Ed Page for Virginia's New Economy

Seventy-five Years

Virginia's system for building and maintaining roads has changed little in three quarters of a century. Some people think it needs more money. Others think it needs an overhaul.

By James A. Bacon

In 1932 the Byrd organization in Virginia created the system for building and maintaining state roads that, but for minor modifications, remains in place today. Some people say there's nothing wrong with the system that more money can't fix. But others believe that Virginia's road-building arrangements have failed to keep pace with 75 years of social and economic change, and need to be restructured from top to bottom.

Among those who argue for far-reaching reform is Speaker of the House William J. Howell, R-Stafford. "Current laws that govern how government agencies operate, the Commonwealth's relations with its localities, and the manner in which we address funding for roads date back all the way to the 1930s," he said when addressing the House Counties, Cities & Towns Committee Sept. 25. "Any plan to improve transportation that ignores one of the root causes of clogged roadways – namely, Virginia's 70-plus-year-old government land use policies – is inherently inadequate, short-sighted and flawed."

At the other end of the philosophical spectrum is Sen. John H. Chichester, R-Northumberland. In a Sept. 24 column in the *Free Lance-Star*, the powerful Senate

Finance chair did give lip service to reform: "We need a two-prong approach: reform and revitalization." But he made it clear that the modest reforms enacted in the regular session of the General Assembly are all that is needed.

Wrote Chichester: "The General Assembly made progress on the reform front. We passed laws that better connect land use and transportation planning; laws



that require performance measures to be used to reduce traffic congestion and improve traffic safety; and laws that promote private investment through partnering opportunities. *We do not need more legislation to do what has already been done.*" (My italics.) What Virginia needs now, he wrote, is more revenue: both on a regional level in Northern Virginia and Hampton Roads and additional revenues "in the billion-dollar range" to address state-wide needs.

Straddling the fence is Gov. Timothy M. Kaine. The Governor campaigned on the theme that Virginia "can't build its way out of traffic congestion." Kaine continues to ask many of the same questions as Howell: Can Virginia create a more efficient transportation system by redefining the responsibilities of

state and local governments for maintaining and building roads? But he also has aligned himself with Chichester in pressing for a dedicated stream of new taxes.

The principles at stake should be crystal clear. Yet the general public has no idea what those issues are because the Mainstream Media, both in its journalistic coverage and its editorial commentary, for the most part has grotesquely oversimplified the debate. The cartoonish characterization pits practical-minded politicians (Kaine and Chichester) who want to solve Virginia's transportation problems through the only way possible, raising taxes, against ideologues and obstructionists (Howell and his allies) who oppose taxes and offer no substantive alternative.

Whether Virginia's journalists have been blinded by their partisan sympathies or they're simply too lazy to dig deeper than the daily sound bites, I will not speculate. In either case, Virginians are the victims of journalistic malpractice. Virginia's daily newspapers, with a handful of exceptions, persist with a taxes/no taxes narrative that becomes more detached from reality with each passing day. (For details on the worst offenders, peruse the [Bacon's Rebellion blog](#).)

Bacon's Rebellion will do its best to fill the void. This column is the first of three that will endeavor to describe the transportation debate that is now unfolding. In this column, Part I, I will provide a historical perspective and outline the broad issues at stake.

In Part II, I will focus on a particular issue that appears to have reached critical mass: Who should be responsible for building and maintaining secondary roads in Virginia's urban counties -- the state or the counties? I will look at what's happening already in places like Prince William County, Spotsylvania County and the City of Suffolk, as well as legislation submitted to the House of Delegates and carried over until the 2007 session.

And in Part III, I will zoom in on a proposal that's more of a long shot: House legislation, also to be carried over to the 2007 session, that would create Urban Development Areas. The purpose of these growth-management districts would be to encourage more transportation-efficient patterns of development.

Regardless of how you judge the merits of the House legislation, I think you will agree that the sponsors are addressing real concerns. The legislative package is not just "a cover" to avoid raising taxes, as charged by the shriller critics and parroted uncritically by the Mainstream Media. Spokesmen for key constituencies -- the conservation lobby, the home builders, local government, even members of the Kaine administration -- have expressed a willingness to participate in the dialogue about the House proposals. That dialogue will occur, whether the MSM chooses to cover it or not.

Del. Clifford L. "Clay" Athey, Jr., R-Front Royal, is one of the leading land use authorities in the General Assembly. Not only did he serve as mayor of Front Royal but he is the only practicing land use attorney serving in the legislature.

To understand how Virginia's

transportation system works, Athey insists, you have to go back to 1932, when VDOT took responsibility for building and maintaining most of the state road network. Before 1932, all cities, towns and counties maintained their own secondary roads, while the state was responsible for the major arterials that sewed the state together. But the Great Depression pushed many counties to the edge of bankruptcy. The landmark legislation known as the "the Byrd Road Act"⁽¹⁾ transferred authority for most roads to the state. Only cities and towns with more than 3,500 people were exempted, along with Arlington and Henrico Counties, which opted out.

Back then, says Athey, the largest city in Virginia was Richmond, with 85,000 people. Seventy-five percent of the population lived on farms -- and most secondary roads were farm-to-market roads, not used for daily commuting. The system worked pretty well as long as Virginia remained mostly rural, he observes, and even as the state began to urbanize in the 1940s and 1950s.

The state constitution recognized the dichotomy between urban and rural settlement patterns by giving cities and towns the taxing power to provide urban amenities such as water and sewer. Counties, by contrast, possessed taxing authority to support little more than courts, jails and schools, Athey says.

Fifty to sixty years ago, most new development in Virginia was compact, and it usually adjoined existing development. When growth occurred, cities and towns annexed the territory and extended water and sewer service to the population. Simultaneously, VDOT transferred road-maintenance responsibility to

the cities and towns, paying what amounted to a stipend per lane-mile to offset the cost. If cities wanted to maintain roads to a higher standard than VDOT, they could at their own expense. It wasn't perfect, but as Athey says, "The system had a way of dealing with urbanization."

The Byrd system began to break down in the 1960s. "Counties wanted to get into the game," explains Athey, and they pushed for legislation that altered the dynamics of growth.

To bolster their tax bases, counties won the right to create Industrial Development Authorities that would help them attract industry. Most manufacturing facilities required water and sewer connections, so counties then won the right to establish water and sewer authorities. The emancipation of subdivision developers from city water-sewer systems opened up much of the countryside for scattered residential development.

Most notable of all, counties challenged the cities' right to annex their developed areas, arguing that cities were skimming the cream of the county tax base. In the 1960s and 1970s, counties gained incongruous allies in the Civil Rights movement. The white power structure in Virginia cities, some argued, annexed white population centers to dilute black voting strength. By the late 1970s, Virginia cities had lost the right to annex.

As urban growth accelerated, city dwellers spilled into the counties, bringing expectations that local governments should provide an urban level of services. Thus arose a new type of political jurisdiction in Virginia: the urbanized county. (In Hampton Roads, where former cities and counties merged and took

the city form of government, Virginia Beach, Chesapeake and Suffolk could be described as rural cities.)

While these changes were taking place, Athey observes, VDOT remained in charge of building and maintaining county roads. For the most part, counties were happy to let VDOT continue picking up the tab. What arose, however, was a disjunction between transportation planning and land use planning. Fast-growth counties adopted zoning codes that mandated the separation of residential, retail, office and industrial land uses. The mixed-use pattern of cities and small towns went out of fashion: Segregated land uses meant that different modes of human activity -- living, working, shopping -- were physically separated. Far-flung modes of activity had to be connected with roads... roads paid for by the state.

Counties also enacted subdivision ordinances, setting development standards for residential subdivisions. In theory, subdivision streets can be maintained by homeowner associations. But counties don't want to be on the hook if the associations fail to deliver. To protect themselves, many counties required subdivision streets to be built to VDOT standards so VDOT could take them over. The consequence of that decision, critics argue, is that many subdivision streets are over-engineered for the traffic they generate.

Localities also have been content to see development occur in the form of disconnected "pods" of cul-de-sac subdivisions, strip malls and office parks (See "[Pod People](#)," April 2, 2006). Counties could ignore the fact that these disconnected pods forced people onto a limited number of collector roads as long as VDOT, not

the counties, had the responsibility for upgrading those roads.

Worst of all, counties have made zoning decisions and approved subdivisions with no thought to how expensive the road networks will be to maintain. For instance, a townhouse community of 100 households might require a quarter mile of publicly maintained roadway to connect it to the public road network. The same 100 households in a down-zoned area of five-acre lots might require 20 times the number of lane-miles and incur 20 times the ongoing expense. Many localities use large lot sizes as a tool to slow growth but they do so knowing that someone else -- the state -- will pay the cost of maintaining the infrastructure.

The cumulative result of these and other trends -- including the transformation of Interstate highways into local commuter roads, and the development of home financing systems that favor subdivision-tract development -- has been the scattering of human settlement patterns. In regions like Northern Virginia and Hampton Roads, responsibility for providing infrastructure to the amorphous, disconnected mass is fragmented between VDOT and a dozen or more local-government jurisdictions.

Virginia's governance structure, adapted to a mainly rural economy, has failed to keep pace with changes to human settlement patterns over the past 75 years. So also have the institutions responsible for building and maintaining state rails and roads.

Most observers agree that the system cannot sustain itself at the current level of funding. Maintenance costs are soaring and will, in the not-too-distant

future, consume all state-generated road revenues. Traffic congestion is paralyzing Northern Virginia and Hampton Roads, and existing sources of funds fall far short of what is needed under the existing tax-build-spend transportation paradigm to complete the megaprojects deemed necessary to relieve the gridlock.

In November 2004, the Warner administration, produced a long-range transportation plan for Virginia entitled "VTrans 2025." Among the startling conclusions: The state anticipated transportation revenues of \$95 billion over the next 20 years -- *\$108 billion short* of what was needed. To continue Business As Usual would require more than double the funds available, or an average of \$5.4 billion more a year!

Judging by their public rhetoric, Sen. Chichester and his allies believe that injecting a meager \$1 billion or more into the system can keep the system going without the need for messy structural changes. Gov. Kaine is more realistic. He wants the \$1 billion a year, but he also acknowledges a need to patch the system. Speaker Howell and Del. Athey go further: They think the system is hopelessly antiquated. They're not willing to raise general taxes to perpetuate a system that no longer works.

The House leadership has called for a three-pronged approach to transportation:

- **Reform VDOT** through outsourcing, privatization, devolution of responsibility for secondary roads to counties, the implementation of performance standards and changes to the Commonwealth Transportation Board governance structure. By achieving efficiencies and

setting priorities, the thinking goes, the state can make its transportation dollars go further.

- **Enact land use reforms** that would incentivize local governments to take into account the transportation impacts of their land use decisions. The hope is that local governments will favor more transportation-efficient human settlement patterns.

- **Tap General Fund budget surpluses** and borrow against the state's AAA-rated bond capacity to raise funds to pay for priority road projects.

In the regular General Assembly session this spring, lawmakers passed two significant pieces of legislation advancing this agenda. One bill allowed builders to "cluster" their houses on smaller lots. For example: If a developer was laying out a 20-house subdivision zoned for five-acre lots, totaling 100 acres, he could cluster the 20 houses on 20 acres, and leave the rest as open space. In theory, that should economize on the lane-miles of subdivision road and other infrastructure -- water, sewer, electricity, cable, telephone lines -- that must be built.

The other reform requires VDOT to conduct a traffic impact analysis of major rezoning proposals in fast-growth counties. Although the law has no legal teeth -- there are no sanctions on counties that ignore VDOT warnings -- a controversial pilot project demonstrated this summer that VDOT can startle people into looking at the long-term implications of land use decisions. A political firestorm erupted in Loudoun County when a VDOT analysis con-

tended that increasing housing densities in the Dulles South area would plunge parts of Loudoun, Fairfax and Prince William Counties into gridlock over the next 20 years.

However, Gov. Kaine backed off a key plank of his gubernatorial campaign that helped him win Northern Virginia swing voters and arguably accounted for his victory. The plan, backed by leading conservation groups, would have given local governments more authority to block rezoning requests if the resulting development would swamp the capacity of the local and regional road networks.

While Sen. Chichester argues that the spring 2006 legislation is sufficient, the House Republican Caucus believes that reform has barely begun. As I will explain in Part II, the House would create Urban Transportation Service Districts to incentivize fast-growth counties to take over maintenance of sections of their own secondary roads. Urban Development Areas, the subject of Part III, would require counties to designate areas for growth to occur and would make it easier for developers to build the kind of walkable, mixed use communities found in cities and towns before conventional zoning codes regulated such development out of existence.

In sum, two inter-related debates are occurring simultaneously: How do we reform the system, and how do we pump more money into the system? The media has covered only one of those debates -- the money angle -- and it has succeeded in mischaracterizing that one.

Gov. Kaine, Sen. Chichester and their allies want to raise \$1 billion a year statewide, plus hundreds of millions more on a regional basis, in "long-term, sus-

tainable funding sources" to feed the system. But they've declared that the money cannot come from the General Fund, where it would "steal" from schools, health care and other priorities. This much the press corps manages to understand.

What the Mainstream Media omits is context. No one questioned the assertion that diverting monies from the General Fund budget would deprive schools and health care in a budget that is projected to increase from \$13.8 billion in 2005 to \$17.0 billion in 2006 -- *30.4 percent over three years.*

At the same time, Gov. Kaine and his allies have declared that the money can *not* be raised from the most logical source: the gas tax. The gas tax has a peculiar virtue: By increasing the cost of driving additional miles, it does more than fund road maintenance and construction. It encourages Virginians to carpool, take the bus, telecommute, move closer to walk or pursue other transportation alternatives. No, rather than increase the gas tax, Kaine, Chichester and others proposed taxing obscure items such as insurance premiums and car registrations -- apparently in the hope that taxpayers simply won't notice.

The House of Delegates, which also refuses to touch the car tax, is guilty of the same flawed thinking. The difference is that Bill Howell and his associates consider it unconscionable to raise taxes when state government is so flush with cash. Instead, the House would divert discrete revenue streams from the General Fund and borrow against the state's ample bonding capacity to pump money into the system for the next two years. Unlike the Kaine/Chichester approach, the House

does not offer a new, long-term source of tax revenue. Instead, House leaders hope to finance big transportation projects by soliciting bids from the private sector under the aegis of public-private partnerships that would pay for construction costs through tolls. With tolls, at least, there is a rational nexus between those who use the new facilities are the ones who pay for them.

In the long run, I have argued, the most logical sources of "reliable, long-term sources of revenue" are the gas tax and congestion tolls. The gas tax should be structured to cover the ongoing cost of maintaining the state road network. I believe that motorists would be willing to pay higher gas taxes if they knew the money was be applied to road maintenance, not to build boondoggle projects in some other part of the state. Congestion tolls would allocate scarce roadway capacity during rush hour, keeping traffic moving at optimal speeds all the while and generating toll revenues that could be used to fund capacity-enhancing improvements in the same transportation corridor.

As determined as it may be to restructure Virginia's road-building system, the House leadership hasn't reached the point where it's willing to endorse congestion tolls. But the Federal Highway Administration wants to fund a pilot project, and at least one House member, Del. Chris Saxman, R-Staunton, has been agitating to bring the project to Virginia. And even the Kaine administration has backed the idea of congestion tolls as a mechanism to fund the construction of new lanes on Interstate 95 and the Washington Beltway.

The fiscal controversy isn't taxes

or no taxes, as the Mainstream Media has portrayed it. The issue is *who pays*. The philosophical issue boils down to this: Should the state strive simply to match increases in traffic with increases in transportation capacity, or should it structure the taxes/tolls in such a way as to encourage Virginia motorists to drive less?

As Virginians think about their transportation future, they must delve deeper than the simple-minded tax/no-tax mantra of the Mainstream Media. The larger question is this: Can Virginia afford to continue down the road of Business As Usual, or should lawmakers to re-think the state transportation system from stem to stern?

-- **October 9, 2006**

(1) For an account of the 1920s- and 1930s-era controversies over road funding in Virginia, see "[Senator Harry Flood Byrd of Virginia: the Pay As You Go Man](#)," by Richard F. Weingroff on the Federal Highway Administration website.

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