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## Transportation Funding Takes a Big Hit

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By Timothy R. Hughes and Alison R. Mullins

**February Virginia Supreme Court decision could slow development in Northern Virginia.**

In a February 2008 decision, the Supreme Court of Virginia struck a severe blow to transportation funding in the state. The Court ruled that a transportation funding bill passed in 2007 violated the Constitution of Virginia. The resulting damage to transportation funding will severely impact local development throughout the Washington Metropolitan Area and in particular Northern Virginia.

**Background** In 2002 the Virginia General Assembly created the Northern Virginia Transportation Authority. The NVTA includes several Northern Virginia localities, including the counties of Alexandria, Loudoun, and Prince William, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. The NVTA is a political subdivision with the limited power to enable legislation addressing certain regional transportation issues in the localities it encompasses.

In 2007, the General Assembly enacted legislation giving the NVTA authority to impose seven new regional taxes and fees. The NVTA anticipated generating \$300 million in funds for transportation funding. The NVTA planned to issue bonds secured by this funding for local transportation projects.

**Don't Spend the Money Yet** Several plaintiffs filed suit in Virginia state courts alleging that the transportation funding bill violated the Virginia Constitution. The plaintiffs challenged the NVTA's authority to impose taxes. According to the Virginia Constitution, only an elected body has taxing authority.

The General Assembly had defined several components of the transportation funding as "fees" not "taxes." The Court quickly rejected any distinction between fees and taxes specifically stating that, "We consistently have held that when the primary purpose of an enactment is to raise revenue, the enactment will be considered a tax, regardless of the name attached to the act."

The NVTA defended its authority to impose taxes by outlining the fact that, "NVTA's power to impose the regional taxes and fees, as authorized by [the enactment], does not constitute a 'true' delegation of legislative authority because the General Assembly



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specified the subject of the regional taxes and fees, dictated the amount or rate of the taxes and fees, and mandated that the >>

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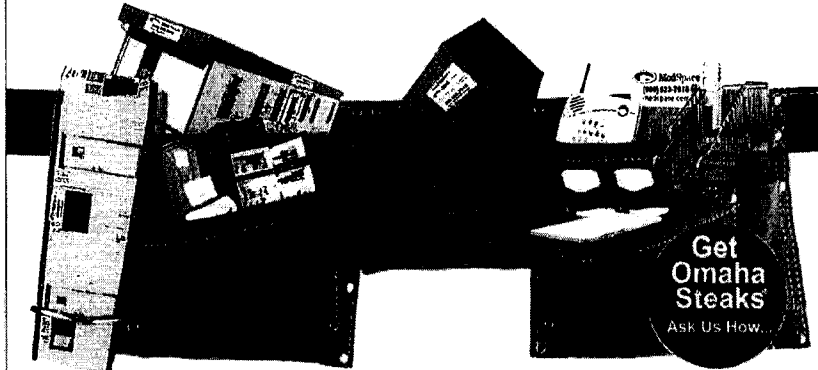
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revenue derived be spent in a certain manner." The Supreme Court of Virginia disagreed. Although the General Assembly retained the ability to amend or repeal the regional taxes and fees, by the terms of the enactment the sole discretion to impose the regional taxes and fees rested with the NVTA. Consequently, the Court ruled that provisions of the enactment permitting the NVTA to impose regional taxes and fees were invalid.

**The Ripple Effect** The major blow this decision deals to Virginia transportation funding will be felt by many. Planned projects to improve roadways in the Northern Virginia localities encompassed under the NVTA will be seriously impacted, delayed or terminated. There will be other repercussions as well. The planned improvements funded by the collected taxes and fees would have provided a substantial number of jobs. The Northern Virginia geographic region, a job creation and economic powerhouse for the Commonwealth for years, may now find that business and economic engine crippled due to severely deteriorating transportation conditions and resulting loss of quality of life. The invalidation of the regional transportation funding, together with the possibility of losing federal funding for the proposed expansion of the Metro rail lines to Dulles Airport, is sending shock waves through the development industry in the Northern Virginia localities and surrounding areas.

**Finding Funding** It is yet to be seen how the surrounding localities will handle the lack of funding for planned projects. There are rumblings in Richmond of potential effort to hold a special legislative session to respond to the funding problems left unresolved by the Supreme Court's decision. While no remedial plan is yet in place, individuals and entities involved in the industry should remain vigilant to the potential ramifications of transportation and its funding in Virginia. <<