

## **VIRGINIA GENERAL ASSEMBLY GAINS MOMENTUM IN SECOND WEEK**

### **“Budget and Politics Still the Lead in 2009”**

The first full week of the 2009 session of the Virginia General Assembly ends today. Today also marked the last day for state lawmakers to introduce bills to have them considered. Legislative Action was interrupted on Monday afternoon and Tuesday of this week with many state legislators traveling to Washington, DC for the inauguration of President Obama.

As of this writing, over 1,900 bills and resolutions have been introduced to this session. Some Capitol Observers have suggested that many may be Brochure Bills for the 2009 elections that will be conducted for the 100 seats in the House of Delegates and statewide offices (governor, lieutenant governor and attorney general).

On the political side, the Republican House Majority has failed to seat Democrat Charniele Herring, who defeated Republican Joe Murray by 16 votes in a Special Election last Tuesday. Last Wednesday morning, Murray contested the close election. Every day of this week, motions from House Democrats to seat Herring have been defeated on party-line votes, with the House majority preferring to wait to seat her until after an official recount can be conducted.

This week also saw the budget writing committees of both houses conducting hearings on the state budget. Budget writers and the governor have been projecting the need to cut the state budget by \$2.9 to \$4.0 billion. The final number will be set on February 15<sup>th</sup> when more current revenue trends will be available. The mood in the halls of the General Assembly Building and State Capitol is somber as all (legislators, interest groups and their representatives) seem to be waiting for that shoe to drop. The question on everyone’s mind is not if their favorite state project or service will be cut, but by how much!

The 99 members of the House of Delegates and the 40 members of the State Senate will be considering significant cuts to core state services (public education, higher education, public health and transportation) this session. The leadership of both houses of the assembly made it clear long before the session convened that any new demands on state resources would not be well received.

Two other new members were seated in the House Counties, Cities and Towns Committee, that considers much housing legislation, this week. Republican Barry Knight of Virginia Beach was seated on the important committee to HBAV to succeed Terrie Suit, who resigned to accept a lobbying position with a highly-regarded lobbying team. Former Richmond City Councilwoman Delores McQuinn was seated on the committee to succeed long-time Delegate Dwight Jones, who was elected Mayor of Richmond in November. In early discussions with Delegates Knight and McQuinn, their local government and land ownership experience makes them seem well qualified to serve on that important committee to the members of HBAV.

\* \* \* \* \*

The 2009 session of the Virginia General Assembly will be a so-called Short Session, or last 45 days. It is scheduled to adjourn on February 28<sup>th</sup>. During the short period, over 2,000 bills and resolutions will be considered by the 139 members. Many state legislative proposals will impact the housing industry, both good and bad.

HBAV will have four full-time representatives on the job at the State Capitol and the General Assembly representing the interest of the 5,300 companies that make up the Home Builders Association of Virginia. HBAV staff members Mike Toalson and Barrett Hardiman and HBAV counsels William G. Thomas and Maureen Stinger of ReedSmith will be defending and promoting the housing industry to the numerous committees of the House of Delegates and State Senate.

## **2009 HBAV AGENDA INCLUDES 4 MEASURES**

The HBAV Legislative Agenda, crafted by the HBAV Legislative Committee includes four bills. The committee is chaired by Bill Garrett of Richmond and includes members from each of the 16 HBAV affiliated local associations. The committee is also charged with establishing policy on all matters introduced to the annual sessions of the state legislature. The committee meets weekly during the legislative sessions.

**House Bill 2077, by Delegate Glenn Oder of Newport News,** is a plan validity extension measure. It would extend the validity of any proffer, subdivision plat, plot, preliminary plan, final plan, conditional use permit, special use permit, special exception, construction plan, public improvement plan, site plan, or any other land use document or action that is valid and outstanding as of January 1, 2009, for a period of five years from its current expiration date, and any deadline or scheduled event specified in such document or action is extended for a period of five years, regardless of whether such expiration or schedule exists by operation of statute, proffer, permit, local ordinance, or local custom. **House Bill 2077 has been assigned to the House CC&T Subcommittee #2, chaired by Delegate Danny Marshall, for further review.**

**House Bill 2029, by Delegate Danny Marshall** would “temporarily” reduce the 25% bond administrative fee to 10% above the estimated construction cost. This legislation will reduce a landowner’s cost and increase his borrowing capacity. **House Bill 2029 has been assigned to the House CC&T Subcommittee #2 for its next stop in the state legislative process.**

**Senate Bill 1276, by Senator Steve Martin and House Bills 1788, by Delegate Hull & House Bill 2294, by Delegate Merricks** would prohibit a locality from not allowing the use of “alternative” or “non-conventional” on-site wastewater treatment systems that have been approved for use by the Department of Health. The legislation would also prohibit localities from imposing maintenance requirements on such systems more stringent than required by the Department of Health, or in their absence, manufacturer’s recommendations.

**House Bills 1788 and 2294** were considered by the House CC&T Subcommittee #2 on Thursday morning of this week. HBAV appeared in support of the measure and a long list of localities and environmental organizations appeared in opposition to the HBAV requested bills. **Both bills were combined in HB 1788.** Most of the opposition focused on the section of the bill that prohibited localities from imposing more stringent maintenance requirements than state regulations or guidelines or manufacturer recommendations. That maintenance guidance is currently being revised into regulations, and they are not scheduled to become final until later this year or early next year.

Consequently, HBAV was requested by the Subcommittee to redraft the bill to make the prohibition on more stringent local maintenance effective upon the final promulgation of state maintenance regulations by the Virginia Department of Health. **HB 1788 will be reconsidered by the CC&T Subcommittee next Thursday morning.**

**Senate Bill 1276** was assigned to the Senate Committee on Local Government this week, and was not docketed for consideration for the regular Tuesday afternoon meeting this week.

**Senate Bill 1335, by Senator Richard Stuart of Stafford** would allow, not require, a local government to waive the requirement for a public hearing in their consideration of an amendment to an existing proffer. Such a waiver could significantly decrease the time required to approve such an amendment.

Many proffers that have been volunteered to local governments in conjunction with a rezoning or other land use decision have dates or triggers that either requires a payment to be made or some other action to take place. Most of those dates or triggers in many proffers were volunteered at a time in the Virginia economy when there was high demand for new housing and that demand had been forecast to continue far into the future.

**Senate Bill 1335** was assigned to the Senate Committee on Local Government this week and will be considered by the 15 member standing committee of the upper chamber in the near future.

\* \* \* \* \*

## **NO IMPACT FEE BILLS – NO APF BILLS**

For the past 15 years, HBAV and the 16 HBAV affiliated local associations, has fought very hard to block a wide variety and a long list of bills that would grant local governments the “authority” to implement a local Impact Fee Ordinance and a local Adequate Public Facility ordinance.

**As of writing (the eve of the bill introduction deadline)**, only one impact fee bill has been introduced to the 2009 session of the state legislature. That measure (House Bill 1728) would amend the current road impact fee law to allow local governments to exempt or reduce impact fees for commercial development in their local ordinance. The current road impact fee law, that was expanded to most growing localities in 2007, by Governor Kaine, requires all types of land use, including residential, commercial and industrial use, to pay road impact fees, if implemented by local ordinance. That clear requirement in the road impact fee statute has limited the implementation of road impact fees in some localities. In the past, many localities have had an eagerness and willingness to tax new housing, but fear imposing that expensive tax on business will result in less expansion of their business tax base. **HBAV will vigorously OPPOSE HB 1728 when it is considered by the House Counties, Cities and Towns Committee.**

\* \* \* \* \*

The embattled membership of HBAV genuinely appreciates the lack of bill introductions this session that would impose new taxes (Impact Fees) on our struggling industry or attempt to limit the number of new homes the business could build based solely on a localities determination that public facilities were not adequate (APF) to serve the new housing. With so many struggles facing the home building business right now, we will just accept the fact that very few Impact Fee and APF bills were introduced as they “get it” for now! They (high growth localities and their state legislators) understand for now, that the home building industry is critical to their local economies and the state economy. They understand that without a healthy and growing housing industry, the economy of the whole declines, unemployment rises, home values fall, banks fail and their revenues decline.....Do they have long or short memories? Time will tell!

### **Other Dangers Linger!!!!**

Yet, there remain many threats to the housing industry in the 2009 session of the state legislature! Listed below is just a partial list of House Bills and Senate Bills that could negatively impact the home building business this year.

**House Bill 1582, by Delegate Algie Howell. Employees of home access businesses; penalty.** Requires the owner or operator of a commercial establishment that provides a service that requires the establishment's employees to regularly enter the interior area of the residence of its customers to conduct a criminal background check of employees whose regular duties can reasonably be expected to require entering the interior area of the residences of establishment's customers. Effective September 1, 2009, employers are required to complete a criminal records check on prospective employees, but an employer is not prohibited from hiring an employee on the basis of the results of the criminal records check. Employers are required to keep copies of the fingerprints and records check for such employees. Employers shall provide identification badges to employees and require the employees to wear the badge when they are expected to enter customers' homes. Violations constitute a Class 3 misdemeanor.

**House Bill 1640, by Delegate Bob Marshall. Form of deeds and deeds of trust.** Provides that when a corporation, partnership, limited partnership, business trust, or limited liability company is the grantee of a deed or the grantor of a deed of trust, the deed or deed of trust shall contain the names of the registered agents and the directors, officers, partners, etc., of these various business entities.

**House Bill 2096, by Delegate Orrock. Board for Contractors; definition of tradesman.** Adds building framers and masonry contractors to the definition of tradesman, thereby requiring these individuals to be licensed by the Board of Contractors.

**House Bill 2563, by Delegate Cole. Street construction.** Allows localities to withhold acceptance of plat approvals if the applicant has other projects in the locality with streets not completed or on track for completion as required by the approved plans for that project before said developer or subdivider will receive approval of a new subdivision or development plan. Further allows localities to withhold partial and final complete release of any performance guarantee if streets in the plan have not been accepted by and taken over for operation and maintenance by the authority responsible for maintaining and operating such public facility.

**Senate Bill 853, by Senator Edwards. Carbon monoxide detectors in certain buildings.** Provides that any locality may, by ordinance, require carbon monoxide alarms be installed in (i) any building containing one or more dwelling units, (ii) any hotel or motel regularly used, offered for, or intended to be used to provide overnight sleeping accommodations, and (iii) any rooming house regularly used, offered for, or intended to be used to provide overnight sleeping accommodations when such structures or buildings contain dwelling units that have an attached garage or carport or are serviced by fuel-fired appliances.

**Senate Bill 1139, by Senator Petersen. Uniform Statewide Building Code** Provides that the building official may revoke any building permit issued when the owner has violated any provision of the Uniform Statewide Building Code on two occasions within a six-month period and the owner has failed to submit a plan to remedy the violation.

### **On the Positive Side.....**

**House Bill 1698, by Delegate Lohr. Scrap metal processors.** Prohibits the sale or purchase of any scrap metal that the seller or scrap metal processor knows is copper, aluminum, brass, lead, or other nonferrous metal of any kind, including catalytic converters or any materials derived from a catalytic converter, steel railroad track and track material, metal beverage containers with a capacity of more than two liters that are marketed as returnable, or other specific categories of scrap metal, unless the person attempting to sell the scrap metal provides documentation establishing or acknowledging that the seller is the owner of the scrap metal or is an employee, agent, or other person authorized to sell the scrap metal on behalf of the owner. The measure authorizes law-enforcement officers during the regular business hours of a scrap metal processor to inspect, without a warrant or subpoena, any scrap metal in the possession of a scrap metal processor, any records required to be maintained by a scrap metal processor, or both. Each seller of scrap metal is required to provide his driver's license number to the scrap metal processor in connection with each sale of nonferrous scrap, metal articles, and proprietary articles. Sales where the seller is unable or refuses to provide the required identification and information are prohibited. Scrap metal processors are required to keep a record of the total price paid for items purchased and the price paid per unit of measurement for the items. The penalty for any violation of the chapter is increased to a Class 1 misdemeanor. Currently, negligent violations are subject to a civil penalty not to exceed \$7,500 while knowing violations are a Class 1 misdemeanor.

**House Bill 1721, by Delegate Chris Peace. Income tax; homebuyer tax credit.** Provides an income

tax credit equal to \$1,250 for single taxpayers and \$2,500 for married taxpayers filing jointly for taxable years beginning January 1, 2009, and ending January 1, 2010, who purchase a home for the first time during that period for use as their principal residence. The taxpayer must repay the credit over a 10-year period which begins the first year when no credit remains to be taken.

**House Bill 1856, by Delegate Shannon. Virginia Residential Property Disclosure Act; disclosure of stormwater detention facilities.** Provides that an owner of real property makes no representations with respect to the presence of any stormwater detention facilities located on the property and that purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any stormwater detention facilities on the property, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract.

**House Bill 2343, by Delegate Amundson. Livable home tax credit.** Increases the limit of the livable home tax credit from \$500 annually to \$1,000, for taxable years beginning on and after January 1, 2009.

**Senate Bill 845, by Senator Puller. Livable Home Tax Credit; increase limit.** Increases the Livable Home Tax Credit limit from \$500 to \$1,000.

**Senate Bill 906, by Senator Stosch. Income tax; homebuyer tax credit.** Provides an income tax credit equal to \$2,500 for single taxpayers and \$5,000 for married taxpayers filing jointly for taxable years beginning on or after January 1, 2009, but before January 1, 2011, who purchase a principal residence during that period. Any tax credit claimed would be recaptured if the taxpayer disposes of the principal residence within two years after purchase.

**Senate Bill 1430, by Senator Stosch. Grants to purchasers of newly constructed residential homes.** Authorizes the issuance of \$50 million in bonds to fund grants to individuals who purchase a principal residence in the Commonwealth that was first issued a certificate of occupancy on or after January 1, 2007, but before July 1, 2009. Eligible individuals would be individuals who had no present ownership in a principal residence within the last three years. The Virginia Housing Development Authority, in consultation with the Virginia Economic Development Partnership, would develop guidelines for purposes of determining eligible homebuyers and the amount of grant awards.

**Senate Bill 1446, by Senator McEachin. Income tax; homebuyer tax credit; emergency.** Provides an income tax credit equal to \$1,250 for single taxpayers and \$2,500 for married taxpayers filing jointly for taxable years beginning January 1, 2009, and ending January 1, 2010, who purchase a home for the first time during that period for use as their principal residence. The taxpayer must repay the credit over a 10-year period which begins the first year when no credit remains to be taken. The bill has an emergency clause.

\* \* \* \* \*

**For complete Summaries of the 2009 HBAV Legislative Agenda, visit [www.hbav.com](http://www.hbav.com). Click on Legislative News.**