

## **VIRGINIA GENERAL ASSEMBLY AT FULL THROTTLE**

### **“HBAV Legislative Agenda Begins Journey”**

The second full week of the 2009 session of the Virginia General Assembly ends today. Much of the week was consumed with early morning and early evening meetings of the subcommittees and full committees of both houses of the state legislature. The 100-member House of Delegates has 14 standing committees and the 40-member State Senate has 11 standing committees. All 25 standing committees have two to four subcommittees.

Last Friday was the last day of the 2009 session of the state legislature for state lawmakers to introduce bills. Over 2,200 bills and resolutions have been introduced this session. That is down from a past average of over 3,000 bills and resolutions. Some Capitol Observers have suggested that may be the impact of a new rule the House of Delegates imposed on themselves that limits each House member to 10 pre-filed bills and 5 Regular Session bills. The State Senate did not impose a bill introduction limit on itself.

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The HBAV Legislative Committee, which meets each Friday afternoon by Conference Call has identified over 75 House Bills and Senate Bills that could help or hurt the housing climate in Virginia, and given clear instructions to the HBAV lobbying team to make every effort to “Impact” their legislative course. The HBAV Matrix (status of each identified bill) of such legislation is reviewed each Friday by the committee, which is chaired by Richmond area home builder Bill Garrett.

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On the political side, one “HOT” dispute was resolved. The House Republican Majority seated Democrat Charniele Herring, who defeated Republican Joe Murray by 16 votes in a Special Election on the day before the 2009 session convened. Murray contested the close election, so Ms. Herring was not seated until after an official recount was conducted this Monday. Delegate Herring succeeds Brian Moran in the Alexandria House seat. Moran resigned in late December to spend full-time on his campaign for the Democratic nomination for governor.

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The 4-piece HBAV Legislative Agenda began its path through the legislative process this week. One Bill (House Bill 2029, by Danny Marshall) advanced through full committee and a subcommittee hearing was conducted on two others (House Bill 1788, by Bob Hull and House Bill 2077, by Glenn Oder). The 4<sup>th</sup>, a Senate Bill, (Senate Bill 1335, by Senator Stuart) will be considered this coming Tuesday in the Senate Committee on Local Government.

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This will be the final full week that House and Senate Bills can be considered in their house of origin. Tuesday, February 10<sup>th</sup> is Crossover Day or the last day House bills can be considered in the House and Senate Bills can be considered in the State Senate. Crossover Day is the “major” deadline of every session of the Virginia General Assembly.

## The 2009 HBAV LEGISLATIVE AGENDA

**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 was briefly introduced to the House CC&T Subcommittee #2, chaired by Delegate Danny Marshall on Thursday morning of this week. After several localities and representatives of VACO vigorously stated their opposition to the bill, Delegate Oder announced he would delay further consideration of the measure until this coming Thursday morning. The subcommittee meets at 7:00 a.m. in the GAB.**

**House Bill 2029, by Delegate Danny Marshall** would “temporarily” (five years) 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 was approved by House CC&T Subcommittee #2 and the full 22-member House CC&T Committee. Fairfax County and VACO urged the subcommittee to shorten the temporary reduction to two years.**

**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 for the second time. HBAV appeared in support of the measure and a long list of localities and environmental organizations appeared in opposition to the HBAV requested bills, again. 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. **Both bills were combined in HB 1788 and Delegate Hull deferred further discussion until this coming Thursday.**

**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 last week and will be considered by the 15-member standing committee of the upper chamber this coming Tuesday.

## **ROAD IMPACT FEE MODIFICATION BILL KILLED**

In a “shock” to HBAV and other organizations that follow land use issues, “ONLY” one impact fee bill was introduced to the 2009 session of the state legislature. And on Thursday morning of this week, it was killed on a voice vote in House CC&T Subcommittee #2. Appearing against the measure was HBAV and VDOT, who both stated the original concept

of the road impact fee statute was to require all new development that generates new road impacts to pay road impact fees.

That measure (**House Bill 1728, by Delegate Mark Cole**) would have amended 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.

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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 locality’s determination that public facilities were not adequate (APF) to serve new housing. With so many obstacles 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 as a 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 2095, 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 2418, by Delegate Bouchard. Optional provisions of a subdivision ordinance; solar energy.** Strikes language requiring that provisions for establishing and maintaining access to solar energy be applicable to a new subdivision only when so requested by the subdivider.

**House Bill 2664, by Delegate Valentine. U.S. Route 29; access management.** Requires the Commonwealth Transportation Commissioner to take all appropriate measures to develop local corridor access management plans for U.S. Route 29 between Gainesville and North Carolina.

**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.

**Senate Bill 1336, by Senator Barker. Virginia Property Owners' Association Act; control of association by declarant.** Provides that a declaration may provide for declarant control of an association and its board of directors for a period of time that shall not exceed (i) five years or (ii) three months after 80 percent of all lots in all phases of the development have been conveyed, whichever occurs first. The bill requires all association funds collected during the period of declarant control to be maintained separately in the association's name and not be commingled with funds of the declarant or the funds of any other association. In addition, the bill prohibits the declarant from using association funds to defend any civil or criminal action, or administrative or arbitration proceeding that has been filed or initiated against the declarant.

## **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.

**House Bill 2613, by Delegate Hall. Cash proffers; phase out.** Requires localities to phase out the acceptance of cash proffers by July 1, 2014.

**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 1423, by Senator Martin. Subdivision ordinances.** Provides that such ordinances shall include a requirement that each locality provide a checklist to potential developers that specifies what shall be shown on the development plans along with the legal authority for such requirement.

**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.

**Senate Bill 1524, by Senator Watkins. Permitted provisions in zoning ordinances.**

Broadens the zoning administrator's authority to determine vested rights in certain circumstances.

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