

“HBAV LEGISLATIVE AGENDA PASSES - MOVES TO GOVERNOR Kaine”

“2009 Session Adjournment Looms”

The final day of the 2009 session of the Virginia General Assembly is close. The House of Delegates and State Senate are scheduled to bring a close to the 2009 session tomorrow or Sunday. As of this writing, budget negotiators are getting closer to a state budget agreement and many capitol observers are suggesting the state legislature may adjourn without a final FY 2010 state budget, and will wait until the April 8, 2009 Veto Session, when there will be better understanding of the specific Virginia share of the Federal Stimulus Package. Apparently, many such details are unknown and are still being determined at the federal level.

HBAV 4-PART LEGISLATIVE AGENDA CLEARS HOUSE AND SENATE

“Local Government Lobbyist Swarm”

The 4-part HBAV agenda of legislation introduced to the 2009 Session of the State Legislature received their final passage this week. It was a long and often difficult legislative path for the HBAV package of bills.

Most every local government in Virginia has either a full-time staff person now assigned to the state legislature, who are present in the Capitol City most every day, or perhaps shocking to some members of HBAV, have hired highly regarded full-time paid lobbyist to represent their interest before the state legislature. Since many bills of interest to HBAV affect land use, they swarm to every committee hearing and prey on their House Delegates and State Senators to protect it from the passage of common sense private-sector initiated good business practices or property rights measures. Many state legislators have become more sympathetic to the desires of their local governments, and often will not act without consulting them.

And now, environmental organizations swarm the halls of the state legislature, and have become masters at motivating their patrons to email their state legislators, in mass, on issues that are often not even related to the environment or are a very significant stretch. At times, it appears to the business community that they adopt issues to justify the

existence of their organizations.

Nevertheless, or despite those significant challenges, HBAV was successful in passing all four parts of your state association's 2009 legislative package. Each bill is not quite perfect, as a result of the legislative process. But in every case, we achieved what we needed, not necessarily what we wanted. Listed below is a summary of each measure.

* * * * *

House Bills 1788, by Delegate Hull and 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 in Virginia by the Department of Health. The legislation would also prohibit localities from imposing maintenance requirements on such systems more stringent than soon to be required by the Department of Health. The maintenance prohibition will not take effect until such regulations are finalized by the VDH. The measure passed the House of Delegates on February 10th and State Senate on February 25th.

HB 1788 will now be communicated to Governor Kaine for his consideration. The measure was strongly opposed by most local governments and many environmental organizations. If signed by the governor, it will take effect on July 1, 2009.

* * * * *

House Bill 1788 had a companion bill. It was Senate Bill 1276, by Senator Steve Martin of Chesterfield. That measure was approved by the House Health Committee last week on a vote of 17 to 4 and full 100 member House on Wednesday by a vote of 79 to 19. Senate Bill 1276 now also goes to Governor Kaine for his consideration. It is identical to House Bill 1788

* * * * *

House Bill 2077, by Delegate Glenn Oder of Newport News is a plan validity extension measure. The measure would extend the period of validity of any preliminary plan, final plan, or associated plan or permit, select conditional use, special use, special exception permits, or limited proffer that is valid and outstanding as of January 1, 2009, until January 1, 2014. House Bill 2077 was approved by the House of Delegates on February 10th and the State Senate on February 23rd.

It also now goes to Governor Kaine for his consideration. If approved by the governor, HB 2077 will become effective on July 1, 2009.

* * * * *

House Bill 2029, by Delegate Danny Marshall of Danville 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 of Delegates on February 10th and the State Senate on February 25th.

It will now be communicated to Governor Kaine for his consideration. The effective date of HB 2029 is July 1, 2009

* * * * *

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 decisions have dates or triggers that either require 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 approved by the State Senate on February 9th and the House of Delegates on February 24th.

The measure now goes to Governor Kaine for his approval. The effective date is July 1, 2009.

MAJOR DANGERS KILLED!!!

Many threats to the housing climate were killed this week for this session of the state legislature. Listed below is just a partial list of House Bills and Senate Bills that could have negatively impacted 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. **Killed**

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. **Killed**

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. **Killed**

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. **Withdrawn by Patron**

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. **Killed**

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. **Killed**

House Bill 1648, by Delegate Lee Ware. Virginia byways. Requires that every agency, instrumentality, and political subdivision of the Commonwealth must give due consideration to what impact or effect any of its plans or projects might have upon the qualities that caused such road to be designated a byway. **Killed**

House Bill 1616, by Delegate Bob Marshall. State and Local Government Conflict of Interests Act; disclosure by certain members of advisory agencies. Requires nonsalaried citizen members of any board, commission, or council established by the

governing body to advise on land use policies within the locality to file, as a condition of assuming office, a disclosure form of their personal interests. The bill also requires such members to make annual disclosures of all their interests in real estate located in the county, city, or town in which they are appointed and requires such individuals to disqualify themselves from participating in any transaction involving their real estate interests. **Killed**

Senate Bill 1366, by Senator George 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 until (i) three months after 80 percent of all lots that the declarant has reserved the right to develop in all phases of development have been conveyed to a person other than a declarant or builder and (ii) the number of lots not yet developed is less than 200. The bill also provides that the declarant has the right to develop all additional lots in accordance with provisions in effect at the time of transfer of control and gives the declarant a seat on the board of the association until such time as all lots have been conveyed to a person other than a declarant or a builder. In addition, the bill requires all association funds collected during the period of declarant control to be maintained separately in the association's name unless held by a title company or common interest community manager. 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. **Withdrawn and forwarded to Virginia Housing Commission**

ON THE POSITIVE SIDE.....OTHER MEASURES ADVANCED

HB 1681, by Delegate Matt Lohr. 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. The bill also adds catalytic converters to the list of proprietary articles for which heightened scrutiny is required prior to sale to a scrap metal processor. **Passed House – Passed Senate – waits action by the governor**

HB 2326, by Delegate Athey. Boards of zoning appeals; variances. Changes the standard by which a variance can be granted by eliminating the requirement for a showing of a hardship approaching confiscation and instead requiring a clearly demonstrable hardship. **Passed House – Passed Senate – waits action of the governor**

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. **Passed House – Passed Senate – waits action of the governor**

House Bill 1938, by Delegate Peace. Income tax; livable home tax credit. Increases the individual tax credit limit from \$500 to \$2,000 and the 25 percent amount for retrofitting to 50 percent for taxable years beginning on or after January 1, 2010. **Passed House and Senate – awaits action of the governor**

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

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. Funding contingent upon resources from federal stimulus legislation pending before the U.S. Congress. **Passed Senate – assigned to House Finance Committee**

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. Contingent upon funding from federal stimulus legislation pending before U.S. Congress. **Passed Senate – Passed House Committee on General Laws – Rereferred to House Appropriations**

Senate Bill 1524, by Senator Watkins. Permitted provisions in zoning ordinances. Broadens the zoning administrator's authority to determine vested rights in certain circumstances. **Passed Senate – Passed House – waits action of the governor**

* * * * *

For complete Summaries of the 2009 HBAV Legislative Agenda, visit www.hbav.com and click on Legislative News.