

## **EDITOR'S NOTE**

Following is the first edition of the 2009 *Legislative Bulletin* of the Home Builders Association of Virginia (HBAV). It will be e-mailed on Friday of each week during the 2009 session of the Virginia General Assembly, and posted on the HBAV website (<http://www.hbav.com>) on Friday afternoon. Current plans call for entire membership (with e-mail addresses) to receive the weekly *Legislative Bulletin*.

The 2009 HBAV *Legislative Bulletin* will feature an update on General Assembly matters of general interest to the building industry, background information and a status report on the package of bills introduced at the request of HBAV, a status report on other issues of more specific interest or concern to HBAV membership and could contain an occasional ACTION ALERT.

We hope you find the HBAV *Legislative Bulletin* to be a valuable and informative tool in your efforts to help us build a sound business climate for our industry and the citizens of the Commonwealth.

Michael L. Toalson  
Executive Vice President

## **VIRGINIA GENERAL ASSEMBLY CONVENES IN RICHMOND**

### **“Budget and Politics to Dominate in 2009”**

The 2009 session of the Virginia General Assembly convened at 12:00 noon on Wednesday, January 14th. The House of Delegates seated 99 members and the State Senate welcomed back 40 members. One seat in the House of Delegates is open, since Alexandria Delegate Brian Moran resigned in late December to dedicate full-time to his campaign for the Office of Governor this year. In a Special Election earlier this week, Democrat Charniele Herring defeated Republican Joe Murray by 16 votes. On Wednesday morning Murray contested the close election. As a result, the Republican majority House of Delegates refused to seat Herring on a party-line vote, preferring to wait to seat her until after an official recount can be conducted.

That was the first of many expected political battles during the 2009 session of the state legislature. 2009 will be an election year for the 100 members of the House of Delegates and the three statewide offices (governor, lieutenant governor and attorney general), and much political or election year posturing will occur. Such election year antics often influence the legislative path of otherwise, good state policy. Election year politics may be embellished this year, as state Democrats attempt a serious run at taking control of the Republican majority lower chamber. In the 2007 elections, the Democrats took majority control of the State Senate.

There will also be competitive political races for the offices of governor, lieutenant governor and attorney general this year between Republicans and Democrats. Virginia and New Jersey are the only states that conduct statewide elections in 2009, and following the often bitter, but enthusiastic campaigns for national offices in 2008, fireworks are expected to be launched to unprecedented heights in the Commonwealth.

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Two other new members were seated in the House of Delegates this week. Republican Barry Knight of Virginia Beach was seated to succeed Terrie Suit, who resigned to accept a lobbying position with a highly-regarded lobbying team. Former Richmond City Councilwoman Deloris McQuinn was seated to succeed long-time Delegate Dwight Jones, who was elected Mayor of Richmond in November.

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The STATE BUDGET will also dominate the 2009 session and the success or failure of many legislative bills. Any measures introduced to the 2009 General Assembly that carry a fiscal impact on the resources of the Commonwealth will most likely be set aside. The state legislature is facing a \$3.0 to \$3.5 billion budget deficit and will not seriously consider any legislation that might add to the deficit.

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.

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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.

Each of the HBAV legislative priorities is designed to reduce costs for the industry in this time of crisis or better position the industry for a recovery, when the demand for new housing returns to many parts of Virginia. Statewide housing starts in the Commonwealth have declined from approximately 49,500 in 2005 to approximately 18,500 in 2008.

**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.

Many landowners or developers geared up their production of lots for new single-family detached home construction in 2003, 2004, 2005 and 2007, anticipating the demand for building lots would continue. The process of taking land from an undeveloped stage to a stage that landowners can actually sell lots to home builders in most localities is not months, it is years. As the demand for new housing waned, many preliminary plans and final plans were continuing through the plan approval process, because of the substantial time and costs involved. Most preliminary plans, final plans and other land development related approvals have a statutory period of validity of five years, provided certain land development activities continue.

NOW, with the significant downturn in the demand for new housing, many of those previously approved actions of local governments will likely expire before the demand for new housing returns, now anticipated in late 2010. If that occurs, millions of dollars of land development costs will be lost. More importantly, when the demand for new housing returns, there could be a shortage of building lots to construct new homes, causing prices to skyrocket.

**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.

The Code of Virginia allows localities, through the mandatory provisions of a subdivision ordinance, to require a landowner to furnish a surety bond or letter of credit equal to the amount of estimated construction of streets, sidewalks, curbs, gutters, drainage systems, or water lines that are to be part of a public system and other public facilities. The amount of the bond or letter of credit shall not exceed the total of the estimated cost of the construction. The bond or LOC insures the developers guarantee

that the expansion or improvements to public facilities meet the localities standards of quality.

The statute also allows localities to increase the bond or LOC by an amount not to exceed 25% for administrative costs, inflation and potential damage to existing roads or utilities. Bonds or LOCs and the additional allowance are expensive to landowners and are required to be displayed as a liability on landowner's financial statement. That stated liability also limits his borrowing capacity. With the much slower economy, landowners must also continue the bond or LOC, beyond the issuer's original term, further increasing the cost.

**Senate Bill 1276, by Senator Steve Martin** 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.

Innovation and improvement has led to the development of "Alternative" or "Non-Conventional" on-site septic systems. These systems are reviewed and approved for use by the Virginia Department of Health through Sewage and Disposal Regulations and numerous Guidance Memoranda and Policy that are interpretations of the regulations. Alternative on-site sewage treatment systems are generally preferred over conventional systems because:

- They are better at removing solid pollutants from wastewater before it goes to the soil absorption system;
- They can be expected to have a longer life;
- They can provide for advanced treatment, which reduces the wastewater content and enhances the quality of the effluent;
- They are better for the environment. Since less land is required for their soil absorption systems, they can be used in applications not suited to conventional systems and they have a time proven record of performance.

The Virginia Department of Health has the expertise and the knowledge to regulate these systems for their use and benefits. Yet, some localities have recently attempted to prohibit the use of such systems or, placed maintenance requirements on them so far beyond manufacturer's recommendations or the requirements of the Department of Health, the maintenance cost becomes prohibitive.

**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 increase 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.

The current economic climate in Virginia and nation has changed significantly since many of those

timed proffers were volunteered. Housing starts, for example, have declined by over 60% in most every market in Virginia. In some cases, it would be poor business judgment to dedicate limited financial resources to projects where there is no demand for the product.

Most local governments already have the ability to waive a public hearing on land use matters that are non-controversial. Like with both Houses of the state legislature, they are often referred to as a Consent Calendar or non-controversial order of business. This measure would simply allow the same process for an amendment to an existing proffer. HBAV would forecast that only non-controversial amendments to proffers would be considered on a consent calendar. This legislation gives the local government the option of waiving the public hearing requirement for these types of amendments.

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HBAV members may follow the path of the four measures introduced at the request of HBAV and the efforts of HBAV to kill anti-housing bills at [www.hbav.com](http://www.hbav.com). A Legislative Bulletin will be posted on that site every Friday afternoon during 45-day session of the Virginia General Assembly.