

HBAV LEGISLATIVE BULLETIN

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VIRGINIA GENERAL ASSEMBLY PICKS UP THE PACE

“HBAV Legislative Agenda Launched”

The 2010 session of the Virginia General Assembly entered its second week on Monday of this week following a weekend of celebrations about the Inaugurations of Governor Bob McDonnell, Lieutenant Governor Bill Bolling and Attorney General Ken Cuccinelli. Many members of HBAV from throughout Virginia joined in the celebration of the swearing in of the Commonwealths 71st Governor.

The ceremony took place on the South Portico of the State Capitol, just two blocks from the HBAV office, the Stewart-Lee House, which is located at 707 East Franklin St. in downtown Richmond. The Stewart-Lee House was built in 1844 and was the Civil War home of Robert E. Lee. The HBAV headquarters is also the sight of the famous Mathew Brady photograph of Robert E. Lee, the only photograph of him in his Confederate uniform after Appomattox.

As of this writing, nearly 2,000 bills and resolutions have been introduced to the 2010 Virginia General Assembly by the 100 members of the House of Delegates and 40 State Senators. Today is the final day legislation can be introduced to be considered this year, and it is anticipated that over 500 more bills will hit the bill hopper.

The HBAV Legislative Committee, chaired by HBA of Richmond past President Bill Garrett, will meet every week during the 60-day legislative session to provide policy and guidance to the 4-member HBAV lobbying team.

HBAV 2010 AGENDA INTRODUCED THIS WEEK

The 5-part HBAV Legislative Agenda was introduced to the 2010 Session of the Virginia General Assembly this week. The agenda was developed by the HBAV Legislative Committee; whose members represent each of the 16 HBAV affiliated local associations. Following is a brief summary and status report of each bill.

House Bill 374, by Delegate John Cosgrove of Chesapeake and Senate Bill 632, by Senator Mark Obenshain of Harrisonburg would delay collection or acceptance of a cash proffer by a locality until the residential property has been issued a certificate of occupancy by said locality. Among the many impediments to the recovery of the new housing industry in many markets, is

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the requirement that Per Lot Cash Proffers, in addition to thousands (\$\$\$) of dollars of water and sewer connection fees, and other fees that are required to be paid in connection with the issuance of a Building Permit, must be paid at the time a Building Permit is issued or in some cases before that time in the building process. Such "UPFRONT" required cash payments to local governments, in the current building and banking environment, stifle job production by the housing industry. In the acquisition, financing and production of every new home in Virginia, over 50 local companies go back to work. And, thousands (\$\$\$) of dollars are typically spent by the new homeowners after they occupy the new home, for such items as new furniture, new floor coverings and new window coverings. As a result in the significant decline in the production of new housing since 2005, the receipts of cash proffers by local governments have also declined significantly and likewise, housing generated state revenues have declined significantly. HBAV believes it is now appropriate to "temporarily" delay this costly upfront payment of cash proffers or impediment to the production of new housing in many areas of Virginia. HBAV will recommend to the State Legislature that for a period of 4 years: *Per dwelling unit or per-home residential cash proffers shall be collected or accepted by a locality only after the completion of a final inspection prior to the time the same locality issues a Certificate of Occupancy for the subject property.* The measure will only "temporarily" delay the payment of the cash proffers. It will not eliminate or reduce the amount of the cash proffer, only delay the payment to eliminate the upfront cost of such payments. Money is tight for the housing industry in today's banking environment. This measure will help. It should also be noted that cash proffers are most often contributed to offset the impact to public facilities created by the occupants of new housing, not the home. HBAV believes this measure will also result in more payment of cash proffers to localities, only delayed.

HOUSE BILL 374 WAS APPROVED BY THE HOUSE COUNTIES, CITIES AND TOWNS COMMITTEE TODAY ON A VOTE OF 18 TO 4. Voting in favor of the bill were Delegates Ingram, Oder, Marshall, D.W., Iaquinto, Crockett-Stark, Lohr, Poindexter, Merricks, Knight, Morefield, Edmunds, Stolle, Spruill, Ware, O., Pollard, McQuinn, Howell, A.T., Torian. Voting against the bill and against HBAV were Delegates Marshall, R.G., LeMunyon, Surovell, Kory.

Senate Bill 632 has only been assigned to the Senate Committee on Local Government.

House Bill 1220, by Delegate Tim Hugo of Fairfax County and Senate Bill 395, by Senator Frank Wagner of Virginia Beach would extend the effective date of the regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria based on the completion of the Virginia Total Maximum Daily Loads (TMDL) Implementation Plan for the Chesapeake Bay Nutrient and Sediment TMDL approved by the United States Environmental Protection Agency and the regulations thereafter adopted to implement the Plan.

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Currently suspended, and pending review by Governor McDonnell, the Governor Kaine inspired Stormwater Management Regulation will apply statewide and will create more uncertainty in the land development process than has ever been created by a state board. The recently adopted regulation will also significantly increase the cost of land development in every part of Virginia, and will do very little to improve the water quality of the Chesapeake Bay. The new regulation was attempted to be rushed to the finish line by the Kaine Administration with their full knowledge that the current Stormwater Management Regulation has brought Virginia very close to its current Phosphorous Goal, and the FACT, that the EPA is in the process of revising the current phosphorous loading limits for Virginia. The EPA has made it clear that they expect to complete the loading limits by December 2010. The changes to the current, and now proven effective Stormwater Regulation, along with changes to the new regulation itself, leaves those in Virginia who plan developments and plan stormwater management "Uncertain" on how to proceed. Since December 9th, land owners and THEIR engineers that design such plans have no idea on how to proceed with their projects. This action, all at a time when every government policy maker in the nation (local, state and federal) is desperately searching for ways to put Americans back to work.

Last week, after HBAV was able to generate more than 25 letters from members and other concerned parties, the Board was forced to reconsider an earlier decision, and granted another 30 day comment period.

House Bill 1220 has been assigned to the House Agriculture, Chesapeake and Natural Resources Committee. Senate Bill 395 has been assigned to the Senate Agriculture, Conservation and Natural Resources Committee.

House Bill 1250, by Delegate Barry Knight of Virginia Beach provides that the issuance of any written order, requirement, decision, or determination by the zoning administrator regarding the permissibility of a specific use or density of the landowner's property shall be considered a significant affirmative governmental act for purposes of determining vested rights.

In 1998, the Virginia General Assembly codified a Vested Rights Statute. At the time, the Act was hailed as the most progressive property rights legislation that had been approved by a state legislature in over 20 years. The basis for the Act was a series of Supreme Court of Virginia decisions. It is now time for a small, but important update to the Virginia Vested Rights Act to be adopted. The amendment will create more certainty for property owners in Virginia. HBAV will recommend to the State Legislature that *the issuance of any written order, requirement, decision or determination made by the zoning administrator or other administrative officer regarding the permissibility of a specific use or density of the landowners property*, should be added to the list of Significant Affirmative Governmental Acts in the Vested Rights Act. In many cases, prior to beginning improvements or construction on property in

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Virginia, lenders require and property owners obtain, a “Determination” from a Zoning Administrator to insure the intended use or construction density is allowed by the underlying zoning classification. In most localities, such a “Determination” is a formal process. This measure will simply protect the property rights and add a layer of certainty for landowners who have acquired a Zoning Determination by a local government.

House Bill 1250 has been assigned to the House Counties Cities and Towns Committee for consideration.

Senate Bill 640, by Senator Steve Martin of Chesterfield County provides that no locality shall establish any rate policy or guideline regarding the amount and timing of the payment of cash proffers to such locality unless such rate policy or guideline is established by ordinance.

Most localities that have adopted a Proffer Ordinance, administer the Local Ordinance through a Per Lot Guideline or Policy. The Guideline or Policy most often establishes the localities’ cash payment expectations (requirement) in conjunction with an application for a rezoning. For residential rezonings the Per Lot (Per Home) cash expectations range from \$15,000 each, to as much as \$55,000 each in Virginia. In most localities, changes to the local government cash proffer guidelines or policies are adopted with very little or no notice to landowners, leaving very little or no opportunity for public input or comment. In some cases, the proposed changes appear as a total surprise on a consent agenda. HBAV will recommend to the State Legislature that *No Locality shall establish any rate policy or guideline, however described or delineated, regarding the amount and timing or the payment of Cash Proffers to such locality unless it is established by ordinance, pursuant to the provisions of 15.2-2204 – (Notice)*. Such a requirement by the State Legislature will simply provide property owners with the opportunity to provide public comment or input on the adoption of and changes to their Cash Proffer expectations (requirements) or the new level of taxes to be imposed on property owners in their jurisdiction. It is only fair that appropriate notice be provided to landowners on such matters. Some, but few localities, have already adopted appropriate notice provisions related to changes in their Cash Proffer policy. It is time to make the Notice Requirement uniform across Virginia.

Senate Bill 640 has been assigned to the Senate Committee on Local Government for further consideration.

House Bill 407, by Delegate Glenn Oder of Newport News allows a landlord to withhold a portion of the security deposit until final settlement of water and sewer bills.

Many localities or their Water and/or Sewer Authorities have the ability to place liens on property (owners) for delinquent water and sewer charges. That same authority applies to

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rental units. Meaning, many property owners are being required to pay the delinquent water and sewer bills for tenants that vacate their rental property. Often such bills are received long after an apartment or rental home is vacated and the delinquent charges can be substantial (\$\$). HBAV and the Virginia Association of Realtors will recommend to the State legislature that *if the landlord has not received the final water, sewer or other utility bill for the dwelling unit within the 45 day period, the landlord may provide written notice to the tenant that a portion of the security deposit is being held pending settlement of the water, sewer or other utility account, after which settlement, the landlord shall refund any remaining balance within 10 days. The tenant may provide the landlord written confirmation of the final settlement of such charges within the 45 day period, in which case the landlord shall refund the security deposit unless other deductions shall apply.* The members of HBAV and VAR believe such a balanced approach to this statewide problem will allow landlords protection from such charges and will allow for the payment of the same by the appropriate responsible party.

House Bill 407 has been assigned to the House General Laws Committee for review.

HOUSE CC&T CHAIRMAN NAMES SUBCOMMITTEE MEMBERS

House Counties Cities and Towns Committee Chairman Riley Ingram, (R) of Hopewell named the members of Subcommittee No. 1 and Subcommittee No. 2 this week. The membership of the Subcommittees are very important because they take the first review and testimony on every measure assigned to them. Their action is a very critical first step in the legislative advancement of every bill assigned to this House Committee. Chairman Ingram made the decision many years ago to assign every bill that is assigned to his committee by House Speaker William Howell to a Subcommittee.

Subcommittee No. 1 considers locality charter amendments, water and sewer and other authority legislation and miscellaneous legislation that may impact local government. The chairman of Subcommittee No. 1 is Delegate Anne Crockett-Stark of Wytheville. The remaining members of her Subcommittee are Delegates Marshall (Bob), Iaquinto, Poindexter, Morefield, Morefield, LeMunyon, Pollard, McQuinn, Surovell and Kory.

The more important Subcommittee to HBAV, Subcommittee No. 2 considers zoning issues and other land issues of significant importance to HBAV. The chairman of Subcommittee No. 2 is Delegate Danny Marshall of Danville. The remaining members of his Subcommittee are Delegates Oder, Lohr, Merricks, Knight, Edmunds, Stolle, Spruill, Ware (Onzlee), Howell (Algie) and Torian.

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IMPORTANT DATES TO REMEMBER

Among the major rules adopted by each General Assembly is a schedule of dates that manages the flow of legislation. Following are the dates of the important deadlines for consideration of legislation during the 2010 Session of the General Assembly:

January 22, 2010	Deadline to Introduce Bills
February 16, 2010	Deadline to Consider Bills in the House of Origin
March 11, 2010	Deadline to Put Bills in Conference
March 13, 2010	Adjournment