



Government Relations

Following is a summary and brief background material on each component of the 2011 HBAV Legislative Agenda. Should you or your policy staff need additional information on the important merits of each bill, we would be pleased to provide that information to you at your convenience.

Senate Bill 1055, by Senator Richard Stuart of Stafford County and House Bill HB 1831, by Delegate Ed Scott and Delegate Lee Ware, is compromise legislation which will prohibit the distribution and sale of established lawn fertilizer in Virginia that contains phosphorus.

All Virginians, including business owners, farmers, and local officials, are facing the challenge of restoring their local urban streams as well as the Chesapeake Bay pursuant to the EPA-TMDL, or “pollution diet.” Runoff from urban and suburban turfgrass is a significant source of nutrient pollution, the prime cause of the Bay’s decline.

The legislation is a simple, common sense solution to reducing pollution from urban and suburban lands that can save taxpayers and business owners money and ease compliance with the EPA-TMDL by private landowners, local governments, and the Commonwealth of Virginia.

Once effective on December 31, 2013, the measure could reduce phosphorus pollution running off into the Chesapeake Bay from Virginia by up to 375,000 pounds per year, or nearly 40 percent of Virginia’s phosphorus reduction goal for 2017. That could save localities millions of dollars by reducing their need to install expensive stormwater runoff treatment systems in their communities.

Both measures would allow for the distribution of specialty fertilizers in Virginia that include phosphorous. Specialty fertilizers are defined as products for starter lawns, gardening, trees, shrubs and indoor plants. The measures also prohibit the sale of de-icers that contain phosphorous. Senate Vote 36 to 4 - House Vote 95 to 0

Senate Bill 1204, by Senator Mark Obenshain of Harrisonburg will allow a court to award reasonable attorney fees, expenses and court costs to any person, group or entity that successfully prevails in an action challenging an ordinance, resolution, motion, administrative or other action as being in conflict with the 2010 legislation enacted by the General Assembly at the urging of HBAV.

Legislation enacted during the 2010 legislative session “Temporarily” required the delay of the payment of per lot cash proffers from prior to the issuance of a Building Permit or earlier, until after the final inspection by local building officials and before the issuance of a Certificate of Occupancy by the local government. Five large localities in Virginia with significant per lot cash proffer demands have refused to issue Building Permits to builders, until the lot owner agreed to pay the cash proffer, despite a September “Opinion” by Virginia Attorney General Ken Cuccinelli that the Act did apply to per lot cash proffers formed prior to the effective date of the 2010 legislation.

Senate Bill 1204 will also extend the period of validity of the 2010 legislation, which required per lot cash proffer payments after final inspection and prior to the issuance of a CO, for a period of 1 year, or until July 1, 2015. Senate Vote 40 to 0 - House Vote 79 to 18

Senate Bill 1206, by Senator Mark Obenshain, will delete from the Code of Virginia the requirement for a VDOT Traffic Impact Statement (TIS) for all by-right development in Virginia. The measure also directs the Department of Transportation to eliminate all TIS Regulations related to by-right development by December 31, 2011.

During the “Traffic Impact Statements” debate in 2007 it was decided that only “Supplemental” information was expected to be required for by-right development, since the use and density for the project had already been approved by a local governing body, many months or years before the new project may be built. Yet many local governments have interpreted the associated VDOT Regulations to require full TIS to be prepared in conjunction with by-right development.

With by-right development, the only traffic or transportation issues yet to be determined may relate to access and/or signalization, which VDOT will be at the table to determine through their access management regulations. SB 1206 will reduce the cost of by-right development and make by-right development more efficient in Virginia. Senate Vote 40 to 0 - House Vote 95 to 3

Senate Bill 1412, by Senator Steve Martin and House Bill 1829, by Delegate Ed Scott will add 3 new members to the Virginia Soil and Water Conservation Board that can fairly represent business or local government interests, through education, training or experience, and would remove the DCR Director as a voting member of the Board.

The Director and Secretary of Natural Resources have approved the proposed legislation. The size of the Board would increase from 10 members to 12 members. Currently the Board is composed of the DCR Director, 2 at-large members that have a demonstrated interest in natural resource conservation and water quality protection, 4 farmers, 2 representatives of the Virginia Association of Soil and Water Conservation Districts and 1 additional at-large member.

With the December 31, 2010 adoption of the TMDL for the Chesapeake Bay and its tributaries and the Virginia Watershed Implementation Plan, submitted by the Commonwealth to the EPA to enable Virginia to comply with the TMDL, business and local governments will be significantly impacted. It is only fair for both to have a voice on the Board that will adopt and administer the new stormwater management regulations that must be completed by yearend.

Stormwater management and administration is very complex, and typically requires an engineering degree or equivalent training and experience to fully grasp its impact on water quality and the business climate in Virginia. The current Board lacks such education, training and experience in this new and evolving period, as Virginia attempts to implement compliance with the new EPA-TMDL over the next 15 years. The legislation will only bring better balance to the current Board and allow more informed decisions to be made on this important issue. Senate Vote 40 to 0 – House Vote 96 to 0

Senate Bill 1462, by Senator Phil Puckett, will require the Commonwealth Transportation Board to review and consider appropriate revisions to the VDOT Traffic Impact Statement (TIS) Regulations, the VDOT requirements for Secondary Streets to be accepted in the state system and the VDOT Access Management Regulations as they relate to family subdivisions. The reviews have to be completed by November 30, 2011, and the revisions shall be final by January 1, 2012. The review and revisions are exempt from the lengthy Virginia Administrative Rules Act (APA).

Secretary Connaughton has expressed support for such a review of the VDOT regulations. HBAV is concerned that the existing VDOT-(TIS) regulations require many small businesses and small residential developments to unnecessarily spend many thousands of dollars for such traffic impact studies, when the smaller projects will create very little new traffic. HBAV is also concerned that the current secondary street regulations expose small and rural developments to the link/node ratio component of the regulation, which often requires connectivity within the new development. Such inner connectivity requirements often significantly increase development cost, often unnecessarily results in impacts to environmental sensitive areas of a project and increases stormwater runoff. Senate Vote 40 to 0 – House Vote 89 to 8

House Bill 1844, by Delegate Clay Athey of Front Royal will require a zoning administrator to give notice to the owner of property within 10 days when a party, other than the owner, requests that the zoning administrator or any other administrative officer provide a written order, requirement, decision or determination that would bind the owner of the property. A decision by the governing body on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided written notice of the zoning violation, written determination, or other appealable decision.

Recently, non-owners of property and in some cases, competitors of property owners have sought binding determinations from zoning administrators that limit the property rights of the owner. Currently, there is not a requirement for property owners to be provided such a notice when their property is the subject of such a determination by another. House Vote 98 to 1 – Senate Vote 40 to 0

House Bill 1950, by Delegate Ron Villanueva, will increase the state Livable Home Tax Credit from \$2,000 to \$5,000 and make the builders of new accessible homes eligible for the state tax credit.

A high priority of the Virginia community with mobility impairments, your Administration and HBAV, is to increase the available stock of homes in the Commonwealth which are visitable or accessible. The Virginia Department of Housing and Community Development will establish the eligibility requirements for the Virginia Livable Home Tax Credit.

The state tax credit is capped at a total of \$1,000,000 per year. Annually \$500,000 of the cap will be dedicated to the builders of new accessible homes and \$500,000 will be dedicated to the renovation of existing single family homes. Residential Rental Property is not eligible for tax credit. House Vote 99 to 0 – Senate Vote 40 to 0

House Bill 2411, by Delegate Scott Lingamfelter, will provide flexibility to local governments to enact a bonding moratorium or deferral option on extended, but inactive development plans.

The legislation would also require the landowner or developer to comply with the terms of any bonding moratorium or deferral agreement for the period of the plan validity extension.

Several localities have now expressed a willingness to waive the performance bonds and other financial guarantees on the extended projects through the local enactment of a bonding moratorium or deferral option. UNFORTUNATELY, THE 2009 LEGISLATION DOES NOT PROVIDE THE FLEXIBILITY TO LOCAL GOVERNMENTS TO WAIVE THE BONDS AND OTHER FINANCIAL GUARANTEES ON THE EXTENDED PROJECTS.

House Vote 98 to 0 – Senate Vote 40 to 0

House Bill 2472, by Delegate Charles Poindexter, will clarify that the terms, conditions and specifications contained in any agreement, contract, performance agreement or similar document in conjunction with required performance bonds, to be limited to those items depicted or provided for in the approved plan, plat, permit application or similar document for which such performance guarantee is applicable.

For decades local governments have required landowners to execute Performance Agreements that require the construction of approved new public facilities and connections or additions to existing public facilities to meet the locality's construction standards. The Performance Agreements also require landowners to post a bond, letter of credit or cash escrow to guarantee the addition or expansion meets the local government standard of quality. In most localities, before a landowner or developer can begin his construction project, the local government requires that their Performance Guarantee must be executed and that the bond, letter of credit or cash escrow be posted with them.

The members of HBAV have always supported such Performance Guarantees. They assure localities that the additions and the expansions of public facilities (roads, sidewalks, water & sewer, etc.) meet the local government required construction standards.

However, recently some localities have begun including language in their Performance Agreements that require developers to not only guarantee the construction of the approved project, but inadequate public infrastructure which already exists, that may be nearby or adjacent to the approved project. In other words, before a developer can be released from their Performance Guarantee, they are being required to make improvements or repairs to public facilities which are not a part of their local government approved project. House Vote 99 to 0 – Senate Vote 40 to 0