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*Home Builders Association of Virginia*

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## News from the Square

With little exception, On Thursday, July 1, most all of the legislation passed during the 2010 General Assembly session became effective. Included among those were the four bills advanced as part of the HBAV legislative agenda.

First among those bills put forward by HBAV was the delayed proffer payment bill. House Bill 374 offered by Delegate John Cosgrove, and its Senate companion Senate Bill 632 submitted by Senator Mark Obenshain prohibit localities from collecting proffers prior to the final inspection. However, the proffers must be paid prior to the issuance of a certificate of occupancy. This bill applies to all per lotproffers, whether they were made before or after July 1, 2010. For more information

on this please review a legal opinion offered by HBAV general counsel Bill Thomas and Edward Mullen by visiting the HBAV website at <http://www.hbav.com/documents/ReedSmithLegalAnalysisof-HB374andSB632.pdf>.

House Bill 1250 offered by Delegate Barry Knight was another among the HBAV legislative agenda. This bill adds a written decision of a zoning administrator to the list of significant governmental acts. That act now qualifies as an action to determine vested rights, and will help to eliminate contradictions between zoning staff and planning commissions.

As part of the annual update to the Landlord Tenant Act, Delegate Glenn Oder included in his



House Bill 407 for HBAV a provision that allows a landlord to withhold a portion of a security deposit for unpaid final utility bills.

The final bill advanced by HBAV in 2010 was the stormwater regulation delay bill. House Bill 1220 and Senate Bill 395 both delayed the enactment date of the controversial stormwater regulation. The new date is dependent upon the completion of the Chesapeake Bay TMDL, but can be no later than December 1, 2011.

## Howard and Domenech Highlight HBAV Annual Convention

The 54<sup>th</sup> Annual Convention of HBAV was held on June 23-26, 2010 at the Chesapeake Hyatt Resort in nearby Cambridge, Maryland. The highlight of the annual gathering of HBAV members was the program that featured NAHB Chief Executive Officer Jerry Howard as the Keynote Speaker and Virginia Secretary of Natural Resources Doug Domenech as the meetings final speaker. Norfolk Building Official Lynn Underwood also addressed the meeting attendees.

CEO Howard reminded the HBAV members of the many recent and valuable activities of NAHB in our nation's capitol. They ranged from their work to extend the federal tax credit to all first time home buyers to their recent efforts to address the AD&C lending crisis facing our business.

Mr. Underwood presented many useful tips to the HBAV members on how to develop a better working relationship with their local building officials and reminded the members of the

modification process, alternative building process and the appeals process in the Uniform Statewide Building Code (USBC).

Secretary Domenech presented the Governor McDonnell approach to regulation in Virginia. His comments were very insightful and included the governor's pledge to make the coming stormwater regulation economically feasible and based on sound science.

Finally, the HBAV Associates Committee headed by Robin

Newhouse and Henry Singleton produced an "Outstanding" Associates Event during the Annual Convention. Cards, dice and dollars (play) were flying around the room and great food and beverage were mixed in during a Casino Night. The Associate members dealt the cards, spun the roulette wheel and managed the dice. There were many winners during the evening. The theme of Associates Night was, as always, do business with a member. The 2011 HBAV Annual Meeting will be at the beautiful Homestead Resort.



## DCR's New Director Focuses on Reliable Data and Reasonable Results

At the end of May, Governor Bob McDonnell announced his selection to replace Joe Maroon as director of the Department of Conservation and Recreation. David Johnson, from Advantus Strategies, and former Deputy Director of DEQ, was tapped to fill the role that has been vacant since mid-January.

HBAV staff had the opportunity to speak at length with Director Johnson, as he is a former member of the HBAV business coalition on stormwater. Johnson's engineering background and representation of the private sector gives him a unique

perspective on approaching the impending Chesapeake Bay TMDL and the resulting stormwater regulations.

Johnson is a dedicated Director often working late into the night reasoning out the confusing, frustrating and often conflicting information being filtered out of EPA. Johnson's commitment to ensuring Virginia is treated fairly throughout the TMDL process falls squarely in line with Governor McDonnell's comments to EPA Administrator, Lisa Jackson.

In a letter dated June 15th, Governor McDonnell criticized the EPA for forcing Virginia and the

other Bay states to move forward on Watershed Implementation Plans with the knowledge that EPA's Chesapeake Bay model was flawed and would likely not be fixed for up to 12 months.

In a meeting with business leaders this week, Johnson noted that he intends to be a hands-on Director, and will be chairing the stormwater Regulatory Advisory Panel himself. He noted that EPA was preparing to release the newest pollution allocations for the state this week, and renewed his commitment to making sure that Virginia is treated appropriately.



Please visit

[www.hbav.com](http://www.hbav.com)

For the latest in everything happening at HBAV.

## More Notes on the 2010 HBAV Annual Convention

Upon the conclusion of his remarks, Past HBAV and NAHB President Gary Garczynski and 2010 HBAV President Mike Newsome presented Jerry Howard with a framed picture of the Stewart-Lee House to hang in the halls of the NAHB Housing Center in Washington, DC.

## Onsite Sewage Regulations Continued Controversy

Despite an Attorney General's opinion, many counties still refuse to recognize a law passed during the 2009 General Assembly session. House Bill 1788 and Senate Bill 1276 made it illegal for local governments to deny the use of alternative onsite sewage systems once regulations governing their operation and maintenance were passed by the Board of Health.

The regulations in question were passed by the Board of Health and signed into law by Governor McDonnell on April 7, 2010. Some local governments, however, are challeng-

ing the claim that these regulations trigger the enactment clauses of HB 1788 and SB 1276 because they are emergency regulations, and are only effective for one year.

An opinion dated November 9, 2009 issued by then Attorney General Bill Mimms, alter appointed to the Supreme Court of Virginia by Governor McDonnell, clearly states that emergency regulations are finally promulgated and have the full force of law. Thereby, triggering the enactment clauses in the legislation.

Many local governments have

chosen to ignore the clear intent of the legislature, the opinion of the Attorney General, and the absolute language of the law by continuing to deny onsite systems.

The permanent regulations are being prepared this summer. The Virginia Department of Health has scheduled three marathon sessions of a stakeholder advisory panel, in which HBAV will play a leading role, for mid-July. The all day sessions will address some concerns that have already been laid out by the Health Department. For more information on the intended topics please contact Barrett Hardiman at [bhardiman@hbav.com](mailto:bhardiman@hbav.com).

## New Chesapeake Bay Action This Week

After cutting a deal with Senate Republicans, Senator Ben Cardin (D-Md) was able to get his S1816 marked-up and out of the Senate Committee on Environment and Public Works on Wednesday.

The deal with Republicans included cutting a significant amount of the language that would have created new authority for EPA and created a kaleidoscope of conflicting regula-

tions within the Bay states.

However, the S1816 is far from perfect. The bill still retains language that requires developers to create post-development stormwater BMPs that return the site's hydrology to pre-development levels to the "maximum extent technically feasible." This provision mandates limits of technology construction with no consideration to economic feasibility. If the bill

passes in its current form, the bay states can expect to see the costs of construction skyrocket.

Fortunately, Congressmen Goodlatte and Holden have a competing bill in the House of Representatives that does not contain the offending language. HBAV will fight to see that Cardin's bill is changed to mirror the language in the Goodlatte Holden legislation.