

HBAV LEGISLATIVE BULLETIN

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HOUSE RULES COMMITTEE SUSPENDS ACTION ON SENATE BILL 768, by WATKINS

“Delegate Frank Hall Brokers Agreement For Future Action”

On Tuesday morning of this week, the future of Senate Bill 768 looked very bleak. In a surprising announcement to HBAV, the Speaker of the House, William J. Howell, had made it clear that unless local governments across Virginia would agree to the measure, he would terminate the bill in his Rules Committee and roll its subject into a Study. Earlier this session, the House leader had expressed his support for the measure to members of the Fredericksburg Area Builders Association.

Senate Bill 768 is the controversial HBAV-backed proffer reform bill, which is opposed by every local government in Virginia, every extreme or radical environmental group in the Commonwealth and the Fairfax County (Government) Chamber of Commerce. The measure had narrowly passed the Senate of Virginia on a 21 to 19 vote. The Patron of SB 768 is Senator John Watkins.

On Tuesday afternoon, Speaker Howell agreed to allow Richmond/Chesterfield Delegate Frank Hall attempt to broker an agreement between HBAV and the opponents to the bill. On Wednesday morning, HBAV and the various representatives accepted a three-part Hall-Brokered Agreement. On Thursday afternoon, the House Committee on Rules accepted the Agreement. The parties to the Agreement are HBAV, Virginia Association for Commercial Real Estate, Virginia Association of Realtors, Virginia Municipal League, the Coalition of High Growth Localities and the Virginia Association of Counties.

First, SB 768 will be carried-over to the 2009 Session of the State Legislature in the Rules Committee. It was NOT to be killed or rolled into a Study. Consequently, when the 2009 session of the state legislature convenes, the legislative path to final passage of SB 768 will begin in that House committee.

Second, the Speaker of the House will write a letter to VACO and VML expressing his desire for localities not to raise their Proffer Guidelines until July 1, 2009. He will also write a letter to the parties of the Agreement, expressing his direction to meet and seek an agreement to terminate the cash component of the proffer system and convert it to a more structured system for the private sector to contribute to the cost of public infrastructure created by growth.

Third, House Bill 111, by Delegate Ed Scott, will be amended on the Senate Floor (Lucas) to prohibit localities from adopting a road impact fee ordinance until July 1, 2009. Once adopted by the State Senate, the amendment to HB 111 would have to be accepted by the House of Delegates. The prohibition will begin on July 1, 2009.

The Agreement is designed to keep the current local government/new development-housing environment in place until the end of the 2009 Session of the General Assembly or July 1, 2009.

The Agreement is not the desired outcome for SB 768 in this session of the state legislature, but it does keep the current housing development-construction environment stable and binds parties to continue discussions.

SENATE BILL 768 GETS THE SILVER MEDAL

The Leaders of HBAV knew Senate Bill 768 would be controversial, but the very high level of controversy surrounding the measure has shocked HBAV and the Patron of the measure, Senator John Watkins.

The Legislative Information System (LIS) of the Virginia General Assembly tracks the frequency of internet inquiries on all matters (legislative bills) before each session of the state legislature. Every year, as you would expect, the Budget always wins the Gold Medal for the highest level of public interest.

Winning the Silver Medal for HITS on the LIS in the 2008 Session has been Senate Bill 768, the HBAV backed proffer reform bill. In other words, SB 786 created more public interest in this session than Pay Day Lending, Dog Fighting or the Michael Vick Reform Bill, Concealed Handguns in Restaurants, the Repeal of Driver Abuse Fees and many other very controversial issues.

Yet, the HBAV-backed measure by Senator Watkins made it through one house of the State Legislature...more to follow!

FRIDAY SHOCKER HITS STATE CAPITOL

“Virginia Supreme Court Overturns Taxing Powers of HB 3202”

On February 24, 2007, the Virginia General Assembly passed, and the Governor subsequently signed into law, a comprehensive legislative package to provide for significant increased funding for transportation. It was a significant compromise between House Republicans, Senate Republicans and Democratic Governor Tim Kaine. Senate and House Democrats opposed the measure. Today, exactly one year and five days later, the Virginia Supreme Court has ruled unconstitutional a major portion of that legislation: the generation by regional transportation authorities of revenues for transportation in Virginia. HB 3202 provided a number of statewide, local, and regional measures to address transportation funding. One of the most significant of those measures was empowering the existing Northern Virginia Transportation Authority (“NVTA”), and creating a new Hampton Roads Transportation Authority (“HRTA”), to issue bonds for transportation projects, and to impose taxes and fees to finance those bonds.

Delegate Robert Marshall, former Delegate Richard Black, and several other citizens of Northern Virginia, as well as the Board of Supervisors of Loudoun County in a separate suit, challenged

the constitutionality of HB 3202 with regard to NVTA (Marshall v. Northern Virginia Transportation Authority, et al.). The Court was asked whether the General Assembly may delegate its power of taxation to a political subdivision that is not a county, city, town, or regional government, and is not an elected body.

The Court held that the General Assembly's authorization of NVTA to impose taxes and fees was constitutionally prohibited delegation of the taxing power of the General Assembly to a political subdivision whose governing board is not elected by the citizens to serve in that capacity.

The Court's issuance of the opinion today, with eight remaining days left in the 2008 Session of the General Assembly, means that the General Assembly is on notice that it cannot rely on revenues expected from both NVTA and HRTA to create the 2008-2010 Biennial Budget. The General Assembly has now lost its expectation of revenues from NVTA of at least \$300 million per year, revenues from HRTA of around \$200 million per year, and \$102 million of bonds authorized, but not yet issued, by NVTA. In a year of lower-than-expected revenue growth statewide, the General Assembly now has to adjust its priorities for transportation projects and identify new or increased sources of revenue to pay for transportation projects in the Commonwealth. These challenges now present the question of how much time the General Assembly needs to accomplish its task, as well as how much compromise will be both necessary and possible to do so.

And, a major change in the make up of the state legislature has occurred since the passage of HB 3202 in 2007. The State Senate is now majority Democratic, and they still oppose many of the provisions of HB 3202. The Senate Democrats would prefer an increase in broad based taxes to fund the transportation needs of the state. STAY TUNED!!!! This Session of the 2008 Virginia General Assembly may have just begun!

STATE LEGISLATURE ADJOURNMENT NEAR

While many uncertainties surround the shocker of a Virginia Supreme Court Decision on HB 3202, the 2008 session of the state legislature is scheduled to adjourn on Saturday, March 8th. The 60-day session began on January 8th of this year.

Many thanks to the members of the HBAV Legislative Committee, chaired by Jamie Spence of the Blue Ridge Home Builders Association, for their support and policy guidance during the highly-charged 2008 session of the state legislature. A full report of all those measures that passed and will have an impact on housing, and those many that failed that would have impacted the members of HBAV will be prepared and distributed next week. Despite the failed passage of SB 768, it was a good session for the housing industry in Virginia.