

HBAV LEGISLATIVE BULLETIN

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HOUSE GERMANENESS RULE BLOCKS ROAD IMPACT FEE MORATORIUM

“Agreement for Future Action on SB 768 Thwarted”

As announced last week, HBAV and the three major organizations that represent local governments agreed to a 3-part agreement surrounding the continuation of discussions on Senate Bill 768 this coming summer and fall.

First, SB 768 was carried over to the 2009 Session of the State Legislature in the Rules Committee. That ACTION STEP was taken last Thursday with the support of Speaker Howell.

Second, the Speaker of the House has agreed to write a letter to VACO, the Coalition of High Growth Localities and VML expressing his desire for localities not to raise their Proffer Guidelines until July 1, 2009. He has also expressed a willingness to write a letter to the parties to 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. The House leader says he will still write the letter.

Third, House Bill 111 was to be amended on the Senate Floor (Lucas) to prohibit localities from adopting a road impact fee ordinance until July 1, 2009. The Senate of Virginia approved the amendment to House Bill 111 on a 35 to 5 vote on Tuesday afternoon and the bill was communicated to the House of Delegates.

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Late on Tuesday afternoon, House Bill 111 Patron, Delegate Ed Scott, made a motion for the House of Delegates to accept the Senate Amendment to his House Bill. Delegate Scott did an excellent job explaining the Senate Amendment and strongly urged his House colleagues to accept it. However, immediately thereafter, another House member raised a Point of Order to the Speaker of the House, questioning whether or not the Senate Amendment was germane to the original purpose and subject of the House Bill.

After several minutes of consultation with his staff and leadership team, the Speaker of the House ruled the Senate Amendment to House Bill 111 was not germane to the original bill. That decision killed House Bill 111 and the Senate Amendment for this session of the state legislature.

The germaneness rule is an important rule. It prevents legislation that has been reviewed and approved by a House Committee from being amended on the House Floor with a totally different subject matter. More often than not, the rule works to the benefit of business in Virginia, including HBAV. In the recent past, the House Speaker has strictly interpreted the House rule on germaneness.

Two follow up details: (1) HBAV got word that the Speaker had been advised by his staff that the Senate Amendment was not germane, and consequently, got the opportunity for the best constitutional lawyer in Virginia to explain to the House Speaker why he believed the Senate Amendment was germane to House Bill 111, and (2) HBAV has absolutely no idea why the Speaker ruled the way he did, other than he truly believed it was not germane.

Finally, there still may be an opportunity for the moratorium to be implemented before July 1. The state legislature has yet to adjourn and it is likely they will return to Richmond in April for another Special Session on transportation. More on this subject follows.

ILLEGAL IMMIGRATION THREAT MANAGED

Illegal immigration or undocumented workers was a major issue in many of the elections for the 100 seats in the House of Delegates and 40 seats in the State Senate last summer and fall. As predicted, the issue moved from the campaign trail to the halls of the General Assembly Building this year. Over 100 bills were introduced surrounding the immigration issue, and many could have imposed significant penalties on Virginia employers who had unknowingly employed undocumented workers. The issue was a major focus of the HBAV lobbying team this year.

To combat the issue, HBAV joined and became an active member of a business coalition that was formed to ensure innocent Virginia employers were heard in the debate. The name of the business coalition was the Virginia Employers for Sensible Immigration Policy (VESIP). The positive result was a classic example of the benefits of the business community working together on a sincere threat.

House Bill 926 by Delegate Byron, and Senate Bill 782 by Senator Obenshain, will require the State Corporation Commission to terminate the existence of a business when the directors or officers are convicted of a pattern and practice of violation of federal immigration laws. This is a very high standard to meet, and only one Virginia employer has ever been convicted of a pattern or practice of hiring illegal immigrants. After this conviction, the SCC may terminate the business existence after a due process hearing.

House Bill 1298 by Delegate Frederick, and Senate Bill 517 by Senator Cuccinelli, address government contractors. The bills require all public bodies to include in public contracts a term or condition that binds public contractors not to hire an unlawful alien. This language is already

in state contracts, and in contracts used by larger local governments. These bills codify this practice so that all public bodies have this provision in their contracts.

TRANSPORTATION FUNDING WILL LIKELY HAVE TO WAIT FOR A SPECIAL SESSION

As reported last week, the Virginia Supreme Court has ruled unconstitutional a major portion of the House Bill 3202, the 2007 transportation funding legislation. 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.

The Court’s issuance of the opinion came with only eight days remaining in the 2008 Session of the General Assembly, and it meant that the General Assembly was 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.

Early this week, the Republican-majority House of Delegates took a run at a quick solution to the Supreme Court ruling by transferring the taxing powers of the regional transportation authorities to local governments, with the requirement for them to enact the same. That move was quickly resisted by local governments and the Democratic State Senate.

Late this week, the Senate Democratic Majority leader took a run at a statewide funding plan for transportation and a revised funding plan for the regional authorities that raised broad-based taxes and fees. As expected, the Republican House leadership immediately rejected that plan.

As a result, as we go to press, it appears a solution to the transportation funding crisis created by the Virginia Supreme Court Decision last Friday, will have to wait until a Special Session on the issue is called, likely in conjunction with the mid April scheduled Veto Session of the State Legislature.

With the State Senate now a majority Democratic chamber, that seems to prefer an increase in broad-based taxes to fund the transportation needs of the state, and the House being a majority Republican body that prefers the opposite, STAY TUNED!!!! The Special Session of the 2008 Virginia General Assembly will be a real test of will power in both chambers.

STATE LEGISLATURE ADJOURNMENT MAY BE NEAR - BUDGET IMPASSE CONTINUES

As of this writing, the House of Delegates and State Senate appear deadlocked on a State Budget for the remainder of FY 2008 and FY's 2009/2010. Many issues are reported to be unresolved late this Friday afternoon. This week in Richmond has been nothing but a series of press conferences, with each house accusing the other of the failure to negotiate in good faith. 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.

Some leaders are forecasting that many issues can be resolved perhaps as early as this evening. Since the joint rules of the Virginia General Assembly require the state budget to be printed and distributed 24 hours before they can be considered by both bodies, it appears Sunday, March 9th is the earliest they can adjourn this year.

BARRETT HARDIMAN JOINS HBAV STAFF

HBAV President Henry Stephens has announced the appointment of Barrett Hardiman as the new Vice President/ Director of Regulatory Affairs for the association. Mr. Hardiman joined the HBAV staff on March 3, 2008. He succeeds Pat O'Hare, who retired on January 1st of this year.

Barrett comes to HBAV with five years of legislative and regulatory experience in Richmond. He most recently served the Virginia Hospitality and Travel Association (VHTA) as Director of Government Relations. Prior to his service at VHTA, he was an Associate Director with Charlottesville-based Easter Associates, where he was responsible for the legislative and regulatory agendas of multiple statewide trade associations.

"We are very pleased to have Barrett join our excellent staff," said Stephens. "He is well known and highly regarded in the halls of the General Assembly Building and the state office buildings that house state regulators. His five years of previous experience with state government will be a valuable asset to the members of HBAV, as we continue the fight for a better housing climate in the Commonwealth."

Barrett is a Richmond native, and enjoys the charm and prestige unique to the history of his hometown and state. Barrett attended the University of Virginia, graduating in 2001 with a double major in Economics and American Government. Barrett has also served on the Board of Directors for the Virginia Recording for the Blind and Dyslexic.

"Barrett will play an active role in the government relations activities of HBAV," said association Executive Vice President Mike Toalson. "He will strengthen our staff in many ways," Toalson concluded.