



Legislative Update

Volume 2010, Issue I

The 2010 Virginia General Assembly convened on January 13, 2010. Having just passed its midpoint (“cross-over” on February 16, 2010), the General Assembly completed initial action on 2131 bills that were introduced. This is a reduction of about 247 bills over the last “long” session which was held in 2008. This reduction in bills has been attributed to the focus on the unprecedented budget shortfall facing the 2010 General Assembly. The following is a summary of major issues facing VACRE at the 2010 Session.

Budget

Legislators began the 2010 Session facing a revenue shortfall in excess of \$4 billion due to continued deterioration in Virginia’s economy. Governor Kaine introduced a proposed 2010-2012 budget which closed about \$2 billion of this gap with spending reductions and one-time savings and proposed the remaining \$2 billion shortfall be met with elimination of the current car tax relief provided to Virginia’s localities and to replace that revenue stream with a 2% increase in the state income tax. This income tax proposal was quickly rejected by Governor McDonnell and in a unanimous bipartisan vote of the House of Delegates which required that these additional reductions be met with additional cuts to public education, health and human services and a wide variety of other state programs. As of this writing, the House and Senate have adopted their versions of a new state budget for 2010-2012 which will then go to a committee of conference for resolution prior to the scheduled adjournment of the Assembly on March 13, 2010.

Transportation

Given the preoccupation with the state budget shortfall, the resistance of the House of Delegates and Governor McDonnell to tax or fee increases and the current state of the economy, most proposed transportation funding legislation has already been defeated this Session. Governor McDonnell has indicated he will call a Special Session of the General Assembly to address transportation funding later this year if a consensus can be reached between House Republicans and Senate Democrats prior the convening of such a Special Session. Given the wide gap that exists between the two houses of the General Assembly over how to meet the acknowledged transportation funding needs of the Commonwealth (the House preferring the use of existing or growth in general fund revenues while the Senate prefers non-general fund tax increases such as an increase in the gas tax), such a consensus appears unlikely anytime soon.

Legislation was introduced in the House (HB 721) by Delegates Tom Rust (R-Herndon), Joe May (R-Loudoun County) and Vivian Watts (D-Fairfax County), which would have added a five percent tax on gasoline at the wholesale level (phased in over a five-year period in one-

percent increments) to provide statewide revenues to meet highway maintenance needs. When fully implemented this would have raised a projected \$750 million per year. This legislation would have also enacted a combination of tax increases in Northern Virginia (1/2 percent sales tax increase, 40 cents per \$100 of value grantor's tax and requirement that localities implement the full 12.5 cents per \$100 value commercial real estate tax for transportation purposes authorized in 2007) which would have raised about \$400 million per year in new revenues to meet Northern Virginia's transportation needs. HB 721 was carried-over to the 2011 Session after receiving some unexpected support in Subcommittee from freshman Delegate Tag Greason (R-Loudoun) and House Finance Chairman Bob Purkey (R-Virginia Beach). Legislation was also defeated which would have:

- allowed a portion of the growth in general fund revenues attributable to new transportation projects to be used as a grant to leverage the public contribution towards PPTA projects (SB 181);
- privatized Virginia's ABC stores to generate additional revenues for transportation funding (HB 342 and SB 443); and
- created a tax district for funding the expansion of metro service to Prince William County (HB 1313-Torian).

Legislation passed the House and was recently reported to the Senate floor (HB 756-Stolle) which provides that 80% of the royalties derived from the drilling of oil and gas off Virginia's coast would be directed to transportation funding. Federal legislation would have to pass Congress to allow Virginia to share in these royalties.

Two bills have passed the Senate, however, which would generate modest additional revenue for transportation. SB 343, introduced by Senator Emmett Hanger (R-Augusta County), has passed the Senate and would provide for an annual increase in the gas tax proportionate to any increase in CAFE standards (fleet fuel efficiency) that occurred in the prior year. If approved, this bill would help halt declines in gas tax revenues which are resulting from increased fuel efficiency of automobiles. SB 513 introduced by Senator Tom Norment (R-James City County) has also been approved by the Senate, it would authorize instant racing machines at Virginia's horse racing track and off-site betting centers and allocate 42.5% of this new revenue for transportation funding purposes (about \$40 million per year). This instant racing legislation has been defeated in the House in recent years so its prospects of approval remain slim. Finally, legislation introduced by Delegate Glenn Oder (R-Newport News) has passed the House and awaits action on the Senate floor which would require VDOT to consider unsolicited proposals for expanding capacity at the Hampton Roads Bridge Tunnel (HB 402).

Traffic Impact Statements

Three bills were introduced in 2010 which would have increased the burden of the traffic impact statement requirements that have been implemented at VDOT for new development projects. HB 808, (Vivian Watts, D-Fairfax County), SB 550 (George Barker, D-Prince William County) and HB 1098 (Mark Sickle, D-Fairfax County) as introduced would have required as part of the existing "527" traffic impact analysis process that separate comments, new regulations and an additional fee of up to \$1000 per submission be required by the Department of Rail and Public Transportation for any proposed rezoning or

site plan filing or comprehensive plan amendment having an impact on “mass transit utilization”. These bills were strongly opposed by VACRE as adding an unnecessary and duplicative burden, delay and cost to a process that has already produced significant costs, delays and concerns for the development community. All three of these bills were defeated and carried over to the 2011 Session where they may be reintroduced.

Environment

The top environmental issue facing the General Assembly in 2010 was implementation of new stormwater regulations by the Virginia Soil and Water Conservation Board. The increased requirements for phosphorus reduction and implementation of the “runoff reduction” method to calculate runoff from a development or redevelopment site, as well as other proposed changes in the stormwater regulatory process, produced great concern in the development community over the potential significant cost increases of these new requirements. There was also significant concern that these proposals were being implemented before the U.S. EPA had finalized its Total Maximum Daily Load (TMDL) allocations for Virginia which could result in conflicting, unnecessarily restrictive or duplicative requirements. As a result, legislation was introduced and has now passed both the House and Senate which would delay implementation of this new regulatory program. SB 395, introduced by Delegate Frank Wagner (R-Virginia Beach), and HB 1220, introduced by Delegate Tim Hugo (R-Fairfax County) delays implementation of these new regulations for 280 days from the establishment of a TMDL by EPA or no later than December 1, 2011, whichever comes first.

Land Use Measures

Given the state of the economy and the realization that the decline of the residential and commercial real estate industries has significantly contributed to the economic downturn, few adverse land use measures have been introduced in 2010 compared to recent years. There were no bills introduced which proposed to implement adequate public facilities legislation or impact fees.

Two bills have passed the House and Senate, respectively, which amend the Urban Development Area (UDA) legislation approved as part of the 2007 transportation legislation. SB 420, introduced by Delegate Clay Athey (R-Front Royal) and HB 1071, introduced by Senator Jill Vogel (R-Winchester), have passed their house of origin and, as requested by VACRE, make it clear that the densities required under the UDA statute are only authorized densities and not required minimum densities. These bills would add a second tier of density for localities with a population in excess of 100,000 persons which would provide for an authorized commercial density of at least 0.8 FAR.

Legislation was withdrawn by the patron (SB 640) which would have required that cash proffers be established by local ordinance. Legislation has passed both the House and Senate (HB 374 and SB 632) which provides that cash proffers for residential development may not be collected until a certificate of occupancy is issued. Currently these cash proffers are usually collected upon issuance of a building permit.

HB 1250, introduced by Delegate Barry Knight (R-Virginia Beach), has passed the House which adds a new action to the list of acts which constitute a “significant governmental

act” for purposes of vesting land use rights. This new criteria is a written order or determination from a zoning administrator “regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of §15.2-2311”.

SB 699, introduced by Senator Vogel, was withdrawn at the request of the patron. It was opposed by VACRE and would have provided for the downzoning of previously grandfathered land uses and densities within the Route 28 tax improvement district in Loudoun County.

Taxes

Two bills that have passed the House and are under consideration in the Senate which would reform the process by which real estate tax assessments are appealed. HB 570, introduced by Delegate Sal Iaquinto (R-Virginia Beach) would shift the burden of proof in real estate tax assessments from the taxpayer to the locality. HB 430, introduced by Delegate Morgan Griffith (R-Salem) proposes a number of changes to the appeals process including that: (1) the locality provide upon request the methodology used to calculate an assessment as well as the comparables and sales values used to calculate the assessment; (2) in localities with a population greater than 100,000 persons one-third of the members of the local panel or board which reviews appeals of assessment must be commercial or multi-family real estate appraisers licensed by the Virginia Real Estate Appraisers Board; and (3) establishes that the policies that must be demonstrated as having been followed during the assessment are those prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO).

Proposed Constitutional Amendments

Constitutional amendments are typically not acted on in even years by the General Assembly unless they are being passed for a second time because they must be adopted twice by the General Assembly with an election occurring after first passage. As such, numerous proposals introduced in 2010 to add to the Constitution the statutory restrictions on eminent domain that were adopted in 2008 were carried over to the 2011 Session. In addition, a proposed constitutional amendment (SJR 25) introduced by Senator Chap Petersen (D-Fairfax City), which would authorize localities to exempt or partially exempt from real or personal property taxation energy efficient buildings or equipment, that was up for second passage, had to be carried over at the request of the patron due to a drafting error that was discovered late in the Session. As a result, this amendment will need to be adopted by the 2011 and 2012 General Assembly before it can be sent to the voters.

Questions or Comments

The General Assembly is scheduled to adjourn on Saturday, March 13. You will receive another Legislative Update following the end of the session. Should you have questions or need additional information, please contact Phil Abraham at pabraham@vectrecorp.com or Martha Marks at mmarks@naiopva.org.