The following is a Virginia General Assembly update from Phil Abraham, who lobbies in Richmond on behalf of the Virginia Association for Commercial Real Estate (VACRE). VACRE is a coalition of the Greater Richmond Association for Commercial Real Estate (GRACRE); the Hampton Roads Association for Commercial Real Estate (HRACRE); and NAIOP Northern Virginia, the Commercial Real Estate Development Association (NAIOP).

These associations are comprised of executives and professionals committed to promoting the ownership, use and development of commercial real estate in the Commonwealth of Virginia. Concurrently balancing the concerns of the private sector with the public interest, VACRE strives to support, educate and affect legislative initiatives that enhance commercial real estate. As a member of one or more of the above mentioned organizations, you will receive information related to VACRE’s efforts on your behalf at the state level. Please take a few minutes to read this update so that you are informed about the legislative issues facing the industry.

You can find a summary of each bill discussed in this update, as well as its full text and legislative history by clicking on the bill number shown in blue. For more information about the Virginia General Assembly, you may go to the Legislative Information System website which is operated by the Virginia General Assembly. For more information about VACRE, please click www.vacre.org.

Virginia General Assembly Update

The 2014 General Assembly reached “cross-over” on February 11, the midpoint of the Session, at which each house of the General Assembly concludes work on its own bills, with the exception of the budget bills. Each house now considers those bills approved by the other body. Five weeks into the 2014 Session and with only about three weeks remaining, the General Assembly has concluded a substantial portion of its work. About 1945 bills were introduced this Session (this excludes study and commending/memorial resolutions). Only about 1055 of these bills remain alive at cross-over, with nearly 46% of the bills introduced in 2014 already either defeated or carried-over until the 2015 Session. This update reviews the status of the major bills of interest to VACRE that we have been following during the 2014 Session.

Environment

With a July 1, 2014 start date rapidly approaching, legislation to delay the start of new stormwater regulations and to shift administration of this program from local to state administration has been the main environmental issue being debated at the 2014 Session. At least 17 bills on stormwater regulation have been introduced at the urging of many local governments. VACRE has been working with the Homebuilders Association of Virginia (HBAV) to make sure that no legislation is approved this year that could produce two harmful results for the development industry. Our first concern was to stop passage of any bill that could result in administration of the new stormwater program by the U.S. Environmental Protection Agency as a result of a delay in the start of the new state stormwater program beyond July 1, 2014. Second, VACRE opposed any bills that would shift administration of the program to the Virginia Department of Environmental Quality that could result in significant delays in the processing of stormwater permit applications within the major jurisdictions in the Hampton Roads, Northern Virginia and Richmond regions in which VACRE’s members operate. After considerable discussion and debate, legislation has now passed the House of Delegates and Senate of Virginia that addresses the concerns of VACRE and HBAV while providing some relief to rural localities that are not ready to administer the new program. HB 1173, introduced by Delegate Keith Hodges (R-Gloucester), has passed the House and SB 423, introduced by Senator Emmett Hanger (R-Augusta County), has passed the Senate. Both bills, which are virtually identical with minor technical differences, allow the new program to take effect on July 1, 2014, maintain local administration of the program in all of the major localities within the urban crescent of Virginia and give rural localities who do not currently operate MS4 programs the ability to opt out of the program and have DEQ administer it in their locality. VACRE will continue to monitor this legislation to make sure it has no negative impact on the stormwater program within the Richmond, Hampton Roads and Northern Virginia regions.

Both the House and Senate have also passed resolutions creating a Joint Subcommittee to formulate recommendations over a two year period for the development of a comprehensive and coordinated planning effort to address recurrent flooding. The joint subcommittee will recommend short- and long-term strategies for minimizing the impact of recurrent flooding. The House recurrent flooding resolution (HJR 16) was introduced by Delegate Chris Stolle (R-Virginia Beach). The Senate
resolution (SJR 3) was introduced by Senator Mamie Locke (D-Hampton) and incorporates a similar resolution (SJ 34) introduced by Senator Jeff McWaters (R-Virginia Beach). A final report will be issued by November 1, 2015. The House and Senate still must resolve differences over the composition of the membership of this Joint Subcommittee prior to its final approval.

**Transportation**

Following passage of last year’s landmark transportation funding legislation, VACRE made it a priority to make sure no legislation is approved at the 2014 Session that would result in a significant erosion of transportation revenues. Two bills were introduced that were of particular concern in this regard, but both were defeated in the House. HB 3, introduced by Delegate Ben Cline (R-Amherst), would have repealed the 2013 transportation funding package in its entirety. HB 40, introduced by Delegate Bob Marshall (R-Prince William), would have repealed provisions that will automatically raise the wholesale gas tax from 3.5% to 5.1% if Congress fails to enact the federal law imposing state sales taxes on Internet transactions prior to January 1, 2015. Both of these bills failed in a House Finance Subcommittee. Legislation that will repeal the $64 annual registration fee imposed on hybrid motor vehicles is sailing through the General Assembly (HB 975-Rust and SB 127-Newman) but will only result in a reduction of about $8,000,000 per year in FY 2016. The annual registration fee will remain on all-electric vehicles.

HB 2, introduced by Delegate Chris Stolle (R-Virginia Beach), has passed the House and requires the Commonwealth Transportation Board (CTB) to develop a prioritization process for transportation projects funded with state monies. The prioritization process to be implemented by July 1, 2016 must include, at a minimum, congestion mitigation, economic development, accessibility, safety and environmental quality as factors by the CTB in prioritizing transportation projects approved during or after FY 2017. The bill also authorizes the CTB to assign different weights to these factors between the construction districts in recognition of the different needs of urban and rural Virginia.

Legislation to create the Hampton Roads Transportation Accountability Commission (HRTAC) (HB 1253-Jones and SB-513-Wagner) has passed its house of origin. The HRTAC is to be comprised of the Mayor or Chairman of the governing bodies of the 14 localities that comprise the Hampton Roads region, along with two Delegates, two Senators and four ex-officio members. The Commission would take over prioritization of transportation projects from the Hampton Roads Transportation Planning Organization and is given authority to issue bonds as well as to enter into contracts under the Public-Private Transportation Act. SB 606, introduced by Senator John Watkins (R-Midlothian), would have allowed Chesterfield County to assume maintenance responsibility for its secondary roads and receive the same per lane mile payment currently received by Henrico County. SB 606 was carried over for the year in the Senate Finance Committee to see if the increased transportation revenues approved in 2013 sufficiently address the secondary road maintenance needs of Chesterfield County.

**Land Use and Local Government**

HB 1084 and SB 578, introduced by Delegate Rick Morris (R-Isle of Wight) and Senator Mark Obenshain (R-Harrisonburg) provide that an applicant aggrieved by the grant or denial by a locality of any approval or permit, including land use approvals and permits, where such grant included, or denial was based upon an unconstitutional condition, shall be entitled to an award of compensatory damages, and may be awarded reasonable attorney fees and costs. The bill also provides that the applicant shall be entitled to an order remanding the matter to the locality with a direction to grant or issue such permits or approvals without the unconstitutional condition. These bills, that have now passed their house of origin, were introduced at the request of HBAV in response to the decision of the United States Supreme Court in Koontz v. St. Johns River Water Management District. This case provided that such relief may be granted even where the permit sought was not issued and where the locality seeks monetary exactions (such as cash proffers) from developers.

Senator David Marsden (D-Fairfax County) introduced legislation that has passed the Senate (SB 593) to clarify that the recusal provisions applicable to land use cases in Fairfax County only apply where the Supervisor has an employee-employer, agent-principal, or attorney-client relationship with a land use applicant. A recent Virginia Supreme Court decision interpreted current law to require recusal if a supervisor has received a campaign contribution or gift from an applicant. This bill may be amended in the House to make a similar change in the identical statute that applies to Loudoun County Board of Supervisor members.

Legislation was introduced in the House and Senate that would have added Prince William County to the list of localities that could create service districts to assess landowners for the cost of placing utilities underground. HB 1101 (Torian) and SB 550 (Puller) were introduced at the request of Prince William County and were carried over due to concerns raised by VACRE and others. Similar legislation is likely to be reintroduced in 2015.

The Commission on Local Government Mandates will continue its work for four more years under bills working their way through the General Assembly. At the request of VACRE and other groups, the work of this Commission was limited to four.
years (as opposed to making it a permanent study commission) and two representatives of the business community were added to the Senate version of the legislation (SB 163-Locke). It is anticipated that the House bills on this topic (HB 1011-Byron and HB 594-BaCote) will be amended to conform to the SB 163 when they are heard in the Senate Local Government Committee.

Taxes

VACRE continued its opposition to any legislation that would allow for bifurcated real estate taxes to be imposed on commercial and residential property when it opposed SB 199 that was introduced by Senator Kenneth Alexander (D-Norfolk). This legislation would have allowed a governing body to set different tax rates on commercial and residential property within a service district based on the “benefit received” by each class of property. Senator Alexander requested that the bill be stricken when he learned of VACRE’s and other business interest opposition to the legislation.

Senator Tommy Norment (R-James City County) introduced SB 480 that has passed the Senate and which requires localities to provide the prior two years appraisals in tax assessment notices. It also requires that such notices inform the taxpayer of their right to access the records used to establish their tax assessment and the procedures available to access such records.

A wide variety of bills were introduced to repeal certain tax exemptions to fund tax relief in other areas. These bills included HB 995, introduced by Delegate Tim Hugo (R-Fairfax County) that would have repealed the Historic Rehabilitation Tax Credit and a variety of other tax credits and exemptions and with the resulting revenue savings be directed to a reduction in the corporate income tax. All of these bills were either carried over or defeated in committee. A similar fate was met by legislation to reduce or freeze the impact of BPOL taxes on Virginia businesses, including HB 371 and HB 434 that were introduced by Delegate Chris Head (R-Roanoke) and Delegate Jim LeMunyon (R-Fairfax County), respectively. A large number of bills and resolutions were also introduced calling for a comprehensive evaluation of existing tax credits and exemptions as well as to study options for eliminating or reducing local BPOL and machinery and tools taxes (e.g. HB 406-Toscano, HB 431-LeMunyon, and HJR 174-BaCote). These tax reform bills and studies failed to pass the House. Tax reform, however, remains a major interest of both the leadership in the House of Delegates and Governor McAuliffe. The Historic Rehabilitation Tax Credit, that is important to many in the commercial development industry, continues to surface as a potential target of tax reform efforts. VACRE will continue to monitor these tax reform issues closely during the remainder of 2014.

HB 1191, introduced by Delegate Jimmie Massie (R-Henrico County), has passed the House. It would require the Secretary of Commerce and Trade to submit an annual report to the Chairs of the Senate Finance and the House Appropriations and Finance Committees on the effectiveness of economic development incentive programs administered by the Commonwealth.

State Budget

The House and Senate money committees will complete their work on their respective versions of the next biennial state budget (2012-2014) on Sunday, February 16. Their recommendations will be available for your review at the State Budget Website. The Senate and Governor McAuliffe are backing expansion of Medicaid and the House opposes this initiative. Medicaid expansion represents the major stumbling block to adoption of the next state budget. Differences over Medicaid expansion are likely to delay the conclusion of the 2014 Session beyond its scheduled March 8, 2014 adjournment date.

Ethics

The House and Senate have both passed similar, but not identical, versions of ethics reform legislation prompted by the controversy surrounding gifts and loans received by former Governor McDonnell and his family. HB 1211, introduced by Delegate Todd Gilbert (R-Woodstock) and SB 649, introduced by Senator Tommy Norment (R-James City County) require a change from once a year to twice a year lobbyist and legislator disclosure reports. Both bills prohibit the receipt of “tangible” gifts in excess of $250 by legislators or candidates for the legislature from lobbyists. The House bill would extend this prohibition to such gifts from persons the legislator or candidate knows or has reason to know is doing business or seeking business with the state. Governor McAuliffe has issued an executive order that prohibits, with certain exceptions, most state employees and board members from receiving any gift from a lobbyist in excess of $25 and from receiving any gift in excess of $100 (singularly or cumulatively of a twelve month period) from any other person.

Questions or Comments

VACRE will continue to review, monitor and influence legislation of interest to the commercial real estate community throughout the legislative session. A more detailed update will be provided to VACRE’s members on the status of legislation of interest following adjournment of the 2014 General Assembly which is scheduled for March 8, 2014.
Please contact Phil Abraham at pabraham@vectrecorp.com or Martha Marks at mmarks@naiopva.org if you have any questions or comments regarding this update or other legislative issues.

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