



Legislative Update

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With the 2009 Virginia General Assembly nearing its scheduled adjournment on Saturday, February 28, 2009, the legislature continues to grapple with some of its more controversial bills and, most importantly, reaching agreement on a conference report on amendments to the FY 2009-2010 state budget. The following is a summary of the major issues VACRE has followed during this legislative session.

Homestead Exemption and Eminent Domain

As reported previously two proposed constitutional amendments were introduced at the 2009 Session which would have given localities the option to exempt up to 20% of the assessed value of residential property from real estate taxation (HJR 686 – Brink and SJR 333 – Whipple). This constitutional amendment was defeated last year at the 2008 Session by a one vote margin on the Senate Floor which prevented it from going to the voters where it faced almost certain passage. This amendment could have resulted in a shift of more than \$1 billion in property taxation from residential to commercial taxpayers. The defeat of this proposal was one of VACRE's top priority. VACRE's lobbyist testified against this proposal again this year and both bills failed to advance from their house of origin.

A variety of constitutional amendments were also introduced in 2009 to place in the constitution the restrictions on the power of eminent domain that were placed in statute in 2007 in response to the Kelo decision. These measures included HJR 725 – Bell and SJR 290 – Obenshain. VACRE opposes passage of any constitutional amendment at the 2009 Session because the 2007 changes have yet to be interpreted by the courts and any such constitutional amendment would tie the hands of the General Assembly in responding to any unexpected interpretations of the statute by the courts. Each version proposed would threaten the ability of government entities to provide infrastructure such as water/sewer and roads to economic development projects (even if the land upon which such projects were purchased without eminent domain). SJR 290 was defeated in the first half of the Session by a one vote margin in the Senate Privileges and Elections Committee. The House version of this proposal (HJR 725) passed the House of Delegates by a vote of 68-31 but was defeated in the Senate Privileges and Elections Committee on a 9-6 vote. VACRE's lobbyists took the lead in assembling a list of the numerous business groups, public utilities, localities and local housing authorities who opposed these constitutional amendments. This list was very effective in demonstrating to Senators the broad opposition to this proposal which we expect will continue to be introduced in future sessions of the Virginia General Assembly.

Land Use Measures

Legislation has passed the House of Delegates and Senate of Virginia (HB 2077 – Oder) which would extend to July 1, 2014 the validity period of any preliminary and recorded subdivision plats and final site plans filed as of January 1, 2009 for residential and commercial development. This five-year extension of validity would also apply to certain types of proffers that are conditioned upon future development activity as opposed to arrival of a date certain. This legislation was strongly supported by VACRE. Legislation has also passed the Senate (SB 1533-Saslaw) which would extend by two years the validity period of special use permits. Legislation was defeated in the House of Delegates (HB 2613-Hall) which would have required a phase-out of cash proffers for residential and commercial development with no replacement of that source of revenue for localities. No legislation was introduced this session which would have imposed adequate public facilities requirements or expanded impact fees for development. Legislation has also passed the House which would clarify the statute which allows for the adoption of transfer of development rights by localities (HB 2055-Lohr), including provisions which allow for severance of the rights (a form of banking) before they are tied to a specific receiving area.

Transportation

After numerous failed attempts in recent years to obtain passage of significant new funding for transportation, no such legislation, once again, failed to pass during the 2009 Session. The House passed legislation (HB 1579-Oder) which would allocate for transportation purposes 30% of the growth of revenue attributable to port activity in Hampton Roads (up to \$300 million annually), Richmond, Staunton (inland port) and Roanoke (proposed inland port), respectively, up to \$50 million each annually. It also provides for 30% of the growth income tax, sales tax and insurance taxes generated in Northern Virginia (up to \$600 million annually) for transportation purposes in that region. This legislation, as predicted, failed to pass the Senate because of its reliance on general funds traditionally allocated to other core services as well as the unpredictability of these revenue streams upon which to base transportation construction programs.

Legislation also passed the House and Senate (HB 2480-Hugo) which is supported by VACRE that would prevent any commercial real estate tax increases adopted for transportation purposes by Hampton Roads or Northern Virginia localities pursuant to HB 3202 (2007) from being used for purposes unrelated to new road construction or new transit or expanded transit capacity. This measure was opposed by Fairfax County and Arlington County whose representatives wanted to use the funds for other transportation purposes such as “safety” improvements or awnings and landscaping at transit stops. Legislation has also passed the General Assembly (HB 2479) which would cap for four years at 12.5 cents per \$100 value the commercial real estate tax for transportation in Northern Virginia (down from the current 25 cents per \$100 value).

Legislation was introduced in the House (HB 2667-Hall) and the Senate (SB 1534-Watkins) which would create a Central Virginia Transportation Authority to help meet the region’s transportation funding needs. The only funding source contained in the two bills is a proposed grantors tax of up to 40 cents per \$100 of value. This legislation was opposed as introduced by GRACRE (Greater Richmond Association for Commercial Real Estate) because it singles out the development industry as its only source of revenue to meet the region’s

transportation needs. Although this legislation was defeated in the House, the Senate bill was approved by the Senate on a 21-19 vote. SB 1534 was amended in the House to take out the grantor's tax provisions and is presently awaiting action on the floor of the House of Delegates where it could be further amended or defeated.

Environment

In the wake of a firestorm of criticism over proposed stormwater regulations, the Department of Conservation and Recreation sought the introduction of HB 1991 (Bulova) which has passed the General Assembly and if signed by the Governor will delay the effective date of the proposed regulations until no sooner than July 1, 2010. VACRE strongly opposed the recommendation of the Governor's Climate Change Commission (issued in December 2008) to require all commercial buildings over 50,000 square feet in size to be built to LEED standards. In the wake of this opposition, no such legislation was introduced. A number of bills have been introduced, however, which would require state and local governments to build new facilities or major expansions to LEED or equivalent standards without having to undergo LEED certification (e.g. HB 2387-Ebbin and SB 1252-Petersen). Both of these bills were defeated in the House of Delegates.

Budget

The House and Senate have adopted their own versions of budget amendments required to trim \$2.8 billion from the state budget due to revenue shortfalls resulting from the current economic slowdown and as of today continue to work towards agreement on a conference report that would resolve differences in the House and Senate amendments. Governor Kaine announced on February 16, 2009 that the state revenue forecast required a mid-session downward revision reflecting the loss of an additional \$821 million bringing the projected budget shortfall to \$3.7 billion. At the same time, however, Governor Kaine announced that funds available from the federal economic stimulus package would allow this gap to be closed with about \$29 million in surplus remaining in the current fiscal year and more than a \$100 million surplus for FY 2010.

Questions or Comments

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