



## Real Estate Legislative Update: 2011 Virginia Legislative Summary

**04.11.2011**

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The 2011 Regular Session of the Virginia General Assembly convened on January 12, 2011 and adjourned February 27, 2011. The Reconvened Session, which considered the Governor's amendments and/or vetoes to legislation passed by the General Assembly during the Regular Session, adjourned sine die on April 6, 2011. The following summary provides an update on some of the bills affecting the real estate industry that were considered during the 2011 legislative session. Bills of particular interest relate to the Virginia Department of Transportation review of development, tax assessments and classifications, tax incentives for development within tourism zones and the impact of zoning administrator decision request letters. For more information about the General Assembly or any of the legislation it considered in 2011, please visit <http://legis.state.va.us/> or <http://leg1.state.va.us/>.

### Taxes

**HB 1588/SB 1350 - Real property tax assessments; appeals.** Specifies that, when a taxpayer appeals the assessment of real property to a board of equalization or to a circuit court, he has the burden of proof to show by a preponderance of the evidence that the property is valued at more than fair-market value or that the assessment is not uniform in its application. The bill includes requirements on assessors to provide certain notice and to furnish certain information in appeals of assessments. The legislation applies to tax years beginning on or after January 1, 2012. This bill has been passed by both houses of the General Assembly and has been approved by the Governor.

**HB 1851/SB 860 - Real property tax; classification of certain historical buildings.** Creates a separate class of property for real property tax rate purposes, consisting of buildings that are on the Virginia Landmarks Register and that are maintained in proper condition, permitting localities to impose a lower tax rate than that imposed on other types of real property. This legislation has been passed by both houses of the General Assembly and has been approved by the Governor.

**HB 1908 - Recordation and grantor taxes.** Changes the basis on which recordation and grantor taxes are calculated on the conveyance of real estate to the consideration for the property conveyed, effective July 1, 2013. Under current law, such taxes are calculated based on the greater of such consideration or the actual value of the property conveyed. For a three-year period, the bill also expands the reduced recordation tax on deeds of trust securing a refinanced mortgage loan with the same lender to all refinancings, regardless of lender. Finally, the bill increases the penalty for fraudulent understatement of the consideration for the property conveyed, from an amount equal to the tax due on the

understatement to twice that amount. HB 1908 was left in the House Finance Committee.

**HB 2285/SB 1193 - Tourism zones; tax revenues for tourism projects.** The Code of Virginia currently authorizes any city, county or town to establish one or more tourism zones, and to grant tax incentives and regulatory flexibility within such zone(s). HB 2285 and SB 1193 assist a developer within a tourism zone with obtaining financing to compensate for a shortfall in project funding between expected development costs and the debt and equity capital provided by the developer of the project. If a project meets the criteria established by the bills, then the tourism project is entitled to 1% of the sales tax revenues generated by the transactions taking place on the premises of a tourism project. This entitlement shall continue until the gap financing is paid in full. The sales tax revenue may be used only to make payments of principal and interest on the qualified gap financing. This legislation requires that the owner of the project (i) have a minimum of 80% of the funding for the project in place through debt or equity; (ii) enter into a performance agreement with the local economic development authority and (iii) enter into an agreement to pay an access fee, which will be used to pay the debt service. These bills passed both the House and Senate. The Governor signed SB 1193 and proposed an amendment to HB 2285, which was adopted by the House and Senate during the Reconvened Session.

### **Transportation, Local Government and Land Use**

**HB 2527/SB 1446 - Transportation funding.** Creates the Virginia Transportation Infrastructure Bank (Bank) as a new source for funding transportation projects. The Bank would be managed and administered by the Virginia Resources Authority and would be capitalized as recommended by the Governor and appropriated by the General Assembly. Up to 20 percent of the capitalization of the Bank would be used to make grants to localities for transportation projects, and the remainder would be used to make loans to private or public entities for transportation projects.

The bill authorizes the issuance of Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes whose outstanding aggregate principal amount, together with any outstanding aggregate principal amount of Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes, cannot exceed \$1.2 billion. The proceeds are to be used for transportation projects as determined by the Commonwealth Transportation Board. The bill also increases the aggregate principal amount of Commonwealth of Virginia Transportation Capital Projects Revenue Bonds that may be issued in a fiscal year from \$300 million to \$600 million for FY 2012, and from \$300 million to \$500 million for FY 2013.

The bill establishes the Intercity Passenger Rail Operating and Capital Fund to be used by the Director of the Department of Rail and Public Transportation, with the approval of the Commonwealth Transportation Board, on projects that expand and improve intercity passenger rail service.

Finally, the bill increases from \$50 million to \$200 million the total limit on revenue-sharing funds allocated by the Commonwealth Transportation Board (CTB) to certain counties, cities, and towns in any fiscal year and increases from \$1 million to \$10 million the per project cap on funds. It also provides that the funds allocated by the CTB will be distributed in accordance with the revenue-sharing guidelines established by the CTB. This legislation was passed by both houses of the General Assembly, but the Governor recommended amendments to the bill. During the Reconvened Session, the Governor's recommended amendments were adopted by both houses of the General Assembly.

**HB 1931/SB 783 - Zoning; clustering.** Provides that a cluster development is otherwise subject to applicable land use ordinances of the locality; however, the locality shall not impose more stringent land use requirements for such cluster development. Also, the locality shall not prohibit extension of water or sewer from an adjacent property to a cluster

development provided that the cluster development is located within an area designated for water and sewer service by a county, city, or town. This bill has been passed by both houses of the General Assembly and has been approved by the Governor.

**HB 1844 - Notice of zoning administrator actions.** Amends the Virginia Code to require a locality to give written notice to the owner of a property within 10 days if a party other than the owner requests a determination of the zoning administrator or other administrative officer that would bind the property owner. This bill also provides that, upon appeal of a zoning administrator's decision to the governing body of the locality, a decision by the governing body is binding upon the owner of the property only if written notice has been provided of the zoning violation, written determination or other appealable decision. This bill passed both the House and Senate and was signed by the Governor.

**SB 1206 - Traffic impact analysis.** Removes the requirement that a supplemental traffic analysis must accompany a plat or plan submitted to the Department of Transportation by a locality because the plat or plan substantially affects transportation on state-controlled highways if such plat or plan is permissible by right under the local zoning ordinance. This bill has been passed by both houses of the General Assembly and has been approved by the Governor.

**SB 1221 - Local rezoning actions.** Provides for more limited review by VDOT when a property being considered for rezoning has already been subject to a VDOT review in connection with development of a local comprehensive plan. SB 1221 was passed by both houses of the General Assembly, but the Governor recommended an amendment to the bill. The Governor's recommended amendment was rejected by the Senate during the Reconvened Session.

**SB 1462 - VDOT regulations; transportation planning; subdivision streets.** Requires VDOT to review and revise certain of its regulations applicable to transportation planning and subdivision streets. This legislation was passed by both houses of the General Assembly, but the Governor recommended amendments to the bill. During the Reconvened Session, the Governor's recommended amendments were adopted by both houses of the General Assembly.

## Environmental

**HB 1831/SB 1055 - Fertilizer; regulation of application and labeling.** Prohibits the sale, distribution and use of lawn maintenance fertilizer containing phosphorus beginning December 31, 2013. The prohibition does not apply to starter fertilizer, manipulated manure, yard waste compost, products derived from sewage sludge, soils containing fertilizer and fertilizer products intended for gardening, tree, shrub and indoor planting application, including nurseries, or reclaimed water. Also, beginning December 31, 2013, it will be unlawful to offer for sale any deicing agent containing urea, nitrogen, or phosphorus intended for application on parking lots, roadways, and sidewalks, or other paved surfaces. However, retailers are allowed to sell their existing inventory of lawn maintenance fertilizer and deicing agents. On this date, a label will be required on bags of lawn fertilizer that states that the product should not be applied near storm drains or drainage ditches or when heavy rain is expected.

The Board of Agriculture and Consumer Services will be required to establish reporting requirements for contractor-applicators and licensees who apply lawn fertilizer to more than 100 acres of nonagricultural lands annually. The report will include the total acreage or square footage and the location of where the fertilizer is being applied. The bill requires golf courses to implement nutrient management plans by July 1, 2017. The plans are to be submitted to the Department of Conservation and Recreation for review and approval. The Department is to provide technical assistance and training for golf course operators. The agency will also have to establish a cost-share program to assist in implementation of the nutrient management plan.

The Department of Agriculture and Consumer Services is authorized to develop consumer information and recommended best practices for the application of lawn fertilizer. The agency is also required to provide a public listing of contractor-applicators who apply fertilizer on nonagricultural lands and have met the training requirements.

Finally, the bill prohibits localities from further regulating (i) contractor-applicators who are in compliance with the fertilizer laws, (ii) golf courses that have approved nutrient management plans, and (iii) agricultural operations with a resources management plan or a nutrient management plan. If localities find it necessary to adopt more stringent stormwater ordinances, they will have to report this fact to the Virginia Soil and Water Conservation Board. This bill has been passed by both houses of the General Assembly and has been approved by the Governor.

**SB 832 - Green Public Buildings Act.** Requires executive branch agencies and institutions entering the design phase for construction of a new building greater than 5,000 gross square feet in size, or renovating such a building where the cost of renovation exceeds 50 percent of the value of the building, to conform to Virginia Energy Conservation and Environmental Standards developed by the Department of General Services considering the U.S. Green Building Council (LEED) green building rating standard, the Green Building Initiative "Green Globes" building standard, and other appropriate requirements. Exemptions from the requirement may be granted by the Director of the Department of General Services upon a finding of special circumstances that make construction or renovation to those standards impracticable. SB 832 was passed by the Senate, but it was left in the House General Laws Committee.

### **Deeds and Real Estate Settlements**

**HB 2507 - Form of deeds.** Provides that when a trust is the grantor or grantee of a deed, the deed shall contain the names of the trust's trustees serving at the time the deed was made. This legislation has been passed by both houses of the General Assembly and has been approved by the Governor.

**HB 2099 - Real estate settlements; disclosures.** Provides that the disclosure required by the seller under the Virginia Residential Property Disclosure Act may be provided by electronic means and overnight delivery using a commercial service or the U.S. Postal Service. Currently the disclosure must be made by either hand delivery or by United States mail. Regarding disclosures related to settlement service providers, the bill requires that a person making a referral to an affiliated settlement service provider where the person owns more than one percent of the affiliated service provider must disclose the percentage of that interest. Under the bill, if the percentage is higher than 50 percent, the disclosure must state that the service provider is a subsidiary of the person making the referral. This bill has been passed by both houses of the General Assembly and has been approved by the Governor.

### **Miscellaneous**

**HB 1611 - Landlord and tenant laws.** Provides that localities must have a uniform set of standards as provided in the Statewide Building Code for smoke detectors, and tenants must maintain smoke detectors; prohibits tenants from painting or altering a dwelling unit without the prior written approval of the landlord; and allows a private process server to serve process. The bill also allows a landlord to take legal action against a relocated tenant for noncompliance during the relocation; and in cases involving a deceased tenant, authorizes the landlord to dispose of such tenant's property if not claimed by the person identified on the lease to be notified in the event of the death of a tenant after the 10-day notice to such person. Currently, such person has 30 days after the 10-day notice to remove the decedent's property before it may be disposed of by the landlord. The bill further provides that withholding tax from a Virginia source for a nonresident landlord is not required where the landlord owns no more than four dwelling units and removes the grandfather provision

for a rental inspection district created by Fairfax City before January 1, 2009. Finally, the bill includes the following provisions that are subject to a reenactment clause: (i) authorizing service of process to be accomplished by a sheriff and for service to be received and accepted electronically provided that sufficient proof of delivery is retained, and (ii) allowing the sheriff to charge an additional \$10 for electronic service. HB 1611 was passed by both houses of the General Assembly, but the Governor recommended amendments to the bill. The Governor's recommended amendments were adopted by both houses of the General Assembly during the Reconvened Session.

**SB 1220 - Landlord and Tenant Law; notice to tenant in event of foreclosure.** Provides that, if a landlord fails to notify the tenant of a notice of mortgage acceleration, or notice of foreclosure sale relative to the loan on the dwelling unit, then the tenant has the right to terminate the rental agreement upon written notice to the landlord at least five business days prior to the effective date of termination. In addition, the bill requires a landlord to disclose in writing to any prospective tenant if he has received any notice of mortgage default, notice of mortgage acceleration, or notice of foreclosure sale relative to the loan on the dwelling unit. SB 1120 has been passed by both houses of the General Assembly and has been approved by the Governor.

**HJ 693 - Constitutional amendment (first resolution); taking or damaging of private property; public use.** Revises the prohibition on the enactment by the General Assembly of laws whereby private property may be taken or damaged. An existing provision authorizing the General Assembly to define what constitutes a public use is removed. The proposed amendment provides that private property can be taken or damaged only for a public use, and only with just compensation to the owner, and that only so much may be taken as is necessary for the public use. Just compensation must equal or exceed the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking. A public service company, public service corporation, or railroad exercises the power of eminent domain for public use when such exercise is for the authorized provision of utility, common carrier, or railroad services. In all other cases, a taking or damaging of private property is not for public use if the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development, except for the elimination of a public nuisance existing on the property. The condemnor bears the burden of proving that the use is public, without a presumption that it is. This resolution incorporates HJR 498, HJR 515 and HJR 647. This bill has been passed by both houses of the General Assembly. If it is passed by both houses again next year, the constitutional amendment will be eligible for approval by the voters.

*Should you have any questions, please contact Lauren D. Nowlin at 804.420.6585 or [lnowlin@williamsmullen.com](mailto:lnowlin@williamsmullen.com), Jennifer D. Mullen at 804.420.6462 or [jmullen@williamsmullen.com](mailto:jmullen@williamsmullen.com) or another member of the Williams Mullen Real Estate Practice Group.*

## Related People

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