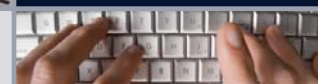




Construction Law

Alert



2009 Construction Industry Legislative Update

BY M. EVE G. CAMPBELL

The following are summaries of construction related legislation that was passed in the regular session of the 2009 General Assembly:

Contractor Performance Bonds for Locally Administered Transportation Improvement Projects

Title 33.1 of the Virginia Code governs highways, bridges and ferries. The General Assembly enacted Virginia Code § 33.1-223.2:21 to require that whenever any county, city or town undertakes administration of a transportation improvement project and obtains, in connection therewith, contractor performance bonds that include the Virginia Department of Transportation as a dual obligee, the amount of such bonds shall be no greater than would have been required had the Department not been included as a dual obligee.



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Allocation of Urban Highway System Construction Funds

Virginia Code § 33.1-23.3 provides for the allocation of construction funds among the cities and towns of the Commonwealth to urban highways. The General Assembly amended this section to increase the amount of the annual urban system highway funds

apportioned to a city or town that may be used to reimburse the locality for debt service for bonds or eligible project costs incurred on approved projects included in the Six Year Improvement Program of the Commonwealth Transportation Board and the city's or town's capital improvement program. Now, not more than 2/3 of the funds apportioned (presently 1/3) may be used.

Construction of Wells

Virginia Code §§ 32.1-176.3 and -176.5 require that any person intending to construct a private well shall apply to the State Department of Health for and receive a permit before proceeding with construction. These sections were amended to allow the permit application to include a site plan, but not a survey plat, and to make it the landowners' responsibility to ensure that the water well is properly located on the landowners' property.

Incentives for Green Roof Construction

The General Assembly enacted Virginia Code § 15.2-977 and amended Virginia Code §§ 15.2-5101 and -5114 to provide for green roof incentive programs. These sections now allow each locality to establish and offer rate incentives designed to encourage the use of green roofs in the construction and remodeling of residential and commercial buildings. If established, the incentives shall be based on the percentage of storm water runoff reduction the green roof provides.

continued

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Bonding Requirements and Subdivision Ordinances

Virginia Code § 15.2-2241 sets forth mandatory provisions for subdivision ordinances. One such requirement is that a subdivision ordinance shall include reasonable regulations that provide for certain site related improvements required by local ordinances for storm water management facilities, financed or to be financed in whole or in part by private funds only if the owner or developer, among other things, furnishes to the governing body a certified check or cash escrow in the amount of the estimated cost of construction or a bond or furnishes to the governing body a bank or savings institution's letter of credit. The amount of such certified check, cash escrow, bond or letter of credit shall not exceed the total of the estimated cost of construction based on unit prices for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs, inflation, and potential damage to existing roads or utilities, which shall not exceed 10 percent (formerly 25 percent) of the estimated construction costs. This provision will sunset in five years.

Regulation of Lead Renovation, Repair and Painting

The General Assembly amended several sections in Title 54 of the Virginia Code relating to the regulation of asbestos, lead and home inspection contractors and workers. Currently, the authority of the Board for Asbestos, Lead and Home Inspectors ("Board") is limited to the regulation of permanent elimination of lead-based paint. The amendments allow for the Board to regulate the practice of lead-based paint renovation businesses, individuals and training providers and define "renovation" as the modification of any existing structure, for compensation, that results in the disturbance of painted surfaces, unless that activity is performed as part of a lead abatement project. The amendments make it unlawful for any person who does not possess a license as a renovation contractor to perform renovation, for any person who does not possess a renovator's license to perform or direct others to per-

form renovation, and for any person who does not possess a dust sampling technician's license to perform dust clearance sampling.

This chapter does not apply to renovations of owner-occupied housing constructed before 1978, provided that the person performing renovations obtains a statement signed by the owner providing that (i) no child under the age of six or pregnant woman resides in the structure, (ii) the residence is not a child-occupied facility, and (iii) the owner acknowledges that renovations may not include all of the lead-safe work practices contained in the EPA lead renovation, repair and painting program final rule. This chapter also does not apply to any person who performs renovations on (i) housing constructed after Jan. 1, 1978, (ii) housing for the elderly or persons with disabilities, unless a child under the age of six resides or is expected to reside in the structure, or (iii) a structure that does not have bedrooms.

Virginia Public Procurement Act ("VPPA"): Procurement Of Architectural Professional Engineering Services For Multiple Construction Projects

Under Virginia Code § 2.2-4301 of the VPPA, "competitive negotiation" is defined as a method of contractor selection for use in public projects. The General Assembly amended this section to provide that the public body shall inform offerors of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. Moreover, this section was amended to provide that for local public bodies, a contract for architectural or professional engineering services may be renewable for four (rather than two) additional one-year terms at the option of the public body.

Design-Build Construction Management Review Board

Virginia Code § 2.2-2405 provides for the powers and duties of the Design-Build Construction Management Review Board ("Review Board"). This section has been amended to allow the Review Board to make a one-time determination that a locality with a

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population in excess of 100,000 has the personnel, procedures, and expertise necessary to enter into contracts for construction on either a fixed price or not-to-exceed price design-build or construction management basis without the approval of the Review Board. Any projects undertaken by the local governing body after such determination shall be exempt from the approval of the Review Board but shall otherwise be in compliance with the provisions of § 2.2-4308 (design-build or construction management contracts for public bodies other than the Commonwealth) and all other applicable laws governing design build or construction management contracts for public bodies other than the Commonwealth.

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