



March 2010

Real Estate

Virginia Legislative Update

2010 Real Estate Industry Legislative Summary

The 2010 Regular Session of the Virginia General Assembly convened on Jan. 13, 2010 and adjourned March 14, 2010. The following summary provides an update on some of the bills affecting the real estate industry that were considered during the 2010 legislative session. Unless otherwise indicated below, the bills that have been passed by both houses of the General Assembly are awaiting approval by the Governor. For more information about the General Assembly or any of the legislation it considered in 2010, please visit <http://legis.state.va.us/>.

Taxes and Tax Credits

HB 17 — Collection of state taxes; period of limitation. Reduces the period of limitation for the collection of state taxes from 20 years to 10 years. This bill has been passed by both houses of the General Assembly and has been approved by the Governor.

HB 430 — Real property tax assessment. Provides (i) that the fair market value of certain affordable housing be determined using the income approach, based on the property's current use and restrictions; (ii) additional requirements for real property appraisers; (iii) that a locality's real property sales assessment ratio higher than 130 percent is *prima facie* proof that the locality has failed to assess at 100 percent of fair market value; (iii) taxpayers access to certain information related to

assessments; and (iv) additional requirements related to boards of equalization. *HB 430* has been passed by both houses of the General Assembly.

HB 447 — Income tax; land conservation tax credit fee limitations. Removes the \$10,000 cap on the two percent fee imposed on the transfer arising from the sale of land conservation tax credits and directs up to 50 percent of revenues be paid to the Department of Taxation and the Department of Conservation and Recreation first. The remaining revenues will be transferred to the Virginia Land Conservation Fund for distribution to the public or private conservation agencies responsible for enforcing the conservation purposes of the donated interest. This legislation has been passed by both houses of the General Assembly.

SB 233 — Land preservation tax credit. Reduces from \$100,000 to \$50,000 the amount of the land preservation tax credit that may be claimed for taxable year 2011. Any taxpayer affected by the credit reduction would be allowed an additional taxable year in which to claim the land preservation tax credit. *SB 233* has been passed by both houses of the General Assembly.

SB 623 — Income tax; corporate and individual; green jobs tax credit. Allows a \$500 income tax credit for the creation of "green"



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jobs paying an annual salary in excess of \$50,000 for taxable years beginning on and after Jan. 1, 2010 but before Jan. 1, 2015. Each taxpayer is allowed a credit for up to 350 new green jobs. This bill has been passed by both houses of the General Assembly.

HB 570 — Real property tax assessments; appeals. Changes the burden of proof from the taxpayer to the assessor when a taxpayer appeals the assessment of real property to a board of equalization or to a circuit court. HB 570 was approved by the House of Delegates, but it was passed by indefinitely in the Senate Finance Committee.

SB 343 — Fuels taxes; annually adjusted. Adjusts fuels taxes each year on April 1 by the percentage increase in the Corporate Average Fuel Economy (sales volume weighted), Total Fleet (the CAFE) for the immediately preceding calendar year over the CAFE for calendar year 2009. The first adjustment would occur on April 1, 2011. This bill was continued to 2011 in the House Finance Committee.

Local Government and Land Use

HB 51 — Comprehensive plan amendments. Grants authority to a governing body to prepare an amendment to the comprehensive plan rather than directing the planning commission to do so. If a planning commission fails to make a recommendation on a proposed amendment within the designated time frame, the local governing body may proceed to submit the proposal to a public hearing. This bill has been passed by both houses of the General Assembly.

HB 374/SB 632 — Cash proffers; acceptance by localities. Delays collection or acceptance of a cash proffer by a locality until the completion of the final inspection of the subject property and prior to the time of the issuance of any certificate of occupancy. This legislation has been passed by both houses of the General Assembly. Once enacted, the provisions of this legislation shall expire on July 1, 2014.

HB 651 — Reinstates the option of the landowner to choose between commissioners and juries to hear an eminent domain case. The option to choose commissioners was eliminated by Chapter 586 of the 2006 Acts of Assembly. The provisions of this bill apply only to actions filed on or after July 1, 2010. HB 651 has been passed by both houses of the General Assembly.

HB 882 — Transfer of development rights; density bonus. Allows localities to establish a density bonus that would permit certain property owners to transfer more property rights than the existing density would otherwise allow. This bill has been passed by both houses of the General Assembly.

HB 1063 — Appeal of board of zoning appeals (BZA) decisions. Provides that written notice of a zoning violation or a written order of the zoning administrator shall include the applicable appeal fee and a reference to where other information regarding the appeal process may be obtained. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs to process the appeal. Additionally, in an appeal of a decision of the BZA, the BZA shall not be named as a party to the proceedings. HB 1063 has been passed by both houses of the General Assembly.

HB 1071/SB 420 — Urban development areas. Sets certain densities in urban development areas according to the population of the locality that designated the urban development area. The legislation also requires that, to the extent possible, certain federal funding and state water and sewer facility and public infrastructure funding be directed to urban development areas or other designated growth areas. The legislation mandates that the Commission on Local Government report on localities' compliance with the statute requiring the designation of urban development areas. This legislation has been passed by both houses of the General Assembly.



HB 1250 — Vested rights. Provides that the issuance of any written order, requirement, decision, or determination by the zoning administrator regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to change, modification, or reversal shall be considered a significant affirmative governmental act for purposes of determining vested rights. This bill has been passed by both houses of the General Assembly.

HB 1383 — Board of zoning appeals. Clarifies what actions taken by a board of zoning appeals require a majority vote of those present and voting. HB 1383 has been passed by both houses of the General Assembly.

SB 318 — Subdivision ordinance; dedication of public improvements. Expands the manner by which a developer may provide financial assurances to a locality prior to a locality accepting the dedication of public improvements. This bill has been passed by both houses of the General Assembly and has been approved by the Governor.

Environmental

HB 1220 — Stormwater management regulations; effective date. Delays the regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria. The regulation, however, shall be adopted within 280 days after the establishment of the U.S. Environmental Protection Agency's Chesapeake Bay-wide Total Maximum Daily Load, but no later than Dec. 1, 2011. The bill also directs the Virginia Soil and Water Conservation Board to establish an advisory panel to review the regulation and make recommendations on possible revisions to the regulation. (This bill incorporates HB 1311 and HB 155 and is identical to SB 395.) HB 1220 has been passed by both houses of the General Assembly and has been approved by the Governor.

SB 110 — Clean energy financing. Gives localities the authority to, in order to secure loans for the initial acquisition and installation of clean energy improvements, place liens equal in value to the loan against any property where such clean energy systems are being installed. Further allows the locality to bundle the loans for transfer to private lenders in such a manner that would allow the liens to remain in full force to secure the loans. This bill has been passed by both houses of the General Assembly and has been approved by the Governor.

SB 109 — 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 meet standards at least as stringent as the LEED or Green Globes standards. 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 the standards impracticable. SB 109 was left in the House Appropriations Committee.

SB 290 — Board for Housing and Community Development; Green Building Code. Requires the Board for Housing and Community Development to promulgate a Green Building Code as a part of the Uniform Statewide Building Code. This bill was continued to 2011 in the Senate Committee on General Laws and Technology.

SJ 25 — Constitutional amendment (second resolution); property exempt from taxation. Authorizes the General Assembly to enact laws to permit localities to exempt from property taxes, any property, including real or personal property, equipment, facilities, or devices, constructed or designed to conserve energy and natural resources in a manner that meets or exceeds performance standards established

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for such purposes. The amendment also deletes the authorization for the General Assembly by general law to directly exempt from property taxes such property and property designed to abate pollution or transfer or store solar energy. This bill was continued to 2011 in the House Privileges and Elections Committee.

Miscellaneous

HB 219 — Adverse possession; abolition. Abolishes adverse possession as a cause of action or a defense if arising on or after July 1, 2010. HB 219 was continued to 2011 in the House Committee for Courts of Justice.

HB 482/SB 440 — Credit unions and banks; mergers and consolidations. Establishes a procedure by which a state credit union may convert to a state mutual savings institution. Conversion requires approval of two-thirds of the eligible and voting members of the credit union, unless the articles of incorporation allow a greater or lesser vote (which shall in no event be less than a majority). This legislation has been passed by both houses of the General Assembly.

For a summary of the bills specific to land use matters, please see [Williams Mullen's 2010 Virginia General Assembly Land Use Update](#).

For more information on legislation affecting the real estate industry in Virginia please contact John M. Mercer at 804.783.6443 or jmercer@williamsmullen.com.

About the Real Estate Practice

The Real Estate Section of Williams Mullen provides clients with innovative, cost effective assistance in all legal matters relating to real estate and litigation. The section's attorneys, numbering more than 50, are widely recognized for their experience and knowledge of real estate law. Section members frequently participate in speaking engagements, write articles and remain active in local, state and national real estate associations and trade associations.

Section attorneys counsel clients on all aspects of real estate development, litigation and finance, including commercial property development of all kinds, land assemblage and development, site plan approval and other land use work, leasing, acquisitions and sales, and complex financings. Our attorneys work with diverse clients owning or leasing facilities and sites throughout the Southeast and in other parts of the U.S. Clients include commercial and residential developers; owners of shopping centers, enclosed malls and lifestyle centers; national retailers; public companies; non-profit institutions; real estate investment trusts; owners of hotels, resorts, timeshares and golf courses; owners of hospitals and other medical facilities; lending institutions; bank trust departments; title insurance companies; and pension funds.

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