

ASSOCIATED BUILDERS AND CONTRACTORS, VIRGINIA CHAPTER

1578-A East Parham Road ♦ Richmond, Virginia 23228
(804) 346-4222 ♦ fax: (804) 346-9111 ♦ www.abcva.org



REPORT: 2010 GENERAL ASSEMBLY OF VIRGINIA

February 5, 2010

With its third full week of deliberations completed, the 2010 session of the General Assembly of Virginia is well underway in navigating through a wide array of legislative proposals. As often is the case during the legislative session, the prior week was not without an unanticipated yet significant event that will undoubtedly impact the ongoing discussion and debate. Governor Bob McDonnell's presentation of the Republican Party response to President Barack Obama's State-of-the-Union Address elicited an immediate and critical response from several Democratic Party members of the state legislature (despite the fact that former-governor Tim Kaine served in the same capacity just a few years ago), along with commendations and praise from fellow Republicans. Regardless of party sentiment, at the very least it is unquestionably gratifying to have the Commonwealth once again recognized as a leader in the national political discourse.

In addition to making a solid national debut, Governor McDonnell also unveiled his "Jobs and Opportunity Agenda" consisting of a package of legislative and budgetary proposals aimed at job-creation and economic development. Essentially, the Governor is seeking approximately \$50 million in new spending initiatives over the next two years aimed at increasing economic opportunity and bolstering employment throughout the Commonwealth.

Highlights of these initiatives that directly impact ABC-VA members include: doubling the current budget allocation to the Governor's Opportunity Fund to enhance the means to attract new business and industry to the state; establishment of a statewide HUB Zone program to support development in rural and economically distressed urban areas and enhance opportunities for qualified small businesses located in such areas; modification of the eligibility criteria for participation in the Enterprise Zone Grant Program in order to expand the program and place priority upon job-creation; expansion of the Major Facilities Job Tax Credit by making this credit available to businesses that create at least 50, versus 100 qualified full-time jobs, or at least 25 new jobs in an enterprise zone or economically distressed area; establishment of a "green jobs" income tax credit for the creation of each job in industries relating to the field of renewable and alternative energy; establishment of the Major Employment and Investment Project Site Planning Grant (MEGA) Fund to assist with site and site development work aimed at attracting new industrial sector employers to the state; increasing financial support to business assistance services including the Loan Guarantee Program, the Business One-Stop Program and the Virginia Jobs investment Program; and the establishment of tax credits for financial institutions that invest in a new Business Investment Company Credit that will be tailored to facilitate loans to small business interests.

An economic impact analysis prepared by the Virginia Economic Development Partnership indicates that the Governor's "Jobs and Opportunity Agenda" would create upwards of 29,000 new jobs over the next two years, and generate approximately \$311 million in new revenue over the next five years. ABC-VA applauds the effort and especially appreciates the Administration's clear recognition that the path to economic recovery is through the promotion of new opportunities for the growth and expansion of businesses across the Commonwealth.

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ABC-VA will continue to closely monitor Governor McDonnell's economic development and job-creation initiatives, along with a wide range of additional legislative proposals impacting the merit shop construction industry. The following provides highlights of several key measures that we are currently tracking.

TAXATION: ABC-VA has joined with a coalition of business groups, spearheaded by the Virginia Manufacturers Association, that is opposing legislative proposals that would eliminate a significant federal tax deduction primarily impacting companies involved in manufacturing, construction and the provision of engineering and architectural services.

HB 614 (Purkey) and SB 545 (Colgan) – Internal Revenue Code (IRC) Conformity and Elimination of Section 199 Deduction – Measures such as these are aimed at the typically routine task of conforming Virginia's tax code to the federal Internal Revenue Code (IRC). Unfortunately, in addition to seeking to advance the date as of which Virginia's tax system conforms with the IRC, these proposals also include an exception that would effectively eliminate the current deduction allowed under Section 199 of the IRC for domestic production activities. This deduction, approved by the U. S. Congress in 2004 and subsequently conformed by the Virginia General Assembly in 2005, was put in place to lower the effective tax rate on production activities primarily associated with manufacturing. However as noted above, the Section 199 deduction is also applicable to activities associated with the construction of real property, as well as with engineering or architectural services connected with such construction. Elimination of this deduction would essentially result in a \$60 million tax increase on affected businesses over the next two years. Conversely, proponents argue that elimination of the Section 199 deduction would result in \$30 million per year in new general fund revenue over the biennium. ABC-VA recognizes the importance of having Virginia's tax code conform to the IRC, and the positive impact that doing so has on maintaining the state's "business friendly" status, however we strongly oppose the provisions included in both *HB 614* and *SB 545* that seek exceptions to such conformance to exclude the Section 199 IRC domestic production deduction. *HB 614* is currently before the House Committee on Finance and *SB 545* is currently before the Senate Committee on Finance. ABC-VA members are encouraged to contact the members of the House Committee on Finance at: [Purkey \(Chairman\)](#), [Orrock](#), [Ware, R.L.](#), [Byron](#), [Cole](#), [Hugo](#), [Cline](#), [Gear](#), [Marshall, R.G.](#), [Lohr](#), [Peace](#), [Greason](#), [Anderson](#), [Garrett](#), [Johnson](#), [Watts](#), [Lewis](#), [Armstrong](#), [Pollard](#), [Englin](#), [Abbott](#), [Keam](#) and the members of the Senate Committee on Finance at: [Colgan \(Chairman\)](#), [Wampler](#), [Stosch](#), [Houck](#), [Howell](#), [Saslaw](#), [Quayle](#), [Norment](#), [Hanger](#), [Watkins](#), [Miller, Y.B.](#), [Marsh](#), [Lucas](#), [Whipple](#), [Reynolds](#) in order to express your opposition to the proposed elimination of the Section 199 IRC deduction.

ENVIRONMENT: ABC-VA has participated with a number of business organizations in seeking a delay in the implementation of new stormwater management regulations recently adopted by the Virginia Soil and Water Conservation Board. ABC-VA has expressed concerns throughout the regulatory review process that the new regulations will have a detrimental impact upon commercial and residential real estate development across Virginia.

SB 395 (Wagner) – Stormwater Management Regulations – Effective Date – This bipartisan proposal represents a compromise between the business community and environmental and conservation interests regarding the effective date of recently adopted stormwater management regulations by the Virginia Soil and Water Conservation Board. This measure provides that such regulations shall become effective within 280 days after the EPA establishes a revised Chesapeake Bay Total Maximum Daily Load (i.e. nutrient pollutant run-off allocation), but no later than December 1, 2011. Current stormwater

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regulations impacting the construction industry would remain in full force and effect, until such time that the new regulations are adopted. SB 395 has been approved by the Virginia Senate on a unanimous vote and will now move to the House of Delegates for consideration. The Homebuilders Association of Virginia deserves a great deal of credit for taking the lead in hammering out this beneficial compromise.

LABOR & EMPLOYMENT: ABC-VA continues to address a number of proposed changes to Virginia labor and employment statutes.

We are pleased to report that two troubling initiatives that were key objectives of organized labor have been set aside for at least a year. Each of these initiatives sought to establish more stringent criteria, as well as new investigation and enforcement capabilities regarding the classification of workers as independent contractors versus employees.

SB 34 (Lucas) – Worker Misclassification Act – This bill seeks to provide that any individual that performs services for remuneration for an employer would be considered an employee, unless it could be proven to the Department of Labor and Industry that (i) the individual is free from direction and control of the employer, (ii) the service provided is outside the usual course of the employer’s business, and (iii) the individual is typically engaged in an independently established trade, occupation profession or business. Penalties prescribed under this measure for wrongly classifying an employee as an independent contractor include: criminal sanctions; civil penalties; the establishment of a private cause of action by the aggrieved party; stop work orders; and debarment from public contracts.

SB 377 (Puckett) – Worker Fraud Act – This proposal applies solely to the provision of construction services and seeks to establish strict criteria for the determination of the classification of a worker as either an employee, or an independent contractor, over and above the standards included in SB 34. This measure would also grant broad latitude to the Commissioner of the Department of Labor and Industry to investigate allegations of employee classification violations, and to issue corresponding citations and penalties. The prescribed penalties extend beyond those called for in SB 34 in both scope and severity including: the establishment of a private cause of action by, and the payment of restitution to the aggrieved party; civil penalties up to \$20,000; and the withholding of payment to employers found to be in violation that are engaged in contract work for a public body.

In response to opposition from the construction industry and a wide range of other business interests, along with the concurrence of both patrons, the Senate Committee on Commerce and Labor agreed to continue SB 34 and SB 377 to the 2011 session of the state legislature. ABC-VA would have preferred to have each of these measures defeated outright, and we will continue to stay abreast of their status going forward.

ILLEGAL IMMIGRATION: Once again, political pressure to crack down on the hiring of illegal workers has clearly been brought to bear before this year’s legislative session. Unfortunately ABC-VA and the business community in general, has been placed in a position of responding to legislative efforts that would impose additional, undue and costly burdens upon employers that are currently following the letter and intent of legitimate federal requirements to validate the legal status of their employees. Fortunately, the business community has thus far achieved some success in fending off such efforts.

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SB 225 (Barker) – Verification of Legal Presence – As originally introduced, this measure sought to amend the Virginia Public Procurement Act to require all contractors and their subcontractors seeking to do business with state or local government entities, to register and participate in the federal Electronic Work Verification Program (E-Verify), or similar electronic verification of work authorization program, to verify the legal status of their employees and any independent contractors with which they contract. Failure to do so would result in denial of prequalification to enter into state or local government contracts. In addition, any employer found to be employing or contracting with any individual determined to not be eligible for work in the United States would be barred from contracting with state and local government entities for a period of one year, and any current contract between such employer and a public entity would be immediately terminated.

In addition to the costly administrative burden that this measure would place upon employers beyond existing federal requirements (I-9 documentation and E-Verify for federal contracts), ABC-VA also expressed concerns regarding the legitimacy of requiring contractors to ensure the legal status of their subcontractors and independent contractors and their employees, as well as the overall reliability and accuracy of the E-Verify system at this time.

Despite Sen. Barker's determined efforts to amend this initiative in order to assuage these concerns, the Senate Committee on Commerce and Labor ultimately sided with the business community and agreed to "pass SB 225 by indefinitely" effectively terminating consideration of this proposal.

Two additional "E-Verify" mandates facing strong opposition from the business community still remain under consideration. **HB 737 (Albo) – E-Verify Requirement** would require state agencies, contractors and subcontractors that have entered into contracts with state or local government entities valued in excess of \$600, as well as private sector employers with fifteen or more employees located within Virginia, to register and participate in the E-Verify program, in order to verify the legal status of all new hires who are to perform work within the Commonwealth. Under this measure, employers that fail to do so would be subject to the suspension or revocation of their applicable state license and local business license. This proposal is currently before the FOIA / Procurement Subcommittee of the House Committee on General Laws - [Jaquinto \(Chairman\)](#), [Oder](#), [Gilbert](#), [Peace](#), [Anderson](#), [Phillips](#), [James](#). ABC-VA members are encouraged to contact the members of this subcommittee to express their opposition to this burdensome and costly measure.

In addition, Del. Scott Ligamfelter has introduced an amendment to **HB 30 (Putney) - 2010-2012 Biennial Budget** that would require any private sector employer including subcontractors and non-profit organizations that contract with the Commonwealth, to utilize the E-Verify program to verify the legal status of all new hires. Any such employer found to be in noncompliance would be prohibited from contracting with state or local government entities for a period of ten (10) years. This measure is currently before the House Committee on Appropriations - [Putney \(Chairman\)](#), [Morgan](#), [Tata](#), [Ingram](#), [May](#), [Sherwood](#), [Cox](#), [M.K.](#), [Landes](#), [Jones](#), [O'Bannon](#), [Lingamfelter](#), [Poindexter](#), [Massie](#), [Abbitt](#), [Phillips](#), [Scott](#), [J.M.](#), [Joannou](#), [Brink](#), [Ware](#), [O.](#), [Howell](#), [A.T.](#), [BaCote](#), [Dance](#). ABC-VA members are encouraged to contact the members of the House Committee on Appropriations and encourage them to reject this amendment.

GREEN: ABC-VA supports a number of initiatives introduced before this year's legislative session that are aimed at promoting environmentally responsible, alternative, sustainable construction means and methods on state and local government projects.

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SB 623 (Hanger and Martin) – Green Job Creation Income Tax Credit - As a component of Governor McDonnell's economic development initiative, this measure is aimed at authorizing a \$500 income tax credit for the creation of each new "green" job between January 1, 2010 and January 15, 2015. Under this measure, a "green job" would include employment in industries relating to the field of renewable, alternative energies including geothermal and solar heating systems, and hydropower, wind, and biomass / biofuel systems. This proposal is currently before the Senate Committee on Finance.

SB 109 (Peterson) – Green Public Buildings Act – This initiative would require state agencies entering the design phase for the construction of a new building in excess of 5,000 square feet, or considering the renovation of a building where the renovation costs exceed 50% of the value of the building, to conform to the LEED Silver or Green Globes two globe standard. In addition, under this measure, such buildings would be required to be designed, constructed and operated to achieve energy savings exceeding the ASHRAE Standard 90.1-1999 (model energy code for commercial buildings) by at least 10 percent for new construction and 5% for major renovation, and be required to include water systems designed to provide potable water use savings of at least 25% over the baseline established in the Virginia Plumbing Code. This bill also authorizes the Director of the Department of General Services to grant exemptions from the required design and construction standards upon a finding of circumstances that make such standards impracticable. This bill was unanimously reported by the Senate Committee on General Laws and Technology and re-referred to the Senate Committee on Finance. The Department of Planning and Budget fiscal impact statement pertaining to this proposal indicates that it would result in a one to three percent increase per project in annual capital project costs, along with an indeterminate increase in administrative and personnel costs associated with implementing and managing the LEED process. Based upon this analysis, it is highly unlikely that this measure will receive a favorable reception before the Senate Committee on Finance.

SB 290 (Deeds) – Green Building Code – This measure sought to require the Board of Housing and Community Development to adopt and promulgate a Green Building Code as part of the Virginia Uniform Statewide Building Code. The Green Building Code would be aimed at integrating and optimizing the following attributes in the construction process: energy conservation, reduced water demand, healthier indoor air quality, minimal environmental impact, safety and security, durability, productivity, sustainability and functionality. In promulgating the Code, the Board would be directed to consider model codes and green building standards developed by organizations including the Green Building Initiative and the U. S. Green Building Council Leadership in Energy and Environmental Design (LEED). This measure would grant localities the option of adopting the Green Building Code.

The Department of Housing and Community Development is in the process of considering the implementation of energy efficiency standards based upon the 2009 Energy Conservation Code currently being promulgated by the International Code Council (ICC). These standards are aimed at achieving many of the same goals and objectives targeted by SB 290. Consequently, while the Senate Committee on General Laws and Technology generally supported the intent of this bill, it voted to "carry over" SB 290 to the 2011 session.

NOTE: ABC-VA members are encouraged to take an active role in the legislative process. You may contact any member of the General Assembly of Virginia through the following link: [Contact Your Legislator](#).

For additional information on any of the issues outlined above, please contact Harold B. Kelly, Vice President, ABC-VA at (804) 346-4222

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