

ASSOCIATED BUILDERS AND CONTRACTORS, VIRGINIA CHAPTER

1578-A East Parham Road ♦ Richmond, Virginia 23228

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REPORT: 2008 GENERAL ASSEMBLY OF VIRGINIA

January 31, 2008

The 2008 session of the General Assembly of Virginia was called to order on January 9, 2008 for a "long" 60-day session scheduled to adjourn on March 8, 2008. The deadline for submitting all bills and joint resolutions fell on Friday, January 18, 2008, and as the dust settled legislators were faced with an astonishing 2,800 legislative proposals to consider over the ensuing seven weeks.

As a result of the November 2007 elections, this year's legislative session convened with a bit of a different look. Nineteen new legislators have been seated, resulting in a diminished Republican majority in the House of Delegates, and more significantly, a shift from a Republican to a Democrat majority in the Virginia Senate. Within the first few days of the session it became abundantly clear that with these changes, the level of partisanship, particularly in the House, has most certainly been ratcheted up a few notches. As we proceed, it should make for an interesting session.

ABC-VA will once again maintain an active presence before the state legislature in order to protect and promote the best interests of our members and the merit shop construction industry. The following provides highlights of some of the key legislative initiatives that we are currently tracking:

BUDGET: As is customary, this year's session kicked off with the Governor's State of the Commonwealth Address. Governor Kaine's address focused primarily upon the most pressing task of the 2008 session: consideration of the carry-over 2006 - 2008 budget (*HB 29-Putney and SB 29-Colgan*), as well as the biennial budget proposal for 2008-2010 (*HB 30-Putney and SB 30-Colgan*). As a one term governor, the \$78 billion 2008-2010 budget proposal is the one and only shot that Governor Kaine will have at setting the Commonwealth's fiscal policy, and at funding his signature policy and program initiatives. Many of the Governor's proposals are certainly well-intentioned including: enhanced pre-kindergarten programs, increased funding for K-12 education, expanded child-welfare services, much needed reforms to the state's mental health care services, and a \$1.65 billion general obligation bond issue for construction projects at state colleges and universities. Nonetheless, the Governor's revenue projections and funding recommendations are a cause of concern. Specifically, in response to a projected \$641 million shortfall in the current budget, the Governor has proposed a \$261 million withdrawal from the state's "rainy-day fund", along with the diversion of \$180 million from the Transportation Trust Fund. General Assembly Republicans have vowed to offer an alternative, more conservative proposal, based upon "realistic" revenue projections and focused upon spending cuts to close the anticipated deficit in the current budget.

IMMIGRATION: On the heels of the November 2007 elections, illegal immigration remains a hot-button issue and has emerged yet again as a key area of concern before the state legislature. A host of legislative proposals have been introduced that include general, broad-based initiatives aimed at curbing illegal immigration by: limiting undocumented individuals' access to services, benefits and opportunities; barring the enrollment of illegal aliens in state colleges and universities; bolstering the capabilities of state and local authorities to enforce provisions of federal immigration law; enhancing penalties for violations of zoning ordinances governing overcrowding in single-family dwellings; establishing a presumption against admission to bail for any illegal alien charged with a criminal

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offense; establishing English as the official language of the Commonwealth and prohibiting the state from providing documents, information, and written materials in any language other than English; requiring drivers license exams to be conducted in English; establishing the failure to speak English in the workplace as employee misconduct and grounds for dismissal; etc. Of greater concern to ABC-VA are a myriad of legislative proposals that specifically take aim at employers as a key means of addressing concerns relating to illegal immigration. These proposals seek to impose additional responsibilities and requirements upon employers and to authorize disciplinary sanctions for non-compliance. Included among these “employer-directed” measures are the following initiatives, which were heard before the Senate Courts of Justice Committee this week:

SB 90 (Colgan) – Employment Eligibility Verification: Requires all employers to participate in the federal electronic employment eligibility verification system operated by the U. S. Department of Homeland Security (“E-Verify”), or equivalent federal system, and bars an individual from starting work until such time the employer receives affirmative verification through the federal system that the individual is legally eligible for employment. This proposal establishes that violations of these provisions constitute a Class 1 misdemeanor. ABC-VA expressed concerns regarding the provisions of this proposal mandating the use of the “E-Verify” system, and raised questions concerning the bill’s possible pre-emption of federal law. The federal “E-Verify” employment verification system is a voluntary program, which is currently established as a pilot program. The accuracy and reliability of the system has recently been called into question by the U. S. General Accounting Office (GAO). More significantly, ABC-VA questioned the validity of the state mandating an employer’s participation in a voluntary federal program. *SB 90* was heard this afternoon before the Senate Courts of Justice Committee and “passed by indefinitely”, effectively suspending its consideration.

SB 426 (Barker) – Employment Eligibility Verification / Public Procurement Prequalification: Requires all contractors and their subcontractors that seek to do business with state and local government entities, to participate in the federal “E-Verify” system to substantiate the legal eligibility for employment of their employees and independent contractors. This measure prohibits such contractors and their subcontractors from employing or contracting with an individual who is not determined to be legally eligible for employment through the federal verification system. Contractors that fail to participate in the “E-Verify” system would be deemed ineligible for prequalification for public contracts. ABC-VA opposed this proposal for the same reasons noted above. In addition, we questioned the legal authority for a contractor to verify the legal status of an independent contractor with which it is doing business, since an independent contractor is just that, and not an employee of such contractor. *SB 426* was also “passed by indefinitely” by the Senate Courts of Justice Committee. Companion legislative proposals, *HB 90 (Nichols)* and *HB 1558 (Cline)* are currently before the House Committee on Rules.

SB 517 (Cuccinelli) – Certification of Compliance: Amends the Virginia Public Procurement Act to require contractors to certify that they have undertaken immigration status verification on all of their employees, and that all of their employees are legally authorized to work in the U. S. This measure basically requires contractors to certify that they have complied with the current provision of federal immigration law governing the verification of employment eligibility (I-9 documentation requirements). Introduced at the urging of the Attorney General’s office, this initiative is aimed at providing a public entity with a cause of action for breach of contract, in the event a contractor certifies compliance with current immigration law, and is later found not to have done so. As drafted, this bill is problematic in that it could potentially place a contractor in breach of a public contract for simply failing to comply with an administrative or record keeping requirement of the federal employment verification statutes. In addition, this bill would essentially require a contractor to make an affirmative declaration of compliance with federal immigration law, with no limitation on the “look back” period, nor any

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connection with a specific public contract. Conceivably, a contractor could be found to be in breach of contract, if it were discovered that at one time in the company's history it failed to verify an employee's status, and subsequently hired an unauthorized individual, completely unrelated to the contract at hand. Following multiple attempts to amend this bill to address these concerns, the Senate Courts of Justice Committee agreed to set this proposal aside for a week, in order to allow interested parties an opportunity to come up with agreeable language. While ABC-VA understands the intent of this proposal, but absent significant amendment we contend that this measure is largely unnecessary and fraught with unintended consequences.

SB 782 (Obenshain) – Termination of Corporation: Authorizes the involuntary termination of a corporation's existence for up to one year, in the event that such corporation is convicted of a willful violation of federal immigration statutes due to the actions of its officers and directors constituting a pattern or practice of employing illegal aliens. This measure applies like provisions to limited liability companies and business trusts. This proposal provides that any business facing termination would be duly notified and given an opportunity to contest such a termination order. *SB 782* is aimed at companies that have demonstrated a willful and consistent disregard of federal immigration law. Concerns were raised during the hearing of this bill regarding its failure to apply to out of state business interests. The Senate Courts of Justice Committee agreed to set this measure aside for a week, in order to allow for the development of language to equalize its applicability to both Virginia-based and out of state businesses operating in Virginia. ABC-VA believes that this proposal is drafted narrowly enough to target the truly "bad actors" that seek to gain a competitive advantage against their law-abiding competitors through the hiring of illegal, undocumented workers.

(NOTE: As Chair of the Courts of Justice Special Subcommittee on Immigration, Sen. Richard Saslaw is to be commended for his sound judgment and sensible business acumen in addressing these proposals.)

LAND USE: As with past sessions, a range of legislative proposals have been introduced this year that seek to afford expanded authority to local governments to manage growth through the adoption of adequate public facilities ordinances providing for the assessment of impact fees, the establishment of limitations on the issuance of building permits, the deferral of subdivision plats or site plans, and the denial of rezoning applications. Unlike these rehashed efforts, the most significant land use reform proposal before this year's session is backed by the Homebuilders Association of Virginia and is aimed at establishing a uniform and predictable system to provide for a consistent source of funding for growth-related public infrastructure improvements.

SB 768 (Watkins): Elimination of Cash Proffers / Impact Fee System: Eliminates the authority of local governments to impose cash proffers on new development, and in its place enacts a standardized, regulated system for all cities and high-growth localities authorizing the imposition of impact fees on residential and commercial development, along with an increase in the grantor's tax. The impact fee system proposed is modeled after the existing road impact fee statute and would thus implement stringent requirements regarding land use planning, public infrastructure needs assessments, and capital improvement funding assessments, and would provide for a cap on the total dollar-value of impact fees that could be assessed on a unit basis. Localities would be authorized to impose impact fees on residential development for necessitated improvements to public roads, public schools and public safety buildings. Commercial development would be exempt from impact fees for public school capital improvements.

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As introduced, this proposal would also require all high-growth localities located outside of the Northern Virginia Transportation Authority and outside of the Hampton Roads Transportation Authority, that seek to enact an impact fee ordinance to impose a “real property tax relief fee” (grantor’s tax) of 20 cents per \$100 of value. The revenues generated from such “fee” would be earmarked for the locality’s capital improvement fund, and utilized in determining the level of impact fees needed to fund capital improvements attributable to new development. The logic behind this provision was to spread the costs of needed public infrastructure beyond simply new construction.

In a marathon hearing before the Senate Committee on Local Government earlier this week, *SB 768* faced strong opposition from the Virginia Realtors Association, Virginia Municipal League and Virginia Association of Counties. This opposition ultimately resulted in a clearly strategic amendment to the bill that stripped away the grantor’s tax provisions, thus removing a key source of revenue for local governments under the proposed new impact fee system. *SB 768* was approved by the Committee and subsequently referred to the Senate Finance Committee for an assessment of its fiscal impact.

ABC-VA contends that the original draft of *SB 768* is worthy of consideration, for its call to eliminate cash proffers, and for its effort to provide a uniform, consistent and reliable approach (rather than the existing piecemeal, locality-by-locality approach) to fund public infrastructure needs attributable to new development. We will continue to closely monitor this measure, as it follows what appears will be a challenging path through the legislative process.

GREEN BUILDING: The green building movement is rapidly expanding and has obviously caught the attention of the Virginia legislature. Several legislative proposals have been introduced that encourage the private sector, and in some cases, direct the public sector to utilize environmentally responsible practices, products and services. ABC-VA supports the following well-reasoned initiatives:

HB 171 (Kilgore) – Virginia Resource Authority Funding: Authorizes the Virginia Resources Authority (VRA) to finance local government energy efficiency projects. The VRA was established by the General Assembly of Virginia in 1984 to provide cost-effective financing to local governments for community investments in such areas as public safety, flood prevention, wastewater and solid waste treatment, brownfield remediation, and redevelopment, and land conservation and preservation. This beneficial proposal is moving quickly, having already been approved by the House of Delegates and is currently awaiting consideration before the Senate Committee on Agriculture, Conservation and Natural Resources.

HB 1137 (Fralin) – Green Roof Incentive Program: Authorizes local governments to establish an incentive program designed to encourage the use of green roof technology in the construction and remodeling of residential and commercial buildings. Under this measure, such programs would be established pursuant to guidelines developed by the Board of Housing and Community Development, and could allow for a range of incentives including a special expedited permitting process and reduced permit fees. *HB 1137* is currently before the House Committee on General Laws.

HB 1195 (Moran) – Green Buildings Act: Requires all major facility projects of state agencies to be constructed to meet the U. S. Green Building Council Leadership in Energy and Environmental Design (LEED) silver certification standards, unless granted an exemption by the Department of General Services. This measure would not require such projects to obtain “official” LEED silver certification. The requirement to build new construction projects to LEED standards would be phased in over a three-

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year period based upon total project square footage, beginning with those of 150,000 square feet or more entering the design phase between July 1, 2008 and June 30, 2009, and eventually applying to those of 25,000 square feet or more entering the design phase after July 1, 2011. The provisions of this measure would not apply to any construction projects undertaken by public school districts.

This initiative also directs the Department of General Services to ensure that all state-owned and occupied buildings shall discontinue the use of incandescent light bulbs by December 31, 2009, and requires such buildings to use compact fluorescent light bulbs by January 1, 2010.

HB 1195 is currently before the Public Procurement / Freedom of Information Subcommittee of the House Committee on General Laws. The companion legislative proposal to this measure *SB 447* (Petersen) is currently before the Senate Committee on General Laws and Technology.

HJ 68 (Plum) – LEED Standards for State Office Buildings: Encourages the Department of General Services to adopt the Leadership in Energy and Environmental Design (LEED) green building rating system into state procurement practices for the design and procurement of construction services for new state office buildings. This joint resolution is currently before the House Committee on Rules.

WORKFORCE DEVELOPMENT: ABC-VA supports legislative efforts to better coordinate the state's disjointed workforce development resources, in order to provide for more effective and targeted training aimed both at offering worthwhile career advancement opportunities, as well as addressing critical manpower shortages across the state. In this regard, we are supporting the following initiative:

SB 252 (Ruff)- Strategic Plan for Workforce Development: Provides that the strategic plan for the statewide delivery of workforce development and training programs shall be developed in coordination with the comprehensive economic development policy that is required to be submitted during the first year of each new gubernatorial administration. Under this measure, the Virginia Community College System would be tasked with providing strategic guidance and staff support to the Virginia Workforce Council, to assist in meeting the workforce training needs of the Commonwealth as set forth in the strategic plan. *SB 252* has been approved by the Senate and communicated to the House.

NOTE: ABC-VA members are encouraged to take an active role in the legislative process. The Constituent Viewpoint office provides a convenient means to have your voice heard. This office provides a toll-free message center to take calls from citizens of the Commonwealth wishing to express an opinion on legislative issues. Callers will be asked to provide their name and address, and will be able to leave a message expressing their opinion on a particular issue of interest. The message will then be transmitted to the constituent's appropriate legislator. The Constituent Viewpoint toll-free line is (800) 889-0229. Callers in Richmond may dial 698-1990.

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

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