

2013 VIRGINIA LEGISLATIVE UPDATE

Of the estimated 3,000 bills under consideration by the Virginia General Assembly, Walsh Colucci's Legislative Committee has been monitoring several related to real estate, land use and zoning, property rights, litigation and tort reform, and transportation planning and funding.

Walsh Colucci will provide periodic updates on the status of these bills and will compile a final, comprehensive list of pertinent legislation following adjournment. A comprehensive list of descriptions and resolutions of all bills filed during the 2013 General Assembly session may be found on the General Assembly's Legislative Information Service homepage at <http://leg1.state.va.us>.

For more information on the foregoing bills, please contact Walsh Colucci's Legislative Committee chair, Andrew A. Painter.

- LAND USE & ZONING -

HB 1419 (Pogge): Zoning provisions for temporary family health care structures. Amends requirements governing zoning ordinances for temporary family health care structures to reduce from two to one the number of activities of daily living with which a person must require assistance to qualify as a "mentally or physically impaired person" eligible to reside in a temporary family health care structure; amend the occupancy restriction to allow a married couple, both of whom are mentally or physically impaired persons, to reside in a temporary family health care structure; and extend the time by which a temporary family health care structure must be removed from 30 to 90 days from the date on which the temporary family health care structure was last occupied by a mentally or physically impaired person receiving or in need of assistance.

HB 1473 (Edward Scott): Regulations applicable to restaurants; concession stands at youth athletic activities exempt. Exempts concession stands at youth athletic activities from regulations governing restaurants, provided that such concession stands are promoted or sponsored either by a youth athletic association or by any charitable nonprofit organization or group thereof that has been recognized as being a part of the recreational program of the political subdivision where the association or organization is located by an ordinance or resolution of such political subdivision.

HB 1398 (Ware): Land preservation tax credit; unissued tax credits. Provides that, beginning with calendar year 2013, if the maximum amount of land preservation tax credits have not been issued by the Department of Taxation for the calendar year, then the Comptroller would distribute from the general fund an amount equal to 80 percent of the unissued credits to the Virginia Land Conservation Fund, an amount equal to 10 percent to the Civil War Site Preservation Fund, and an amount equal to 10 percent to the Virginia Farmland Preservation Fund. For purposes of the distributions, the Department would provide a written certificate of the amount of the unissued tax credits to the Comptroller by March 15 of the following calendar year, and the Comptroller would make the distributions within 60 days of receiving the certificate.

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HB 1333 (Farrell): Amendment of service district boundaries. Allows localities to amend service district boundaries after notice and a public hearing.

HB 1378 (Cole): Advertisement of legal notices on websites. Allows a locality to publish required legal notices on its website instead of advertising them in a newspaper having a general circulation in the locality.

HB 1404 (Cole): Residential development; impact fees to defray the costs of public facilities. Authorizes any locality to impose impact fees on residential developments in order to defray the costs of constructing public facilities necessitated by those developments. Under current law, such impact fees may be imposed only by those localities that have established urban transportation service districts in accordance with § 15.2-2403.1.

HB 1408 (Scott): Requirement that certain planning commissioners own real property. Removes the requirement that at least one-half of the members of a local planning commission be owners of real property.

HB 1429 (Morris): Zoning; attorney fees. Provides that a court may award reasonable attorney fees, expenses, and court costs to any person, group, or entity that prevails in a zoning action brought against it or that successfully challenges the validity of a zoning ordinance.

HB 1521 (Villaneuva): Virginia Residential Property Disclosure Act; required disclosures; tourism activity zones. Authorizes any locality to designate one or more tourism activity zones as areas that may be used for special events, including parades, events requiring temporary street closures, and indoor and outdoor activities. An owner of residential property located partially or wholly within a designated tourism activity zone must disclose the presence of the property within the zone by either (i) disclosing in writing to any prospective purchaser or lessee of the property that the subject property is located within a tourism activity zone or (ii) including a statement on all recorded surveys, subdivision plats, and all final site plans approved after July 1, 2013, giving notice that a parcel of real property either partially or wholly lies within a tourism activity zone.

HB 1574 (Minchew): Uniform Statewide Building Code; enforcement by towns. Provides that if any town does not elect to enforce the Uniform Statewide Building Code, then such enforcement shall be the responsibility of the county in which the town is situated. The bill also provides that the enforcement by the county shall be with equal dignity as the county does in unincorporated areas of the county and no agreement between the town and the county shall be required as a prerequisite for the county to perform this obligation. The bill contains technical amendments.

HB 1853 (Knight): Planning and zoning; effects of development on military installations. Requires local planning commissions to consider the effects of development on military installations. The bill requires a local planning commission to cooperate with the commander of any military installation that will be affected by development and permits a governing body to appoint an additional nonvoting member to its planning commission to represent a local installation.

HB 2072 (Peace): Local application process; condemnation. Provides that no locality shall condition or delay the timely consideration of any application for or grant of any permit or other approval for any real property over which it enjoys jurisdiction for the purpose, expressed or implied, of allowing the locality to condemn or otherwise acquire the property or to commence any process to consider whether to undertake condemnation or acquisition of the property.

HB 2238 (D. Marshall): Recorded plats and final site plans. Provides that a site plan shall be deemed final once it has been reviewed and approved by the locality if the only requirement remaining to be satisfied in order to obtain a building permit is the submission of any other administrative documents, agreements, deposits, or fees required by the locality in order to obtain the permit. The bill also amends a 2012 act by adding an enactment that clarifies the validity of previous extensions of valid plats and site plans.

HB 2306 (Ramadon): Eminent domain; just compensation; tax assessments. Provides that just compensation paid for real property taken pursuant to eminent domain shall not be less than the appraisal of the fair market value of such property, if such an appraisal is required, or the current assessed value of such property for real estate tax purposes when the entire parcel for which the assessment has been made is to be acquired, whichever is greater. Under current law, just compensation shall not be less than the appraisal of fair market value if such an appraisal is required.

HB 1547 (Knight): Cemeteries. Provides that the minimum tree canopy as required by localities during the development process shall be 10 percent for cemeteries.

HB 1565 (Orrock): Affordable housing dwelling unit program. Allows the governing body of any locality to amend its zoning ordinances to provide for an affordable housing dwelling unit program. Under current law only certain specific localities are permitted to provide for such a program.

HB 1724 (Toscano): Subdivision ordinances; City of Charlottesville, sidewalk construction fund option. Authorizes the City of Charlottesville to alter its subdivision ordinance regarding the requirement that a developer construct a sidewalk along the property under development. The bill permits the City of Charlottesville to give developers the option of contributing funds equal to the cost of constructing the required sidewalk to a city-run sidewalk construction fund for use anywhere in the city.

HB 2239 (D. Marshall): Cash proffers. Provides that cash proffers shall not be used for any capital improvement to an existing facility that does not expand facility capacity or for any operating expense of an existing facility such as ordinary maintenance or repair.

HB 2265 (Knight): Cash proffers. Provides that a locality may waive certain written notice requirements in order to reduce, suspend, or eliminate outstanding cash proffer payments for residential construction calculated on a per dwelling-unit or per-home basis that have been agreed to, but unpaid, by any landowner.

HB 799 (Garrett): Real property tax; special valuation for land preservation. Adds Goochland County to the list of localities that are permitted certain variations in administering the special valuation of real property for land preservation purposes. The bill also adds real property in service districts to that which the listed localities may exclude from special valuation and permits such localities to exclude such real property from the imposition of roll-back taxes.

SB 894 (Peterson): Uniform Statewide Building Code; who may be cited for violations. Clarifies that a local enforcement officer may issue a summons or a ticket to the owner, lessor, or sublessor of a residential dwelling unit for violation of any Building Code provision.

SB 1029 (Reeves): Planning and zoning; effects of development on military installations. Requires local planning commissions to consider the effects of development on military installations. The bill requires a local planning commission to cooperate with the commander of any military installation that will be affected by development and permits a governing body to appoint an additional nonvoting member to its planning commission to represent a local installation.

SB 1073 (Obenshain): Attorney fees in certain land use cases. Provides that a court, in addition to any other relief provided, and for good cause, may award reasonable attorney fees, expenses, and court costs to any person, group, or entity that prevails in an action successfully challenging an ordinance, administrative act, or other local action related to planning, subdivision of land, zoning, or other land use activity.

SB 1226 (Stuart): Zoning; cash proffers. Extends from 7 to 12 years the time by which a locality must begin utilization of cash proffers. The bill also removes the requirement that when cash proffers are used for alternative improvements, such improvements must be used in the same vicinity as the initial improvements.

SB 1239 (Herring): Uniform Statewide Building Code; enforcement by towns. Provides that if any town does not elect to enforce the Uniform Statewide Building Code, then such enforcement shall be the responsibility of the county in which the town is situated. The bill also provides that the enforcement by the county shall be with equal dignity as the county does in unincorporated areas of the county and no agreement between the town and the county shall be required as a prerequisite for the county to perform this obligation. The bill contains technical amendments.

SB 1293 (Barker): Comprehensive plan; transportation. Provides that the transportation component of a local comprehensive plan shall be consistent at the interstate and primary levels with various state and local transportation plans. The bill also shortens from 90 to 45 days the time period by which the Department of Transportation shall provide comment upon submission of such local plans for review.

- TRANSPORTATION, GENERALLY -

HB 1908 (Surovell): Commonwealth Transportation Board (CTB); composition. Changes the Composition of the CTB so that one member will be appointed from each of Virginia's 11 congressional districts as opposed to the current 9 VDOT construction districts and provides 3 at-large appointments.

HB 2049 (Rust): Composition of Commonwealth Transportation Board. Increases the membership of the CTB from 17 to 20 members by doubling the number of members from Hampton Roads, Northern Virginia and Richmond construction districts.

HB 2152 (Anderson): Transportation commission membership. Gives the Chairman of the CTB or his designee each voting rights on the Virginia Railway Express Board of Directors.

HB 1696 (Minchew): Dulles Toll Road and the Dulles Corridor Metrorail project. Authorizes VDOT to enter into an agreement with the Metropolitan Washington Airports Authority (MWAA) whereby MWAA would reduce tolls on the Dulles Toll Road in exchange for the Commonwealth's moral obligation backing of bonds, not exceeding an aggregate principal amount of \$500 million, issued by MWAA to fund Phase 2 of the Dulles Corridor Metrorail project.

HB 1979 (May): Authorization of bonds to acquire the Dulles Greenway. Authorizes the Commonwealth Transportation Board to issue bonds to (i) acquire the Dulles Greenway and (ii) if determined necessary by the Board, improve or upgrade the Dulles Greenway. If the Board were to acquire the Dulles Greenway, the Board would impose and collect tolls from all classes of vehicles in amounts established by the Board for the use of the same. The bill provides no bonds could be issued by the Commonwealth Transportation Board to acquire the Dulles Greenway unless the Treasury Board provides through a written certification provided to the Governor and the Commonwealth Transportation Board its opinion that the revenues from the tolls or other charges proposed by the Commonwealth Transportation Board for use of the Dulles Greenway are reasonably expected to result in a debt service coverage ratio of at least 1.25.

HB 1980 (May): Dulles Greenway Authority created. Creates the Dulles Greenway Authority to, among other things, operate and maintain the Dulles Greenway. The provisions of the bill would not become effective unless and until the Commonwealth Transportation Board acquires the Dulles Greenway on or before July 1, 2015.

HB 1885 (LeMunyon): Quantitative rating of pavement condition and ride quality of highways. Requires VDOT, to the extent funds are made available, to determine a quantitative rating on the pavement condition and ride quality of every highway in the primary and secondary state highway systems at least every five years and to post the ratings on its website. (Committee on Appropriations)

HB 2020 (LeMunyon): Use of toll revenues. Prohibits use of toll revenues for any purpose other than the construction, reconstruction, replacement, maintenance replacement, improvement, or maintenance of the facility for the use of which the tolls were imposed and collected, except as otherwise provided in § 33.1-23.03:4.

HB 1717 (Anderson): Comprehensive plan; transportation. Provides that the transportation component of local comprehensive plans be consistent with interstate and primary facilities contained in the state plan.

HB 1718 (Anderson): Termination or alteration of certain transportation projects. Requires reimbursement to VDOT if locality cancels or significantly alters a project.

SB 1075 (Barker): Transportation planning and projects. Requires a locality to repay the Department when a locality requests termination of a project and the Department does not agree to the termination. The bill also expands the step before a locality requests alterations to a project to include the approval of project scope and final engineering by the Department.

SB 732 (Petersen): Composition of the Commonwealth Transportation Board. Increases the number of CTB members to 18 by adding one citizen representative and changing representation from the current 9 construction districts to the existing 11 congressional districts.

- TRANSPORTATION FUNDING -

HB 2063 (Rust): Establishing and adjusting sources of revenues for appropriations of the Commonwealth. Establishes a 5% tax on motor fuels sales based on the statewide average wholesale price of a gallon of self-serve unleaded regular gasoline. The revenues would be distributed to the Highway Maintenance and Operating Fund, the Transportation Trust Fund, the Intercity Passenger Rail Operating and Capital Fund, and the localities to be used for transportation purposes.

HB 2285 (May): Alternative fuels taxes. Establishes beginning January 1, 2014, alternative fuels tax rates for biodiesel fuel, liquefied natural gas, liquefied petroleum gas, methanol, compressed natural gas, hydrogen, and electricity used in operating a highway vehicle.

HB 1884 (LeMunyon): Allocation of highway maintenance funds. Provides that highway maintenance funds shall be allocated on the basis of vehicle miles traveled in each highway construction district compared to vehicle miles traveled in the Commonwealth as a whole. However, the bill also allows the Commissioner of Highways to direct funds to specific maintenance projects that he believes are needed to protect public safety, provided he provides written notice to the Commonwealth Transportation Board.

HB 2313 (Speaker Howell): Revenues and appropriations of the Commonwealth. Governor's Transportation Funding Bill. Increases the state sales tax by 0.8%, eliminates the state gas tax (except on diesel), increases vehicle registration fees by \$15 and raises the annual fee on hybrid vehicles from \$50 to \$100.

HB 2070 (Comstock): Commonwealth Mass Transit Fund. Eliminates the existing formula and changes the way state public transit funds are allocated to include the size of a transit system and specific performance criteria developed by the Commonwealth Transportation Board. Allows Department of Rail and Public Transportation to disburse funds directly to WMATA rather than through NVTC.

HB 584 (Watts): Requires transportation funds to remain in TTF. The General Assembly may borrow from the Funds for other purposes only by a vote of two-thirds plus one of the members voting in each house, and the loan or reduction must be repaid with reasonable interest within three years.

HB 1438 (Purkey): Motor fuels tax; indexed. Indexes gas tax based on USDOT Transportation Services Index.

HB 1888 (LeMunyon): Individual income tax and fuels taxes; adjusted for inflation. Adjusts Virginia gas and income tax rates for inflation.

HB 2253 (Albo): Transportation funding. Places 5% sales tax on motor fuels, increases electric vehicle registration fees, changes some individual and corporate income tax rates and provides Northern Virginia localities with transportation funding options.

SB 275 (Obsenshain): Requires transportation funds to remain in the TTF. The General Assembly may borrow from the Funds for other purposes only by a vote of two-thirds plus one of the members voting in each house, and the loan must be repaid with reasonable interest within four years.

SB 1140 (Petersen): Commonwealth Mass Transit Fund. Removes all current allocations made by the Commonwealth Transportation Board to mass transit and implements performance-based funding for mass transit.

SB 925 (McWaters): Sales and use tax revenue dedicated to the Transportation Trust Fund. Increases the amount of the existing sales tax dedicated to transportation from 0.5% to .75 % over a three year period.

SB 1355 (Newman): Revenues and appropriations of the Commonwealth. Governor's Transportation Funding Bill. Increases the state sales tax by 0.8%, eliminates the state gas tax (except on diesel), increases vehicle registration fees by \$15 and raises the annual fee on hybrid vehicles from \$50 to \$100.

SB 700 (Alexander): Taxes on fuels; issuance of bonds. Makes the retail sale of gasoline, diesel fuel, and other fuels subject to the general five percent retail sales and use tax and reduces the fuels tax on

such fuels by \$0.05 per gallon from \$0.175 per gallon to \$0.125 per gallon. Of the net additional revenues generated each year under the bill, \$250 million would be deposited into the Highway Maintenance and Operating Fund and the remainder would be deposited into the Highway Construction Projects Trust Fund created under the bill. The bill also authorizes the issuance of up to \$5 billion in bonds for such highway projects with the bonds and the interest thereon to be repaid from the net additional revenues generated by the bill and deposited into the Fund. Over the long term, approximately 38 percent of such revenues would be used for projects in the Northern Virginia highway construction district, 31 percent for projects in the Hampton Roads highway construction district, and 31 percent for projects in all other highway construction districts in the Commonwealth.

SB 717 (Watkins): Establishing and adjusting sources of revenue for appropriations of the Commonwealth and its localities. Establishes a five percent tax on motor fuels sales based on the statewide average wholesale price of a gallon of self-serve unleaded regular gasoline. The revenues would be distributed to the Highway Maintenance and Operating Fund, the Transportation Trust Fund, the Intercity Passenger Rail Operating and Capital Fund, and the localities to be used for transportation purposes.

SB 855 (Petersen): Transportation; funding and administration. Increases the gas tax by 10-cents per gallon to 27.5 cents per gallon and adjusts the rate annually based on a fuel efficiency index. Adds a \$10 fee for electric batteries and increases size of CTB from 18 (See SB) to 23 members with 4 members from Northern Virginia, 3 members from Hampton Roads and 2 members from Richmond, each of which currently has one member.

SB 1340 (Saslaw): Revenues and appropriations of the Commonwealth. Raises the state sales and use tax rate by 1.0%. Of these new revenues, one-half percent goes to Transportation Trust Fund (TTF), and the percentage of the TTF dedicated to mass transit will be raised to 25%. Of the other 0.5%, two-thirds goes to localities to use for K-12 education, and one-third to fund higher education. In FY 2014, 2015, 2016, and 2017, \$80 million dollars each year that would otherwise be distributed to the TTF will be designated to the Phase 2 Dulles Corridor Metrorail. The bill also raises the cents-per-gallon rate of the tax on motor fuels by 5 cents on July 1, 2013 and July 1, 2014, and begins indexing the cents-per-gallon rate on July 1, 2015.

SB 872 (McWaters): Assignment of general fund balance; Transportation Trust Fund. Increases the percentage of annual surplus dollars available for transportation after current obligations have been met from 67% to 75%.

- CONDOMINIUM & PROPERTY OWNERS' ASSOCIATIONS -

HB 1008 (Ramadan): Condominium and Property Owners' Association Acts; rights of owners. Provides that no provision of the declaration or rules or regulations adopted pursuant thereto shall prohibit an owner or any person entitled to occupy a unit or lot from exercising his constitutionally protected right of freedom of speech upon property to which the owner or person entitled to occupy has a separate ownership interest or a right to exclusive possession. The bill further provides that any provision of a declaration or rule or regulation adopted pursuant thereto that prohibits the exercise of such right upon such property shall be void as against public policy. The bill allows, however, an association to establish reasonable time, place, and manner restrictions on such property provided the restrictions are necessary to protect a substantial interest of the association. In any action brought by an association for a violation of such restriction, the association bears the burden of proof that such time, place, or manner restriction is necessary to protect a substantial interest of the association. Finally, the bill provides that the association may restrict an owner's exercise of freedom of speech upon the common areas.

HB 1256 (Sickles): Condominium Act; Property Owners' Association Act; lien for assessments; priority. Provides that such portion of the unpaid assessments due and owing the association for a period not to exceed three years that is attributable to providing the maintenance and upkeep of the common areas and such other areas of association responsibility expressly provided for in the declaration, including capital expenditures, shall be prior to all other liens and encumbrances except any real estate tax liens, deeds of trust, or mortgages, regardless of when recorded, on the unit or lot. The bill contains technical amendments.

HB 1711 (Plum): Condominium and Property Owners' Association Acts; notice to owners of election of officers at a special meeting. Provides that in the event of the cancellation of any annual or regularly scheduled meeting at which officers are elected, the seven-day notice of any special or emergency meeting scheduled to elect such officers shall include a statement that the meeting is scheduled for the express purpose of the election of officers.

HB 1807 (Jackson Miller): Condominium and Property Owners' Association Acts; disclosure of qualification for federal financing. Requires the disclosure in the respective association disclosure packets for purchasers of whether the project as of the effective date of the resale certificate is intended to comply with the underwriting guidelines of the secondary mortgage market agencies, including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Virginia Housing Development Authority.

HB 1995 (LeMunyon): Condominium Act; convertible land. Provides that no mortgage, deed of trust, or other lien shall be subject to the provisions of a recorded declaration unless such mortgage, deed of trust, or other lien expressly so provides. The bill also provides that certification that all units or portions thereof depicted on the plans have been substantially completed shall not be required at the time of recordation if a completion bond is filed and remains in full force and effect until all units designated on the convertible land are certified as substantially complete by a licensed architect, licensed engineer, or licensed land surveyor. Finally, the bill provides that if a completion bond is filed, then the time limit for conversion of convertible land into units shall be deemed satisfied for so long as the bond remains in effect.

HB 2275 (Peace): Condominium Act; declarant control. Expands the respective declarant control period where the declarant has reserved the power to add more units to the condominium and provides that notwithstanding the limitations in the Condominium Act, at the request of the declarant and a two-thirds affirmative vote conducted pursuant to the voting procedures set forth in the Condominium Act, the initial declarant control period for an expandable condominium may be extended at any time prior to its expiration, provided that it does not exceed 15 years from the settlement of the first unit to be sold in any portion of the condominium. The bill also changes when the statute of limitations for structural defects is tolled because of the longer period of declarant control provided for in the bill. The bills provides that for any condominium existing on July 1, 2013, the condominium instrument for such condominium may be amended in the manner prescribed in the relevant condominium instrument or by statute to conform to the provisions of the bill.

HB 2305 (Ramadam): Solar panels in community associations. Clarifies that a community association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. The bill provides that any disclosure document, however designated, required by law to be given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

HB 1630 (Cosgrove): Virginia Real Estate Time-Share Act; developer control in time-share estate program; control liens; foreclosure procedure. Provides that in addition to the current developer control termination provisions and to the extent that the purchase contract or time-share instrument does not expressly provide otherwise, the developer control period shall terminate when the developer is no longer the beneficiary on deeds of trust secured on at least 20 percent of the time-share estates. Under current law, the transfer must occur when the developer has (i) transferred to purchasers legal or equitable ownership of at least 90 percent of the time-share estates or (ii) completed all of the promised common elements and facilities comprising the time-share estate project, whichever occurs last. In addition, the bill changes from mandatory to permissive the requirement that the trustee file an accounting of a foreclosure sale of a time-share estate with the commissioner of accounts. Under the bill, if the trustee decides to file an accounting with the commissioner of accounts, the fee is limited to \$45. The bill includes a second enactment clause stating the intent of the General Assembly that the provisions of the bill relating to the developer control period shall apply retroactively to all registered time-share projects to the extent that the purchase contract or time-share instrument does not expressly provide otherwise. The bill is a recommendation of the Virginia Housing Commission.

SB 772 (Wagner): Virginia Real Estate Time-Share Act; developer control period. Provides that in addition to the current developer control termination provisions and to the extent that the purchase contract or timeshare instrument do not expressly provide otherwise, the developer control period shall

terminate when the developer is no longer the beneficiary on deeds of trust secured on at least 20 percent of the time-share estates. Under current law, the transfer must occur when the developer has (i) transferred to purchaser's legal or equitable ownership of at least 90 percent of the time-share estates or (ii) completed all of the promised common elements and facilities comprising the time-share estate project, whichever occurs last. The bill includes a second enactment clause stating the intent of the General Assembly that the provisions of this act apply retroactively to all registered time-share projects to the extent that individual purchase contracts do not provide otherwise.

SB 841 (Locke): Uniform Statewide Building Code; establishment of occupancy standards for residential dwelling units by owners or managing agents. Authorizes an owner or managing agent of a residential dwelling unit to develop and implement reasonable occupancy standards restricting the maximum number of occupants permitted to occupy the dwelling unit, provided such standards comply with the federal standards established under federal laws and regulations. The bill also authorizes an owner or managing agent to restrict the number of occupants in a dwelling unit to two persons per bedroom and clarifies that such restriction will not be enforceable under the provisions of the Uniform Statewide Building Code.

SB 1125 (Norment): Virginia Condominium Act; casualty insurance for common areas. Specifies the items that must be insured under a master casualty policy obtained by a unit owners' association or executive organ or the association to cover the common elements of a condominium.

- ENVIRONMENT -

HB 1488 (Rush): Local implementation of stormwater management program. Delays the date that local governments will have to assume responsibility for administering the stormwater management program from July 1, 2014, to July 1, 2015.

HB 1505 (Lingamfelter): Sewage systems; betterment loans. Clarifies that betterment loans may be used for conventional onsite, alternative onsite, and alternative discharging sewage systems; authorizes the Board of Health to use up to 25 percent of the Onsite Sewage Indemnity Fund to provide or guarantee betterment loans; increases the amount of each fee collected by the Department of Health pursuant to subsections C and E of § 32.1-164 that is contributed to the Onsite Sewage Indemnity Fund from \$10 to \$25; and removes the use of the Onsite Sewage Indemnity Fund for training and recognition of authorized onsite soil evaluators.

Hundred and HB 1457 (Watts): Estate tax reinstated. Reinstates the estate tax for persons dying on or after July 1, 2013. No estate tax will be imposed on a gross estate if the majority of the assets of the estate is an interest in a closely held business or a working farm. The revenues from the estate tax would first be used for funding the Medicaid cost of meeting staffing standards in nursing homes required to be established under the bill, which staffing standards would require a minimum period of time of direct care services to each resident per 24-hour period. Five percent of the remaining revenues shall be used to fund home-based and community-based services to enable older adults and people with disabilities to remain in home settings.

HB 1594 (Minchew): Small estates; checks and negotiable instruments. Provides that if the successor to a decedent receives certain small assets in the form of checks, drafts, or other negotiable instruments that are payable to the decedent, the successor may endorse or negotiate such checks, drafts, or other negotiable instruments.

HB 1752 (Wright): Powers of personal representatives; digital accounts. Provides that the personal representative of a decedent has the power to take control of, conduct, continue, or terminate the decedent's accounts on any social networking website, microblogging or short message service website, or electronic mail service website.

HB 1757 (Ramadan): Wetlands mitigation bank. Establishes a special nonreverting fund known as the Aquatic Resources Improvements Fund to receive moneys paid to the State Water Control Board for mitigation of any impacts that a project may have on wetlands. The moneys in the fund are to be disbursed to purchase mitigation bank credits.

HB 2048 (Sherwood): Consolidation of water quality programs. Moves the water quality programs currently administered by the Department of Conservation and Recreation to the Department of Environmental Quality. The Department of Environmental Quality and the State Water Control Board will have oversight of water quality planning and laws dealing with stormwater management, erosion and sediment control, and the Chesapeake Bay Preservation Areas. The composition of the Virginia Soil and Water Conservation Board is changed, reducing the number of voting members from 12 to seven, and the Department of Environmental Quality is assigned responsibility for staffing the Board. The Virginia Soil and Water Conservation Board will continue its oversight responsibilities of the soil and water conservation districts and of resource management planning. The Board of Conservation and Recreation will be responsible for administration of the flood prevention and dam safety laws.

HB 2190 (Cosgrove): Stringency of stormwater management ordinances. Requires localities that adopt more stringent stormwater management requirements than those necessary to ensure compliance with the minimum regulations of the Soil and Water Conservation Board to submit such requirements to the Board to confirm that statutory requirements have been met and that the locality's determinations pursuant to the statute are reasonable. The bill ensures the availability of best management practices authorized by the Virginia Stormwater management Regulations and the Virginia Stormwater BMP Clearinghouse Committee as a means of complying with regulations and requirements.

HB 2209 (Knight): Nutrient management certification program. Transfers authority for administration of the nutrient management certification program and responsibility for adopting regulations on nitrogen application rates from the Department of Conservation and Recreation to the Virginia Soil and Water Conservation Board. The bill also empowers the Board to allocate general fund moneys to soil and water conservation districts to support their operations and oversee districts' programs.

HB 1548 (Knight): Guidance documents for municipal separate storm sewer (MS4) permit Tees. Requests the Department of Conservation and Recreation and the Department of Environmental Quality to jointly prepare guidance documents to assist MS4 permittees in developing and implementing their Chesapeake Bay Total Maximum Daily Load (Bay TMDL) Action Plans. The guidance documents shall (i) identify methodologies to be used by MS4 permittees in calculating nutrient reductions and best management practices efficiencies as part of their Bay TMDL planning activities pursuant to MS4 permits and (ii) assist MS4 permittees in developing and implementing their Action Plans.

HB 1726 (E. Scott): Non-gravel effluent drain systems for onsite sewage systems; regulations. Directs the Board of Health to promulgate regulations for chamber and bundled expanded polystyrene effluent distribution systems for onsite sewage systems. The bill contains an emergency clause.

SB 926 (McWaters): Adoption of wetlands zoning; governmental activity in wetlands. Removes from Virginia's standard wetlands zoning ordinance the condition that wetlands be owned or leased by the Commonwealth if a governmental activity occurring there is to be authorized. The current standard ordinance, which may be adopted by any locality and is the only wetlands zoning ordinance under which any wetlands board may operate, authorizes an otherwise-permitted governmental activity only if the wetlands in which the activity is to take place are owned or leased by the Commonwealth or a political subdivision of the Commonwealth.

SB 1095 (Hanger): Bond issuance for wastewater treatment facilities. Authorizes the Virginia Public Building Authority to issue an additional \$150 million in bonds to continue installing nutrient removal technology in eligible wastewater treatment facilities to comply with the Chesapeake Bay TMDL and the Watershed Implementation Plan. These funds would complete projects at facilities under existing signed Water Quality Improvement Fund agreements and at additional eligible facilities that did not receive moneys from the original bonds issued in 2007.

SB 1121 (Ruff): Water and waste authorities; rates. Clarifies the ability of a water or waste authority to fix rates for services that are furnished by a refuse collection and disposal system. The bill expands the list of rate-setting powers that require a public hearing by adding the rate setting power found in subdivision 10 of § 15.2-5114, a power that includes the establishment of incentives for green roofs. The bill combines the two parallel processes found in current law for the setting of rates for sewage disposal and refuse collection, and it reduces the period for publication of notice of a rate-setting hearing from 60 days to 14 days. Finally, the bill provides that no rate established before January 1, 2013, shall be invalidated because of a failure to provide the required public notice. The bill also makes technical changes.

SB 1279 (Hanger): Consolidation of water quality programs. Moves the water quality programs currently administered by the Department of Conservation and Recreation to the Department of Environmental Quality. The Department of Environmental Quality and the State Water Control Board will have oversight of water quality planning and laws dealing with stormwater management, erosion and sediment control, and the Chesapeake Bay Preservation Areas. The composition of the Virginia Soil and Water Conservation Board is changed, reducing the number of voting members from 12 to seven, and the Department of Environmental Quality is assigned responsibility for staffing the Board. The Virginia Soil and Water Conservation Board will continue its oversight responsibilities of the soil and water conservation districts and of resource management planning. The Board of Conservation and Recreation will be responsible for administration of the flood prevention and dam safety laws.

- REAL ESTATE TRANSACTIONS -

HB 1507 (Lewis): Recording deeds; statement of preparation. Clarifies that the circuit court clerk may reject for filing or recording only deeds conveying real property, and not other types of deeds, unless the deed states on its first page that it was prepared either by the owner of the property or by an attorney licensed to practice in Virginia.

HB 1405 (Bell): Private road easements; maintenance and repairs. Provides that all the property owners served by a private road or right-of-way that serves as the primary source of ingress and egress for the properties are jointly and equally responsible for the cost of maintaining and repairing the road or right-of-way unless the owners agree otherwise. Such costs include the cost of snow removal but do not include the cost of capital improvements to the road or right-of-way.

HB 1436 (Purkey): Mechanics' lien notice. Provides that any person intending to perfect a mechanics' lien against a one-family or two-family residential dwelling unit must send the mechanics' lien agent designated on the building permit or, if no agent is designated on the permit, the property owner written notice of his intention at least 30 days before filing the memorandum of lien with the clerk of the court. The bill also provides that if no mechanics' lien agent is designated on the building permit, the permit shall contain the name and mailing address of the property owner.

HB 1861 (Rust): Notice of sale of certain residential property. Amends current provisions that require localities in Planning District 8 (Northern Virginia) to be given notice when residential property is subject to a sale under a deed of trust to make those provisions applicable statewide. The bill also requires common interest community associations to be given such notice when such property is located within a common interest community.

HB 2006 (Toscano): Subordinate mortgages. Provides that a subordinate mortgage retains its subordinate status upon the refinancing of the primary mortgage if the principal amount secured by the refinance mortgage does not exceed the greater of the outstanding principal balance of the prior mortgage plus \$5,000 or the outstanding principal balance of the prior mortgage plus any accrued interest, fees, and prepayment penalty required to satisfy the prior mortgage. Under current law, the amount of the refinance mortgage cannot exceed the outstanding principal balance of the prior mortgage plus \$5,000. The bill also provides that a subordinate mortgage retains its status if the prior mortgage was not a fully amortizing fixed rate mortgage, a term defined in the bill, and the refinance mortgage is such a mortgage. The bill also expands its application to mortgages on real estate containing up to four dwelling units, whereas current law applies only to real estate containing a single dwelling unit.

HB 2200 (Webert): Property Owners' Association Act; home-based businesses permitted. Provides that, except to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly provide otherwise, no association shall prohibit any lot owner from operating a home-based business on his lot. The bill requires disclosure of any such prohibition in the association disclosure packet. The bill requires any home-based business to comply with all applicable local ordinances and defines "home-based business" as any enterprise for which the principal administrative and managerial activities take place within an individual's personal residence. The bill provides that the General Assembly finds that the bill's objectives serve the public interest by promoting Virginia's small businesses.

HB 1734 (Loupassi): Virginia Residential Landlord and Tenant Act. Provides that where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in writing by each of the

tenants, disposition of the security deposit shall be joint and several, with one check being payable to all such tenants and sent to the forwarding address provided by the tenants. If the tenants do not provide the landlord a forwarding address to enable the landlord to make a refund of the security deposit, upon the expiration of one year from the date of the end of the 45-day statutory period, the balance of the tenants' security deposit shall escheat to the Commonwealth and shall be paid into the state treasury and credited to the Virginia Housing Partnership Revolving Fund. Upon payment to the Commonwealth, the landlord shall have no further liability to the tenant relative to the security deposit and is deemed in compliance with real estate licensing laws and corresponding regulations of the Real Estate Board. Among other things, the bill also (i) allows a landlord to proceed to obtain possession of the premises when rent is unpaid within five days after the landlord's pay or quit notice due to a failure of electronic payment or a bad faith stop order on an electronic payment by the tenant; (ii) removes the requirement that the rental agreement must first require a tenant to give notice of an anticipated extended absence before the landlord may recover actual damages from the tenant; and (iii) specifies notice of termination in periodic tenancies. The bill contains technical amendments.

HB 1749 (Dance): Landlord and tenant laws; application to certain occupants of hotel, motel, extended stay facilities, and similar lodging. Provides that an occupant in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging shall not be construed to be a tenant living in a dwelling unit under landlord and tenant laws or the Virginia Residential Landlord Tenant Act. The bill provides that if a person resides in such lodging as his primary residence for more than 90 consecutive days or is subject to a written lease for more than 90 days, then landlord and tenant laws or the Virginia Residential Landlord Tenant Act will apply to the occupancy. The bill is a recommendation of the Virginia Housing Commission.

HB 1425 (Greason): Private road easements; maintenance and repairs. Provides that all the property owners served by a private road or right-of-way that serves as the primary source of ingress and egress for the properties are jointly and equally responsible for the cost of maintaining and repairing the road or right-of-way unless the owners agree otherwise. Such costs include the cost of snow removal but do not include the cost of capital improvements to the road or right-of-way.

- MISCELLANEOUS -

HB 2165 (Dudenhefer): Signs or advertising within limits of highways. Imposes a civil enalty of \$100 for first violations and \$250 for second or subsequent violations for placing advertising within highway rights-of-way.

HB 810 (Garrett): Bills requiring expenditures by localities. Prohibits any committee of the General Assembly from reporting any bill impacting localities that does not fully fund any net expenditures that otherwise would have to be paid by localities.

- ESTATES & TAXES -

SB 711 (Stuart): Testamentary trustees; relief of duty to file an inventory or annual accounts.

Provides that any trustee under a will of a decedent, whenever probated, shall be relieved of the duty to file an inventory or annual accounts with the commissioner of accounts if the will does not direct the filing of such inventory or accounts and the trustee (i) obtains the written consent of all adult beneficiaries and the consent of all incapacitated beneficiaries and (ii) files those consents with the commissioner on or before the date on which the inventory or next required accounting would otherwise be due. Currently, this relief is only available for trustees of wills probated on or after July 1, 2010.

SB 757 (Edwards): No-contest clauses; exceptions. Allows the beneficiary of a will or trust to institute an action to seek interpretation or enforcement of a provision of a will or trust without triggering the penalties of a no-contest clause. This bill does not eliminate the general utility of no-contest clauses to prevent unwarranted challenges or contests to the validity of a will or trust.

SB 759 (Edwards): Guardianship and conservatorship. Makes various changes to guardianship and conservatorship laws, including: (i) permitting another person to initiate a guardianship proceeding before an incapacitated child turns 18 if there is no living parent; (ii) requiring a petition to state the basis for the court's jurisdiction; (iii) clarifying the court's ability to award reasonable fees for a guardian ad litem and counsel for the respondent; (iv) requiring the court to hold a hearing on the appointment of a guardian or conservator within 120 days from filing; (v) confirming that the court should consider the respondent's best interests when determining the need for a guardian or conservator; (vi) granting a conservator the power to make elections for a family allowance, exempt property allowance, and homestead allowance; and (viii) granting a court the ability to authorize a conservator, for good cause shown, to create and fund a trust for an incapacitated person.

SB 1052 (McDougle): Revising and recodifying the laws pertaining to wills, trusts, and fiduciaries. Reinserts language that was inadvertently omitted from Chapter 614 of the Acts of Assembly of 2012, which created Title 64.2. The bill contains an emergency clause and provides that it is effective retroactively to the date Title 64.2 took effect. This bill is a recommendation of the Virginia Code Commission.

SB 1093 (Hanger): Uniform Real Property Transfer on Death Act; adoption. Codifies the Uniform Real Property Transfer on Death Act, which authorizes the creation of a transfer on death deed, which, when properly executed and recorded, passes title directly to named beneficiaries without probate upon the transferor's death. The uniform act was approved by the National Conference of Commissioners on Uniform State Laws in 2009. The bill contains technical amendments.

- COURTS & JUSTICE -

HB 1338 (Cole): Appointment of judge by circuit court. Restricts the circuit courts from appointing to judicial office any person either house of the General Assembly failed to elect. (SEE ALSO SB693 of similar subject matter)

HB 1435 (Albo): Judges; senior judge system; study. Allows for a study by the National Center for State Courts of a senior judge system.

HB 1451 (Minchew): Retention of case records; general district court. Permits the chief judge of a general district court to direct the clerk of that court to destroy documents related to civil and criminal cases that have been ended for a period of three years, provided that they have been microfilmed or converted to an electronic format. Currently, such documents must be retained for 10 years. This bill is a recommendation of the Committee on District Courts. SEE ALSO SB979 and SB 1202 of similar subject matter.

HB 1483 (Iaquinto): Record on appeal from district court. Provides that, upon the appeal of a general district court or juvenile and domestic relations district court judgment in a civil case to circuit court, only the pleadings filed in the case shall be transmitted to the circuit court. All other materials contained in the case file, including all other documents, exhibits, or papers, shall be retained by the district court. Currently, the district court transfers all materials to the circuit court in the event of an appeal.

HB 1654 (Kilgore): Courts of record; acceptability of electronic medium; submission of trial court record to appellate court. Requires a clerk of circuit court with an established electronic filing system to provide any appellate court the trial court record in electronic form.

HB 1715 (Iaquinto): Clerks of circuit courts; electronic filing and records; remote access. Makes various changes to the provisions that allow circuit court clerks to provide remote access to certain records and to charge a fee for such access. The bill also directs that fees assessed for electronic filing of cases and other records and accessing certain records remotely shall be paid to the clerk's nonreverting local fund to be used to cover the clerk's operational expenses.

HB 1716 (Iaquinto): Clerks' fees; case management systems, etc. Allows circuit court clerks to establish and maintain their own case management systems, financial management systems, or other independent technology. The Executive Secretary of the Supreme Court of Virginia is required to provide an electronic interface to the data available on a clerk's independent system, and cost of the interface shall be paid by the Executive Secretary from the Courts Technology Fund. A circuit court clerk who has established and maintained his own case management system may retain 50 percent of the fees collected for the Courts Technology Fund for his own local nonreverting fund to be used to pay for the operational expenses of his office.

HB 1768 (O'Quinn): Specialized court dockets; environmental courts. Provides that any district court or circuit court may establish an environmental court, a separate court docket within the existing calendar of a district or circuit court, that would have the authority to hear cases involving the protection, improvement, and preservation of the public health and the environment.

HB 1911 (Surovell): Judicial Council; law clerks; report. Directs Judicial Council to report on law clerks used by the appellate and circuit courts.

HB 1374 (Head): Summary judgment; use of depositions. Allows motions for summary judgment to be based, in whole or in part, upon depositions, answers to interrogatories, admissions in the proceedings, or affidavits. Currently, such motions cannot be based on depositions unless agreed to by the parties.

HB 1477 (Albo): Revises the Deadman's Statute by allowing for the corroboration of the testimony of an adverse or interested party by an entry in a business record authored by the adverse or interested party.

HB 1546 (Loupassi): Service of process on nonresidents. Makes several changes to how service of process is made on nonresidents and foreign corporations, including providing that (i) foreign corporations may be personally served with process outside of the Commonwealth in addition to substituted service on such corporation within the Commonwealth; (ii) service of process on the Commissioner of the Department of Motor Vehicles for nonresident motor vehicle owners or operators or the Secretary of the Commonwealth for nonresident aircraft owners or operators is effective on the date service is made on the Commissioner or the Secretary, and (iii) the Secretary of the Commonwealth or the statutory agent of a foreign corporation must provide a receipt noting the date service of process was made if the Secretary or statutory agent was served by hand delivery or any other method that does not provide a return of service. This bill is a recommendation of the Boyd-Graves Conference.

HB 1551 (Loupassi): Discovery rule; statute of limitations. Provides that the period of limitations for filing a cause of action for injury resulting from implanted medical devices, toxic exposure, and prescribed or over-the-counter medications accrues from the time the person knew or should have known of the injury and its causal connection to such device, substance, or medication. (See also SB 1139 of similar subject matter).

HB 1552 (Loupassi): Punitive damages cap. Increases the punitive damages cap from \$350,000 to \$675,000 to reflect the effect of inflation since the cap was first established. The bill also provides that the cap will be adjusted annually in an amount equal to the annual increase in the United States Average Consumer Price Index for all items, all urban consumers.

HB 1618 (Gilbert): Venue in civil cases; conduct of business activity; change of venue. Eliminates from the list of Category B venue (permissible venue) the forum where the defendant regularly conducts substantial business activity or where such activity was conducted before the

defendant's withdrawal from the Commonwealth. The bill also provides that Category B venue exists where a defendant that is a corporation, partnership, or limited liability company has its principal office or place of business. The bill further provides that a court that has Category A venue (preferred venue) over a case may transfer that case to another forum if there is a lack of a practical nexus between the transferring court and the underlying cause of action.
(See also SB 1337 of similar subject matter)

HB 1676 (Kilgore): Service of process; timing. Provides that in order to be timely, service of process must be made within six months from the commencement of the action. Currently, service of process is timely if made within 12 months. The bill also provides that no nonsuit may be taken more than six months after the commencement of an action in the absence of timely service of process unless the court finds that the plaintiff exercised due diligence in attempting to serve process. (See also SB 1278 of similar subject matter)

HB 1754 (Wright): Service of process; timing. Provides that in order to be timely, service of process must be made within 90 days from the commencement of the action. Currently, service of process is timely if made within 12 months. The bill also provides that no nonsuit may be taken more than 90 days after the commencement of an action in the absence of timely service of process unless the court finds that the plaintiff exercised due diligence in attempting to serve process.

HB 1595 (Watts): Condominium and Property Owners' Association Acts; assessments; imposition of late fees. Authorizes condominium and property owners' associations to impose a late fee for any assessment or installment thereof that is not paid within 60 days of the due date for payment of such assessment. No such late fee shall exceed the penalty provided in § 58.1-3915 (five percent).

HB 1761 (Ramadan): Property Owners' Association Act; waiver of assessments; voting. Prohibits, under certain circumstances, an association or board of directors from waiving for any lot owner for any reason any assessment authorized in the declaration. The bill also provides that (i) votes of the membership of an association taken to authorize the transaction of any association business must occur at a duly called meeting and with the concurrence of a majority of the members present and voting or by any larger vote specified in the declaration, (ii) votes cast by proxy may be counted at such meeting so long as voting by proxy is not prohibited in the declaration or association bylaws, and (iii) no association shall utilize cumulative or block voting for any purpose other than the election of members of the board of directors.

HB 1995 (Massie): Condominium Act; convertible land. Provides that no mortgage, deed of trust, or other lien shall be subject to the provisions of a recorded declaration unless such mortgage, deed of trust, or other lien expressly so provides. The bill also provides that certification that all units or portions thereof depicted on the plans have been substantially completed shall not be required at the time of recordation if a completion bond has been filed and remains in full force and effect until all units designated on the convertible land are certified as substantially complete by a licensed architect, licensed engineer, or licensed land surveyor. Finally, the bill provides that if a completion bond has been filed before the expiration of the time limits for conversion of convertible land, then such time limit to complete the units shall be deemed satisfied for so long as the bond remains in effect.

SB 762 (Edwards): Mandatory judicial retirement. Increases the mandatory retirement age under the Judicial Retirement System from 70 years of age to 73 years of age.

SB 1058 (McDougle): Judicial conferences; meetings. Restricts meetings of the mandatory judicial conferences to no more than once every other year.

SB 895 (Peterson): Service of process on domestic corporations. Allows process on a Virginia corporation to be served on its registered agent by posting a copy of the process on the front door or main entrance of the corporation's registered office.

SB 903 (Reeves): Dismissal of action by nonsuit; fees and costs. Clarifies that if notice to take a nonsuit is given to the opposing party during trial, the court may assess against the nonsuiting party reasonable witness fees and travel costs of expert witnesses scheduled to appear at trial, which are actually incurred by the opposing party, solely by reason of the failure of the nonsuiting party to give notice at least seven days prior to trial. The bill also provides that invoices, receipts, or confirmation of payment shall be admissible to prove reasonableness of such expert witness costs and may, in the court's discretion, satisfy the reasonableness requirement, without the need for further testimony. (See also HB 1570 of similar subject matter)