



The following is a Virginia General Assembly update from Phil Abraham, who lobbies in Richmond on behalf of the Virginia Association for Commercial Real Estate (VACRE). VACRE is a coalition of the Greater Richmond Association for Commercial Real Estate ([GRACRE](#)); the Hampton Roads Association for Commercial Real Estate ([HRACRE](#)); and NAIOP Northern Virginia, the Commercial Real Estate Development Association ([NAIOP](#)).

These associations are comprised of executives and professionals committed to promoting the ownership, use and development of commercial real estate in the Commonwealth of Virginia. Concurrently balancing the concerns of the private sector with the public interest, VACRE strives to support, educate and affect legislative initiatives that enhance commercial real estate. As a member of one or more of the above mentioned organizations, you will receive information related to VACRE's efforts on your behalf at the state level. Please take a few minutes to read this update so that you are informed about the legislative issues facing the industry.

You can find a summary of each bill discussed in this update, as well as its full text and legislative history by clicking on the bill number shown in blue. For more information about the Virginia General Assembly, you may go to the Legislative Information System [website](#) which is operated by the Virginia General Assembly.

COVID-19 Related Update

The COVID-19 crisis reached a critical mass just as the General Assembly was adjourning. Governor Northam declared a [State of Emergency](#) on March 12, 2020. Life and work in Virginia have changed dramatically since that day. [Executive Order 53](#) was issued on March 23 (limiting public gatherings and many retail businesses to 10 or less people at a time) and subsequently [Executive Order 55](#) which established a Stay at Home Order through June 10, 2020. Throughout this initial period of the COVID-19 state-of-emergency and through today, VACRE is advocating for the commercial development community before the Northam Administration and General Assembly on many matters relating to COVID-19 including: (1) local government electronic meeting authority, (2) extension of local development and public financing approval and filing deadlines and (3) keeping all forms of construction moving during the state of emergency.

VACRE wrote Governor Northam a [letter](#) on March 23, 2020 on these matters, congratulating him on his handling of the crisis and suggesting he call a Special Session to address any issues that require new state authority. We are preparing for a Special Session of the General Assembly that likely will be called on a date yet to be announced. Speculation is that it will likely be called between July and September 2020. It would first and foremost address state budget issues and could also address local government electronic meeting authority and extension of local government approvals and filing deadlines. We are communicating with the Northam Administration on matters of importance to commercial development as Virginia prepares to reopen retail businesses and companies plan for their employees to return to work.

Virginia General Assembly Update

The 2020 General Assembly adjourned its Regular Session on March 12, five days late primarily due to delays in reaching a final agreement on the next state budget. About 2830 bills were introduced during the 2020 Session (this excludes study and commending/memorial resolutions). This was 830 bills more than the preceding 2019 "short" Session and about 225 more bills than the 2018 "long" Session. Only about 1291 of these bills were approved by the General Assembly. As a result, about

54% of the bills introduced in 2020 were defeated and about 46% were ultimately approved by the Governor. All but a handful of the bills presented to the Governor have now been signed or were approved by the Governor with amendments now adopted at the April 22, 2020 Reconvened Session. The Governor has until May 22, 2020 to act on the few bills, including the new 2020-2022 state budget, that were returned to him on April 22 with rejected amendments.

This update reviews the status of the major bills VACRE followed during the 2020 Session.

Symbols used are:

-  = VACRE opposed the bill.
-  = VACRE supported the bill.
-  = Bill was defeated.
-  = Bill passed the General Assembly.
-  = Bill was approved by the Governor.

Bills of interest are grouped by category and are as follows:

Land Use

Labor Negotiations as Part of Land Use Approval Process ([SB 839](#) – Ebbin)

If this bill had been approved, it would have allowed any locality to include in its zoning ordinance, as part of the grant of a special exception, conditions that would require a developer through its contractors to enter into binding contractual agreements for worker protections that include “publicly available hiring standards and procedures, competitive wage levels, wage theft protections, prompt payment, apprenticeship and training programs, and neutral third-party dispute resolution processes.” As introduced, it would have applied to any development with a FAR “greater than 1.0 or 25 units per acre, or requires the construction of or improvements to public facilities, public roads, or other publicly owned or managed areas.” VACRE was a leader in the opposition to this bill that would have injected labor negotiations into the land use process. It was referred for study prior to the 2021 Session by the Virginia Housing Commission.

Affordable Housing Ordinances & Development of State Tax Credit Legislation ([SB 834](#) - McClellan and [HB 1101](#) – Carr) (New Tax Credit: [HB 810](#) – Bourne)

This legislation authorizes new local option affordable housing ordinances to incentivize development of affordable housing. These ordinances may offer incentives such as reductions or waiver of permit, development, and infrastructure fees, as the governing body deems appropriate, to encourage the provision of affordable housing. HB 810 directs the Virginia Housing Development Authority (VHDA) to convene a stakeholder group to develop a “housing opportunity tax credit” program for the purpose of providing incentives for the utilization of private equity in the development and construction of affordable housing in the Commonwealth.

Acreage for Commercial Lifestyle Center ABC License    ([SB 181](#) – Favola)

Commercial lifestyle centers are retail shopping centers that qualify for an ABC license to allow patrons to carry alcoholic beverages between shops and in common areas. This bill reduces the minimum development acreage required to qualify for this ABC license from 25 acres to 10 acres.

Real Estate Development and Construction

Loosen Restrictions on Residential Impact Fees   ([HB 1564](#) – M. Cole)

If passed, this bill would have expanded the number of localities that could impose residential impact fees. It would have eliminated some of the previous requirements for gaining impact fee authority and repealed a 2008 local action deadline to use the current impact fee authority.

Local Option Override of Uniform Statewide Building Code for Flooding  
([HB 1005](#) – Mullin & [SB 797](#) – Lewis)

These bills, if passed, would have authorized localities to adopt ordinances that exceed Uniform Statewide Building Code (USBC) standards if the required measures were intended to make buildings more resilient to the impacts of recurrent flooding, coastal storms, sea level rise, and other similar threats to the health, safety, and general welfare.

Broadband Provider Use of Existing Electricity Easements   w/ amdts. 
([HB 831](#) – Carroll-Foy & [SB 794](#) – Lewis)

This legislation allows broadband providers, with agreement of the electric utility, to use existing easements to bury fiber optic cable or attach to poles without compensation to or permission from the landowner. This complex legislation is intended to assist in expanding broadband in Virginia to underserved areas. VACRE initially opposed the bills but withdrew its opposition after cross-over with amendments that (1) exempt the landowner from having to pay relocation costs for cable buried by shallow-depth trenching if it needs to be moved if the property is later developed; and (2) require express notice to landowners that they have only six months to contest use of an existing easement if this shortened limitation period is used by the broadband provider. This bill may be the subject of litigation and/or 2021 legislation to address remaining concerns.

Delay in Release of Performance Bonds – Open Space   ([SB 1092](#) – Surovell)

If this bill had passed, it would have prohibited the final release of performance bonds and other guarantees for the construction of public facilities until each common area, if any, is transferred from the subdivider or developer to a property owners' association.

Project Labor Agreements for State Projects   ([SB 182](#) – Saslaw and [HB 358](#) – Lopez)

This legislation authorizes any public body, including any state or local government, when procuring products or services or letting contracts for construction of public works, to require bidders to enter into project labor agreements on the public works projects. Approved Governor's amendments delayed effective date of bill to May 1, 2021.

Prevailing Wages State Public Construction Projects

([HB 833](#) – Carroll-Foy & [SB 8](#) - Saslaw)

As approved, these bills require payment of the “Davis-Bacon” prevailing US Labor Wage Rate on all public construction project contracts awarded by the state and funded with state dollars. Approved Governor’s amendment delayed the effective date of bill to May 1, 2021.

Transportation

Statewide Transportation Funding ([HB 1414](#) – Filler Corn & [SB 890](#) – Saslaw)

Governor Northam’s transportation funding legislation provides increased statewide funding for roads, public transit and rail. It changes and simplifies the allocation formulas for road construction and maintenance and public transit with increased dedicated funding for all three modes and new dedicated funding for public transit. It does the following:

- Establishes a Virginia Passenger Rail Authority to plan for and allocate passenger rail funding.
- Increases gas tax by \$0.10/gallon phased in over two years (\$0.05/gallon increase per-year).
- Expands regional fuels tax \$0.076/gallon statewide.
- Indexes motor fuel taxes to CPI.
- Establishes a tiered Highway Use Fee paid with motor vehicle registration by all fuel-efficient vehicles (25 mpg and higher all gas, hybrid and electric vehicles) that is tied to average gas taxes paid annually by 24 mpg gas vehicle today.

In Northern Virginia, the grantors tax used for WMATA is lowered to \$0.10 per \$100 value and a new grantors tax called a “regional congestion fee” is imposed at a rate of \$0.10 per \$100 (for a net \$0.05 cent increase per \$100) and the regional transient occupancy tax (TOT) raised from 2% to 3%. Approved Governor’s amendments delayed the grantors and TOT increases in Northern Virginia until May 1, 2021.

Central Virginia Transportation Authority ([HB 1541](#) – McQuinn)

The Central Virginia Transportation Authority (CVTA) is created to provide regional and local transportation funds for Chesterfield, Goochland, Hanover, Henrico, Richmond, Ashland, Charles City, New Kent and Powhatan. The CVTA will administer funding generated through an additional regional 0.7 percent sales and use tax, a wholesale gas tax of \$0.76/gallon of gasoline (indexed for inflation) and \$0.77/gallon tax on diesel fuel. Approved Governor’s amendments delay the new regional taxes until October 1, 2020.

Hampton Roads Regional Public Transit Funding w/amdts.

([SB 1038](#) – Lucas & [HB 1726](#) – Askew)

As approved, this legislation will create a regional public transportation network in six of the major localities in Hampton Roads funded by an additional regional grantor's tax of \$0.06 per \$100 value; a regional transient occupancy tax (TOT) of 1% and \$20 million annually of existing statewide recordation taxes. HRACRE opposed this bill as proposed with a \$0.15 per \$100 grantors tax but agreed to the final bill with a \$0.06 per \$100 grantors tax and the addition of recurring existing recordation taxes to the revenue stream. Approved Governor’s amendments delayed the effective date of the TOT increase to May 1, 2021.

Modification of VDOT Design Standards ([SB 1011](#) – McDougale)

If this bill had not been defeated, it would have allowed a VDOT engineer to waive VDOT design standards within a VDOT residency to encourage economic development, address safety concerns, account for local topographic constraints, or address off-site impacts of development as negotiated through the rezoning process. VDOT agreed to address administratively concerns that led to this legislation.

Taxes (Non-Transportation)

Equalizing County and City Taxing Authority ([HB 785](#) – Watts & [SB 588](#) – Hanger)

This legislation loosens restrictions on certain taxes imposed by counties that do not exist for cities. It also establishes a new limit on cigarette taxes imposed by any locality. While only certain counties may currently impose an admissions tax, this bill allows most counties to impose one, not to exceed 10%. In addition, it eliminated the cap on the rate of county transient occupancy taxes (TOT) (currently capped at 2% for most counties). Effective July 1, 2021 any county may impose a cigarette tax up to a maximum rate of 40 cents per pack and any locality that imposes a rate higher than 40 cents per pack may not increase such rate. Currently only certain counties may impose a cigarette tax, and cities and towns may impose such tax with no limit on the rate. Any county may impose a meals tax of up to 6% and the existing referendum requirement before a county can impose such tax is eliminated. Currently, counties may impose the tax after a referendum, but the rate may not exceed 4%. Approved Governor's amendments delay new TOT tax authority for certain counties until May 1, 2021 and delay to July 1, 2021 repeal of the current 5% cap on cigarette tax authority in Arlington and Fairfax Counties.

Research and Development Tax Credit and Cap Increase ([SB 110](#) – Howell & [HB 748](#) – Jones)

This legislation will increase the amount of the Virginia Research and Development Expenses tax credit from \$7 million to \$7.7 million. It also increases the cap on the total amount that can be awarded annually from \$20 million to \$24 million.

Environment

Limits on Tree Removal ([HB 221](#) – Mugler and [SB 184](#) – Locke)

As introduced, any tree or group of trees in a locality subject to the Chesapeake Bay Preservation Act could be designated by a locality for preservation if found to have particular ecological, stormwater, riparian buffer, or tree-canopy significance. In committee, it was amended to apply only in Hampton Roads to allow its localities to require by ordinance preservation of any tree or group of trees as part of a local sea-level rise and recurrent flooding strategy. VACRE strongly opposed these bills. The Senate Bill was narrowly defeated in committee and the House Bill was carried over to the 2021 Session to allow for further study of tree preservation and planting.

Wetlands Permit Processing Deadline Retained    ([HB 1458](#) – Murphy)

This legislation clarifies the ability of DEQ to order administrative withdrawal of wetlands general permit applications. A provision that it proposed to eliminate, that deems an application approved if not acted on in 45 days, was retained at the request of VACRE.

Restrictions Nutrient Bank Credits   ([HB 1464](#) – Gooditis & [HB 1393](#) LaRock)

If passed, these bills would have restricted the total nutrient credits generated in a locality and used in an adjacent Hydrologic Unit Code (HUC) area to comply with stormwater nonpoint nutrient runoff water quality criteria. This legislation results from concern over the impact of nutrient credit banks on available farmland in rural areas near urban areas. It was carried-over to 2021 for further study.

Forest Mitigation Agreements    ([SB 674](#) – Mason)

This legislation authorizes and specifies provisions that could be imposed by voluntary agreement on the owner or operator of construction projects to accomplish forest mitigation. VACRE and HBAV obtained amendments exempting building construction and all road construction, except interstate highways, from the legislation.

Community Flood Preparedness Fund    ([HB 22](#) – Lindsey & [SB 320](#) – Lewis)

This legislation will rename the currently unfunded Shoreline Resiliency Fund, as the Community Flood Preparedness Fund. It will fund implementation of flood prevention and protection projects and studies. The bill requires that at least 25 percent of the money disbursed from the Fund each year be used for projects in low-income geographic areas. The 2020 Regional Greenhouse Gas Initiative (RGGI) legislation (see HB 981 and SB 1027 below) statutorily dedicates and establishes a sustainable revenue source for this fund.

Energy

C-PACE Energy Efficiency and Resiliency Loans Statewide    ([HB 654](#) – Guy)

As passed, this bill authorizes the Department of Mines, Minerals and Energy (DMME) to sponsor a statewide clean energy financing program. These loans for energy efficiency and resiliency projects are currently only available in a few Virginia localities. DMME will hire a private entity to develop and administer the statewide program.

Virginia Clean Economy Act   ([HB 1526](#) – Sullivan and [SB 851](#) – McClellan)

This legislation establishes a schedule by which Dominion Energy Virginia and American Electric Power are required to (1) retire electric generating units located in Virginia that emit carbon as a by-product of combusting fuel to generate electricity and (2) construct, acquire, or enter into agreements to purchase solar or offshore wind generating capacity located in Virginia. It replaces the existing voluntary renewable energy portfolio standard program (RPS Program) with a mandatory RPS Program. Under the new mandatory RPS Program, Dominion Energy Virginia and American Electric Power are required to produce their electricity from 100 percent renewable sources by 2045 and 2050, respectively.

Regional Greenhouse Gas Initiative (RGGI)   ([HB 981](#) – Herring & [SB 1027](#) – Lewis)

This legislation authorizes the Virginia Air Board to fully implement the carbon cap and trade rules it previously adopted but were delayed by just repealed budget language. This program is linked with the Regional Greenhouse Gas Initiative (RGGI) and will result in addition of a carbon charge to the cost of electricity from each carbon producing power plant located in Virginia. Revenues from this cap and trade program will be used for loans and grants for resiliency and flood prevention projects and for low-income energy efficiency programs.

Siting Solar Facilities   ([HB 655](#) – Heretick and [SB 870](#) – Marsden)

Authorizes a locality to include reasonable provisions in its zoning ordinance for a special exception for any solar photovoltaic (electric energy) project. That includes the dedication of real property of substantial value or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the granting of a conditional use permit, so long as such proffered conditions are reasonably related to the project.

State Budget

State Budget    ([HB 29/HB 30 - Howell and SB 29/SB 30 Torian](#))

The amendments to the current budget (2018-2020) (HB 29) and the next state budget (2020-2022) (HB 30) adopted at the 2020 Session have been thrown into a state of limbo in the wake of COVID-19. Faced with a potential shortfall of \$1 billion or more in the current fiscal year that ends June 30, 2020 and an even greater than \$1 billion shortfall possible for the first year of the next budget that begins July 1, 2021, Governor Northam had to propose budget amendments to begin to address these impacts. His amendments that were approved at the April 22 Veto Session included “unallocating” all new spending pending future approval by the General Assembly and diverting a planned \$600 million deposit to the State’s Rainy-Day Fund.

As a result, until further action from the Governor and General Assembly, the new budget now looks a lot like the current budget that expires June 30. State budget reduction plans are being implemented and revenues will be officially re-forecasted soon after July 1, 2020. Approved Governor’s amendments to HB 29 and HB 30 expand the authority of local governing bodies and boards and state boards and commissions to meet electronically without a physical quorum.

Economic Development

Local Approval of EDA Appropriations   ([SB 1000](#) – Chase)

If passed, this bill would have required a local governing body, prior to making any appropriation for funds to an industrial development authority, to hold a public hearing with opportunity for public comment on the proposed appropriation.

Repeal or Modify Right to Work   ([HB 153](#) – Carter and [SB 426](#) – Saslaw)

The House bill would have repealed Virginia’s Right to Work law. The Senate bill would have allowed employers to enter into agreements with their unions to deduct from a non-union employee’s

paycheck an amount attributable to their share of the cost of negotiating wages for employees, known as a “fair share fee”.

Collective Bargaining for Public Employees – Local Employees Only   
([HB 582](#) – Guzman and [SB 939](#) = Saslaw)

Allows localities the option to enter into collective bargaining agreements with local public employees. Those employees are prohibited from striking. The House bill as introduced would have allowed such bargaining for all state employees too but it was modified in conference committee to be local option, local employees only. Approved Governor’s amendments delayed the effective date of this bill to May 1, 2021.

Regulation and Litigation

Key Box Access to Commercial Buildings by Police   ([HB 1732](#) – Miyares)

If passed, this bill would have directed that the Uniform Statewide Building Code (USBC) be amended to require that all “high-risk structures”, as defined in the bill, have key boxes installed in strategic locations on the outside. Each key box must contain keys, access cards or other credentials that may be necessary for law-enforcement to access these structures.

Source of Income Added to Fair Housing Laws   ([HB 6](#) – Bourne)

As passed, it adds discrimination on the basis of a person's source of funds to the list of unlawful discriminatory housing practices. An owner who does not own more than four rental dwelling units is exempt. An owner or owner's managing agent can deny or limit a person's rental or occupancy based on the person's source of funds for that unit if such source is not approved within 15 days of request for tenancy approval.

Late Rent Payment Penalties   ([HB 1420](#)– Bourne)

Establishes that a landlord (residential or commercial) shall not charge a tenant for late payment of rent unless such charge is provided for in the written rental agreement. In addition, no such late charge shall exceed the lesser of 10 percent of the periodic rent or 10 percent of the remaining balance due and owed by the tenant. An approved Governor’s amendment added an emergency clause to this bill, so **it is now effective**.

Registration Required for Local Lobbying   ([SB 383](#) – McPike)

If passed, this bill would have required individuals to register with a locality and payment of a \$25 fee if compensated for attempting to influence a local government official.

Questions or Comments

VACRE will continue to monitor legislation of interest to the commercial real estate community that may be proposed at the yet to be scheduled Special Session of the Virginia General Assembly. We will report to you on any developments on a Special Session as well as on any actions taken by the Governor related to the restrictions imposed in response to COVID-19. Please contact Phil Abraham at pabraham@vectrecorp.com or Martha Marks at mmarks@naiopva.org if you have any questions or comments regarding this update or other legislative or COVID-19 issues.

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