

# BUSINESS REPORT

## On The 2005 Virginia General Assembly Session

By Tom Hyland

*The following report is the sixth and final of a series reports prepared by David Bailey Associates (DBA) on major legislative issues at the 2005 Virginia General Assembly Session of general interest to the Virginia business community. DBA is a full-service government affairs firm, located in Richmond Virginia, that has been involved in Virginia legislative and executive branch lobbying and other government relations activities for nearly a quarter-century. If you have questions regarding any of these bills, or any other bills, at this or past sessions, please feel free to contact David Bailey Associates at 1-800-789-3390.*

### The State Budget

The Virginia General Assembly at its recent 2005 session approved HB 1500, a \$63 billion biennial (two-year) budget. In doing so, the General Assembly utilized the state's \$1.2 billion surplus for the current fiscal year to eliminate the state's portion of sales tax on food, fund a \$50 million cleanup of the Chesapeake Bay, and raise the salaries of state workers and teachers. In addition, the General Assembly agreed to an \$848 million funding package for highways and rail projects.

### Economic Development

**SB 1122**, by Senator Mark Obenshain of Harrisonburg, and **HB 1948**, by Delegate Chris Saxman of Staunton, require the Department of Planning and Budget, in addition to the economic impact analysis currently required for proposed regulations, to identify and estimate the number of small businesses subject to the regulation; the projected reporting, recordkeeping and other administrative costs required for compliance by small businesses with the regulation; the probable effect of the regulation on affected small businesses; and any alternative method for achieving the purpose of the regulation while minimizing adverse impact on small businesses. A small business is defined as a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. The law also gives small businesses the right to judicial review of agency compliance with these requirements.

**HB 2570**, by Delegate Allen Dudley of Rocky Mount, and **SB 983**, by Senator John Watkins of Chesterfield County, establish new processes/procedures for continuing the Virginia Enterprise Zone Act after July 1, 2007.

### Education

**HB 1945**, by Delegate Chris Saxman of Staunton, and **SB 1107**, by Senator Walter Stosch of Henrico County, makes several revisions to the Public Private Education Facilities and Infrastructure Act of 2002 (PPEA). The bill authorizes establishment of an interim agreement to provide for partial planning and development activities while other aspects of a qualifying project are being negotiated and analyzed. The bill also (i) requires the adoption of formal timelines for the review of proposals and outlining the process for review, (ii) provides for accelerated review for priority projects, and (iii) adds factors that a responsible public entity may consider when selecting proposals. In addition, the bill provides for the Chairs of the Senate and House General Laws Committees to convene a work group to revise the current model guidelines in 2005.



Tom Hyland, a seasoned political strategist, has joined the David Bailey Associates team. Educated in history and political science, Tom is retired Senior Vice President for Government Affairs for the Apartment & Office Building Association. He has added background in labor arbitration, teaching, the U.S. Navy, and the Peace Corps.

**SB 1327**, by Senator Tommy Norment of Williamsburg, and **HB 2866**, by Delegate Vince Callahan of McLean, set forth enabling legislation for the restructuring of public institutions of higher education that will extend, upon the satisfaction of various conditions, autonomy while providing oversight mechanisms and establishing certain expectations.

### Environmental Protection

**HB 2862**, by Delegate L. Preston Bryant, Jr. of Lynchburg, establishes a nutrient exchange or trading program to allow point source dischargers to achieve and maintain compliance with the load cap allocations for nitrogen and phosphorous delivered to the Chesapeake Bay and its tidal tributaries.

**HB 2902**, by Delegate Ryan McDougle of Mechanicsville, amends the existing Watershed Improvement District law to require only a simple majority of the votes cast to pass a referendum held to create a watershed improvement district. Currently, at least two-thirds of the votes cast must be (i) in favor of the watershed improvement district and (ii) represent the ownership of at least two-thirds of the land in the proposed district.

### General Business

**HB 1777**, by Delegate Harry Purkey of Virginia Beach, amends the Virginia Consumer Finance Act to require a person to seek approval from the State Corporation Commission prior to acquiring 25 percent or more of the ownership interest in a lender licensed under the Act. The measure also updates the Act by modifying the contents of the application for licensure, establishing qualifications for principals of new licensees, and requiring licensees to give notice to the Commissioner of the Bureau of Financial Institutions of the opening or closing of offices and of changes in senior officers, members, partners, and directors.

**HB 1922**, by Delegate Danny Marshall of Danville, provides that certain sewer fees and charges shall be a lien on the property served only if certain procedures are followed including first obtaining a judgment against the lessee or tenant who contracted for the service.

**SB 891**, by Senator Bill Mims of Loudoun County, amends the Uniform Trust Code (adopted by Virginia in 2000) through modifications to existing Virginia Code sections to accommodate the Uniform Trust Code and provisions that modify the Uniform Trust Code so as to retain current Virginia statutory treatment of some matters.

**HB 2795**, by Delegate Johnny Joannou of Portsmouth, permits an employed person to be absent from work on any day he serves on a jury with a provision that no person who serves on jury duty for four or more hours shall be required to start any work shift that begins on

or after 5:00 p.m. on the day of jury service or begins before 3:00 a.m. on the day following the day of jury service.

**HR 2907**, by Delegate Benny Keister of Dublin and SB1258 by Senator John Edwards of Roanoke, amend the Virginia Human Rights Act extends from 180 days to 360 days the time from discharge to file a court action alleging employment discrimination.

**SB 1079**, by Senator Patsy Ticer of Alexandria Provides that the current limitation of 180 days from the discharge for bringing a court action alleging employment discrimination is extended in instances where the employee has filed a discrimination complaint with the Virginia Human Rights Council or a local human rights or human relations agency. In such instances the time for bringing the court action is 90 days from the date that the Council or a local human rights or human relations agency or commission has rendered a final disposition on a complaint.

**SB 971** by Senator Jay O'Brien of Clifton, and **HB 1834**, by Delegate Harry Parrish of Manassas, prohibit an employee from seeking relief through the administrative process (via the Commissioner of Labor) for discharge or discrimination as a result of reporting health or safety violations if the employee fails to file his complaint alleging such discharge or discrimination within 60 days after the discrimination or discharge occurs.

**HB 1590**, by Delegate Gary Reese of Fairfax County, clarifies that submetering equipment for water and sewer service may be used in commercial and residential buildings if clearly stated in the rental agreement or lease for the leased premises or dwelling unit. Water and sewer submetering equipment measures the actual water or sewer usage in a dwelling unit or nonresidential unit when the equipment is not owned by the utility that provides service to the building. With respect to water and sewer usage, landlords are currently authorized to use ratio billing systems, which do not measure actual usage. Water and sewer submetering equipment will not be subject to regulation by the State Corporation Commission.

**SB 1338**, by Senator Janet Howell of Reston, allows coverage under group accident and sickness insurance policies to be extended to any class of persons mutually agreed to by the insurer and the group policyholder.

**SB 912**, by Senator Tommy Norment of Williamsburg, amends the Virginia Consumer Protection Act to provide that if the parties desire to settle all matters in a dispute under the Act, the court may determine whether the plaintiff should be awarded attorneys' fees and court costs and the amount of the award.

## Local Government

**HB 2158**, by Delegate Dave Nutter of Christiansburg, allows single or multiple local governments to create wireless service authorities.

**HB 2408**, by Delegate Clarence Phillips of Castlewood, permits counties to include solid waste disposal fees on the corresponding real estate tax bills.

**HB 2460**, by Delegate Terrie Suit of Virginia Beach removes the requirement for localities to pass an ordinance when a locality is establishing the order in which payments are applied for combined billing of storm water charges and other charges.

**HB 2888**, by Delegate Scott Ligamfelter of Prince William County makes numerous changes to the existing law on the use of cash proffered by localities, including amendments that provide that any locality accepting a cash payment voluntarily proffered on or after July 1, 2005, pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 shall within five years of receiving full payment, begin construction, site work, or cause construction to begin, of the improvements for which the cash payment was proffered. Unless prohibited by the proffer agreement between the owner and the locality, a locality may utilize any

proffered funds in excess of funds needed for the proffered purpose in order to construct other improvements within the locality similar to and in the vicinity of those for which the cash payment was proffered. A locality that does not begin construction of the improvements for which the cash payment was proffered within five years of receipt of the proffered cash payment shall pay the amount of that proffered cash payment to the Commonwealth Transportation Board for allocation to the appropriate construction program.

**HB 2167**, by Delegate Gary Reese of Fairfax County, and **SB 1206**, by Senator Bill Mims of Loudoun County, were withdrawn by the sponsors after Arlington County and the City of Alexandria both agreed to comply with existing state enabling law on affordable housing ordinances.

## Homeland Security

**SB 800**, by Senator John Watkins of Chesterfield County, implements recommendations of the federal 9/11 Commission that states provide guidance and assistance to state agencies and localities in developing and maintaining continuity of operations (COOP) programs. This effort would be coordinated by the Virginia Department of Emergency Management.

**SB 963**, by Senator Jay O'Brien of Clifton, (another recommendation by the 9/11 Commission) requires the Governor to ensure that the annual review and update of the statewide interoperability strategic plan is accomplished and implemented and that all state agencies and localities achieve consistency with and support the goals of the plan by July 1, 2015 in order to remain eligible to receive state or federal funding for communication programs.

## Taxation

The 2005 Virginia General Assembly took the following major decisions on taxation issues this past session:

- eliminated the state's portion of the sales tax on food, beginning July 1, 2005
- declined to make further reductions in the car tax,
- declined to raise the tax on gasoline and fuel products,
- failed to approve any substantive tax increase initiatives to fund transportation.

**HB 2679**, by Delegate Scott Lingamfelter of Prince William County, makes a number of useful changes to the appeals process regarding local license and local business taxes.

**SB 1139**, by Senator Emmett Hanger of Mount Solon, requires fair market value of qualified donations under the Virginia Land Conservation Incentives Act of 1999 be substantiated by a qualified appraisal, which must be signed by a qualified appraiser. A copy of the appraisal must be submitted to the Department of Taxation. A false or fraudulent appraisal may lead to revocation of the appraiser's license or other disciplinary action, and the future appraisals by the same appraiser may be disallowed.

## Telecommunications

**HB 2471**, by Delegate Joe May of Loudoun County, updates the Virginia Computer Crimes Act to include recommendations made by the 2004 joint study on Computer Crimes by the Joint Commission on Technology and Science and Virginia State Crime Commission. The bill modernizes definitions to comport with changing technology. The bill adds unauthorized installation of software on the computer of another, disruption of another computer's ability to share or transfer information, and maliciously obtaining computer information without authority as additional crimes of computer trespass, a Class 1 misdemeanor and provides the fraudulently gathering of

such information as a Class 6 felony, a new crime and punishes transferring the information to another or use of the information as a Class 5 felony. The bill also reduces the threshold for property damage resulting from trespass to \$1,000.

**HB 2880**, by Delegate Sam Nixon of Chesterfield County, directs the APA to review and collect information in 2005 regarding certain local communications taxes and report to the chairmen of the House and Senate Finance Committees and the Department of Taxation no later than December 1, 2005.

## Transportation

**SB 985**, by Senator John Watkins of Chesterfield County, provides that if funding for the construction of a primary or interstate project is scheduled in the Commonwealth Transportation Board's Six-Year Improvement Program, as defined in § 33.1-12, a locality may choose to advance funds to the project. It further provides that if such an advance is offered, the Board may consider such request and agree to such advancement and subsequent reimbursement of the locality of the advance, in accordance with terms agreed upon by the Board and the locality.

**HB 2793**, by Delegate Leo Wardrup of Virginia Beach, creates the Transportation Partnership Opportunity Fund to be used by the Governor to encourage the development of design-build transportation projects, projects under the Public Private Transportation Act, and to provide funds to address the transportation aspects of economic development opportunities. Under the bill, the Commonwealth Transportation Board, in consultation with the Secretary of Transportation and the Secretary of Commerce and Trade, would develop guidelines and criteria to be used in awarding grants or making loans from the Fund.

**HB 1602**, by Delegate Bill Fralin of Roanoke, provides that any state agency, board, or commission that issues a permit required for a highway construction project pursuant to Title 10.1, 28.2, 29.1, or 62.1 of the *Code of Virginia* must, within 15 days of receipt of an

individual or general permit application, review the application for completeness and either accept the application or request additional specific information from the Department of Transportation. The bill further provides that, unless a shorter period is provided for by law, regulation, or agreement, the state agency, board, or commission must, within 120 days of receipt of a complete application, issue the permit, issue the permit with conditions, deny the permit, or decide whether a public meeting or hearing is required by law. If a public meeting or hearing is held, it must be held within 45 days of the decision to conduct such a proceeding, and a final decision as to the permit must be made within 90 days of completion of the public meeting or hearing.

**SB 746**, by Senator Charles Colgan of Prince William County amends the Virginia Resources Authority Act to expand the types of projects that can be financed through the Authority to include the design and construction of roads, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail.

**SB 1108**, by Senator Walter Stosch of Henrico County, and **HB 2666**, by Delegate Bob McDonnell of Virginia Beach, make several revisions to the Public Private Transportation Act (PPTA). The bill authorizes the establishment of an interim agreement to provide for partial planning and development activities while other aspects of a qualifying transportation project are being negotiated and analyzed. The bill also (i) authorizes a private entity to request approval of multiple responsible public entities (RPEs) in proposed projects involving multimodal transportation facilities, (ii) authorizes RPE's to enter into comprehensive agreements with multiple private entities, (iii) requires the responsible public entity to protect confidential information submitted by a private entity, and (iv) adds factors that an RPE may consider when selecting proposals. The bill requires the Secretary of Transportation to revise existing state guidelines pertaining to the PPTA by October 1, 2005 and includes a provision allowing application of the revisions made by the legislation to certain existing qualifying transportation facilities.