



2015 Virginia General Assembly Legislative Report

VAMA is pleased to present the 2015 Virginia General Assembly Legislative Report. Once again, VAMA's advocacy program has produced meaningful results on behalf of commercial and multifamily property owners and managers that will reduce regulatory burdens and produce a net positive effect for your bottom line.

In the course of this year's short 45-day session, the General Assembly considered and took action upon nearly 3,000 individual pieces of proposed legislation, ultimately passing just under half of those measures into law. The extreme workload of session condensed into such a short timeframe fosters a hectic pace and tests the capacity of legislators to fully vet the legislation before them while working to complete the business of the Commonwealth. These challenges were only compounded this year by politically charged debate and interparty/inter-chamber squabbles heading into an election year in which all 140 seats of the State Senate and House of Delegates will be up for reelection. The resulting fights and political discourse not only drew the time and focus of legislators away from pressing issues impacting Virginia's business climate, but would ultimately draw the business and real estate communities into the fray, threatening the outcome of business-focused measures. In spite of all this, VAMA successfully carried an aggressive agenda this year, passing several measures to improve the business and regulatory climate for commercial and multifamily residential properties in the Commonwealth.

VAMA's advocacy team is charged with reviewing all 2,761 bills introduced for consideration for their potential impact on multifamily property owners and managers. VAMA's advocacy team continued to actively monitor nearly 250 individual pieces of legislation, lobbying for the passage or defeat of a large percentage of those bills, taking positions, educating key members and staff, building coalitions, testifying in committees and submitting official statements for the record. Through these efforts, VAMA was able to stave off numerous bills and initiatives which would have layered administrative and financial burdens on its members. We are also pleased to report that we successfully supported several measures that will benefit our industry going forward, and maintain Virginia's strong position as a great state in which to do business. Ultimately, VAMA notched an extremely successful session on your behalf, with nearly 100% of the measures supported having achieved passage into law, and all bills opposed either defeated or amended in our favor. Provided within is a summary of key measures VAMA influenced on your behalf this year.

PROPERTY OWNER AND TENANT ISSUES

Changes to the Unlawful Detainer Process

H.B. 1767 is a judicial efficiency measure builds on changes to the unlawful detainer process successfully advocated for by VAMA last year. The bill makes mandatory the currently optional provision that an unlawful detainer motion be amended at a plaintiff's request to cover all rent due at the time that a judgment is issued, precluding the need for a housing provider to refile and go through the court process again to recover all debts owed. The bill further amends the required timeline for declaring satisfaction of a judgment to better align with procedures for filing of bankruptcy by a debtor, preventing a scenario where a debtor may have a debt declared as satisfied and later use clawback provisions of bankruptcy law to retrieve funds paid to a housing provider. This bill achieved unanimous passage through the General Assembly and was subsequently signed into law by the Governor March 23. The provisions of the new law will become effective July 1.

Omnibus Amendments to Virginia's Rental Housing Act

H.B 1451 comprised the annual omnibus compilation of amendments to Virginia's Rental Housing Act (also known as the Virginia Residential Landlord/Tenant Act or VRLTA). This year's bill makes several changes to clarify existing code and add protections to housing providers operating in the Commonwealth:

- Clarifies that 120-day notice for a conversion to condominium use is not required for tenants under a 30-day lease
- Clarifies that a housing provider may include utilities in rent billing
- Stipulates that prepaid rent may be accepted if other financial requirements are not met by a prospective tenant
- Clarifies that a housing provider may charge a tenant for a prorated share of self-insurance programs
- Authorizes sharing of tenant information with succeeding property management
- Eliminates any liability for release or access of tenant information by a third-party cloud provider
- Changes 30-day notice to "reasonable" notice for remediation of a non-emergency property condition
- Makes uniform the notice to vacate requirements between tenants and housing providers in the case of fire or casualty damage.

Having passed unanimously through both chambers of the General Assembly, the bill was signed into law by Governor McAuliffe on March 26. The provisions of the new law will become effective July 1.

Mandating Acceptance of “Section 8” Vouchers from Veterans

This proposed legislation took a new spin on “source of income” legislation introduced in years past. Previous iterations of this initiative have sought to add “source of income” to the list of protected classes under Virginia fair housing law. This would effectively mandate participation in the currently voluntary federal housing choice (Section 8) voucher program. Acceptance of these vouchers comes with significant red tape and administrative strings attached. Housing providers must sign onto a third party contract with the federal government and subject themselves to additional inspections and lease addenda that would otherwise not be required of non-Section 8 properties. H.B. 1910 took another run at the issue, but narrowing the focus to veterans receiving such subsidies. The bill was politically crafty as it would put legislators in the difficult position of casting a vote “against veterans” in an election year. The bill was ultimately referred to the Virginia Housing Commission for further evaluation during the legislative interim and will not move forward in 2015.

Termination of Rental Agreements by Victims of Stalking

H.B. 1902, which was defeated in Committee, sought to expand the protections currently offered to victims of domestic abuse to allow termination of a lease to escape from a dangerous situation to also include victims of stalking. As drafted, the legislation was extremely broad and opposed by the industry. VAMA worked with Delegate Lopez and the Virginia Poverty Law Center, Housing Opportunities Made Equal and other proponents to amend the legislation to allow the exercise of such termination rights only under very narrow circumstances. The bill was nevertheless defeated and will not advance to enactment.

Housing Providers Guilty Until Proven Innocent?

Last year, VAMA successfully defeated a bill proposed by Arlington Delegate Alfonso Lopez (D) regarding “retaliatory” evictions. The measure would have reversed the current judicial burden of proof, essentially creating a situation where a housing provider would be considered guilty, until proven innocent, when a tenant claimed that an eviction or rent increase was executed in retaliation for an earlier action by the tenant, such as filing a building code complaint or joining a tenant organization. The bill, nonetheless, brought back before the Housing Commission this summer by the Virginia Poverty Law Center. The Housing Commission amended the bill such that it no longer had the same effect, but simply clarified existing code. The bill passed the House of Delegates on a vote of 95-4 and was subsequently passed the Senate on a unanimous vote. Governor McAuliffe signed the bill into law March 23. The code changes will become effective July 1.

More Protected Classes, More Opportunities to be Taken to Court

H.B. 1454 and S.B. 917 are companion bills which proposed to establish a new protected class under Virginia fair housing law for sexual orientation and gender identity, going beyond the federal Fair Housing Act. The bills would have broadly

defined the term to include a person's actual or perceived homosexuality, gender identity or expression. In addition to going beyond federal housing law, the bill would have opened opportunities for litigation based on suspect causes of action. Both bills were defeated at the Committee level and were not enacted into law.

Rekeying of Locks at Change in Tenancy

H.B. 2093 sought to allow local governments the authority to adopt local ordinances requiring the rekeying of locks at a change in tenancy for multifamily residential properties of five units or more. Delegate Keam attached amendments to his bill requested by VAMA to allow for the use of alternative locking technologies such as proprietary locks, electronic key cards, combination locks, etc. In spite of the amendments, the bill failed on the House floor.

BUILDING CODES, LAND AND ENVIRONMENTAL REGULATION

Regulation of Wheelchair Access Only Parking

H.B. 1793 would have legislatively mandated that in all commercial and residential parking lots with more than 25 spaces, at least 25% of disabled parking spaces be designated as wheelchair access only. VAMA generally opposes measures which seek to legislate the building code. VAMA worked with the patron to have the bill stricken and instead referred to the Board of Housing and Community Development for consideration under the triennial building codes review process in which VAMA regularly engages as a stakeholder.

Changes to Process for Appealing Local Zoning Decisions

Delegate Danny Marshall's H.B. 1849 would amend the process by which both commercial and multifamily residential properties may appeal a ruling of a local zoning administrator. The legislation seeks to reverse the burden of proof for rulings of a Zoning Administrator and reduce the judicial standard to a preponderance of the evidence for appeals before a Board of Zoning appeals while also seeking to protect the interests of adjoining properties. Recent case law has been interpreted and applied in a manner that has rendered the burden of proof for property owners seeking a variance nearly insurmountable.

VAMA and its coalition partners worked with local government representatives to resolve any opposition. As such, the measure was passed unanimously through the State Senate and the House of Delegates. Governor McAuliffe signed the bill into law March 26. The code changes will become effective July 1.

Delinquent payment of rates and charges in our Water Systems

The function of H.B. 1424 and S.B. 868 is to repeal a provision created by the Virginia Water and Waste Authorities Act that limits a landlord's liability for a tenant's separately

metered sewer or water charges to three delinquent billing periods of no more than 90 days in total. The provision would prevent lien placed on property for delinquency of a tenant.

The bills were passed unanimously through both Chambers and subsequently signed into law by the Governor March 17. The lien authority will be eliminated effective July 1.

Local Government Appointees to Serve at Pleasure of Governing Body

H.B. 1383 would have stipulated local government appointees to boards, commissions and committees would serve at the pleasure of the Board of Supervisors or Council and could be removed at any time. This potentially created a scenario under which a member of a quasi-judicial body such as a Board of Equalization, Board of Zoning Appeals or Planning Commission may be removed by the governing body if they cast decisions that do not comport with the agenda of the local government. The bill was defeated in the House Committee on Counties, Cities & Towns and received no further consideration.

TAXES AND GENERAL BUSINESS REGULATION

Exemptions from Local Government Taxes and Fees

H.B. 1294, which was defeated in the House Finance Subcommittee, sought to exempt churches and other religious institutions from local government taxes and fees, including real estate taxes. This bill would have potentially started Virginia down a slippery slope of allowing exemptions to real estate taxes and minimizing the pool of properties paying into and supporting the local revenue base.

Altering the Burden of Proof on Appeals of Real Estate Tax Assessments

H.B. 1416 sought to eliminate the burden of proof currently placed on a property owner for an appeal of a local government real estate tax assessment in an appeal before a Circuit Court. The bill would have established an even playing field for property owners seeking to overturn an erroneously high assessed valuation. The bill failed to report from the House Civil Law Subcommittee and received no further consideration.

ENERGY UTILITY MATTERS

Suspension of SCC Overview of Electric Rates

In an effort to mitigate and smooth out the impact of the federal rules, Virginia Beach Senator Frank Wagner introduced S.B. 1349. This bill, as introduced, sought to freeze base electric rates and suspend biennial reviews by the State Corporation Commission for 10 years. But this bill is not as good a deal for consumers as Dominion Virginia

Power would have you believe. Though base rates would be frozen during the extended period of suspended regulation, the company could proceed with rate adjustment clauses or “riders” that could ultimately still result in increased bills for consumers. What’s more, the SCC has already found that the company is over-earning based on its current return on equity, which the SCC could not adjust prior to the rate freeze. Compounding matters, the riders going forward would be tied to the inflated rate of return on equity, further driving up costs that will be borne by utility customers beyond a fair and reasonable return. VAMA called for amendments to the legislation to allow a full and unrestricted rate case before the State Corporation Commission prior to any suspension of biennial reviews to establish an appropriate baseline going forward, rather than cementing into place overearnings currently being collected by Dominion Virginia Power. Incremental improvements were made to the bill, most notably reducing the period of suspended oversight to five years. But VAMA’s primary objections went unaddressed. The bill was passed by the Senate of Virginia on a vote of 32-6 and was expedited through the House, where it also passed on a vote of 72-24 and was signed into law by Governor McAuliffe.

Expansion of Natural Gas Infrastructure

H.B. 1475 and S.B. 1163, two House and Senate companion bills, would allow natural gas utility companies to expand their infrastructure to extend service to new customers and economic development prospects. VAMA worked with the natural gas companies behind the legislation to secure amendments that make clear that any costs recovered would be borne by the newly served customer, not by the entire rate base. The bills were approved overwhelmingly in both chambers and signed into law by the Governor March 17.