2018 Virginia General Assembly Legislative Report

VAMA is pleased to present the 2018 Virginia General Assembly Legislative Report. Once again, VAMA's advocacy program has produced meaningful results on behalf of 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 60-day legislative session, the General Assembly considered and took action upon a whopping 3,641 individual pieces of proposed legislation. The condensed timeframe of the legislative session combined with such a hefty scope of work fosters a hectic pace. But this year's legislative environment was even more daunting in the context of a significant shift in the political landscape that brought into office 19 new members of the House of Delegates as well as a new gubernatorial administration and Lieutenant Governor. With a new Governor and single vote margins in both the House and Senate, the tension between Republicans and Democrats created a level of partisan rancor that would affect all issues considered by the legislature.

Yet in spite of these challenges, VAMA succeeded in shepherding through an ambitious legislative agenda, comprising 13 bills addressing issues of importance to the commercial and multifamily residential real estate industries. VAMA further saw to the defeat or amendment of several more measures, which would have otherwise negatively impacted the business climate for owners and managers of revenue-generating properties.

VAMA maintains a full-time presence in Richmond during the General Assembly session, with two registered lobbyists on the ground. VAMA's advocacy team is charged with reviewing all 3,641 bills introduced for consideration for their potential impact on multifamily property owners and managers. VAMA's advocacy team continued to actively monitory nearly 200 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 also 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. Provided within is a summary of key measures VAMA influenced on your behalf this year.

VAMA-INITIATED LEGISLATION

Each year, working with a coalition of business and real property associations, VAMA submits legislation to improve the business climate for owners and operators of multifamily residential properties in Virginia. This year, VAMA brought forward a record thirteen bills addressing matters of importance to the commercial and multifamily real estate industries. VAMA successfully advanced these measures through the General Assembly, with the majority going on to be signed into law by the Governor.

H.B. 856 – Expediting the Unlawful Detainer/Eviction Process

Delegate Chris Peace's H.B. 856 was introduced at the request of VAMA and our coalition of real estate groups to streamline the eviction process by allowing evictions to be scheduled during the tenant's 10-day appeal period, as long as the evictions are not executed prior to its expiration. Some Courts had been significantly extending the timeline for an eviction by not allowing the eviction to be scheduled until after the appeal period had expired. The bill passed unanimously through the House of Delegates and Senate and was signed into law by Governor Ralph Northam March 2. The new law will take effect July 1, 2018.

H.B. 855/S.B. 197 – Acceptance of Rent with Reservation

Delegate Peace also introduced H.B. 855 with the support of VAMA and our coalition of real estate groups. The bill streamlines notice requirements for the acceptance of rent with reservation, eliminating the requirement to send multiple notices to the tenant. The bill passed the House of Delegates on a vote of 96-3 and subsequently received the unanimous approval of the Senate. Senator Locke's companion bill, S.B. 197, passed the Senate unanimously and later cleared the House of Delegates with only one negative vote. The two bills were signed by Governor Ralph Northam on March 9 and will become effective July 1, 2018.

H.B. 1595/S.B. 972 – Local Regulation of Landscape Cover Materials

At VAMA's request, Senator Mark Obenshain (R-Harrisonburg) and Delegate Tony Wilt (R-Harrisonburg) introduced S.B. 972 and H.B. 1595 to prohibit local governments from enacting expensive and overreaching mandates to require property owners to retrofit or preclude them from refreshing or maintaining landscape cover materials.

The bills were responsive to overreaching local government action in the City of Harrisonburg that could possibly be replicated in other jurisdictions across the Commonwealth without legislative action.

In 2016, the General Assembly adopted special legislation to stop the City of Harrisonburg from implementing a local ordinance regulating mulch. The City subsequently amended and reenacted its local ordinance to get around the prohibition

on regulation of “specific landscape cover materials” and the requirement to retrofit and replace such materials. In doing so, the City circumvented the intent and spirit of the legislation. However, Circuit Court judge ruled in favor of the City, determining that they complied with the letter of the law. Delegate Wilt and Senator Obenshain’s legislation closes the loophole identified in the Court’s decision and stipulates that a locality may not require retrofit of landscape cover materials or prohibit such materials from being maintained or refreshed.

The cost of retrofitting and re-landscaping properties to specifications of local government is significant. It forces hundreds of businesses and apartment communities in the City of Harrisonburg to spend thousands of dollars to remove existing mulch and plant material, and then to install rock and new plant materials. An estimate obtained by one apartment owner for one community to retrofit and re-landscape to comply with the City’s ordinance was $85,000. Failure to comply with this costly and burdensome regulation could result in fines up to $2,500, a Class 1 misdemeanor, and/or up to 12 months of jail time.

VAMA worked to rally a coalition of supporting organizations, including the Home Builders Association of Virginia (HBAV), the Manufactured Housing Communities of Virginia (MHC), the National Federation of Independent Business (NFIB), the Northern Virginia Apartment Association (NVAA), the Virginia Agribusiness Council, the Virginia Apartment and Management Association (VAMA), the Virginia Association for Commercial Real Estate (VACRE), the Virginia Manufactured and Modular Housing Association (VAMMHA), the Virginia Realtors, the Virginia Retail Merchants Association (VRMA), and the Virginia Retail Federation (VRF).

In spite of significant opposition from fire services organizations and the administration, both bills received strong support in both chambers. S.B. 972 passed the Senate on a vote of 26-13 and the House of Delegates by a vote of 87-11. H.B. 1595 passed the House of Delegates at the crossover deadline by an impressive 94-6 margin, with two of the Delegates opposing the bill -- submitting for the record that they had intended to support the bill. The bill later passed the Senate on a 32-8 vote.

In spite of the overwhelming margins of support in the House and Senate, the administration submitted amendments to the bill effectively carving residential properties out of the legislation. If passed, this would have gutted the intent of the bill, allowing local governments the authority to regulate landscape cover materials and fine or imprison housing providers that were not in compliance. VAMA again rallied a coalition of supporting business interests to reject the Governor’s amendments on a bipartisan basis.

The three-year effort, however, concluded in disappointing fashion on May 17 when the Governor issued a veto, thus killing the legislation and allowing the court ruling to stand.

H.B. 857 – Amendments to the Virginia Residential Landlord/Tenant Act

Our annual legislation amending the Virginia Landlord/Tenant Act (VLTA) and the Virginia Residential Landlord/Tenant Act (VRLTA) was carried by Delegate Chris Peace this year. H.B. 857 aligns remaining differences between the VLTA and VRLTA in advance of this year's Code Commission action that will create a more user-friendly division of code sections, with one section applying to residential and another to commercial. The bill passed the House of Delegates 97-1 and passed the Senate on a unanimous vote. Governor Northam signed the bill on March 9, and it will become effective July 1, 2018.

H.B. 786/H.B. 787 – Clarifying the Burden of Proof for Real Estate Assessment Appeals

VAMA-initiated legislation to clarify the burden of proof upon appeal of erroneously high local real estate assessments. These two bills, were filed in response to some Circuit Court judges failing to acknowledge the new standard, which was set at "a preponderance of the evidence" by VAMA legislation enacted in 2011. Instead, some judges continue to fall back on the previous standard of manifest error. The bills would make clear that it is not necessary for the taxpayer to show manifest error and that appeals may be based on any one of three bases: that the assessment exceeds fair market value; that the assessment was not uniform in its application; or that the assessment was not arrived at in accordance with generally accepted appraisal practices.

The language of the bills was negotiated with the Virginia Association of Counties (VACo), the Virginia Municipal League (VML) and the Virginia Commissioners of the Revenue Association. However, in response to a groundswell of opposition among local government attorneys across the state, two of those organizations withdrew their support for the bills after the bills passed the House of Delegates unanimously. VAMA agreed to carry over the legislation to the 2019 session on the agreement that all parties would convene in the legislative interim to discuss broader real estate assessment reform.

VIRGINIA HOUSING COMMISSION LEGISLATION

VAMA participates each year in the Virginia Housing Commission. The body is appointed by the Governor and General Assembly to study and make recommendations on issues related to affordable housing, real property and community development. VAMA is among a select group of organizations that has a seat at the table for these discussions as a member of the Commission's various work groups that study and develop legislation to address housing and real estate issues each legislative interim. The following bills were brought forward as a product of the Commission's 2017 work program.

H.B. 594/S.B. 451 – Local Authority to Require Abatement of "Criminal Blight"

Legislation was considered during the 2017 session of the Virginia General Assembly which would have granted broad powers to local governments to revoke the occupancy permits of all types of residential property upon a locality's subjective determination of the existence of "criminal blight" at the property. The legislation was intended to address a unique situation occurring in hotel/motel properties in the Richmond area where prostitution and drug dealing were being harbored on site. VAMA worked to help defeat the legislation during last year's legislative session. The bill was subsequently referred to the Housing Commission, where VAMA participated with other stakeholder groups to draft a legislative approach that did not unfairly penalize responsible housing providers that cooperate with local public safety personnel to address criminal issues.

VAMA members were ultimately exempted from the Housing Commission approach. H.B. 594 and S.B. 451 passed with only one negative vote respectively. The bills have been forwarded to the Governor's desk to be signed into law. The Governor's deadline to act on the bills is April 9.

H.B. 609/S.B. 391 – Uniform Standards for Smoke Detectors and Carbon Monoxide Alarms

Another issue considered during the 2017 legislative interim by the Virginia Housing Commission related to creating uniform statewide standards for the installation of smoke detectors and carbon monoxide alarms. The Commission's review determined that there were significant conflicts between requirements in the statewide building code, the Virginia Residential Landlord/Tenant Act (VRLTA), and local ordinances across the Commonwealth effectively creating a patchwork of regulations that differed from locality to locality. H.B. 609 and S.B. 391 give local governments until July1, 2019 to conform their own local regulations to the statewide law. The bills passed both chambers unanimously and were signed by the Governor February 26 and March 2 respectively.

DEFENSIVE AGENDA

"Source of Income" as a Protected Class

Legislation aimed at adding "source of income" or "source of funds" to the list of protected classes under fair housing law, effectively mandating participation in the federal housing choice (Section 8) voucher program, failed to pass this year. Senator Jennifer McClellan's (D-Richmond) S.B. 909 was carried over for the year by the patron. The Senator intends to convene stakeholders for a discussion during the legislative interim regarding alternative means of addressing affordable housing opportunities. House companion legislation, H.B. 1408, introduced by Delegate Jeffrey Bourne (D-Richmond), was held in the full Committee on General Laws and never received assignment to a Subcommittee. As such, the bill did not receive a hearing.

Delegate Dickie Bell's (R-Staunton) H.B. 178, was introduced at VAMA's request to specifically affirm that a housing provider cannot be compelled to sign onto a third party agreement for acceptance of rental subsidies. This bill received similar treatment and was not scheduled for a hearing. VAMA helped to engineer this resolution. Existing law still applies, maintaining participation in the federal housing choice (Section 8) voucher program as voluntary. However, the bill's introduction was helpful in reshaping discussion of the issue from one of discrimination to that of a property owner's legitimate business decision to take on the significant costs and administrative costs associated with the program.

Mandatory Energy Benchmarking and Disclosure

Delegate Rip Sullivan (D-Arlington) introduced H.B. 204 to allow local governments to mandate that all commercial and residential buildings over 50,000 square feet engage in energy benchmarking and turn over the proprietary and confidential data to the locality. VAMA strongly supports benchmarking, but opposes mandatory disclosure of private information. The bill was heard in a Subcommittee of the House Committee on Counties, Cities & Towns. VAMA testified against the mandate and the Subcommittee voted to pass the bill by indefinitely by a vote of 6-2.

Transferring Authority over the Statewide Fire Prevention Codes

Delegates Gordon Helsel (R-Poquoson) and Christopher Collins (R-Winchester) introduced legislation at the request of fire services organizations to transfer the authority over the promulgation of the Statewide Fire Prevention Codes from the Board of Housing and Community Development (BHCD) to the Fire Services Board. The current process is open, fair, transparent and efficient. Conversely, if the process was transferred to the Fire Services Board, the broad array of stakeholder groups would not be represented as they are at DHCD. The membership of the Fire Services Board is legislatively proscribed such that 12 of the 15 positions are to be affiliated with local governments and fire services organizations, and only one designated to represent the

industries impacted. VAMA has opposed similar legislation in past sessions. Upon learning the legislative history behind the issue, H.B. 1411 and H.B. 1420 were withdrawn by their respective patrons. Senator John Edwards introduced identical legislation in the Senate. S.B. 488 was passed by indefinitely in the Senate Committee on General Laws in the face of opposition from VAMA and other real estate groups.

Making Housing Providers Liable for Criminal Activity of Third Parties

Delegate Mullin's H.B. 209 sought to establish a duty on the part of housing providers and commercial property owners to protect tenants, visitors and guests from criminal activity of third parties. The extremely broadly drafted bill, which was requested by the Virginia Trial Lawyers Association, was opposed by numerous business groups as it would have created tremendous liability for property owners based on third party actions that could not be reasonably foreseeable. The bill was passed by indefinitely in Committee prior to the Delegate presenting the bill.

Utility Regulation and Oversight

VAMA engaged - as part of a stakeholder group convened by the Governor – in discussions related to ending the existing rate freeze and restoring State Corporation Commission (SCC) oversight of electric utility base rates. VAMA opposed the rate freeze and suspension of SCC oversight in 2015, which was ostensibly needed to provide rate stability in the face of pending federal regulations which never ultimately came to fruition. Since that time, the SCC has documented more than $400 million in overearnings by the company on the backs of ratepayers. Dominion has acknowledged that the rate freeze period should end and that some money should be refunded to customers in the wake of an election cycle in which the company was the target of significant scrutiny.

The stakeholder process resulted in significant progress and improvement on the bills:

- The initial refund to be given back to taxpayers for overearnings in the last three-year period in which SCC reviews were suspended was increased from roughly $135 million to approximately $185 million. This still falls tremendously short of overearnings for the period documented by the SCC and includes some creative accounting, since it encompasses savings from a fuel rider that the company gave up as part of the 2015 legislation.
- The first base rate review to occur in 2019 was expanded to include years 2017, 2018, and 2019. Additionally, the inability for the SCC to order a refund as part of this initial review was stricken, but capped in the first year at $50 million. The requirement for findings of overearnings in consecutive rate cases before a refund may be issued was also eliminated.
- Preexisting law that allowed the utility to retain 30% of all overearnings was eliminated. Instead those dollars would have to be reinvested in grid modernization projects funded through the base rates.

With the Governor having signed off on the bill, Senator Frank Wagner's SB. 966 passed the Senate on a 26-13 vote. But things took an interesting turn on the House floor. By a vote of 55-41, the House voted to approve a floor amendment to the bill that resolved one of the most notable remaining issues.

As approved by the Senate, the bill would have still allowed the company to "double dip" on funding of grid modernization projects. This means that if the company were to overearn on the base rates by $100 million, but also incur $100 million in expenses for grid modernization projects, the overearnings would be applied to the costs of those projects. However, the company would still charge consumers for those same projects through the base rates. The utilities argue that they can't make needed investments in the grid without such "flexibility." With the amendment to address this issue, VAMA withdrew opposition to the bills. The Senate bill, SB. 966 became the legislative vehicle. The ultimate version of the bill passed the Senate on a 24-16 vote and the House by a margin of 65-30. The Governor signed the bill into law March 9 and the new law will become effective July 1, 2018.