

New Virginia Legislation Of Interest To Contractors and Developers

This update is not legal advice and reflects only some of the new laws and changes that may be of interest to the Virginia construction industry and does not cover all changes and legislative action.

Additional information on any of the new laws may be obtained by contacting [Chandra Lantz](mailto:clantz@hf-law.com) at clantz@hf-law.com or **804.771.9586**.

Below are new laws, adopted by the General Assembly and approved by the Governor, that will become effective on July 1, 2012.

MECHANICS' LIENS

Site Development Improvements

The existing mechanics' lien law has been updated as it relates to site development contractors. The law will be amended to allow site contractors to obtain a mechanics' lien in the amount of the value of the work contracted for by the claimant, rather than the cost of the work itself, for site development improvements. The new amendments further clarify that common areas are not to be included in the fraction used to allocate the value of the work to each individual lot or unit. The changes specify that any payment made to the site contractor without designating the lots to which the payment relate may be applied to any lot previously sold by the developer. Finally, the definition of site development improvements has been expanded to include traffic signalization and the installation of electric, gas, cable and other utilities.

HIGH PERFORMANCE BUILDINGS ACT

New High Performance Buildings Requirements For Executive Branch Construction

A new law will become effective requiring any executive branch agency entering the design phase for the construction of a new building greater than 5,000 gross square feet in size, or renovating such a building where the cost of renovation exceeds 50 percent of the value of the building, to conform to Virginia Energy Conservation and Environmental Standards developed by the Department of General Services. These standards are to consider LEED, Green Globes and other sustainability requirements. The law is contained in Virginia Code § 2.2-1182.

PUBLIC PROCUREMENT

Agreements with labor organizations in state facility contracts

New laws will require that prohibit state agencies from using bid specifications, project agreements, or other controlling documents for the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility that: (a) requires or prohibits bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations; (b) or (b) discriminates against bidders, offerors, contractors, subcontractors, or operators for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations.

The law does not apply to cities, counties or towns. The law also does not apply to public-private agreements for any construction or infrastructure project in which the private body, as a condition of its investment or partnership with the state agency, requires that it retains the right to control its labor relations policy and perform all work associated with such investment or partnership in compliance with all collective bargaining agreements to which it is a signatory and is thus legally bound with its own employees or to employers covered by the National Labor Relations Act or the Railway Labor Act. The law will be found at Virginia Code Sections 2.2-4321.2

Threshold for performance and payment bonds on transportation projects increased to \$350,000

Virginia Code Section 2.2-4337 will be amended to increase the contract amount for which performance and payment bonds are required on transportation-related funded by the Commonwealth from \$250,000 to \$350,000. For projects in excess of \$250,000 but less than \$350,000, the changes provide that the payment and performance bond only may be waived by if the bid is accompanied by evidence that a surety company has declined an application from the contractor for a bid bond. The law requires the Commissioner of Highways and the Department of the Treasury to establish a prequalification program for transportation contractors for those who have been denied a bid bond

TRANSPORTATION FUNDING

The General Assembly and Governor have agreed on some transportation funding by: (a) increasing transportation's share of year-end surpluses to 67 percent; (b) authorizing the Commonwealth Transportation Board (CTB) to sell naming rights to highways, bridges, interchanges, and other transportation facilities; and (c) an annual \$50 license tax for electric motor vehicles registered in the Commonwealth. The bill also authorizes the CTB to withhold federal and state funds for certain local or regional capital improvement projects if those projects are inconsistent with the Statewide Transportation Plan or the Six-Year Improvement Program. Provision is made for use of "revenue-sharing" funds for secondary highway system maintenance projects carried out by local governments and requires local governments to include specific transportation plans and cost estimates for those facilities in their comprehensive plans. The bill provides for special allocations by the CTB for bridge reconstruction, high priority highway projects, and reconstruction of highways with particularly deteriorated pavements. The changes are documented through Code Sections 2.2-1514, 15.2-2223, 33.1-12, 33.1-49.1, 58.1-2201, and 58.1-2249.