

**2018 General Assembly Review
VDOT Coordinating Transportation and Land Use Planning Forum
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Over 2,600 bills were introduced at this year's session. Almost 900 were passed by both houses. The bills reviewed here are a relatively small fraction of the passed bills. They concern such subjects as eminent domain, stormwater management and permitting, public safety and roadway safety, procurement, VDOT right of way land use permits, duties of the Office of Intermodal Planning and Investment, Smart Scale, transportation finance, planning of transportation projects in Planning District 8, funding for WMATA and VRE, highway signage, VDOT value engineering, locally adopted transportation plans, I-81 corridor financing, and review of plat, site plan, and plan of development submittals. These are not necessarily the only bills concerning these subjects; rather, they are bills deemed of consequence to the intersection of transportation and land use planning.

As of May 1, after making recommendations (adopted in part for HB 1539 but wholly rejected for HB 1595) the Governor had not taken action on HB 1539 (mass transit funding including WMATA) or HB 1595 (grandfather clause for ground cover ordinances). The deadline for action is May 18. If the Governor does not sign or veto one or both of these laws by that date, they will become law regardless. The rest of these laws will take effect on July 1, 2018.

Comprehensive Public Transportation Project Review in Planning District 8

- HB 1285 Requires a joint meeting at least annually between the Northern Virginia Transportation Authority, the Northern Virginia Transportation Commission, the Virginia Railway Express, and the Commonwealth Transportation Board for the purposes of presenting to the public, and receiving public comments on, the transportation projects proposed and conducted by each entity in Planning District 8 (the Counties of Loudon, Prince William, Fairfax, and Arlington, and the Cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park). None of the enumerated entities are required to produce a quorum at such meetings.

Eminent Domain

- HB 1564 In eminent domain proceedings this bill modifies the number of commissioners proposed by each party if the parties cannot agree upon the number and

identity of the commissioners, and modifies the number of commissioners selected by the court from the individuals proposed by the parties.

- SB 278 Modifies Titles 25.1 and 33.2 to require prompt payment to the owner upon “final determination resulting in a judgment for the owner” in an eminent domain proceeding. Such payment shall be made to the owner’s attorney, if the owner consents.
- SB 809 Changes the definition of “Lost Profits” and “Business Profits” in Sections 25.1-100 and 25.1-230.1 respectively. It also (i) permits recovery of Lost Profits for a three year period if the entire property is acquired (previously Lost Profits in total takes were limited to one year); (ii) changes the date from which three years’ Lost Profits are to be calculated; (iii) permits a business owner who is not named as a party in the condemnation proceeding to intervene in the pending condemnation to prove lost profits; and (iv) provides that the trial of a lost profits claim may be bifurcated from the other condemnation proceedings to determine just compensation, but only if the lost profits claim period will not expire until one year or later from the filing of the petition.

Land Use Planning

- HB 1595 Provides a grandfather clause applicable to certain owners of real property limiting a locality’s ability to require retrofit of existing landscape cover materials such as mulch, wood chips, rock, stone, and the like.
- SB 993 Amends Section 15.2-2259 to prohibit a local planning commission from delaying the official submission of any proposed plat, site plan or plan of development by requiring presubmission conferences, meetings or reviews. It also eliminates previous exemptions from all of the requirements of this section (i) for deficiencies caused by changes, errors, or omissions occurring in the applicant’s plat, site plan, or plan of development filings after the initial submission of such plat, site plan, or plan of development, and (ii) from the review and approval of construction plans.
- Note: at least six bills and a House Joint Resolution, all concerning amendments related to proffers, failed to advance in 2018.

Locally Adopted Transportation Plans

- SB 622 Modifies Section 15.2-2223 relating to the preparation and adoption of local comprehensive transportation plans. It allows a locality or local commission to use a portion of its allocation from (i) its NVTA distribution under Section 33.2-2510, (ii) the commercial and industrial real property tax revenue specified in Section 58.1-3221.3, and (iii) the secondary system road construction program, for utility undergrounding in a planned mass transit corridor, but only if the locally adopted transportation plan

designates corridors planned to be served by mass transit, and only if the locality matches 100% of the state allocation.

Procurement

- HB 574 Section 2.2-4304 already provides that a public body may purchase from another public body's contract or that of certain other specified entities, except for contracts for (i) architectural and engineering services or (ii) construction. A carve-out from this exception was added so that the construction prohibition will not apply to purchasing from contracts for stream restoration or stormwater management practices. This practice is known as cooperative procurement.

Public Safety/Roadway Safety

- HB 505 Upon request of any person who is deaf, blind, or has autism or an intellectual or developmental disability, or the agent of any such person, VDOT shall post and maintain signs informing drivers that a person with a disability may be present in or around the roadway.
- HB 955 Adds vehicles with flashing high-intensity amber lights used by any public utility company for the purpose of repairing, installing, or maintaining electric or natural gas utility equipment or service to the list of vehicles for which motorists are bound by Section 46.2-921.1 to yield right of way or reduce speed when approaching on a highway having at least four lanes, two of which run in the direction of the approaching motorist.
- HB 1525 Doubles from \$125 to \$250 the mandatory fine for reading e-mails or texting while operating a motor vehicle in a highway work zone.
- SB 186 Modifies Section 19.2-60.1 by adding localities to the "purposes other than law enforcement" exclusion from the search warrant requirement otherwise applicable to unmanned aircraft used by state or local government agency.
- SB 508 Modifies Section 19.2-60.1 by permitting the use of unmanned aircraft by police without a search warrant, or by VDOT when assisting a law enforcement officer, for the purposes of crash reconstruction and the recording of the scene by photographic or video images.

Stormwater Management and Permitting

- HB 377 Creates an exception from Virginia Water Protection Permit requirements for stormwater management facilities created on dry land.

Transportation Finance

I-81 Corridor Financing and Planning

- SB 971 Directs the CTB to evaluate financing options to improve I-81. The CTB may not consider general tolls or tolls upon commuters, but may consider HOT lanes and tolling heavy commercial vehicles. This bill also requires the CTB to adopt an Interstate 81 Corridor Improvement Plan.

Mass Transit Funding Including For WMATA and VRE

- HB 1539 This is the most intricate bill reviewed in this presentation. Among its many effects, it accomplishes the following:
 - Directs the CTB to develop a prioritization process for the use of funds in the Commonwealth Mass Transit Fund consistent with the CTB's Six-Year Improvement Program, while inviting input from localities, MPOs and the Northern Virginia Transportation Authority (NVTA), and explicitly considering input from the MPOs and the NVTA;
 - Allocates funding for major capital improvement projects for Metro and other mass transit in the Washington, DC metropolitan area;
 - Establishes the Washington Metropolitan Area Transit Authority Capital Fund to fund WMATA's capital costs;
 - Establishes a three member Metro Reform Commission to advise signatories to the WMATA Compact;
 - Seeks to ensure that Maryland and DC provide their respective shares of \$500 million to WMATA; and
 - Dedicates revenues from a portion of state recordation taxes and transportation transit occupancy taxes to the Commuter Rail Operating and Capital Fund, circumscribes the use of this fund, and authorizes bond financing for commuter rail capital projects by transportation districts established pursuant to Chapter 19 of Title 33.2 that on July 1, 2018, jointly operate a commuter rail system.

Office of Intermodal Planning and Investment Duties/Smart Scale

- HB 765 Expands oversight duties of the Office of Intermodal Planning and Investment of the Secretary of Transportation (the Office) to include oversight and development of the CTB's six year improvement plan, Smart Scale prioritization, development of the CTB's annual budget and six year financial plan, and oversight of the Virginia Transportation Infrastructure Bank and the Toll Facilities Revolving Account. It also modifies the timing and content of periodic reports due from the Commissioner of Highways to the Office, or due from the Office to the Governor, the General Assembly, or the CTB. This bill also modifies the residency requirements for the at-large CTB members, prohibits contemporaneous local governing body members from serving on the CTB, and modifies Section 33.2-357 by lowering locality-matching allocation ceilings and overall ceilings regarding revenue sharing funds available for construction, reconstruction and maintenance of highway systems in certain localities.

Transportation Generally

- **HB 134** Raises the minimum VDOT project cost requiring the use of value engineering from \$5 million to \$15 million. This bill also exempts from value engineering requirements those projects designed utilizing (1) a design-build contract or (2) the Public-Private Transportation Act of 1995.
- **HB 1523** Amends Section 33.2-1217 to remove the requirement that signs visible from a highway advertising an on-site activity be no more than 250 feet from the center of the advertised activity.

VDOT Right of Way Land Use Permits

- **HB 698** Section 2.2-1151.1 contains restrictions on the issuance of a VDOT land use permit, but then excludes from the application of those restrictions a person providing utility service solely for his own agricultural or residential use. A new subsection was added, excluding from the restrictions any application for land use permit filed by the owner of a private residence or business for water or sewer service to cross VDOT right of way when no viable alternative exists to provide potable water or to transfer sewer effluent to a qualified drain field.
- **HB 901** Directs VDOT to develop and submit to FHWA for approval an expedited land use permit process by which public or private utility companies that offer high-speed Internet services may apply to use any right of way maintained by VDOT. Such process shall be designed to apply only when the proposed use of the right of way does not make substantial changes to such right of way and does not interfere with the safety or ongoing maintenance of the right of way for transportation purposes.
- **HJ 77** Directs the Center for Innovative Technology to study the feasibility of a statewide “dig once” policy under which conduits are to be installed during highway construction projects to accommodate improved broadband, especially in unserved or underserved areas.
- **SB 823** Sets the annual use fee rates for new wireless support structures within highway rights of way, and by implication will require VDOT to issue permits to applicants for the use of right of way for the new wireless support structures. VDOT may elect to enforce existing agreements until such agreements expire. Another implication is that thereafter VDOT must charge the statutory rates even for long-standing wireless support structures, even if such rates would be below current market rates for existing structures. This bill is appended to Chapter 15.1 of Title 56, which was enacted in 2017.
- **Note:** two bills affecting a locality’s treatment of wireless infrastructure were also passed in 2018, but they are beyond the scope of this review. They are HB 1258 (affecting

provisions in Title 15.2 similar to those of Chapter 15.1, Title 56 applicable to VDOT) and HB 640 (affecting requirements of a locality's comprehensive plan).