

VIRGINIA
Legislative Update
2010

**New and Updated Laws
Impacting the Construction Industry**

**HIRSCHLER
FLEISCHER**
ATTORNEYS AT LAW

www.hf-law.com

THE EDGEWORTH BUILDING | 2100 E. Cary Street | Richmond, Virginia 23223-7078 | Phone: 804-771-9500 | Fax: 804-644-0957
MILL RACE NORTH | 725 Jackson Street, Suite 200 | Fredericksburg, VA 22401-5720 | Phone: 540-604-2100 | Fax: 540-604-2101

Public Projects

State-aid construction project threshold. Raises the threshold for competitive bidding and competitive negotiation requirements from \$30,000 to \$50,000 for state-aid construction projects. *Amends Code § 2.2-4305.*

Competitive negotiation dollar threshold. Increases from \$1 million to \$1.5 million the cost of a construction contract for which a state or local public body may use competitive negotiation instead of competitive bidding to procure the construction. *Amends Code § 2.2-4303.*

All public project contractors must be authorized to transact business in Virginia. Requires all public bodies to include in every written contract a provision that the contractor must be authorized to transact business in Virginia as a domestic or foreign business entity as required by the State Corporation Commission. Such status shall be maintained during the term of a contract. A contract entered into by a business in violation of the requirements is voidable at the option of the public body. *Adds new Code § 2.2-4311.2*

Commonwealth Transportation Commissioner; advertising for bids; construction. Provides that the Commonwealth Transportation Commissioner may enter into contracts for projects costing below \$300,000. Further provides that the Commissioner may, at his discretion, build or maintain any of the roads by state or local employees in cases of emergency or on projects costing not more than \$600,000. *Amends Code §§ 33.1-185 and 33.1-190.*

Claims against counties; timing of decision; appeals. Provides that when a claim is made against a county, the county attorney shall notify the claimant of the date that the claim will be considered and establishes a 90 day period for the county to act, after which a claim or court action on a claim is not barred if the governing body fails to act. Further sets the amount of the bond for appeals of a claim that has been disallowed by the governing body at \$250. *Amends Code §§ 15.2-1245, 15.2-1246, and 15.2-1247*

Freedom of Information Act; recording of public meetings. Prohibits any public body from conducting a meeting required to be open in any building or facility in any location which prohibits recording devices and clarifies that no public body may prohibit or prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open. *Amends Code § 2.2-3707.*

New Licensing Requirements and Updates

Temporary licenses to out-of-state contractors. Authorizes the Department of Professional and Occupational Regulation to issue a temporary license or certification to an applicant who holds a comparable license or certification issued by another state. A temporary license or certification shall be valid for not more than 45 days. *Amends Code § 54.1-201.1.*

Certification of “accessibility mechanics.” Provides for the certification of accessibility mechanics by the Board for Contractors. An “accessibility mechanic” is an individual who erects, constructs, installs, alters, services, repairs, tests, or maintains wheelchair lifts, incline chairlifts, certain dumbwaiters, and private residence elevators, in accordance with the Uniform Statewide Building Code. *Amends Code §§ 54.1-1140, 54.1-1141, 54.1-1142, and 54.1-1143.*

Prerequisite for obtaining business license. Requires any contractor applying for or renewing a business license in any locality to furnish prior to the issuance or renewal of the business license either (i) satisfactory proof that he is duly licensed or certified as a contractor or (ii) a written statement, supported by an affidavit, that he is not subject to licensure or certification as a contractor or subcontractor. The new law prohibits a locality from issuing or renewing a business license unless the contractor has furnished his contractor license or certificate number or evidence of being exempt from licensure as a contractor. *Amends Code § 54.1-1111.*

Class B and C license thresholds. Raises the threshold for which a person must have a Class C contractor’s license from less than \$7,500 to less than \$10,000. As a result, the Class B threshold is also raised from \$7,500 or more to \$10,000 or more. *Amends Code §§ 54.1-1100 and 54.1-1103.*

New Laws

Recordkeeping requirements for sale of used building fixtures. Requires dealers in secondhand building fixtures to retain records of identifying information about the seller or purchaser of such materials. The seller of an article is required to provide documentation to the dealer establishing that the seller lawfully possesses the article being sold. Dealers are required to keep the records for five years. If the dealer buys copper gutters, downspouts, or similar copper or aluminum materials, he is required to hold the articles for not less than 15 days following the date he gives the required notice of the transaction to the chief of police or sheriff. The measure also increases the penalty for a first violation to a Class 3 misdemeanor and for a second or subsequent violation to a Class 1 misdemeanor. *Amends Code §§ 59.1-117, 59.1-120, 59.1-121, 59.1-124, and 59.1-136.1.*

Civil penalties for violations of noise ordinance. Authorizes the governing body of a locality to adopt civil penalties for violations of noise ordinances. Civil fines will not exceed \$250 for the first offense and \$500 for each subsequent offense. *Adds new Code § 15.2-980.*

Equipment used to determine the decibel level of sound. Authorizes a law-enforcement officer to use certain equipment to determine the decibel level of sound, including noise. The results of such determinations shall be accepted as prima facie evidence of the decibel level of the sound in any court or legal proceeding where the decibel level of the sound is at issue. *Amends Code § 2.2-1112 and adds new Code § 19.2-270.7.*

Remediation of Defective Drywall. Creates the Virginia Defective Drywall Correction and Restoration Assistance Fund to promote the correction and restoration of residential property affected by problems attributable to defective drywall used between 2001 and 2008. The fund will be

administered by the Virginia Resources Authority and the Department of Housing and Community Development. Grants and loans will be established that may be used to pay the reasonable and necessary costs associated with (i) the remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes, (ii) the stabilization or restoration of such structures or (iii) the demolition and removal of the existing structures or other work necessary to remediate or reuse the real property. Also sets out procedures for obtaining financing from the Authority for defective drywall restoration or remediation projects. *Amends Code §§ 62.1-198 and 62.1-199 and adds new Code §§ 36-156.1 and 36-156.2.*

Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects authorized to include limitation of liability clauses in contracts. Allows entities consisting of design professionals to include limitation of liability clauses in their contracts to perform services; but provides that individual licensees are not relieved of any responsibility that may exist for services performed by reason of employment or other relationship with an entity. The bill contains a technical amendment. *Amends Code § 54.1-411.*

Move over law. Requires drivers to move left on a four lane highway when approaching vehicles displaying flashing blue, red, or amber lights. A first offense is punished as a traffic infraction. A second or subsequent violation, when such violation involves a vehicle with flashing, blinking, or alternating blue or red lights, is punishable as a Class 1 misdemeanor. The requirements do not apply in highway work zones. *Amends Code § 46.2-921.1.*

New and Expanded Business Opportunities

Virginia Offshore Wind Project Development Authority. Creates the Virginia Offshore Wind Development Authority to facilitate and support the development of the offshore wind industry and wind-powered electric energy facilities beyond the Commonwealth's three-mile jurisdictional limit. *Adds new Code §§ 67-1200 through 67-1211.*

Offshore energy resources. States that it shall be the policy of the Commonwealth to support oil and natural gas exploration, development, and production 50 miles or more off Virginia's coast, taking into account the impact on affected localities, armed forces, and the mid-Atlantic regional spaceport. Currently, the policy is limited to supporting exploration for natural gas resources 50 miles or more offshore. *Amends Code § 67-300.*

Governor's Development Opportunity Fund. Expands the use of moneys in the Fund to include grants for the construction or build-out of privately owned buildings and caps the aggregate amount of grants outstanding on or after July 1, 2010, at \$30 million. *Amends Code §§ 2.2-115 and 2.2-5102.1.*

Virginia Universities Clean Energy Development and Economic Stimulus Foundation. Creates the Virginia Universities Clean Energy Development and Economic Stimulus Foundation as a body corporate and a political subdivision of the Commonwealth. The Foundation shall identify, obtain, disburse, and administer funding for (i) research and development of alternative fuels, clean energy production, and related technologies; (ii) support of economic development projects in disadvantaged rural areas; and (iii) the provision of assistance in the commercialization of alternative fuels and clean energy technologies. Funding shall be awarded only to those proposed projects that best meet the established criteria and purposes of this act. *Adds new Code §§ 23-299 through 23-302.*

Building Codes And Safety Regulations

Uniform Statewide Building Code; expansion of court-ordered abatement of violations to include nonresidential property. Provides that a court may order violations of the Uniform Statewide Building Code on nonresidential buildings or structures be abated or otherwise. *Amends Code § 36-106.*

Uniform Statewide Building Code; increase in penalty for violation. Increases the civil penalty for a second or subsequent violation of the Code from \$150 to \$350 and the total for violations arising from the same operative set of facts from \$3,000 to \$4,000. *Amends Code § 36-106.*

Uniform Statewide Building Code; any person aggrieved may appeal to the local board of Building Code Appeals and the State Technical Review Board. Clarifies that any person aggrieved by a local building official's application of the Building Code may appeal to the local board of Building Code appeals and grants the State Technical Review Board authority to hear appeals from decisions arising under application of the Virginia Manufactured Housing Construction and Safety Standards Law and the Virginia Certification Standards adopted by the Board of Housing and Community Development. *Amends Code §§ 36-105 and 36-114.*

Uniform Statewide Building Code; applicable to buildings or structures built on state-owned property. Provides that the Uniform Statewide Building Code shall also apply to buildings or structures built on state-owned property. The bill requires the Department of General Services to act as the building official for all buildings or structures built on state-owned property. The Building Code shall not apply to uninhabitable structures, equipment, or wiring owned by a public service company, a certificated provider of telecommunications services, or a franchised cable operator that are built on rights-of-way owned or controlled by the Commonwealth Transportation Board. *Amends Code § 36-98.1.*

Industrialized Building Safety Law. Provides that any person aggrieved by the Department of Housing and Community Development's application of the Industrialized Building Safety Law appeal to the State Building Code Technical Review Board. Currently only local building officials, compliance assurance agencies, and industrialized building manufacturers are listed as being allowed such appeals. In addition, the bill deletes references to model code writing entities (except the National Fire Protection Association) and replaces them with the International Code Council. *Amends Code §§ 36-73 and 36-82.1.*

Dam safety. Requires the Soil and Water Conservation Board to establish an incremental damage analysis procedure that provides for a new standard for the spillway design requirement. The bill requires the Board to adopt regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk in the determination of the hazard potential classification of an impounding

structure. The bill also allows an owner of a dam who has received a report from the Board containing recommendations for the correction of deficiencies in the dam to submit his own plan for such corrections. One of the two criteria for designating a dam as unsafe is changed. Currently, if there are serious deficiencies in the design or construction of the dam that, if left unaddressed, could result in a failure that may result in loss of life or damage to downstream property, the dam is cited as being unsafe. The new criterion would be that such deficiencies may result in the loss of life or "significant" damage to downstream property. *Amends Code §§ 10.1-605, 10.1-607.1, and 10.1-609.*

Erosion and sediment control; penalty. Any violation of any erosion and sediment control regulation or order of the Virginia Soil and Water Conservation Board, any provision of a local program, or any condition of a permit will be subject to a civil penalty of \$100 to \$1,000. *Amends Code § 10.1-562.*

Underground Utility Damage Prevention Act; sewer laterals. Establishes a set of requirements for the protection of sewer system laterals and private sewer laterals that are unique from the general requirements of the Underground Utility Damage Prevention Act. The measure also establishes procedures to address recurring noncompliance with the provisions of the Act by localities and other political subdivisions of the Commonwealth. *Amends Code §§ 56-265.15 and 56-265.32 and adds new Code § 56-265.19:1. (Note that this law does not become effective until January 1, 2011.)*

Mechanics' and Materialmen's Liens

Mechanics' lien agent changes. Removes the definitional requirement that one must give consent in writing in order to be a "mechanics' lien agent." The law also authorizes any person entitled to claim a lien to notify the mechanics' lien agent that he seeks payment for labor performed or material furnished if the building permit contains the name, mailing address, and telephone number of the mechanics' lien agent. Current law provides that any person entitled to claim a lien may notify the mechanics' lien agent that he seeks payment for labor performed or material furnished only if, at the time of issuance, the building permit contains the name, mailing address, and telephone number of the mechanics' lien agent. *Amends Code §§ 43-1 and 43-4.01.*

Roads and Highways

Requirements for acceptance of subdivision streets into state secondary highway system. Provides that any street or segment of a street within a network addition that meets one or more of the public service requirements addressed in the regulations can be accepted into the secondary system, provided that the network addition satisfies all other requirements adopted pursuant to this section. In cases where a majority of the lots along the street or street segment remain undeveloped and construction traffic is expected to utilize that street or street segment after acceptance, the bonding requirement for such street or street segment may be required by VDOT to be extended for up to one year beyond that required in the secondary street acceptance requirements. *Amends Code § 33.1-70.3.*

Secondary highway system design standards. Provides that for urban and urban development areas in jurisdictions using the urban county executive form of government, the Virginia Department of Transportation shall work in conjunction with the jurisdiction and the Department of Rail and Public Transportation to review new design standards for state secondary highway system components that the jurisdiction proposes. *Adds new Code § 33.1-69.001.*

Hampton Roads Bridge-Tunnel; unsolicited proposals. Directs the Virginia Department of Transportation to accept for review unsolicited proposals to add capacity to the Hampton Roads Bridge-Tunnel.

Email Restrictions

Illegal to use profane, threatening, or indecent language in electronically transmitted messages. Provides that any person who uses obscene, vulgar, profane, lewd, lascivious, or indecent language, or makes any suggestion or proposal of an obscene nature, or threatens any illegal or immoral act with the intent to coerce, intimidate, or harass any person when any electronically transmitted message is received or transmitted by telephone is guilty of a Class 1 misdemeanor. *Amends Code § 18.2-427.*

Penalty for distributing unsolicited commercial electronic mail (spam). Narrows the scope of the existing spam statute to cover only those emails that constitute "spam." Spam is defined as a subset of commercial mail that is unsolicited. The definition of spam excludes emails that are transmitted by a sender to a person with whom the sender has an existing business or personal relationship. Any person who (i) falsifies or forges the transmission or routing information of spam or (ii) knowingly sells, gives, or distributes software designed to facilitate the transmission of spam is guilty of a Class 1 misdemeanor. The penalty for sending spam rises to a Class 6 felony if the person sends a certain volume of spam in a given time period or generates a certain amount of revenue from a spam transmission. *Amends Code §§ 18.2-152.2, 18.2-152.3:1, and 18.2-152.12.*

All information compiled from summaries available on the Virginia General Assembly's Legislative Information System, <http://leg1.state.va.us/lis.htm>.

**HIRSCHLER
FLEISCHER**
ATTORNEYS AT LAW
www.hf-law.com