

Capitol Report Summary - March 21, 2012



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THE 2012 GENERAL ASSEMBLY SESSION

Personality of this Session

We have often described each General Assembly session as having its own personality. The 2012 session proved to be emotional/contentious and politically charged. The majority of issues of importance to our agribusiness industry were fortunately not caught up in the conflicts.

Following the November elections of all General Assembly members, the Senate was evenly divided 20-20 between Republicans and Democrats. Prior to the session, Lt. Governor Bill Bolling clarified his authority in regard to breaking tie votes. He would not be casting votes on the budget, judicial appointments, and constitutional amendments; however, he is not prohibited from voting on organizational matters. Therefore, on the first day of the session the Lt. Governor voted with the Republicans to establish Committees with all Republican Chairmen and all with a majority of Republican members except for one - laying the foundation for passing their legislative agenda. Displeased with this organization, the Democrats leveraged their only power by not voting for the state budget causing it to fail on a tie vote. Their demands initially called for power-sharing on Committees, but toward the end of the session they also offered a wish list of budget items. As the regular session adjourned, the state's two-year budget effective July 1, 2013, was still in limbo. A special session will be held when agreement has been reached - with the expectation it will occur before the current budget expires on June 30, 2012.

The majority of Republicans in the House of Delegates increased to 68 of 100 members thereby affording them the opportunity to easily pass their legislative agenda, but not without expressive and emotional speeches for and against a number of conservative social issues.

Amid this contentious environment, the General Assembly introduced 2678 bills and resolutions, passed 1616 of them, continued 326 to the next session, and failed to pass 934. At one point in time, the Virginia Agribusiness Council was monitoring or actively working on over 200 pieces of legislation to ensure that our members interests were being effectively represented. The result was once again a successful session for the agribusiness community. The highlights of our work on your behalf during the 2012 General Assembly session are summarized here. Our efforts will continue with the Governor yet to act on most bills, the reconciliation of the state budget still to come, and post-session studies and activities beginning to form.

We appreciate those of you who responded to our Action Alerts by contacting legislators to convey your support or opposition to measures being considered. Our voice is only as strong as those we represent

and who make their voices heard. We look forward to our continued partnership to ensure a thriving agribusiness community for future generations. Thank you for your support.

How Did Your Delegate and Senator Vote?

The Virginia Agribusiness Council will be publishing a Legislator Voting Record for the 2012 Session in the near future. This members-only report will include legislation of particular importance to our agribusiness industry. Look for the website link in a future AgReport.

Interested in how your Delegate voted throughout the 2012 Session on all issues? [Click here](#) to see all floor, committee, and subcommittee votes. (This is not yet available for Senators.)

Summary of Key Issues

Animal Agriculture

Several rather controversial animal rights bills, such as prohibiting the ownership of wild, dangerous animals and a "trap, neuter, and release" program for feral cats, attracted quite a crowd to committee meetings, but fortunately none dealt with agriculture animals. Thanks to the hard work of the Virginia Agribusiness Council and our partners in the Virginia Alliance for Animal Agriculture, the standards of care for agriculture animals that were put into Code last year acted as a buffer for animal agriculture. It also aided in the argument against another proposal which would have listed very specific animal husbandry practices as acceptable in the Code and was intended to send a clear message to animal rights activists. Fearing that this bill would unnecessarily reopen the issue, we assured the patron that the care standards were sufficient and provided adequate protection for animal agriculture; the bill was subsequently withdrawn. ([SB610](#))

Value to You: Animal agriculture is not burdened with any unnecessary new laws.

Budget Items

Our efforts were focused on not unfamiliar items in the state budget: replacing the Governor's proposed per device fee with general funds for the VDACS **Weights & Measures Inspection Program**; increasing the funding level of the **Reforestation of Timberland Program** and paying for its new software program; maintaining the \$1 million per year proposed by the Governor for the **Agriculture & Forest Industries Development Fund**; supporting additional funding for VDACS **International Marketing** Opportunities to establish additional overseas marketing offices; ensuring that the VDACS **Coyote Damage Control Program** funding meets the USDA matching requirement; restoring cuts made by the Governor to **Soil & Water Conservation Districts** operations and technical assistance; initiating a study of **SWCD funding**; securing adequate dollars for the DCR **Agriculture Best Management Practices Cost-Share Program** to allow our industry to meet water quality objectives; and joining with Va. Tech to promote additional position funding for **Virginia Cooperative Extension**. At this point in time, the General Assembly has not yet finalized the state budget. ([State budget](#))

Value to You: Ensuring that the General Assembly recognizes the importance of certain state programs to Virginia's number one industry of agriculture and forestry and these programs continue to be adequately funded.

Economic Development

After encouragement from the Virginia Agribusiness Council for several years, a Governor's Agriculture & Forestry Industries Development Program is being developed and funded at \$1 million per year. The program is a part of the Governor's Economic Development Initiative and will set up a grant program targeted specifically for our industry. There will be large grants (greater than \$50,000) given for projects that are value-added or processing operations for Virginia-grown products and smaller grants (less than \$50,000) available to localities to assist in the planning and infrastructure development that facilitates agricultural and forestry economic development. ([HB766](#) & [SB128](#))

Value to You: Where one does not exist today, the Commonwealth will have a new economic

development incentive program geared only to our agribusiness community and rural localities.

Electric Utilities

Even after a mandated State Corporation Commission study on the subject last year, the telecommunications industry tried again this year to legislate lower rates for attachments to electric cooperative poles. Our electric cooperatives negotiated a compromise which authorizes the State Corporation Commission to determine reasonable rates and terms of service. The authority may be exercised if, after good faith negotiations, the parties cannot reach an agreement regarding the attachments. ([HB1186](#) & [SB652](#))

Value to You: Resolution to an ongoing issue and a reasonable means for electric cooperatives to recover the costs of pole attachments by telecommunication companies.

Eminent Domain/Lost Access-Lost Profits

It took seven years, but the Virginia Agribusiness Council and our partners (including the Attorney General) were successful this year in the final passage of the eminent domain Constitutional Amendment. The Virginia Constitution requires that proposed amendments to the Constitution pass the House of Delegates and the Senate twice, with a general election of the House of Delegates held in between. In 2011 the General Assembly voted for the first passage of a constitutional amendment for eminent domain which ensures that: a) private property can only be taken for true public uses, not for enhancing tax revenues, economic development, or private gain; b) full compensation must be given when property is taken or damaged; c) no more property can be taken than is necessary for the project; and d) the burden of proof that the taking is for a true "public use" is on the entity taking the property. In 2012, the Constitutional Amendment achieved its second passage by the General Assembly and will go before the voters for approval in November. ([HJ3](#) & [SJ3](#))

As instructed in the Constitutional Amendment, the General Assembly provided definitions for the terms "lost profits" and "lost access" and how to determine the amount of just compensation that must be paid for property taken by eminent domain. After many hours of negotiations between our coalition, the Attorney General, and representatives of condemning entities, a structured framework for determining lost profits was created, capping profits to three years based on average net income of federal tax returns. To claim lost access, it must meet the high standard of "material impairment of direct access." The bill has a contingent effective date of January 1, 2013, provided that the voters approve the Constitutional Amendment at the 2012 November election. ([HB1035](#) & [SB437](#))

Value to You: Protection of your private property rights as landowners and just compensation if a taking does occur. This is landmark legislation for Virginia and a major victory for advocates of private property rights.

Environment

Resulting from a study on the subject, the "Nutrient Trading Act" passed that directs the Virginia Soil and Water Conservation Board to adopt regulations governing the certification of certain nutrient credits. DCR is permitted to establish an online registry of certified credits and municipal separate storm sewer systems are allowed to acquire and use credits under certain conditions. At the request of our turf industry, the Virginia Agribusiness Council had "managed turf" added to the list of sources from which certifying credits may be generated from. ([HB176](#) & [SB77](#))

While we strongly support a voluntary internet-based program for farmers and turf managers to develop their own Nutrient Management Plans, the Virginia Agribusiness Council was successful in having a bill amended to use general funds rather than take money from the Natural Resources Commitment Fund which funds the agriculture BMP cost-share program. We are hopeful that the \$150,000 needed to start-up the program will be included in the state budget. ([HB932](#))

The environmental community and wastewater treatment plant representatives advocated for the state to issue an additional \$300 million in bonds so localities can continue installing nutrient removal technology to comply with the Chesapeake Bay TMDL. The Senate supported the measure, but the House did not. Without these additional resources for point-source pollution projects, there will be limited funding available for non-point source programs such as the agriculture BMP cost-share program.

The final disposition of this issue will be determined in the state budget when it is resolved. ([HB1180](#) & [SB494](#))

Value to You: Programs are being sought and developed to provide farmers with more options for managing nutrients.

Food Safety

The elimination of VDACS food safety inspections of certain foods was once again proposed. In one bill, stores that are owned and operated by a farmer, are located on the farmer's land, and that sell only food grown and processed by the farmer or neighboring farms would have been exempted from being inspected ([HB998](#)). Another created a definition for "cottage food production operations" and exempted those operations and their products from inspection. ([SB221](#)) The Virginia Agribusiness Council expressed concerns about exempting such a broad range of foods from state inspection; both bills were withdrawn.

What has become known over the years now as the "pickle bill" would have exempted pickles, relishes and salsas from state inspection. The Virginia Agribusiness Council educated the subcommittee members about the sometimes fatal consequences when these potentially hazardous foods are not prepared properly; as a result, the bill died without a motion. ([HB46](#))

Defining genetically-engineered food and mandating that it be labeled as such died a quick death when the Virginia Agribusiness Council and other industry organizations raised major concerns about the negative impact on our products. ([SB606](#))

Value to You: Ensured safety of the consumers and protects the integrity of the food products.

Forestry

Because of an incident of timber trespass, a bill was introduced that would have required the owner of any property on which timber is to be cut to send written notice to all adjoining property owners at least 60 days before cutting timber caused great concern. Such a requirement would inhibit the proper scheduling of timber harvests based on weather, environmental conditions, and logger availability. In lieu of the bill moving forward, the patron agreed to a study of the issue by the State Forester, stakeholders, and interested parties this summer. ([HB291](#))

Value to You: Avoided a notification requirement that would have been extremely disruptive to normal timber harvesting operations.

Government Structure

The Governor proposed numerous government reform streamlining measures, including board consolidations, most of which passed the General Assembly. The Virginia Agribusiness Council worked with the Governor's office to ensure these four changes that impact our industry resulted in proper membership and responsibilities: 1) consolidate the Pesticide Control Board into the VDACS Board with two additional seats specifically representing the pesticide industry; 2) consolidate the Reforestation of Timberlands Board into the Board of Forestry with members representing specific sectors of the forest industry; 3) consolidate the Seed Potato Board and the Potato Board into a single Potato Board; and 4) consolidate the Bright Flue-Cured Tobacco Board and the Dark-Fired Tobacco Board into a single Tobacco Board. ([HB1291](#) & [SB678](#))

Value to You: Continued representation on these Boards that reflect our industry's interests and maintain the integrity and funding of existing programs.

Hunting/Kill Permits

Proponents of Sunday hunting gained some footing this year, but ultimately failed. Ten bills were introduced promoting some form of hunting on Sunday - limited to private lands, public waters, not deer with the aid of dogs, not within 250 yards of a place of worship, only in areas with severe Lyme disease, and their last proposal of limiting to wildlife management areas and military bases as long as it included

a licensed youth apprentice hunter. All attempts failed in a House Agriculture Subcommittee. Should the measure have reached the full House Agriculture Committee or the floor, its fate may have been different. The Virginia Agribusiness Council joined the Virginia Horse Council, Virginia Farm Bureau, and some hunting groups in leading the opposition. ([SB464](#))

Several other actions related to hunting addressed the damage to crops and livestock by wildlife. The DGIF Director may now authorize nonlethal control measures against elk (in addition to bear) found to be responsible for damage. ([HB990](#)) Coyotes and feral swine were added to the definition of "nuisance species" allowing a continuous open season for killing. ([HB855](#)) DGIF is expected to study the idea of establishing a voluntary private land easement program that provides public hunting access. ([HB342](#))

Value to You: Maintained the culture of rural Virginia with no hunting on Sunday and protection of property rights for those who wish to use their land on Sundays for purposes other than hunting. Provided additional protections against damage of crops and livestock by wildlife and nuisance species.

Labor

Unlike previous years, there was only one bill introduced to expand the mandated use of E-Verify. Since it was aimed at one specific enterprise, the business coalition of which the Virginia Agribusiness Council is a member raised concerns at this targeted expansion which led to the bill being carried over to 2013. ([HB1077](#))

Expanding the definition of "family member" to address concerns with the child labor laws was dropped as it may have conflicted with federal labor laws. ([HB167](#)) A proposal to increase from 16 to 18 the age at which children are required to have a work-training certificate from their school if they do not have a diploma was intended to address truancy issues in a certain District. The business community saw this as an unnecessary burden that could be addressed in other ways and encouraged its eventual defeat. ([HB641](#))

Value to You: Ensuring that there are no additional labor laws that cause unnecessary burdens on your business.

Land Use & Preservation

The Land Preservation Tax Credit program was the subject of a number of bills; however, no significant changes passed. The issue of donors knowing for certain that the appraisal was acceptable and the exact amount of their tax credits was discussed. One proposal would have removed the requirement that the taxpayer complete the conveyance of a donation prior to applying for the tax credits and permit taxpayers to apply for conditional issuance of tax credits prior to the donation of the land. Though the bill did not pass, it did get the attention of legislators who support the program and want to see donors treated fairly. There may be additional discussions on the subject before next year. ([HB908](#)) Increasing the land preservation tax credit from 40 percent of the fair market value of land for working farmers will have to wait until 2013. ([SB403](#)) Also failed was a proposal to allow any unused land conservation income tax credits of a deceased taxpayer to transfer to another taxpayer. ([SB352](#))

To address a specific abuse situation, all localities may now require a special use permit for the storage or disposal of certain nonagricultural materials not generated on the farm or agriculturally zoned property. ([HB1076](#)) James City County is now authorized to create agricultural and forestal districts. ([HB371](#)) Local assessing officials will be prohibited from considering prior, discontinued uses of property in determining whether the property qualifies for special assessment as land devoted to agricultural, horticultural, forestal, or open space use. ([HB81](#))

Value to You: Raised awareness of landowner concerns with the Land Conservation Tax Credit program and ensured that new laws did not impact the agricultural and forestal use of our lands.

Miscellaneous - Horses, Extension, Tobacco, Wine, and More

The full week before Thanksgiving each year will be designated as Virginia Cider Week. ([HJ105](#)) The wine industry was commended on the occasion of its 250th anniversary. ([SJ114](#))

Roll-your-own cigarette machines at a retail establishment will now be considered a manufacturer and

have to comply with the Master Settlement Agreement. ([HB314](#) & [SB74](#))

Designating the month of May as Horse Month in Virginia did not receive consideration ([HJ121](#)) and neither did a study of the horse racing industry ([HJ172](#)).

Defining genetically-engineered food and mandating that it be labeled as such died a quick death when the Virginia Agribusiness Council and other industry organizations raised major concerns about the negative impact on our products. ([SB606](#))

The importance of adequate Virginia Cooperative Extension staffing was noted in a bill to require at least one employee in each county; however, the measure did not advance. ([HB242](#)) The Virginia Agricultural Experiment Stations received positive attention with a resolution of commendation on their 125th Anniversary. ([HJ57](#) & [SJ105](#))

The annual "plastic bag" bill that would have imposed a tax of 20 cents on plastic bags used by consumers in grocery stores, convenience stores, and drug stores was defeated early in the session with opposition from the retail community. ([HB124](#))

Value to You: Well-deserved recognition of our wine industry, Virginia Cooperative Extension, and Agricultural Experiment Stations.

Taxes and Tax Credits

It was an interesting session in the tax arena. While new or expanding tax credits came under increased scrutiny looking for a cost-benefit analysis and an expiration date, grant programs with funding limitations in the budget became the preferred mechanism for incentivizing certain actions. A measure passed that prohibits future state tax credits unless they contain an expiration date of five years or less. ([HB246](#)) The Senate Finance Committee indicated that there would be a Tax Reform Commission established to review tax credits along with other taxation items.

Registered beekeepers who meet VDACS qualifying guidelines will receive a \$200 grant per new beehive up to a maximum grant of \$2400 per year if funding is included in the yet-to-be-passed state budget ([HB300](#) & [SB354](#)). When the riparian forest buffer program was headed toward being converted to a grant program rather than a refundable tax credit as proposed, the patrons withdrew the bills at the request of the Virginia Agribusiness Council and others in the industry. ([HB456](#) & [SB404](#)) The Governor's proposal to increase the total annual amount of tax credits for farm wineries and vineyards from \$250,000 to \$500,000 will receive additional discussion in the coming year. ([HB1194](#)) The only bill reinstating the estate tax (with revenues being used for nursing homes) was quickly defeated. ([HB419](#))

Legislation was introduced to put a stop to the allegation that some business taxpayers are intentionally overpaying their local taxes in order to receive interest on the overpayment amount. Localities today may refund overpayments with interest at the same rate (up to 10 percent) that they charge for underpayments. The bill would have authorized localities not to pay interest on the refund of local taxes when the refund is due to errors made by the taxpayer even though the federal and state government also pay interest in such situations. The Virginia Agribusiness Council and our business partner organizations learned that there is apparently equal abuse by localities in not making timely refunds and refusing to pay interest at all. Rather than move forward on what turned into a two-sided issue, the bill failed. The business community has committed to studying the issue with localities in the coming months. ([HB117](#) & [SB401](#))

Value to You: Retention of existing tax credit programs, no new taxes on your businesses, and a new beehive grant program.

Transportation

Last year, the House Transportation Committee Chairman asked VDOT and DMV to develop a uniform fee structure for overweight vehicles. The Virginia Agribusiness Council was a participant in the stakeholder group that was convened in response to the Chairman's request.

The resulting bill which passed this session will generate almost \$5 million annually beginning in 2013 to be used for highway maintenance with a portion going to DMV for administrative costs. The uniform annual fee for hauling permits issued for specialized vehicles will be \$130 except for hauling Virginia-grown farm produce and cotton modules which will have a fee of \$45 per year (lower because of

the seasonal use of these vehicles). A direct economic benefit of the legislation is the addition of specially designed tractor-trailers that deliver bulk farm animal feed with a 37,400 pound maximum tandem axle weight limit; these vehicles will be allowed to load to a gross weight of 84,000 pounds for the same \$130 annual fee. For overload permits, permits authorizing 1%, 2%, 3%, and 4% overloads were eliminated, and the fee for the 5% overload permit was raised from \$200 to \$250. Cities, towns and counties that maintain secondary streets must also enter into an agreement with DMV to issue permits on behalf of the locality. This eliminates the painstaking process of obtaining multiple local permits with various requirements, primarily in the Tidewater area. (HB806) ([See full Permit Equity Study.](#))

Localities will now be able to exempt or set a lower tax rate for certain motor vehicles used exclusively for agricultural purposes. (HB743)

Value to You: Minimized impact of increased overweight and hauling permit fees, addition of farm animal feed vehicles, and an improved local permitting system.

Urban Turf

In addition to the phosphorous restrictions passed last year, lawn fertilizer will also need to list its nitrogen application rates in its directions for use. The rates must be consistent with those recommended in the Virginia Nutrient Management Standards and Criteria. This was the recommendation of a stakeholder group which included the Virginia Agribusiness Council, several of our members, and environment organizations. (HB1210) Cool-season lawn and turf seed will now be able to sold in Virginia up to 15 (vs. 9) months after the completion of the required germination test. (HB301)

Value to You: Reasonable approach to nitrogen rates in lawn fertilizer and an update to the retail sale of lawn seed.

Industry Promotions During the Session

The Virginia Agribusiness Council provided leadership and logistical assistance in the delivery of gifts representative of certain sectors of our diverse agribusiness community. These Council members partnered with us in this effort:

- Virginia Horse Council - Trail mix and horseshoe-shaped cookie
- Virginia Grain Producers Association - Corn-based coffee travel mugs
- Virginia Wine Council - Bottles of wine, of course!
- Virginia Cattlemen's Association - Beef jerky
- National Fruit Products - Applesauce snack packs
- Virginia Peanut Growers Association - Peanuts
- Virginia Nursery & Landscape Association - Baskets of African violets and native flowering plants
- Virginia Soybean Association - The ever popular chocolate-covered soynuts
- Marva Maid Dairy and the Maryland & Virginia Milk Producers Cooperative Association - Ice cream specialties (that made all the legislators feel like kids again)

We welcome additional participants in the future. Just let us know if your organization would like to join in this enjoyable promotion of Virginia agribusiness to the Governor, Lt. Governor, Attorney General, Governor's Cabinet, and General Assembly members.

After Session Activities

The General Assembly session always generates follow-up activities such as studies, workgroups, and regulations to implement new laws. The 2012 session was no different. If you have a specific interest in any of the issues listed below, [please let us know](#). We will invite you to be a resource and keep you informed as the discussions progress.

Eminent Domain (HJ3 & SJ3) - Work with our private property rights coalition on public education and

awareness for the Constitutional Amendment ballot vote in November.

Governor's Reorganization of the Executive Branch (HB1291 & SB678)- Submit nominations to the Governor's office for appointment to new or newly defined positions on consolidated industry boards. And, join the Secretary of Natural Resources in evaluating the consolidation of all water quality permitting into DEQ.

Agriculture and Forestry Industry Development Fund (HB766 & SB128) - Work with the Secretary of Agriculture & Forestry to implement this new economic incentive program targeted specifically for agricultural and forestry operations.

Food Safety (HB46)- Explore with VDACS options for streamlining the inspection and regulatory process for the approved sale of acidified foods such as pickles, salsas, and relishes.

Timber Trespass (HB291) - Participate in a study led by the Department of Forestry on the issue of requiring the owner of any property on which timber is to be cut to send written notice to all adjoining property owners at least 60 days before cutting timber.

Private Land Easement for Hunting (HB342) - Discuss with interested stakeholders and DGIF the feasibility of a voluntary private land easement program that provides public hunting access.

Invasive Plants (HB396) - Participate in the regulatory process underway at VDACS to adopt regulations for the control of noxious weeds (invasive plants).

Land Preservation Tax Credit (HB908) - Discuss with state agencies and stakeholders solutions to concerns that landowners have raised about not having certainty related to land preservation tax credits.

Tax Overpayment Refund (HB117 & SB404)- Partner with other business organizations, treasurers, commissioners of revenue, and localities to discuss a uniform method for a) assessing interest earned or charged for underpayments and overpayments of local taxes and b) timely refunds of overpayments.

Dangerous, Wild Animals (HB1242 & SB477) - Monitor discussions between VDACS, DGIF, and stakeholders on ownership of specific "dangerous, wild animals" to ensure there are no unintended consequences for animal agriculture.

Questions, Responses, Opinions?

We welcome your comments in regard to the Virginia Agribusiness Council's representation of your interests during the 2012 General Assembly session. Let us know your thoughts and any questions you may have. Thank you.

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