

For VSLD Members information.

Please note, the section FERTILIZER APPLICATION REGULATIONS, might be of particular interest.

Margaret

----- Forwarded message -----

From: VNLA <vna@swva.net>
Date: Wed, Mar 26, 2008 at 5:11 PM
Subject: FW: Actions of the 2008 General Assembly
To: VNLA <info@vnla.org>

TO: VNLA Board and Regional Presidents
FYI. Actions of the 2008 General Assembly
Jeff

-----Original Message-----

From: info@va-agribusiness.org [mailto:info@va-agribusiness.org]
Sent: Wednesday, March 26, 2008 12:43 PM
To: info@vnla.org
Subject: Actions of the 2008 General Assembly

Below you will find the Virginia Agribusiness Council's Summary of the 2008 General Assembly Session. If you prefer to read this on our website, you may go to: <http://www.va-agribusiness.org/public/pages/index.cfm?pageid=193>.

Note: Responses to this newsletter should be directed to va.agribusiness@att.net. Unfortunately a "reply" to this message cannot be transmitted.

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SUMMARY OF 2008 GENERAL ASSEMBLY

The General Assembly members introduced 3322 bills, of which 1654 passed, 1352 failed, and 316 were continued to 2009. The Governor has until the third week of April to take action on the passed bills in the form of approval, amendments, or veto which will then be considered by the General Assembly at their reconvened session on April 23.

In this Summary issue, we provide you with the results of General Assembly actions important to our agribusiness community. In addition, we have included background information on how we achieved positive outcomes on a number of the major issues. Contributing to this success was the weekly interaction we had with every member of the Agriculture Committees to review relevant bills on their agendas. This Report demonstrates how the Council and its members continue to be well-respected and influential through its government affairs activities. Thank you for your ongoing participation and support.

AGRICULTURAL BMP COST-SHARE PROGRAM FUNDING

HB 1335 (Patron: Landes) Passed House 98-0; Passed Senate 40-0;
Approved by Governor
SB 511 (Patron: Whipple) Passed Senate 38-2; Passed House
100-0

The Council is one of ten agriculture and conservation organizations who formed a Partnership last year to advocate for \$1 billion in funding over 10 years for the State's Agriculture Best Management Practices (BMP) Cost-Share Program which would match approximately \$650 million from the farming community. This level of funding is needed to implement five priority BMPs state-wide to meet water quality goals established by the Commonwealth.

The Partnership successfully sought agreement from the Governor and the General Assembly on the need, the amount, and recognition that without sufficient funding, the water quality goals would not be met on time. The challenge then was to establish a dedicated and consistent funding source to eliminate the "roller-coaster" funding of the past 20 years. The Partnership's recommended dedication of 1/10th of one-cent of the existing sales tax amounting to approximately \$100 million per year was the basis for HB 1335 and SB 511. Unfortunately, the adverse economic conditions did not create a positive environment for the Partnership's innovative approach. (There were also bills introduced by Del. Ed Scott and Sen. Hanger to address natural resources funding in different manners.)

The General Assembly did make a positive policy decision in support of the funding need by establishing in Code a Natural Resources Commitment Fund and appropriated \$20 million from interest and reserve accounts for the first year of the 2-year budget (as was originally proposed by the Governor). In a year of economic stress and many other priorities, this level of funding is exceptional. The Council continues its work with the Partnership, the Governor, and the General Assembly to achieve our goal for dedicated, consistent, and adequate future funding.

AGRIBUSINESS WORKFORCE (Immigration)

HB 926 (Patron: Byron) Passed House 98-0; Passed Senate 40-0;
Approved by Governor
SB 782 (Patron: Obenshain) Passed Senate 36-4; Passed House 97-0

These identical bills allow the State Corporation Commission to terminate the corporate existence of a corporation (or LLC or business trust) for up to one year, following a hearing, for business entities that are convicted under Federal Immigration Law of a pattern or practice by officers or directors of employing illegal aliens. This bill will have an effect on only businesses that have been convicted of the most egregious violation of Federal immigration law.

HB 1298 (Patron: Frederick) Passed House 97-0; Passed Senate 40-0;

Approved by Governor

SB 517 (Patron: Cuccinelli) Passed Senate 39-0; Passed House 97-0

These identical bill mandate that written contracts with public bodies must include certification that the contractor is in compliance with all applicable Federal, state, and local laws, rules, and regulations, and will not knowingly employ unauthorized aliens. This provision is already included in contracts currently being issued.

In anticipation of efforts by General Assembly members to address illegal immigration at the state level, the Council initiated a coalition of business interests last summer known as Virginia Employers for Sensible Immigration Policy (VESIP) for the purpose of protecting law-abiding employers. Significant progress was made by VESIP to educate decision makers and serve as a resource for reasonable legislation through numerous meetings before and during the session. While the State can pass laws to suspend or revoke state-issued business licenses or permits of employers who knowingly and willfully employ illegal immigrants, most any other proposal would have been pre-empted by Federal Law.

The numerous introduced bills, in which the Council had an interest, generally fell into four categories: a) Mandating verification of employment eligibility (i.e., E-Verify); b) Suspending or revoking a business license if employing an illegal immigrant; c) Requiring additional certifications/compliance for government contracts; and d) Tightening criminal laws for aliens who commit criminal offenses. VESIP was asked by legislators to respond to these proposals, explain the ramifications on law-abiding employers, and provide alternative language for the employment-related bills which was eventually incorporated into the four bills that passed (listed above).

ANIMAL WELFARE

The Council is participating in a coalition of agricultural organizations committed to promoting responsible animal care while ensuring that proposals do not unduly burden animal agriculture. Over the past few years, there has been a noticeable increase in the presence of animal welfare interests in the General Assembly. The Council and other industry partners will continue to monitor efforts in Virginia to ensure that legislation that would negatively impact responsible animal agriculture practices is not enacted. Following are bills that without the coalition's attention potentially could have been harmful to our members.

HB 217 (Patron: Alexander) Patron requested for the bill not to go forward in House Agriculture Subcommittee

Had this bill passed, it would have made it a Class 3 misdemeanor to (i) tether animals less than six months old, except in an emergency, (ii) tether animals not spayed or neutered, except in an emergency, and (iii) use a tether weighing more than the animal can reasonably bear. Also would have authorized local governments to adopt animal tethering ordinances more

restrictive than state law. The Subcommittee was aware of the Council's concerns about this measure.

HB 464 (Patron: Albo) Failed in House Agriculture Committee

This proposal would have restored the humane investigator program to its pre-2003 status, and would have allowed volunteer animal investigators who have little training and supervision to have the same authority as professional animal control officers. In 2003, the law was amended to limit the number of humane investigators to those serving at that time and the number of programs to those in operation in 2003. The Council worked with other industry organizations to voice our strong opposition of this bill prior to its defeat in the House Agriculture Committee.

HB 673 (Patron: Alexander) Passed House 98-0; Passed Senate 40-0;
Approved by Governor

After amendments were made by the Patron and the House Agriculture Committee, the bill only modifies the definition of "adequate water" as it pertains to companion animals (i.e., dogs and cats) by changing the requirement that water must be provided at intervals "appropriate for weather and temperature." The law originally specified that water must be provided "at least every 12 hours." We worked to make sure that the provisions did not impact agricultural animals.

HB 999 (Patron: Bell) Passed House 99-0; Passed Senate 40-0;
Approved by Governor

Courts are now allowed to order the owner of any animal seized by an animal control officer for more than 30 days to post a bond with the locality for the amount of the cost of boarding the animal. The current requirement to post bond pursuant to local ordinance after 30 days does not change. The law continues to follow stringent guidelines on seizing agricultural animals, including consultation with the State Veterinarian prior to seizure, which alleviated the initial concerns of the Council.

DEQ BOARDS

HB 1332 (Patron: Landes) Passed House 98-0; Passed Senate 40-0;
Approved by Governor

SB 423 (Patron: Puckett) Passed Senate 40-0; Passed House
94-0; Approved by Governor

Following over a year of discussion, this legislative compromise a) continues the three separate DEQ citizen Boards (Air, Water, Waste); b) retains the permitting authority of the DEQ Air and Water Boards; c) standardizes the procedures for permit hearings and approvals between the Air and Water Boards while creating new timelines for permit hearings and permit issuance; d) requires the Air or Water Board or DEQ Director to document their reasons for taking certain actions on permits; and e) tightens the qualifications for the DEQ Director and Air, Water, and Waste

Board members.

In the 2007 session, the General Assembly decided to continue their discussions regarding proposed changes to the structure of the DEQ Air, Water, and Waste Boards until 2008. The Council was asked by DEQ to participate in a series of stakeholder discussions between those who were supportive, opposed, and neutral on the proposal. We also met with Council members to refine our position and identify both the positive and negative impacts of the legislation for all of our members to share with other parties. When DEQ's stakeholder group adjourned without a consensus opinion this past fall, the Council began to work with a broad group of business and agriculture interests to find a consensus to take to the 2008 General Assembly. We were successful in ensuring that issues of importance to the Council, such as maintaining the three separate Air, Water, and Waste Boards, creating consistency between the Boards in permitting and regulatory processes, and continuing public participation in the permitting processes through the Boards were included in the group's legislative proposal in 2008. After much discussion during the General Assembly session, the various parties involved in the legislation, including legislators, environmental groups, business interests, agriculture organizations, and the Governor's office, all reached agreement to support the compromise outlined above.

FERTILIZER APPLICATION REGULATIONS

SB 135 (Patron: Stuart) Passed Senate 40-0; Passed House 92-7-1

This bill, as originally introduced, required a contractor-applicator [for hire] to have a soil analysis performed prior to every application of regulated product [fertilizer, specialty fertilizer, soil amendment, soil conditioner, and horticultural growing medium] on agricultural and non-agricultural property and mandated that the soil analysis recommendations be followed. A civil penalty of \$500 could be imposed by the VDACS Board for any violation. The Council's members, both farmers and commercial/residential applicators, opposed this proposal because the provisions would be unenforceable; soil analyses may not be timely or reliable; and farmers and professional applicators would not be allowed to take into consideration the uniqueness of the property or the turf variety or crops that have been or will be planted.

After weeks of extended discussions with Sen. Stuart, Council members, and other legislators, the bill was amended and improved considerably. The final version proposed by Del. Ed Scott and passed at the end of the session reflected a more reasonable approach. The VDACS Board is directed to develop regulations that establish proper nutrient management practices and training requirements for contractor-applicators who apply regulated product to non-agricultural lands. The Board is to consult with DCR and a stakeholder group over the 18-24 month period it will take to develop regulations. Contractor-applicators will need to comply within 12 months of the effective date of the regulations and then a penalty of up to \$250 for violations may be imposed.

HB 1567 (Patron: Marsden) Continued to 2009 by House Agriculture Committee

Continuing his effort from last year to penalize contractor-applicators for fertilizer left on impervious surfaces, Del. Marsden met with the Council and several members seeking a new solution. We proposed requiring contractor-applicators on non-agricultural land to receive VDACS approved training before they could get their annual VDACS permit to apply regulated product. Del. Marsden chose to introduce a bill that directed DCR (vs. VDACS) to operate a voluntary nutrient management training and certification program. Up until its first hearing, language of the bill continued to change. Following our recommendation to several legislators, the House Committee on Agriculture continued the bill to 2009 and the Chairman directed the appropriate agencies and interested parties to discuss the issue and report back to the General Assembly. With the passage of SB 135 (above), these discussions are expected to take place during the regulatory process.

FOOD SAFETY

SB 272 (Patron: Deeds) Passed Senate 39-0; Passed House 96-0; Approved by Governor

The preparation of some foods in private homes is now exempted from inspection by VDACS under very specific conditions that will continue to ensure food safety. Jams and jellies not considered to be low-acid or acidified low-acid food products, candies, and baked goods that do not require time or temperature control after preparation will be allowed to be sold without inspection, only if such products: (i) are sold to an individual for his own consumption and not for resale and (ii) are labeled "NOT FOR RESALE-PROCESSED AND PREPARED WITHOUT STATE INSPECTION." These products can be sold only from private homes or farmers markets under this exemption.

The Council spent many hours holding numerous meetings with the industry, VDACS, legislators, and proponents of the legislation to seek middle ground between those who want no regulation and those who are concerned about food safety. We were successful in amending the bill to eliminate our food safety concerns, while still allowing for the limited sale of some baked goods, candies, jams, and jellies from smaller producers who wish to produce and sell non-hazardous foods without VDACS inspections. We are hopeful that our efforts to work with the patron, VDACS, and the organization who requested the legislation will result in reasonable discussions in future General Assembly sessions about food safety issues.

BUDGET ITEMS

Revised revenue estimates during the session increased the challenge of funding existing programs, much less anything new. The extra time it took to negotiate the State's two-year budget effective July 1, 2008, resulted in an

extension of the General Assembly session by three days. In the end, they agreed on everything except a significant bond package to fund state construction projects and how to fund transportation needs after the Virginia Supreme Court ruled taxes and fees being imposed by Northern Virginia and Hampton Roads Transportation Authorities are unconstitutional. Those two issues will continue to be debated in special sessions in the coming weeks (or maybe months). The budget challenges were evident in the results of certain budget items of importance to our agribusiness industry.

Ag BMP Cost-Share Program - Retained Governor's proposed funding of \$20 million (1st year) which equates to generally a continuation of "level funding" from the current year.

Avian Influenza Detection - Did not fund industry's request for \$200,000 to support a program to test poultry for avian influenza.

Biofuels Production Incentive Grant Program - Upheld Governor's proposed cut of the entire \$1.0 million in the fund.

Farmland Preservation - Reduced Governor's proposed \$3.0 million per year for State-Local Matching Dollars for PDR (Purchase of Development Rights) Programs to \$500,000 (1st year) and \$1.0 million (2nd year).

National Animal Identification System - House defeated (32-66) a budget amendment that would have prohibited VDACS from expending funds to implement or participate in any mandatory provisions of the USDA's National Animal Identification System for livestock. The Council opposed this budget amendment.

Reforestation of Timberland Program - Upheld Governor's proposed cut of \$72,184 each year.

Virginia Cooperative Extension and Agricultural Research Stations - No new funding is included for either VCE or ARECs.

Marion DuPont Equine Medical Center - No funding included to indemnify the Center for \$775,000 in losses incurred from a state-ordered quarantine last year.

OTHER ISSUES

Agritourism - The Agritourism Activity Liability Act, which was passed in 2006, would have been expanded to include marine tourism activities conducted by commercial fishermen. However, the bill failed when legislators raised concerns about these activities occurring on boats and in public waters. Another bill to enhance VDACS' efforts to promote Virginia agritourism both nationally and internationally was doomed due to the fiscal impact of creating a new position.

Alternative Fuels - Partially as the result of meetings the Council held with legislators last year, there were a number of proposals to encourage

the development of alternative energy production, including waste-to-energy, in Virginia. The Council helped to facilitate a compromise with DEQ on legislative that passed requiring DEQ to develop expedited air permitting processes for small biomass energy generators. A proposal that would have required the State Corporation Commission to provide alternative rate options for alternative energy co-generation facilities was continued for a year to be discussed with interested parties, including the Council.

The definition of biodiesel fuel was updated and a definition of "green biodiesel" established to include fuels produced from resources such as agriculture or silviculture. Also created is an income tax credit of \$.01/gallon for biodiesel and green biodiesel producers of at least 2 million gallons. The credit is capped at \$5,000 annually for the first three years of production beginning with the 2008 taxable year.

Animal Disease - Legislation that would have made Virginia an inconsistent state when dealing with the USDA standards for scrapie (a sheep and goat disease) was continued for one year after we raised concerns about the status of pending regulations at VDACS and the potentially negative financial impacts to the sheep and goat industry.

Arborists - A bill that would have prohibited anyone from using the title "arborist" unless they have the proper certification failed during Committee discussion on whether or not it was needed.

Avian Influenza - The Virginia Poultry Federation and the Council supported this unanimously passed measure which immediately requires importers of poultry into the state to test for avian influenza within a period of time set out by the State Veterinarian.

Eminent Domain- Due to procedural timelines for constitutional amendments, two proposals to define the term "public uses" in the State Constitution and specify permitted public uses for which private property is taken were continued until 2009.

Energy Efficient Buildings - Legislation passed to expand the definition of an "energy-efficient" building to meeting or exceeding standards of the Green Globes Green Building Rating System (which was added by our forestry industry), LEED (Leadership in Energy and Environmental Design Green Building Rating System), EarthCraft House Program, or Energy Star. Such a designation may qualify for a separate class of real property in certain localities. Other bills that would have mandated that major state-owned buildings meet the LEED standards failed.

Environment - Of the numerous environmental bills debated this year, those of interest to the Council were:

*A bill dealing with local zoning ordinances and consideration of environmental impacts was amended to alleviate the major concerns of the Council and other groups; however, it was ultimately defeated by a Subcommittee due to questions from legislators as to the need for the bill.

*Legislation proposed to require greenhouse gas emissions reports from stationary sources that emit more than a de minimis amount of greenhouse gases, but was defeated in a Subcommittee due to concerns about duplicating federal efforts.

*A proposal that would have allowed localities to prohibit the storage of hazardous materials in floodplains upstream of an intake for public water supplies was withdrawn by the patron following meetings with interested parties, including the Council, who expressed concerns. The patron will be continuing discussions during the year with Loudoun County, industry representatives, DEQ, and the Health Department.

Farm Wineries - Two issues from last year resurfaced; however, both were continued to 2009 to allow time for laws passed in 2007 to proceed. One would have allowed farm wineries to self-distribute their product. The other would have very specifically defined "usual and customary activities" that occur at farm wineries and cannot be restricted at the local level.

Forestry - A bill to clarify the right of the State Forester or his designees to enter and inspect any forest lands or logging operations to carry out the provisions of Virginia's forestry laws will continue to be discussed to address notification to landowners.

Invasive Species - The patron carried over a bill that would require nursery dealers to label all invasive species of nursery stock. Discussions in the industry need to take place this year.

Horse Dealers - There was some difference of opinion in the equine industry on a proposal to regulate the sales of horses for showing or racing by dealers when the value of the horse is over \$10,000. Therefore, the bill was continued to 2009 to allow for continued discussion.

Land Preservation - A 9-member joint subcommittee will be studying the transfer of development rights (TDR) program to examine ways to make the existing TDR legislation more appealing to localities and landowners. A Senate Finance Subcommittee will also be discussing land conservation funding this year. Legislation, supported by the Council, will establish Purchase of Development Rights (PDR) program funding between the state and local governments at a \$1 for \$1 match in general and will allow for an increased incentive for participating localities with land-use taxation. A proposal to create a leasing of development rights or "term easement" program in Virginia, an effort supported by the Council, was carried over for a year for further discussion.

National Animal Identification System - After numerous discussions with the Council, industry members, and VDACS, the patron of a proposal that would have prohibited VDACS from supporting a mandatory National Animal Identification System decided to not go forward with the bill in 2008. A budget amendment that would have had a similar negative impact was defeated

(32-66) on the House floor.

Overweight Vehicles -VDOT, in consultation with DMV, and stakeholders will be studying the current fee structure applied to overload and overweight vehicles to determine if additional fees should be associated with damage and additional maintenance costs caused by such vehicles and what mechanism is best suited for the collection of such additional fees. A legislative recommendation is due by December 1. Please let us know if you would like to be involved in this study.

Plastic Bags - Reducing the negative impacts of plastic bags on the environment and farms will be discussed this year in a broader study on the environment through DEQ.

Recodification of Title 3.1 - The entire Agriculture, Animal Care, and Food Title of the Virginia Code was updated and obsolete provisions deleted in this 244-page bill which passed without any opposition. The Council participated in a 7-year long working group with General Assembly staff, VDACS staff, and industry representatives to make recommendations to the Virginia Code Commission.

Sunday hunting - Three bills, which would have extended hunting in some form on Sundays, were defeated. The Council voiced opposition on behalf of our private landowners and equine enthusiasts who want to retain one day of comfort knowing that there is no possibility of hunting occurring when they enjoy the outdoors on a Sunday.

Tobacco (Smoking Bans) - There were bills that would have allowed localities to regulate smoking in restaurants, others that would have prohibited smoking in all Virginia restaurants or food establishments, and more that would have prohibited smoking in all public places. The Council joined the tobacco industry in promoting that owners of restaurants and public facilities should be allowed to respond to consumer demand and market forces. All smoking bans billed failed in a House General Laws Subcommittee.

Tolls on I-81 - The Council supported legislation that was passed to require the prior approval of the General Assembly before any tolls may be imposed on I-81.

Water Resources - The existing exemption for farm or stock ponds from having to obtain a Water Protection Permit has been added to the Code. Legislation mandating certain residential irrigation equipment to have rain sensors was defeated after the home building industry raised concerns.

We look forward to working with you for the benefit of Virginia's agribusiness industry. Please feel free to contact us whenever you have questions, need information, or have feedback to share. Remember to direct your emails to va.agribusiness@att.net. Thank you.

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