

Legislative Activity in the Commonwealth Regarding Recurrent Flooding and Sea Level Rise

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It was generally believed that there would be minor legislative activity during the Commonwealth's 2015 legislative session regarding recurrent flooding and sea level rise and that major activity would occur in 2016 or later years. This was largely because the **Joint Subcommittee to Formulate Recommendations to Address Recurrent Flooding** had begun their hearings in July 2014, and was preparing an Interim Report in late 2014 and had until November 2015 to conclude its fact-finding meetings and prepare its final report.

As it turns out, there was a fair amount of legislative activity during this session on these topics. Three pieces of legislation and a joint resolution secured approval from both the House and Senate regarding recurrent flooding and sea level rise. The legislation now awaits action by Governor McAuliffe no later than March 29. The Governor reviews all bills at that time for his signature, amendment or veto. The General Assembly will then reconvene on April 15 to discuss any requested amendments.

The *Joint Subcommittee's* four legislative recommendations in their Interim Report were:

- Initiate a Joint Legislative Audit and Review Commission (JLARC) study of groundwater management in the Coastal Plain, due to withdrawals and land subsidence.
- Require a residential real estate disclosure statement concerning flood zone mapping.
- Update Virginia's Statewide Floodplain Management Plan.
- Create or authorize a recurrent flooding resiliency fund.

As a sign of the sound work by the *Joint Subcommittee*, and the significance that the recurrent flooding topic garnered with the Legislature, the approved legislation and resolution address three of these four recommendations. Legislation was proposed to address the final recommendation that passed the Senate but failed to obtain approval in the House. Lastly, an additional piece of legislation was approved that addressed a topic not yet presented to the *Joint Subcommittee*. That legislation requires local governments in Hampton Roads to update their comprehensive plans to address the issue of recurrent flooding and sea level rise.

All the patrons that introduced the bills, not surprisingly, represent Hampton Roads, the Eastern Shore and the Middle Peninsula. Four members of the *Joint Subcommittee*, including Chairman Delegate Chris Stolle, introduced legislation (Senators Lynwood Lewis and Mamie

Locke, and Delegate Keith Hodges). Senate Majority Leader Thomas Norment introduced a related resolution that was approved and also incorporated into a substitute version of the House Resolution. A related bill introduced by Senator Norment was passed concerning development of groundwater policy in Eastern Virginia, and was accompanied by an identical House bill introduced by Delegate Hodges. The final piece of legislation was introduced by Senator John Miller. The following is a brief summary of the topics addressed by the legislature and the status of each initiative.

Comprehensive Planning by Localities and HRPDC (SB 1443) – Requires localities within the Hampton Roads Planning District to include strategies to combat projected sea level rise and recurrent flooding in all subsequent updates to their Comprehensive Plans. This is the first formal legislation to integrate these topics into land-use planning and creates the first instance for the commercial real estate industry to encounter these topics during the planning of new projects.

Virginia Residential Property Disclosure (HB 1642, SB 775) – Requires an owner’s representative to advise purchasers of residential property to perform their own due diligence regarding recurrent flooding and that the owner makes no representations. While not necessarily related to commercial real estate, it shows that the topic of due diligence in property transactions is broadening in part because of the new, higher cost of flood insurance, which will affect both residential and commercial real estate.

Updating the State’s Flood Protection Plan (HB 1817, SB 1079) – Directs the Department of Conservation and Recreation to update every five years its state-wide flood protection plan last updated in 2004. These plans will also be available online. The proposed budget includes monies for the current update.

Virginia’s Water Resources & Planning Management (HJ 623 & SJ 272) – The version of the Resolution introduced by Senator Norment was ultimately adopted and offered a broader study of both groundwater and surface water consumption and sustainability. The *Joint Committee* heard concerns about whether and to what degree groundwater withdrawals were causing lowering of the water table and subsidence of lands in Eastern Virginia, thereby contributing to relative sea level rise. The resolutions direct the JLARC to complete their study by November 2016 and address issues such as: whether water consumption is unsustainable; is state and local planning effective; is funding and staffing sufficient; and need for additional strategies to preserve and increase water supplies for future consumption.

Eastern Virginia Groundwater Management Advisory Committee (HB 1924 & SB 1341)
- This legislation will authorize DEQ to create a stakeholder group to focus on a subset of issues being evaluated in the JLARC study (HJ 623 & SJ 272) concerning groundwater

use in Eastern Virginia. This committee will assist DEQ with developing, revising and implementing a management strategy for the region's groundwater by January 1, 2018, approximately one year after the conclusions and recommendations from the JLARC study are finalized. It also prohibits reductions in the volume of permitted groundwater withdrawals prior to December 31, 2015, unless otherwise agreed by the permittee.

Virginia Shoreline Resiliency Fund (SB 1317) – This bill which did not move out of the House Appropriations Committee attempted to establish a fund for localities to provide low-interest loans to residents and businesses subject to recurrent flooding. This concept may well be revisited in the next legislative session as it was a recommendation of the *Joint Subcommittee*.

One question presented by various speakers before the subcommittee that has not yet been resolved is: What legal flexibility as it relates to recurrent flooding do localities have and what authority is maintained at the state level via the Dillon Rule? For example, in 2014 localities in Hampton Roads established different final floor elevations for the same 100-year flood elevation. Does this create an unintended differentiator between localities that could alter decisions by developers? Are such differences in the finished floor elevation justified due to such things as a locality's compliance with FEMA's National Flood Insurance Program?

This is the type of complex issue that may be addressed during the 2016 legislative session as a result of the final report from the *Joint Subcommittee*. The final report from the **Governor's Climate Change and Resiliency Update Commission** is to be completed by June 30, 2015. This will likely add to the issues addressed during the 2016 legislative session concerning recurrent flooding and sea level rise.

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