



Colonial Heights Courthouse Utilizing Pervious Concrete as Stormwater Management System


By J. Keith Beazley,
Director of Industry Services

A new Courthouse for the City of Colonial Heights will hold the groundbreaking in the spring of 2012. The building, designed by Moseley Architects, will be a classic colonial design with two-stories, three courtrooms, and will have a total of 65,000 square feet under roof. The cost of the new facility will be \$23.2 million dollars.

The building will feature the latest in innovative design and features and will become a new focus for the historic section of the city. The Courthouse will be part of the 12th Judicial Court of Virginia for Chesterfield County and the City of Colonial Heights.

The Colonial Heights City Engineer William Henley wished to have the parking lot of the new building designed with the latest methods of stormwater management and selected Pervious Concrete and Conventional Concrete for the pavements. The building will be located in the James River Watershed and comply with the Chesapeake Bay Regulations. The plans were submitted to the NRMCA Parking Lot Design Engineering Service and a special design was developed using Pervious Concrete for the parking spaces and Conventional Concrete for the drive lanes.



The Colonial Heights Stormwater Management Department will use the Courthouse as an example to follow for new buildings and development in the City. The building will be completed in the summer of 2013. The Courthouse with the classic design and features will become a landmark for the future. 

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Hampton	April 17, 18, 19
Warrenton	May 1, 2, 3
Richmond	May 22, 23, 24
Bristol	June 5, 6, 7

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Roanoke Cement Company's Distribution Terminals Honored by Environmental Protection Agency

Officials at Roanoke Cement Company, a Titan America business, are pleased to announce that four of their cement distribution terminals have achieved the U.S. Environmental Protection Agency's ENERGY STAR® Challenge for Industry, which recognizes plants that demonstrate a commitment to the environment by achieving a 10% reduction in energy intensity within five or fewer years.

"This achievement was the result of a supreme team effort," said Don Ingerson, VP of Cement and Aggregates, Sales and Marketing, Roanoke Cement, "The focus on reducing energy by each and every one of our people at the terminals is an excellent example of our commitment to continuous improvement; with that, our energy management knowledge continues to grow as we share it with our customers and our community."

Recognized operations include terminals in Castle Hayne, N.C., in Richmond, VA., in Front Royal, VA. and in Chesapeake, VA. The average energy



intensity reduction for all four terminals was 21.76 percent.

"We are proud that these four facilities are the first to be awarded among the cement sector," stated Steven Drzymala, Energy Systems Engineer with Titan's Corporate Engineering Department. "This is a great achievement."

"Employees at all four terminals and the terminal managers ...should all be commended for their success in reducing

energy use and protecting the environment, stated Jean Lupinacci, Director, Commercial and Industrial Branch, ENERGY STAR®, "We look forward to recognizing accomplishments for additional Titan America LLC plants in the future."

The EPA recently recognized Titan America's Roanoke Cement Plant for its highly successful Plant-A-Star program that resulted in a 15 percent reduction in customer energy usage. 🚚

Outdated Bidding Policies for Pavement Costs Taxpayers Billions

As oil prices rise and refineries adopt new technologies, industry experts are seeing a direct impact on the costs for states to build and maintain roads and highways. The lower "initial bid" of asphalt roads has disappeared, yet industry experts say many state departments of transportation (DOTs) have not changed their bidding policies.

At the 2012 World of Concrete this week in Las Vegas, Portland Cement Association (PCA) Chief Economist Ed Sullivan reported that to manage the new cost realities of asphalt and concrete DOTs must become "efficient" spenders.

"The free market is the best way to have efficient solutions to financial budget constraints," Sullivan said. "However, old and irrelevant policies like the use of escalators benefit suppliers and distort free market mechanisms."

Since 2005, liquid asphalt prices have increased annually 12 percent while concrete rose only four percent. Yet, states' DOT procurement practices that include escalators, non-use of alternative material bidding, flawed LCCA calculations, and the lack of equivalent paving design are slowing costing taxpayers billions of dollars. PCA estimates that since 2006, escalator clauses have cost states \$1.1 billion.

Asphalt cost escalator clauses are a price adjustment provision that allow asphalt paving contractors to adjust their construction price based on a fluctuation in liquid asphalt cost. These price adjustments occur after the contractor has won the bid. As a result, states, and ultimately taxpayers, take on the risk of increasing asphalt prices.

"Today escalators mask unneeded cost overruns caused by asphalt's price volatility," said Sullivan. "The new realities in the road construction materials markets will force DOTs to make huge changes to how they evaluate road-paving projects."

During 2010-2011 concrete's initial cost advantage over asphalt increased to \$78,500 in 2010 and \$192,700 in 2011 per one-mile "standard" two-lane roadway. Using Wisconsin DOT software, PCA estimates by 2015 concrete paved roads will enjoy a \$266,185 initial bid cost for the same road - roughly a 30 percent savings and the savings will grow to 44 percent by 2025. 🚚

VRMCA Participates in Design Public Hearing for Route 607 at Route 29 in Culpeper District

By Hessam Nabavi,
Director of Industry Services

On January 11, 2012 VRMCA representatives Hessam Nabavi and Bob Nablo and NVCAC paving committee chairman, James Murray with Rowe Materials participated in a VDOT Public Hearing on Rt. 607 improvement.

Project Description

The primary purpose of this project is to improve safety and increase capacity of the intersection of Rt. 607 (Matthew Mill Road) and Rt. 29 (Seminole Trail) in Culpeper District. Rt. 607 is a two-lane connector road serving a growing amount of local traffic, due to recent development in the area. It also provides a cut-through for commuters between Rt. 29 and Rt. 33 to the east. Presently at its intersection with Rt. 29, Rt. 607 has a shared left-turn/through lane and an exclusive right-turn lane.

VDOT proposes to widen Rt. 607 to five lanes where it meets Rt. 29. The widening will provide an eastbound left-turn lane into Sheetz service center and an additional westbound left-turn lane onto Rt. 29 South. Rt. 607 currently carries over 7,000 vehicles per day. The total length of this project is 0.165 miles and the anticipated cost is \$2.27 million. The project is being designed at the pres-



ent time and construction is anticipated to begin in Fall 2014.

This public hearing was a great opportunity for VRMCA to make some suggestions regarding the concrete alternate design for this project to the VDOT officials, Greg Krystyniak, VDOT Assistant District Location & Design Engineer and Barry Jones, VDOT Project

Manager in Culpeper District who were present in the hearing. We also talked about the potential use of this project as a demonstration project. We are anticipating a follow-up meeting with VDOT Culpeper District Location & Design Engineer, John Giometti, Greg Krystyniak, Barry Jones and the designer of the project within the next few weeks. 🚚

Industry Leaders Converge on Capitol Hill

Members from the Virginia Ready-Mixed Concrete Association made their way to Richmond to lobby legislators on January 17th and 18th. More than 20 participants visited with policymakers who face major decisions during the upcoming Legislative Session.

Preliminary events began on Tuesday afternoon with a luncheon followed by a Board of Directors meeting. On Tuesday night, the VRMCA Board was invited to attend the Annual Titan America Legislative Dinner.

Wednesday morning came early with attendees meeting for breakfast in order to get a legislative update for the day's meetings. During meetings with the lawmakers, members of the ready mixed concrete industry requested that the Commonwealth change its paving requirements in three ways:

- Provide equivalent designs for asphalt and concrete so that bids can be compared fairly.
- Require alternative bids on all projects.
- Follow current Virginia Law that requires localities to consider life cycle costs when soliciting and awarding paving bids.

VRMCA would like to thank all of those who participated in this important industry event. 🚚

Land, Streets and Roads: The Geotechnical Report Program Presented in Richmond

By J. Keith Beazley,
Director of Industry Services

Designing any road or street requires knowledge of the soils that will support them. The geotechnical study of the soils is the avenue to this understanding. Variations in soil type, consistency and site conditions can have an effect on the type of pavement selected and the design. The geotechnical study involves evaluation of in-place conditions; collecting samples; laboratory testing and analysis and design recommendations. This theme was the basis of a

special presentation to the Central Virginia Concrete Advisory Council and the Local Streets and Roads Committee by Samuel H. Kirby, P.E., and President of F & R.

Sam Kirby is a graduate of Virginia Military Institute, B.S., and Virginia Tech M.E. He has 35 years experience with F&R and serves as President. Sam Kirby is



responsible for company administration and performance of regional work and has oversight on F & R contracts, including the Virginia Community College System and Virginia Military Institute, and is integral to F&R's work overseas including Romania and Jordan. Mr. Kirby also directs F&R's classified projects.

Mr. Kirby continues to be involved

in materials engineering and construction engineering services. These services include the specification, design, and use of Portland cement concrete, bituminous concrete, soils and aggregates. Sam Kirby's initial years with F&R were spent in concrete technology services.

The information received from the special presentation was very helpful in the marketing of the VRMCA Local Streets and Roads program. The StreetPave and other pavement design programs have a section on soils and soils types and the presentation helped define the input for these programs and developed a better understanding and comfort for usage. Mr. Kirby is planning the continuation of the presentation to the western and eastern regional councils in the next three months. We would like to thank Sam Kirby and F&R for their interest and support of the LSR's program. 🚚

Southwest Virginia Council Hosts Fiber Technology Seminar

By Bob Nablo, Director of Industry Services

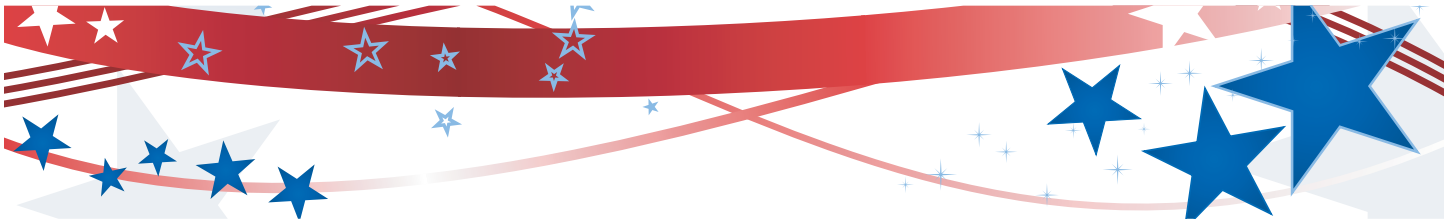
In an effort to move designers and contractors away from welded wire, saving them money and headaches, the Southwest Virginia Council sponsored a dinner/seminar on the topic "Cost Reductions in Concrete Construction Through Advancements in Fiber Technology". Andy Faulconer of Grace spoke on the science and uses of both micro and macro fibers with special emphasis on the advancements in macro fiber technology, and Steve Lloyd of Lloyd Concrete Services followed with pictures and descriptions of his twenty-plus years of experience in placing concrete.

Lloyd also serves as a member of ACI committees and is a frequent speaker at national events like World of Concrete. He is a strong advocate for the use of fibers in both "regular" and pervious concrete, and can speak at length about the cost savings – in time, materials and labor – of using the proper fiber for a specific project. Lloyd firmly believes that welded wire reinforcement, and in some cases rebar, can be eliminated through proper design, and joint spacing can be increased or eliminated as well. For the design community, Faulconer explained the technology and research behind the various fibers, and showed how cost savings might be generated with proper usage.

The audience of about 50 municipal and private engineers, concrete contractors and Council members was treated to a very fine buffet meal at the Hotel Roanoke, followed by the presentations. The SW VA Council has tried to make this winter seminar an annual event, and the topic this year seems to have led to a pleasantly successful evening. There were many questions for the speakers, and several comments that this particular topic might well be offered in other cities throughout the state. VRMCA offered Certificates of Attendance to those engineers and architects interested in Professional Development Hours, and this helps attract that community.

The keys to a successful event of this type are: offering an interesting, relevant topic with appropriate, knowledgeable speakers, and; keeping meal and event costs relatively low. Just as in concrete placement, good planning leads to a good event. 🚚

2012 General Assembly Session: VRMCA Legislation



HB 422 Transportation; additional funding by imposing and increasing certain taxes.

Chief patron: Watts

Summary as introduced: Transportation funding and administration. Provides additional funding for transportation by (i) imposing a motor fuels sales tax rate of four percent, phased in over four years, for highway maintenance; (ii) increasing the state sales tax in Northern Virginia by 0.5 percent for transportation projects in Northern Virginia; and (iii) adding an additional recordation tax in Northern Virginia at a rate of \$0.40 per \$100 valuation. The motor fuels tax is not effective until the unemployment rate in the Commonwealth decreases for four consecutive quarters after July 1, 2011. The bill also reduces the sales and use tax rate on food for human consumption from 1.5 percent to one percent, and repeals the authority for certain localities to impose a local income tax. In addition, the bill removes the sunset date from the 2009 Act of Assembly that reduced the special real property tax rate on commercial property in the localities embraced by the Northern Virginia Transportation Authority from \$0.25 per \$100 of assessed value to \$0.125 per \$100 of assessed value. Finally, the bill increases the special real property tax rate on commercial property in Hampton Roads from \$0.10 per \$100 of assessed value to \$0.125 per \$100 of assessed value.

HB 539 Private road; county ordinance may require maintenance by certain lot purchasers.

Chief patron: Poindexter

Summary as introduced: Private road maintenance. Provides that any county may by ordinance require that, in any instance where individual lots for residential use are subdivided from a larger

tract, the deed shall require that each lot purchaser contribute a pro rata share for required private road maintenance. The ordinance may also authorize the majority of lot owners on any private road, whether acting as a group or through a duly organized homeowners' association, to collect from each lot owner on the private road a pro rata share of the reasonable costs of repair, upkeep, and maintenance of the private road.

HB 731 Performance guarantees; street construction.

Chief patron: Dudenhefer

Summary as introduced: Performance guarantees; street construction. Allows localities to retain full performance guarantees until streets in a new development are accepted by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility. The bill also provides that if a developer is in default with regard to street completions in another development within a locality, the locality may withhold acceptance of securities or plat approvals. Furthermore, a locality may withhold building permits or occupancy permits within a development until streets in a new development are accepted by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility.

HB 802 Virginia Pump Toll; established.

Chief patron: May

Summary as introduced: Transportation funding and administration; Virginia Pump Toll ("FareShare"). Imposes the Virginia Pump Toll ("FareShare"), in the amount of (i) \$0.50 on each use of a retail motor fuels pump and an additional \$0.50

when purchasing 35 or more gallons; (ii) \$1.00 on each 12-gallon sale of gasoline (other than for resale) from a transport truck or tank wagon and on each 60-gallon sale of diesel fuel (other than for resale) from a transport truck or tank wagon; (iii) an amount to be determined by the Commissioner of the Department of Motor Vehicles on the bulk purchase of clean fuel other than electricity at a rate equivalent to \$1.00 times the volume of clean fuel required to fill the average size fuel tank to three quarters full; and (iv) \$0.50 on each sale of clean fuel at an electric vehicle charging service facility. Revenue from the FareShare shall be used for highway maintenance and operation in the highway construction district in which the motor fuel is sold. The amount of the FareShare increases by 10 percent every five years. The bill has a delayed effective date of January 1, 2013.

HB 806 Overweight and oversize vehicle permits and fees; provides a method of assigning cost-based fees.

Chief patron: May

Summary as introduced: Overweight vehicle permits and fees. Provides a uniform method of assigning cost-based fees based on the amount that a vehicle is overweight. The bill also allocates payment of fees into specific funds. The bill has a delayed effective date of January 1, 2013.

HB 945 Virginia Public Procurement Act; performance and payment bonds on transportation-related projects.

Chief patron: Villanueva

Summary as introduced: Procurement; performance and payment bonds on transportation-related projects. Raises from \$250,000 to \$500,000 the contract

continued on page 8

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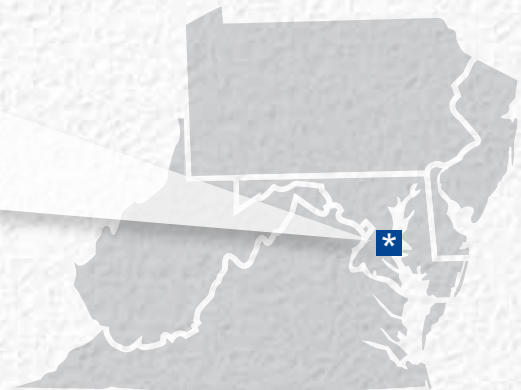
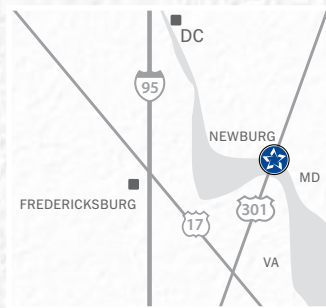
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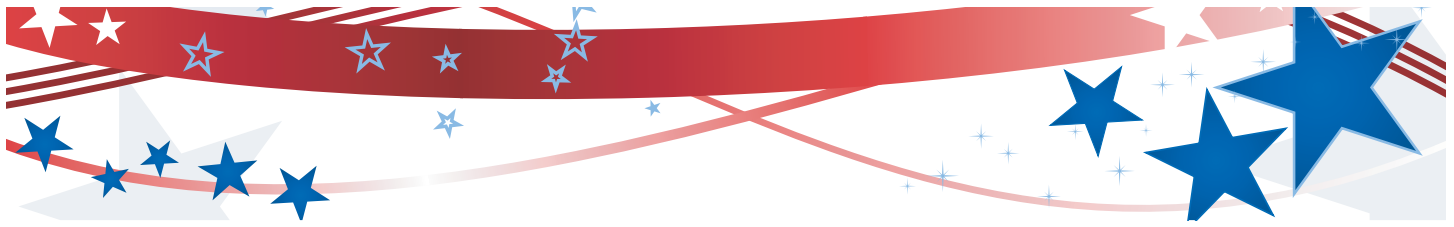
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amount for which performance and payment bonds are required on transportation-related projects partially or wholly funded by the Commonwealth.

HB 983 Motor fuels tax rate; converts rate from cents per gallon to a percentage rate.

Chief patron: Scott, J.M.

Summary as introduced: Motor fuels tax rate. Converts the rate of taxation on motor fuels from cents per gallon to a percentage rate. The bill provides that the Commissioner of the Department of Motor Vehicles shall calculate the percentage rate in an amount that will most closely yield the amount of cents per gallon being charged on the applicable motor fuel prior to the effective date of the bill. Thereafter, the percentage rates would not change, but would be applied against the average price per gallon of the fuel, less federal and state taxes, as determined by the Commissioner of the Department of Motor Vehicles over rolling six-month periods, to determine the cents to be charged.

HB 1167 High Performance Buildings Act; created.

Chief patron: Jones

Summary as introduced: Department of General Services; High Performance Buildings Act. Provides that any executive branch agency or institution entering the design phase for the construction of a new building greater than 5,000 gross square feet in size or the renovation of a building where the cost of the renovation exceeds 50 percent of the value of the building, shall conform to Virginia Energy Conservation and Environmental Standards (VEES) and the building shall be designed, constructed, verified, and operated to comply with the high performance building certification program. The bill defines "VEES" and "high performance building certification program." The bill allows the Director of the Department of General Services to grant

an exemption from this requirement due to impracticability.

HB 1195 Vehicle weight limits; increases tandem axle weight limit.

Chief patron: Lewis

Summary as introduced: Tandem axle weight limit. Increases the maximum tandem axle weight limit from 34,000 pounds to 40,000 pounds.

HB 1241 Motor fuels tax; required to be indexed starting on January 1, 2014.

Chief patron: Purkey

Summary as introduced: Motor fuels tax; indexed. Requires that the motor fuels tax rate be indexed on January 1, 2014, and each year thereafter, to the average percentage change in the U.S. Department of Transportation's Transportation Services Index for the three years ending October 31 of the year immediately preceding the affected year.

HB 1239 Retail Sales and Use Tax; increased from four percent to five percent, and distribution of revenues.

Chief patron: Putney

Summary as introduced: Retail sales and use tax increase. Increases the state retail sales and use tax from four percent to five percent beginning January 1, 2013, subject to a statewide referendum on the same. The increase in the state retail sales and use tax would result in a combined state and local retail sales and use tax of six percent. One-half of the revenues generated would be deposited into a new special fund, the Supplemental Highway Construction and Maintenance Fund, and one-half of the revenues generated would be used in accordance with the general appropriation act for the provision of mental health services, public K through 12 education, and public higher education.

Of the sales and use tax revenues deposited into the Supplemental Highway Construction and Maintenance Fund,

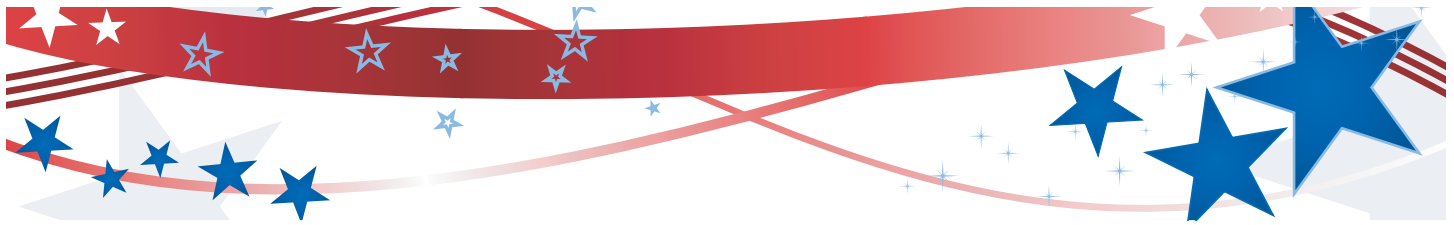
\$200 million each fiscal year would be used for the construction of secondary system roads. The remaining sales and use tax revenues deposited into the Fund would be distributed to the Highway Maintenance and Operating Fund to be used (i) to repair bridges that are structurally deficient or functionally obsolete and (ii) for maintenance of the Commonwealth's highways.

HB 1248 Transportation; provides for construction, operation, maintenance, and funding, report.

Chief patron: Lingamfelter

Summary as introduced: Transportation construction, operation and maintenance, and funding. Provides for the construction, maintenance, and funding of transportation by (i) creating transportation construction districts and the Transportation Improvement District Fund to identify, construct, and fund certain transportation projects, including the authority to issue revenue bonds; (ii) creating the Virginia Toll Road Authority to fund transportation projects through tolls and other charges, (iii) increasing the dedicated transportation allocation of the sales and use tax from 0.5 percent to 0.75 percent, phased in over eight years, with the additional revenue dedicated for highway maintenance and operation, (iv) increasing transportation's share of year-end surpluses to 75 percent, (v) dedicating a portion of revenue growth each year to transportation, and (vi) requiring localities to create transportation plans as part of comprehensive planning.

The bill also authorizes the Commonwealth Transportation Board (CTB) to name highways, bridges, interchanges, and other transportation facilities for private entities if an annual naming rights fee is paid, with the revenue dedicated to highway maintenance and operation. The bill also charges the CTB with greater responsibilities involving integration of land use and transportation planning and authorizes the CTB to withhold



federal and state funds for certain local or regional capital improvement projects if those projects are inconsistent with the Statewide Transportation Plan or the Six-Year Improvement Program. Provision is made for use of “revenue-sharing” funds for secondary highway system maintenance projects carried out by local governments. The bill also provides for special allocations by the CTB for bridge reconstruction, high priority highway projects, and reconstruction of highways with particularly deteriorated pavements. It also provides for the performance of maintenance projects directly by VDOT when it can be demonstrated to the Commissioner or the CTB that VDOT can do it at lesser cost than an outside contractor.

SB 70 Retail Sales and Use Tax; two-year sales tax moratorium for construction materials & supplies.

Chief patron: Stanley

Summary as introduced: Sales tax exemption; construction materials. Establishes a two-year sales tax moratorium for construction materials and supplies purchased by licensed contractors.

SB 177 Performance guarantees; localities to retain until streets in new development are accepted by State.

Chief patron: Stuart

Summary as introduced: Performance guarantees; street construction. Allows localities to retain full performance guarantees until streets in a new development are accepted by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility. The bill also provides that if a developer is in default with regard to street completions in another development within a locality, the locality may withhold acceptance of securities or plat approvals. Furthermore, a locality may withhold building permits or occupancy permits within a development until streets in a new development

are accepted by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility.

SB 335 Weight limits; haulers of sand, gravel, and crushed stone.

Chief patron: Carrico

Summary as introduced: Weight limits; haulers of sand, gravel, and crushed stone. Extends the temporary increased weight limit for trucks hauling sand, gravel, or crushed stone in coal counties to July 1, 2013.

SB 509 State Water Control Board; powers and duties.

Chief patron: Wagner

Summary as introduced: State Water Control Board regulations. Requires that state water quality laws be no more restrictive than federal requirements. Currently, Virginia law allows more stringent regulations than those adopted by the federal government, so long as the reasons for the more restrictive provisions are disclosed to the committees having oversight responsibilities.

SB 631 Motor fuels tax; required to be indexed starting on January 1, 2014.

Chief patron: Watkins


Summary as introduced: Motor fuels tax; indexed. Requires that the motor fuels tax rate be indexed each year to the percentage change in the U.S. Department of Labor’s Producer Price Index for Other Nonresidential Construction from January 1 through December 31 of the year immediately preceding the affected year.

SB 639 Transportation; provides for construction, operation, maintenance, and funding, report.

Chief patron: Wagner

Summary as introduced: Transportation construction, operation and maintenance, and funding. Provides for the construction, maintenance, and

funding of transportation by (i) creating transportation construction districts and the Transportation Improvement District Fund to identify, construct, and fund certain transportation projects, including the authority to issue revenue bonds; (ii) creating the Virginia Toll Road Authority to fund transportation projects through tolls and other charges, (iii) increasing the dedicated transportation allocation of the sales and use tax from 0.5 percent to 0.75 percent, phased in over eight years, with the additional revenue dedicated for highway maintenance and operation, (iv) increasing transportation’s share of year-end surpluses to 75 percent, (v) dedicating a portion of revenue growth each year to transportation, and (vi) requiring localities to create transportation plans as part of comprehensive planning.

The bill also authorizes the Commonwealth Transportation Board (CTB) to name highways, bridges, interchanges, and other transportation facilities for private entities if an annual naming rights fee is paid, with the revenue dedicated to highway maintenance and operation. The bill also charges the CTB with greater responsibilities involving integration of land use and transportation planning and authorizes the CTB to withhold federal and state funds for certain local or regional capital improvement projects if those projects are inconsistent with the Statewide Transportation Plan or the Six-Year Improvement Program. Provision is made for use of “revenue-sharing” funds for secondary highway system maintenance projects carried out by local governments. The bill also provides for special allocations by the CTB for bridge reconstruction, high priority highway projects, and reconstruction of highways with particularly deteriorated pavements. It also provides for the performance of maintenance projects directly by VDOT when it can be demonstrated to the Commissioner or the CTB that VDOT can do it at lesser cost than an outside contractor. 

Four New Year's Resolutions to Help Put Your "Labor and Employment" House in Order

By John G. Kruchko and Kevin B. McCoy

By a show of hands, how many of you resolved to change, add, subtract or modify some aspect of your life in 2012 (*I'm raising my hand*)? Also by a show of hands, how many of you have resolutions that are "holdovers" from previous New Year's resolutions that went unfulfilled (*...raising my hand here, too*)? How many of you have



actually resolved to be more diligent about your New Year's resolutions (*...no comment*)?

The trouble with resolutions is that in our personal lives we tend to think of them as aspirations, or a "wish list," and not as actual goals that are worth giving up some of our evenings or Sunday afternoons to accomplish. By contrast, resolutions made by companies tend to be more pragmatic and goal oriented – seen more as an additional opportunity to identify further metrics of success and to set out a "plan of attack" for accomplishing them. While I have no doubt your business has already set some New Year's resolutions for itself, your organization should seriously consider adding a few Labor and Employment oriented resolutions to its cache. I could give you a dozen resolutions, but let us start with just four; the four Labor and Employment resolutions from which your business could derive the most benefit.

Conduct a Wage and Hour Audit

Do you know whether your employees are properly classified as employees or independent contractors? Do you know whether your employees are appropriately categorized under the Fair Labor Standards Act as either "exempt" or "non-exempt"? Are you paying your employees correctly for overtime hours they work in a given week? Are you withholding the appropriate amount of taxes from your employees' paychecks?

If your answer to any of these questions is either "no," or "I don't know," then your company needs to perform a wage and hour audit. A wage and hour audit should be performed at least once every few years, and it is absolutely critical to determining whether your organization is in continued compliance with federal and state laws governing employment classifications, wages and taxes.

Violating the law in this area is not only easy to do, but it is not dependent on your intent. The U.S. Department of Labor, the Internal Revenue Service, and a host of corollary state agencies will not be sympathetic to the "I'm sorry; I didn't know" argument. From their perspective, you are either in compliance or you are not. The penalties for non-compliance can be steep – ranging from fines and penalties, to back taxes, and even unpaid wages (with interest) to those employees you may have improperly paid. This is simply not a risk worth running...especially since it can all be avoided with a wage and hour audit that you (or your employment counsel) can complete in relatively short order.

Review Your Non-Competition and Non-Solicitation Agreements

In most states, the laws governing the enforceability of restrictive covenants (i.e., covenants not to compete and covenants not to solicit clients) are not contained in statutes. Instead, they are governed by each and every court deci-

sion in which one of these agreements is at issue. So literally, the law in this area can change (usually in small ways) several times a year.

If your business is like most, you have employees who signed a restrictive covenant when they began their employment. The only problem is that many of those employees began employment three, five or even ten years ago. In that period of time, the laws surrounding the enforceability of these agreements may have changed so dramatically that it is entirely possible the restrictive covenant is no longer enforceable. Such agreements need to be reviewed every two years to make sure there has been no intervening change in the law that might negatively affect their enforceability.

Speaking of changes in the law, of special interest for Virginia employers is the fact that the Virginia Supreme Court recently issued a decision that essentially overturned that Court's long-held standard governing the enforceability of restrictive covenants. So if your Virginia organization utilizes either covenants not to compete or non-solicitation covenants, there is a good chance the language in those covenants is no longer enforceable and needs to be revised.

Create a Comprehensive Social Media Policy

I know there are many people who are still getting accustomed to using e-mail and the internet. However, the reality today is that a broad swath of the workforce is actively engaged in using one or more online social media sites, such as Facebook; LinkedIn; Flickr; MySpace, etc. Up until recently, the biggest concern for employers was the fact that such employees' use of these sites might interfere with the amount of time spent doing their job. While that remains a legitimate point to address, there are much bigger concerns.

For example, online bullying of co-workers or subordinates can lead directly to discrimination or harassment complaints. It does not matter that the offending behavior (i.e., an online Facebook post) occurred at 11 p.m. at night, long after the offices were closed. In addition, employees can knowingly (and sometimes inadvertently) disclose confidential company information or trade secrets. Even worse, a well-intentioned employee boasting about the prowess of his or her company's business might unknowingly subject the company to an FTC violation (for publicly traded companies), if the employee fails to disclose his or her role and relationship with your company.

However, creating a social media policy is not as simple as it might seem. The National Labor Relations Board ("NLRB") has issued a series of decisions (affecting both union and non-union employers) addressing how restrictive employers can and cannot be in limiting their employees' use of social media. Moreover, on January 24, 2012, the NLRB's Office of General Counsel issued a report to its senior regional staff outlining many common social media provisions that it now considers to be violations of the National Labor Relations Act. Even if your company is non-unionized, it is still unlawful to interfere with your employees' ability to confer with each other about the terms and conditions of their employment. For these reasons, it is best to utilize the skills of your Labor and Employment counsel so you don't end up creating a policy that does your organization more harm than good.

Make Sure Your Supervisors Undergo Harassment and Retaliation Training


Every organization (no matter the size) should put their supervisors and managers through harassment and

retaliation training at least once every two years. There are two really good reasons why.

First, harassment and retaliation claims are two of the fastest growing types of employment litigation. Retaliation litigation, in particular, has jumped exponentially in the past several years. It is therefore imperative that your management understands what constitutes retaliation so that they know how to avoid it.

Second, in order to mount a successful defense to harassment or retaliation claims, employers must be able to demonstrate that they have adequately trained their managers on recognizing and avoiding such violations --- and that such training was done recently. If the managers in your organization last underwent training three or more years ago, it is imperative that they renew that training this year. Otherwise, your managers' previous training (although educationally worthwhile) will be of virtually no legal benefit when it comes to defending the company's alleged misconduct.

So, Be It Resolved ...

Keeping your organization healthy with respect to Labor and Employment issues is a little like keeping your body healthy. The old adage that an "ounce of prevention is worth a pound of cure" is particularly applicable with respect to this area of the law. Doing one (or even, all) of the above resolutions will cost the company exponentially less time and money than defending even a single lawsuit. So in 2012, resolve to be proactive instead of reactive, and make sure your organization's Labor and Employment efforts are "up to snuff" before the government or a disgruntled employee knocks on your office door. 

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John G. Kruchko is a Partner with the Management Labor & Employment Law Firm of Kruchko & Fries in McLean, Virginia; Kevin B. McCoy is also a Partner with the Firm. For more information, please contact Mr. Kruchko or Mr. McCoy at (703) 734-0554 or JKruchko@KruchkoandFries.com, or KMcCoy@KruchkoandFries.com. This article is published for general information purposes, and does not constitute legal advice.

On the Horizon Calendar of Upcoming Events

FEBRUARY 2, 2012

SWCAC

Streets and Local Roads Meeting

12:00 NOON - 1:30 PM

Roanoke, VA

FEBRUARY 7-9, 2012

ACI Concrete Field Testing Seminar and Examination*

Chandler Concrete

614 Norfolk Avenue SW

Roanoke, VA

*PRE-REGISTRATION REQUIRED

FEBRUARY 8, 2012

BRCAC Business Meeting

12 NOON - 1:30 PM

Rowe's Family Restaurant

Staunton, VA

FEBRUARY 9, 2012

NVCAC Business Meeting

7:30 AM - 10:00 AM

Manassas, VA

FEBRUARY 14-16, 2012

ACI Concrete Field Testing Seminar and Examination*

Crowne Plaza Hampton Marina

700 Settlers Landing Road

Hampton, VA

*PRE-REGISTRATION REQUIRED

FEBRUARY 15, 2012

SWCAC Business Meeting

8:00 AM - 9:30 AM

Roanoker Restaurant

Roanoke, VA

FEBRUARY 16, 2012

NVCAC VDOT Meeting

9:00 AM - 10:00 AM

NOVA VDOT Headquarters

4975 Alliance Drive

Fairfax, VA

Please visit the online calendar for an up-to-date list of events.

www.VRMCA.com/calendar



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