

POSITION STATEMENT FORM

(We intend to use what is submitted in this form to draft an item for consideration to present to the Legislative Committee; however, submissions will be edited, and additional background or other relevant information will be included in any item to be considered by the Legislative Committee)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

Preserve Tidal Wetlands Protection

PROPOSAL:

Oppose legislation that weakens the existing tidal wetlands law, regulation, and guidelines. In particular, oppose existing tidal wetlands bulkheads from being exempted from the law.

SOURCE:

Environmental Quality Advisory Committee

BACKGROUND:

The General Assembly updated tidal wetlands law in 2020. Subsequently, the Virginia Marine Resources Commission updated Tidal wetlands guidelines. The Fairfax Board of Supervisors asked the Fairfax County Wetlands Board to work with the Fairfax County Attorney to develop and issues additional guidelines for Fairfax County tidal wetlands permitting. The County Guidelines were public noticed, commented on, and published in 2023.

Concerns have been raised that the tidal wetlands law and the County Wetlands Board will required owners of existing bulkheads to remove their bulkheads and install living shorelines. This concern was addressed in the 2023 Guidelines as follows:

With respect to well-maintained existing bulkheads, the FCWB will typically interpret its role in issuing tidal wetlands permits as following:

- Tidal Wetlands Permits are not required for maintenance of existing bulkheads if the proposed maintenance does not disturb tidal wetlands permanently or during construction.

The Commonwealth has decided that there is a need to better preserve and protect tidal wetlands. For those in Fairfax County with tidal wetlands on their property wishing to continue using existing structural controls to protect against erosion, it is important to maintain those structures in a manner that does not disturb tidal wetlands. If erosion control structures are not maintained, it is possible that tidal wetlands may develop landward of the structure. If this occurs, it is likely that a permit to repair the structure will be needed and possible that a living shoreline or elements of a living shoreline may become suitable. There is no grandfathering provision in the law for failed bulkheads.

Contrary to concerns raised, existing bulkheads that are kept in good working order are not subject to removal under the existing law. However, changes to the law could allow tidal wetlands that have developed landward of failed bulkheads to be lost.

STAFF RECOMMENDATION:

(Do not fill out-- This will be indicated by the Legislative Director and County Executive)

POSITION STATEMENT INFORMATION SHEET

(Supplemental background information to be used by staff)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

Preserve Tidal Wetlands Protection

ADDITIONAL BACKGROUND INFORMATION:

See Fairfax Applicant Guide For Tidal Wetlands Alteration/Stabilization

<https://www.fairfaxcounty.gov/plan2build/sites/plan2build/files/assets/documents/pdf/wetlands-board/applicant%20guide.pdf>

POSSIBLE SUPPORT OR OPPOSITION BY ORGANIZATIONS:

Opposition: South County Federation

Support: Fairfax County Wetlands Board Members

STAFF CONTACT PERSON(S):

(Provide name and phone number of County staff person(s) best able to provide any additional research or necessary information)



July 10, 2023

Dear members of the Environmental Quality Advisory Council:

The Friends of Little Hunting Creek ask that you support the state and county wetlands laws in their current form, and oppose any proposals for changes in the law that would weaken state wetlands protections.

To preserve and protect its wetlands, Virginia gives preference to living shoreline approaches to stabilizing shorelines, over hardening and armoring approaches. Living shoreline approaches may include placement of rock away from the shoreline, grading a steep bank, and planting vegetation to hold soil, slow down and absorb upland runoff, and absorb the force of waves against the shore. Scientific, peer-reviewed literature demonstrates the value of living shorelines in providing wildlife habitat, protecting water quality, and preventing erosion.

By contrast, traditional shoreline armoring—such as bulkheads and rip-rap—severs the connection between shoreline and shore, alters and destroys habitats (especially shallow water habitat) that provide essential nursery and spawning areas for fish, and nesting and foraging habitat for birds and other wildlife. Hardened shorelines also increase erosive forces on adjacent properties.

A property owner's request to install shoreline stabilization is evaluated by the county wetlands board, which grants a permit when "the anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment," as required by law. The appropriate approach depends on the the slope of the land, proximity of structures to the shore, fetch, and other factors that vary from one property to the next. A [decision support tool](#) created by Virginia Institute of Marine Sciences (VIMS) provides practical guidance about what sort of shoreline stabilization is appropriate for various situations.

Since 2020, changes in state law require the use of living shorelines to stabilize a shoreline where suitable according to the best available science. VIMS provides technical support and is the source of the best available science. In addition, the law now requires that sea level rise be taken into account when installing shoreline stabilization structures.

Even though the law gives preference to living shorelines, a property owner may make the case for a different form of shoreline stabilization. In high energy environments, especially near houses or other manmade structures, hardened shorelines may be the only effective way to protect life and property.

It has been argued that old projects should be grandfathered in, so that (for example) a homeowner who built a bulkhead in the past has the right to rebuild it, without meeting current engineering standards. This is inadvisable and we oppose it. On Little Hunting Creek, for example, some bulkheads were built without benefit of a permit. Some improperly constructed bulkheads jut into the creek, beyond mean high tide, and are likely to have a short lifespan due to infiltration of water behind them. Other bulkheads were built for aesthetic reasons, not because they were needed to stabilize a shoreline. Unpermitted, improperly designed, or unnecessary shoreline structures should not be grandfathered in. Structures that provide insufficient protection against future sea level rise should not be rebuilt as is.

Any new or replacement shoreline stabilization project requires engineering consultation and permitting expense. Engineering to install new stabilization or reinforce an existing one must recognize current conditions, meet current standards, and anticipate sea level rise.

Please do not support proposals that weaken wetlands protections by grandfathering in bulkheads built in years past to now insufficient standards. Weakening wetlands protections will reduce resilience in Fairfax County and in all tidewater localities throughout Virginia. None of us are grandfathered in from the effects of sea level rise, and the recent changes in the law support resilience and adaptive response to climate change.

Thank you.

A handwritten signature in black ink that reads "Elizabeth A. Martin". The signature is written in a cursive, flowing style.

Elizabeth Martin

President, Friends of Little Hunting Creek

MEMO

TO: Fairfax County Environmental Advisory Council

FROM: Glenda Booth, President, Friends of Dyke Marsh; former member and chair, Fairfax County Wetlands Board

SUBJ: State legislation addressing living shorelines law

DATE: July 7, 2023

Request

I urge you to oppose proposals to weaken Virginia's current living shorelines law, regulations and guidelines.

Rationale

The General Assembly passed and two governors (Bob McDonnell, Republican, 2011; Ralph Northam, 2020) signed the two bills that created the current living shorelines law. The legislature's intent in passing these bills is to improve water quality, enhance shoreline resiliency in light of rising sea levels and increased flooding, stem erosion and fulfill the state's legal commitments to "no net loss" of wetlands.

In terms of climate resiliency, nature-based approaches are better able to respond to intense storms, for example, than "hard" shoreline approaches, according to scientists.

Under the current law, regulation and guidance, property owners can repair existing structures as long as the repairs do not expand adverse wetland impacts. VMRC has published guidance that clarifies that the living shoreline requirements apply only to **new** impacts to state aquatic resources.

No permit is required for routine maintenance of a structure, like a bulkhead, **on the same footprint** as the current structure. Virginia's Attorney General has affirmed this right to repair.

In 2021, Delegate Paul Krizek introduced a bill weakening current law. It was defeated by a House of Delegates subcommittee and so no further consideration in the state legislature.

In addressing violations, the Fairfax County Wetlands Board has acted appropriately and within the law, consistent with the County Attorney's advice. People who violate the law, who ignore permitting requirements, should face the consequences.

The Fairfax County Wetlands Board was the first in the state to adopt a living shorelines policy, at least 15 years ago.



July 10, 2023

Fairfax County Environmental Quality Advisory Council
Via email to Neely Law, Neely.Law@fairfaxcounty.gov

Re: State legislation addressing living shorelines law

On behalf of the more than 5,000 members of Audubon Society of Northern Virginia (ASNV), I urge you to oppose proposals to weaken Virginia's current living shorelines law, regulations and guidelines.

North America has lost 30 percent of its bird population since 1970.¹ To push back against that loss, our members support policies and practices that preserve habitats for birds and other wildlife. Habitat protection is more important than ever as climate change is having increasingly adverse effect on our environment, particularly tidal shorelines. Living shorelines are a nature-based approach to stabilizing shorelines that preserves rather than destroys wildlife habitat, specifically wetlands. Changing state law to reduce wetland protections would be an unfortunate step backward that would adversely affect birds and other wildlife.

We commend the Fairfax County Board of Supervisors for approving landmark climate and resiliency plans, the latter of which recently won an award. The Fairfax County Wetlands Board was the first in Virginia to adopt a living shorelines policy, at least 15 years ago, and has administered it fairly and even-handedly, with scientific guidance from the Virginia Institute of Marine Science. Weakening the state's living shorelines laws would be contrary to those policies. In light of rising temperatures and the increasing severity and frequency of intense weather events, Fairfax County now more than ever needs to resist calls to backslide on these critical provisions of law. It must oppose rather than support legislation inconsistent with the its award-winning plans and policies.

Current law does not unnecessarily burden property owners. They can repair existing structures as long as the repairs do not expand adverse wetland impacts. Guidance from the Virginia Marine Resources Commission specifies that the living shoreline requirements apply only to new impacts to state aquatic resources. No permit is required for routine maintenance of structures such as bulkheads, when that action is within the same footprint as the current structure.

We believe it is important to note that the current living shorelines law was enacted with support of state legislators and governors of both the Republican and Democratic parties. The General Assembly supported the living shorelines approach as the preferred approach because tidal shorelines are dynamic environments, and nature-based approaches are more resilient than "hard"

¹ Elizabeth Pennisi, "Three billion North American birds have vanished since 1970, surveys show," Sept. 19, 2019, at <https://www.science.org/content/article/three-billion-north-american-birds-have-vanished-1970-surveys-show>.

We engage all Northern Virginia communities in enjoying, conserving, and restoring nature for the benefit of birds, other wildlife, and people.

Audubon Society of Northern Virginia

structures in responding to severe weather events and rising sea levels. In addition, in the interstate Chesapeake Bay agreement, the state committed to “no net loss” of wetlands. The current tidal wetlands law can help the state meet those commitments. A House of Delegates subcommittee killed a bill to weaken existing law in the 2021 General Assembly. A similar bill is likely to meet the same fate.

We urge you to oppose resolutions or other measures to weaken Virginia’s current living shorelines law and urge the Board of Supervisors to take similar action.

If you have questions, please contact me at advocacy@audubonva.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Blackburn", with a stylized flourish at the end.

Tom Blackburn, Advocacy Chair

We engage all Northern Virginia communities in enjoying, conserving, and restoring nature for the benefit of birds, other wildlife, and people.

POSITION STATEMENT FORM

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GENERAL SUBJECT AREA -- TITLE OF PROPOSAL: Require commercial and multifamily residential housing developers to install EV chargers or EV chargers ready electrical capabilities, or allow local jurisdictions to make such requirements.

PROPOSAL: *(Provide brief description of legislative or funding position)*

(Sample legislative position) Support legislation to either require statewide or allow local jurisdictions to require EV chargers or EV charger-ready parking spaces in commercial and multi-family housing. One of the impediments to installing EV charging stations is inadequate wiring to support EV charging station needs. Given that we would expect most if not all cars in twenty years to require electricity, requiring new construction to at least provide the infrastructure to install EV chargers and provide significant cost and disruption in the future.

SOURCE: EQAC, July, 2023 *(Provide the name of the agency, board, or commission generating the proposal and the date of the proposal)*

BACKGROUND:

*(Briefly summarize why the position(s) is/are necessary to the County; list any pros/cons, note any previous Board of Supervisors action or previous General Assembly study or action on this issue; note any other helpful information. Given efforts to reduce Greenhouse Gases (GHG), more vehicles will be EVs in the future and their owners will seek convenient ways to charge these vehicles, such as at home or work/shopping. An impediment to installing charging stations, even when a tenant with assigned parking is willing to pay for the installation of an EV charger, is inadequate wiring to support the demand for EV charging stations. **This section should provide a synthesis of the proposal and should be no more than one paragraph, two if necessary; the Board wants concise information in the Legislative Program. Please use "Additional Background Information" on the next page to more fully explain the proposal. If you are submitting more than one proposed position, please include background information for each position.**)*

STAFF RECOMMENDATION:

(Do not fill out-- This will be indicated by the Legislative Director and County Executive)

POSITION STATEMENT INFORMATION SHEET

(Supplemental background information to be used by staff)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL: Require commercial and multifamily residential housing developers to install EV chargers or EV chargers ready electrical capabilities, or allow local jurisdictions to make such requirements.

ADDITIONAL BACKGROUND INFORMATION:

(Additional information may be necessary to fully develop the idea. Please assume that government relations staff may need additional technical information to fully explain the proposal and the necessity for the proposal.)

Motor vehicle emissions constitute almost half of the county's GHG emissions and shifting to EVs are a key action that is outlined in the CECAP to reduce GHGs. Residents of multifamily buildings are sometimes not allowed to install charging stations for their vehicle at their parking space because the building electrical system has not been built to accommodate the power that would be required to support multiple EV charging stations. Moreover, some condominium associations also hold concerns for installing EV charging stations on concrete floors that were not designed to be drilled into to support structures like a charging station.

POSSIBLE SUPPORT OR OPPOSITION BY ORGANIZATIONS:

(List any organizations or groups, if any, which might be in favor of or against the proposed position)

This position would likely be supported by environmental groups, residents of multifamily buildings and those who rent, lease or purchase commercial buildings, especially in the future. It is more efficient, less costly and less disruptive to incorporate the ability to provide the electricity needed to support EVs and EV charging stations during construction than taking these actions after construction.

Opposition from builders is likely because providing the electrical capacity to support EV charging for essentially all parking spots would be more costly. Moreover, there could be some cost to provide floors (or other surfaces) that would be designed to accommodate a charging station.

STAFF CONTACT PERSON(S):

(Provide name and phone number of County staff person(s) best able to provide any additional research or necessary information)

LEGISLATIVE INITIATIVE

LEGISLATIVE INITIATIVE INFORMATION SHEET

(Supplemental background information to be used by staff)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL: To mandate revision of the Uniform Statewide Building Code (USBC) to adopt the most current International Construction Code building energy efficiency standards, or to permit local jurisdictions to set more stringent standards than the USBC for new construction and major renovation of commercial and multi-unit residential buildings, and to require energy intensity benchmarking of commercial and multi-unit residential buildings..

PROPOSED NEW OR REVISED STATUTORY LANGUAGE:

2022 SESSION

SENATE BILL NO. 452

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend the Code of Virginia by adding in Article 5 of Chapter 9 of Title 15.2 sections numbered [15.2-987](#) through [15.2-990](#), relating to powers of local governments; additional powers; energy efficiency of buildings.

Patrons-- Boysko; Delegates: Plum and Shin

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 5 of Chapter 9 of Title 15.2 sections numbered [15.2-987](#) through [15.2-990](#) as follows:

§ [15.2-987](#). *Energy efficiency standards; more stringent energy efficiency requirements.*

A. *The Board of Housing and Community Development (the Board) shall consider and adopt optional building energy efficiency standards designed to increase energy conservation beyond the generally applicable standards in the Uniform Statewide Building Code (USBC) (§ [36-97](#) et seq.). The optional energy conservation standards shall be designed to reduce energy use in buildings by approximately 15 percent compared to projected energy use under the current International Code Council's International Energy Conservation Code (IECC) or successor standards.*

B. *The Board shall adopt and publish the optional building energy efficiency standards by July 1, 2023, and shall update such standards within 12 months from each newly published version of the IECC. The standards shall be published as appendices to the USBC.*

C. *Any locality may adopt and enforce the optional building energy efficiency standards within its jurisdiction after giving written notice to the Board and the public.*

D. *The Board shall maintain and publish a list of local jurisdictions adopting such standards.*

§ 15.2-988. *Building energy efficiency; point of sale disclosure.*

A. *As used in this section:*

"Building" means any residential or non-residential covered building.

"Energy" means (i) electricity, natural gas, or water sold by a utility to an account of a covered building; (ii) energy that is generated, from renewable or other sources, on the premises of a covered building from a facility not owned by a utility and that is used to provide heating, cooling, lighting, or water heating, or for powering or fueling other end uses captured by the Energy Star Portfolio Manager; or (iii) any other sources of energy that a locality may designate.

"Energy audit" means an assessment of available information regarding energy use of a building that is representative of such energy use for a given period of time, with procedures and criteria created by a locality by ordinance.

"Energy Star Portfolio Manager" means the tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the energy performance of covered buildings.

"Energy use intensity information" means information and data pertaining to the consumption of energy in a building

B. Any locality may by ordinance require any building owner or operator to disclose energy use intensity information for the building to a prospective buyer, lessee, or lender at the time of sale and prior to its completion.

C. Such ordinance shall create guidelines for the criteria, collection, and disclosure of such information, such as requiring the use of Energy Star Portfolio Manager. Such ordinance shall also specify procedures for an energy audit.

D. Such ordinance may require an energy audit, to be disclosed to the prospective buyer, lessee, or lender, prior to completion of the sale should there be less than 12 months of existing energy use information available or upon request by the prospective buyer, lessee, or lender.

§ 15.2-989. *Energy benchmarking.*

A. *As used in this section:*

"Account holder" means a utility's customer with a utility account that receives utility service at a covered building.

"Aggregated data" means the combined measured energy usage data for multiple utility accounts of customers receiving service in a covered building across a given period.

"Benchmarking" or "energy benchmarking" means obtaining information on the energy usage of a covered building for a specific period to enable the energy usage to be tracked or compared against the energy usage of other buildings.

"Covered building" means any building, including public, private, and multi-family buildings, with one or more utility accounts and a gross floor area of not less than 50,000 square feet.

"Department" means the Department of Energy.

"Energy" means (i) electricity, natural gas, or water sold by a utility to an account of a covered building; (ii) energy that is generated, from renewable or other sources, on the premises of a covered building from a facility not owned by a utility and

that is used to provide heating, cooling, lighting, or water heating, or for powering or fueling other end uses captured by the Energy Star Portfolio Manager; or (iii) any other sources of energy that a locality may designate.

"Energy scorecard program" means a program developed by a locality using Energy Star Portfolio Manager that tracks performance of buildings based on information disclosed by owners.

"Energy Star Portfolio Manager" means the tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the energy performance of covered buildings.

"Owner" means the person owning a covered building as reflected in the land records of the circuit court clerk where the covered building is located or such person's designee.

"Utility" means a person that sells electricity, natural gas, or water services consumed in a covered building.

"Utility account" means an agreement between a utility and its customer under which the utility provides energy to a specified location.

B. Any locality may by ordinance require energy benchmarking under which a utility shall collect and provide aggregated data for a covered building to the owner.

C. Any locality may by ordinance require a utility to maintain aggregated data for all buildings with at least one active utility account for at least the most recent 12 months.

D. Any locality may by ordinance develop and implement energy scorecard programs for covered buildings and require owners to disclose information to Energy Star Portfolio Manager subject to guidelines established in the program in such ordinance.

§ 15.2-990. Building energy use intensity; reporting, reduction, requirements, and incentives.

A. Any locality may by ordinance create incentives for an owner, operator, or an agent of one of them, of buildings of specified parameters to report the energy use intensity (EUI) or reduce EUI amounts by specific parameters. Such ordinance shall identify the size, use, and type of building that makes an owner, operator, or agent eligible for such incentives. Such ordinance shall also identify the specific percentage of EUI reduction that makes an owner, operator, or agent eligible for such incentives.

B. Any locality may by ordinance establish EUI requirements for specific buildings based on type, size, and use, as identified in such ordinance.

C. Such an ordinance may also allow the locality to develop incentive programs focused on increasing building efficiency, including local changes to zoning and permitting, local tax adjustment, and programs for green banks and commercial property-assessed clean energy (C-PACE).

2021 SPECIAL SESSION I

CHAPTER 425

An Act to direct the Board of Housing and Community Development to consider adopting amendments to the Uniform Statewide Building Code relating to energy efficiency and conservation upon each publication of a new version of the International Code Council's International Energy Conservation Code.

[H 2227]

Approved March 30, 2021

Be it enacted by the General Assembly of Virginia:

1. § 1. *That upon each publication by the International Code Council of a new version of the International Energy Conservation Code (IECC), the Board of Housing and Community Development (the Board) shall consider adopting amendments to the Uniform Statewide Building Code (Building Code) to address changes in the IECC relating to energy efficiency and conservation. In doing so, the Board shall consider adopting Building Code standards that are at least as stringent as those contained in the new version of the IECC. For the purposes of this act, a standard shall be deemed to be as stringent as one contained in the IECC if such standard would perform the same function as that contained in the IECC without using more energy than would be used under the IECC standard. In conducting its review, the Board shall assess the public health, safety, and welfare benefits of adopting standards that are at least as stringent as those contained in the IECC, including potential energy savings and air quality benefits over time compared to the cost of initial construction.*

ADDITIONAL BACKGROUND INFORMATION:

The Virginia Uniform Statewide Building Code, (VA Code section 36-97 et seq.) does not sufficiently emphasize energy conservation and efficiency in new construction. Buildings in the US are estimated to produce 40% of US carbon dioxide emissions and are responsible for 41% of energy consumption. Reducing these numbers will make it easier to achieve VA Clean Economy Act goals, as well as local goals such as Fairfax County's Climate-wide Energy and Climate Action Plan (CECAP). This proposed legislation would require that the Department of Housing and Community Development (DHCD) to adopt the most current International Construction Codes for building energy efficiency, such as those of the International Green Construction Code (IgCC). The International Green Construction Code is a collaborative effort of several professional organizations, including the American Institute of Architects (AIA); the American Society of Heating, Air Conditioning Engineers (ASHRAE), the International Code Council (ICC), the Illuminating Engineering Society (IES); and the US Green Building Council (USGBC).

Building energy codes set minimum efficiency requirements for new and renovated buildings. By establishing baseline requirements during building construction, buildings use less energy, are more comfortable, and cost less to operate. It is also easier to increase the efficiency of a building during its construction than to try and do so after the fact.

Benchmarking building energy use intensity.

Benchmarking is the practice of collecting building energy use data, tracking energy use over time, and using this data to compare a building's energy use to that of a similar structure. When combined with transparency laws requiring this information to be shared with prospective buyers, benchmarking becomes a valuable resource to spur owners to make their buildings more efficient and help purchasers and renters make smart, energy-efficient decisions about where to live and what properties to buy.

These proposals have been included in Fairfax county's 2022 and 2023 legislative

agenda called for either statewide adherence to the most current building energy efficiency codes or to permit local jurisdictions to require more stringent codes within their jurisdiction. The legislative agenda asked for authority to require energy utilization.

- *“The state should provide localities with increased flexibility to explore initiatives that promote clean air, energy efficiency, conservation, new investment in green construction, tree preservation, reduced waste, recycling management, and other critical measures that could spur the development of innovative approaches that address the impact of global climate change on health and the environment and increase sustainability throughout the Commonwealth.*
- *The state should adopt the International Green Construction Code (IgCC) and adopt the International Energy Conservation Code (IECC) and energy provisions of the International Residential Code (IRC) without weakening amendments.*
- *Modernize state building codes by adopting the IgCC and the full provisions of the IECC and provide localities more flexibility to increase energy efficiency and improve resilience to climate change impacts by adopting stronger local standards and implementing energy efficiency and utilization disclosure/benchmarking.”*

Examples of the benefits from energy efficiency standards as stringent as the IECC include:

Energy and Cost savings: Greater efficiency saves residents (whether owners or tenants) energy and money by reducing monthly energy bills for the lives of affected properties and by avoiding much more costly retrofits. Occupants of commercial buildings also benefit from savings attributable to IECC compliance. As repeatedly shown in independent analyses, the energy cost savings, over time, from IECC compliance exceed the incremental construction costs. The savings occur every year even considering the incremental impacts from construction costs. The cost savings will be potentially greater over the next decade as a result of incentives provided by laws such as the Inflation Reduction Act.

Lower utility rates for all Virginians: Reducing demand in peak and off-peak periods reduces utilities’ costs for new generation and for purchasing fuel and power in high-cost peak periods. Lower demand reduces upward pressures on rates for electricity and natural gas. That benefits all customers and Virginia’s economy. In addition, constructing more efficient buildings would, over time, reduce or eliminate the need for utilities to fund energy efficiency improvements for customers.¹

Improved affordability. As further discussed in Attachment B, and as recognized by DHCD and Virginia law, *affordability is a function of mortgages/rents and utility costs*, which are relevant throughout the lifecycle of a building, not just builders’ costs and prices. *These are the types of costs that DOE analyzes when it concludes that occupants will save money, year after year, over the lives of buildings, notwithstanding*

¹ Under Virginia law, Virginia’s largest utilities are required to spend over \$1 billion on energy efficiency improvements in the 10 years ending July 1, 2028. <https://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0296> In addition, pursuant to the Clean Energy and Community Flood Preparedness Act half the funds received by the Commonwealth from RGGI carbon dioxide auctions will go to energy efficiency. <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1280> Those are only two of the measures Virginia has devoted to energy efficiency.

some incremental construction costs. Not only do residents of more efficient dwellings save money, but better energy efficiency also reduces the impacts of widely varying fossil fuel costs and overall increases of energy prices over time. Greater energy efficiency thus reduces risks of defaults on mortgages, rents and utility bills and the consequent harms to families, communities, and businesses. Buyers are not served by being sold new dwellings whose energy cost burdens jeopardize their occupants' economic security, stability, and comfort.²

Improved comfort and indoor air quality: Better insulated and less leaky envelopes and installing heat pumps improve indoor air quality and comfort for residents. In addition to reducing fuel combustion, these reduce transmission indoors of mold that can build up in walls.

Resiliency: Tighter, better insulated buildings maintain occupancy comfort longer during outages. They also reduce risks of energy cost increases that can trigger mortgage and rent defaults.

Air Quality and Climate Mitigation and Resiliency: As discussed more fully in Attachment C and in our proposals, reducing energy demand is critical to improving air quality, including mitigating rapidly growing climate damage to people's lives, health and property, public infrastructure, agriculture, lands and resources, oceans, and the economy. Approximately 35-40% of U.S. carbon emissions are attributable to building energy usage.⁸ Likewise, much of other forms of air pollution (e.g., SO₂, particulates, NO_x, CO, methane) are attributable to energy consumption in buildings either as electricity or as direct fossil fuel combustion.³ The adverse health consequences of air pollution include asthma, cardiovascular harm, brain damage, and, in the case of heat-trapping gases, a growing frequency of heat illnesses.

- o Virginians around the state are increasingly threatened by storms, sea level rise, heat, diseases, economic and security disruptions, etc. Destruction of infrastructure and other man-made resources and to natural resources is also occurring.

- o Climate change is accelerating and the harms threaten to accelerate faster as feedback effects drive the world past "tipping points." Nor is there any quick turnaround: CO₂ will drive climate change for many centuries after it is emitted, as will some other greenhouse gases.

- o The growing danger of heat illness is increasingly restricting periods of

² Buyers want more energy efficiency. Not only will they save during occupancy their home will be more valuable for resale. <https://myhome.freddie.com/blog/homeownership/20200825-selling-green-home>

³ "[B]uildings account for about 40% of all U.S. energy consumption and a similar proportion of greenhouse gas emissions. Most of these structures will be in use for decades, so reducing their energy use will not only ensure long-term cost savings for homeowners and businesses, but also must be a central component of any meaningful climate strategy." Alliance to Save Energy <https://www.ase.org/categories/buildings>

DOE has confirmed the large impact that buildings have on energy use and greenhouse gas emissions and energy waste: "America's 129 million residential and commercial buildings collectively cost well over \$400 billion a year to heat, cool, light and power – accounting for 35% of U.S. carbon emissions, 40% of the nation's energy use, and 75% of electricity use. And yet, buildings waste at least 30% of the energy they consume."

<https://www.energy.gov/articles/secretary-granholm-announces-new-building-energy-codes-save-consumersmoney-reduce-impacts>

outdoor living, work and sports.⁴

Enhanced economy. A stock of more energy efficient buildings will make Virginia a more attractive and affordable place to start or grow a business and to raise families. Reducing energy dependence, costs and pollutants will strengthen Virginia's economy, making it more competitive and less vulnerable to energy price and supply disruptions. Improving energy efficiency will also improve the profitability of companies that save energy, reduce future expenses for retrofits and fuel costs, reduce dependence on foreign energy sources and fluctuating energy prices, and reduce the damage to land, water and communities that results from fossil fuel energy production, transportation and distribution. Energy efficiency investments also create jobs as documented by DOE and others.

Reduced tax burdens. Building more efficient, less polluting homes will reduce future costs to taxpayers by reducing subsidies needed for efficiency retrofits, reducing climate resiliency investments, and take advantage of federal tax incentives for efficiency.⁵

"Futureproofing." With the average building being used for 50-100 years and many individual buildings operating for more than 100 years, efficiency deficiencies will harm residents and the public for decades. Building highly efficient dwellings and other buildings is critical to protecting current and future generations. Building up the base of highly efficient buildings must begin with each new residential and commercial building. Retrofits are costly and unlikely to reach the efficiency levels that can be achieved in new construction.

State policies. In addition to the statutory building code policy for efficiency standards "as stringent as" the latest IECC, saving total energy in buildings is needed to meet other state and local goals to reduce energy costs and to cut climate pollution and achieve net-zero climate pollution.

o Cutting energy use and emissions is needed to implement Virginia's stated Clean Energy Policy (§ 45.2-1706.1. (Effective October 1, 2021), which supports decarbonization and energy efficiency. It states, among other things, that it is "**the policy of the Commonwealth to: ...8. Promote building and construction practices that reduce emissions associated with built environment, including energy efficiency targets, new building standards**, and transit-oriented and other sustainable development practices...." Greater energy efficiency benefits building occupants and the Commonwealth based on total energy savings regardless of fuel type.

⁴ See <https://www.virginiaclinicians.org/fact-sheets> ; <https://states.ms2ch.org/va/>

⁵ The legacy of less efficient buildings has led to government expenditures of hundreds of millions of tax dollars (direct subsidies and tax breaks) to retrofit older dwellings to try to improve energy efficiency to reduce costs to residents and reduce pollution to everyone. Unfortunately, retrofit costs are much higher and unlikely to achieve the energy savings that can be achieved at lower costs during new construction. In addition, less efficient buildings contribute to greater tax expenditures on health care, storm clean-up, national security, and repair to climate damages to infrastructure and natural resources. The Inflation Reduction Act (IRA) and other legislation offer tax credits and other financial incentives for builders, building occupants and government jurisdictions to improve energy efficiency. There are even grants to states that fully comply with the latest IECC.

- o Multiple local governments in Virginia have committed to achieve zero net carbon goals in their communities, which will require rapid progress in buildings.

Proposed readiness requirements facilitate future energy-saving options.

Residents and the public would also benefit from installing basic equipment, such as conduits, that facilitate future options to shift easily, in the future, to more efficient appliances. With small construction costs, readiness requirements will save energy and costs over time, as well as improve air quality and resiliency. Retrofitting wiring after walls have been closed and finished creates a costly barrier to energy-saving, cost-saving and pollution-avoiding choices for building occupants.

Statewide standards. The fact that the USBC is a uniform statewide standard means that local governments are prevented from adopting more energy efficient building standards. That makes it even more important for BHCD to adopt efficiency standards consistent with Virginia law.

RELATED FEDERAL OR STATE STATUTES OR REGULATIONS, OR ANY PERTINENT COURT DECISIONS OR LEGAL OPINIONS:

The 2021 General Assembly enacted VIRGINIA ACTS OF ASSEMBLY – 2021 SPECIAL SESSION I, CHAPTER 425, Section 1 (referred to herein as “H2227”) to remove any doubt about the legislative directions for adopting building code standards “consistent with” or even stronger than the IECC. It requires consideration of adopting energy efficiency standards “at least as stringent” as the latest IECC. And it requires making the decision based on an assessment of **“the public health, safety, and welfare benefits of adopting standards that are at least as stringent as those contained in the IECC, including potential energy savings and air quality benefits over time compared to the cost of initial construction.”**

“Be it enacted by the General Assembly of Virginia:

1. § 1. That upon each publication by the International Code Council of a new version of the International Energy Conservation Code (IECC), the Board of Housing and Community Development (the Board) shall consider adopting amendments to the Uniform Statewide Building Code (Building Code) to address changes in the IECC relating to energy efficiency and conservation. In doing so, the Board shall consider adopting Building Code standards that are at least as stringent as those contained in the new version of the IECC. For the purposes of this act, a standard shall be deemed to be as stringent as one contained in the IECC if such standard would perform the same function as that contained in the IECC without using more energy than would be used under the IECC standard. In conducting its review, the Board shall assess the public health, safety, and welfare benefits of adopting standards that are at least as stringent as those contained in the IECC, including potential energy savings and air quality benefits over time compared to the cost of initial construction.”⁶

⁶ IECC standards were adopted by the H2227 legislation because Virginia has long accepted the IECC as the appropriate model code for energy conservation. Though a national model code, the IECC recognizes regional climatic differences. The IECC has been thoroughly vetted by multi-year review process that involves builders, architects, material manufacturers, non-governmental organizations, trade associations, and governmental bodies

ANY APPROPRIATE ANALYSES, FINANCIAL ESTIMATES, STATISTICS:

INDEPENDENT DETERMINATIONS OF 2021 IECC BUILDING EFFICIENCY BENEFITS

1. IECC Determinations.

Use of national model codes, including the IECC, is the appropriate ground floor (not the ceiling) for efficiency measures in Virginia's USBC for good reasons. **Each update of the IECC has gone through lengthy development involving study, debate, drafting and voting by experts, community leaders and a wide range of stakeholders in order to assure that the standards are viable and that the benefits and savings serve the public and residents will, in fact, exceed the incremental costs of construction.** The stakeholders consider new technical developments and options and past experience with existing codes.

2. DOE and PNNL Determinations of IECC Benefits

By law, the U.S. Department of Energy is required to evaluate the IECC and ASHRAE (which the IECC recognizes as an alternative means of compliance). As shown in our CDPVA submissions, the **annual savings to residents from full IECC implementation (even considering incremental construction costs) have been repeatedly demonstrated by the U.S. Department of Energy (DOE) and Pacific Northwest National Laboratories (PNNL) with respect to the IECC's for 2012, 2015, 2018 and 2021. DOE/PNNL have also found that there will be substantial net benefits to the public from full implementation of the 2021 IECC.**

<https://www.energycodes.gov/determinations> ;

<https://www.energycodes.gov/previousdeterminations>

a. DOE/PNNL Residential Determinations

In July 2021, after an extensive technical and economic analysis of the impacts of the 2021 IECC updates, DOE published its formal determinations concerning the energy efficiency improvements that would result from adopting the 2021 IECC. DOE's review of building code updates is required by law.

<https://www.energycodes.gov/determinations>

"RESIDENTIAL: 2021 INTERNATIONAL ENERGY CONSERVATION CODE

"On July 28, 2021, [DOE issued a determination](#) that the 2021 International Energy Conservation Code (IECC) will improve energy efficiency in residential buildings. In support of this determination, DOE conducted a technical analysis evaluating the impacts of the updated code (relative to the 2018 IECC edition). DOE estimates national savings of approximately:

- 9.38 percent *site* energy savings
- 8.79 percent *source* energy savings
- 8.66 percent *energy cost* savings
- 8.66 percent *carbon emissions*"

This follows multiple prior findings that, as compared to each IECC since 2006 would save residents money. <https://www.energycodes.gov/previous-determinations>

around the country. DHCD officials have often participated in ICC development process. Further, as required by federal law, the benefits and costs of implementing the IECC have been analyzed by DOE and PNNL, which have found that each update since 2006 provides energy savings and other benefits that exceed the incremental costs of construction.

In its July 2021 report on “Cost-Effectiveness of the 2021 IECC for Residential Buildings in Virginia” (PNNL-31627), PNNL summarizes its findings as follows:

“The 2021 IECC provides cost-effective levels of energy efficiency and performance for residential buildings in Virginia.

“Moving to the 2021 International Energy Conservation Code (IECC) is cost effective for both single-family and low-rise multifamily residential buildings in Virginia. The 2021 IECC will provide statewide energy savings of 17.9% across all climate zones compared to the current state energy code. This equates to \$413 of annual utility bill savings for the average Virginia household. It will reduce statewide CO2 emissions over 30 years by 28,420,000 metric tons, equivalent to the annual CO2 emissions of 6,181,000 cars on the road (1 MMT CO2 = 217,480 cars driven/year). Updating the state energy code based on the 2021 IECC will also stimulate the creation of high-quality jobs across the state. Adopting the 2021 IECC in Virginia is expected to result in homes that are energy efficient, more affordable to own and operate, and based on current industry standards for health, comfort and resilience. “The average expected statewide economic impact (per dwelling unit) of upgrading to the 2021 IECC is shown in the tables below based on cost-effectiveness and carbon metrics established by the U.S. Department of Energy.⁷

Consumer Impact Metric with amendments	Compared to the 2015 IECC
Life-cycle cost savings of the 2021 IECC	\$8,376
Net annual consumer cash flow in year 1 of the 2021 IECC ⁸	\$250
Annual (first year) energy cost savings of the 2021 IECC (\$) ⁹	\$413
Annual (first year) energy cost savings of the 2021 IECC (%) ¹⁰	17.9%

PNNL found that aggregate energy cost savings for Virginia residents from adopting the full 2021 IECC would be \$7,192,000 in the first year and \$2,487,000,000 over 30 years. Virginia would achieve substantial pollution reductions and add jobs. In an earlier report, “Virginia Energy and Cost Savings for New Single- and Multifamily Homes: 2012 IECC as compared to the 2009 Virginia Construction Code,” PNNL found savings applicable to Virginia. It stated: “The 2012 International Energy Conservation Code (IECC) yields positive benefits for Virginia homeowners. Moving to the 2012 IECC from the

⁷ A weighted average is calculated across building configurations and climate zones.

⁸ The annual cash flow is defined as the net difference between annual energy savings and annual cash outlays (mortgage payments, etc.), including all tax effects but excluding up-front costs (mortgage down payment, loan fees, etc.). First-year net cash flow is reported; subsequent years' cash flow will differ due to the effects of inflation and fuel price escalation, changing income tax effects as the mortgage interest payments decline, etc.

⁹ Annual energy savings is reported at time zero, before any inflation or price escalations are considered.

¹⁰ Annual energy savings is reported as a percentage of end uses regulated by the IECC (HVAC, water heating, and interior lighting).

current Virginia Construction Code is cost-effective over a 30-year life cycle. On average, Virginia homeowners will save \$5,836 with the 2012 IECC. Each year, the reduction to energy bills will significantly exceed increased mortgage costs. After accounting for up-front costs and additional costs financed in the mortgage, homeowners should see net positive cash flows (i.e., cumulative savings exceeding cumulative cash outlays) in 1 year for the 2012 IECC. Average annual energy savings are \$388 for the 2012 IECC.” Unfortunately, Virginia did not adopt the full changes in the 2012 IECC and has remained at 2009 levels in key respects ever since. Benefits to residents were lost for a decade, and those benefits will be lost going forward based on the Proposed Final Rule and the Board’s consensus requirement for removing past weakening amendments.

b. DOE/PNNL Commercial Determinations

As required by law, DOE has also reviewed commercial code updates for many years to assess whether the updates would improve energy efficiency. Most recently, DOE found that implementing the last ASHRAE updates ANSI/ASHRAE/IES STANDARD 90.1-2019 would save money relative to the incremental costs of construction.

<https://www.energycodes.gov/determinations>

“COMMERCIAL: ANSI/ASHRAE/IES STANDARD 90.1-2019

“On July 28, 2021, DOE issued a determination that Standard 90.1-2019 will achieve greater energy efficiency in buildings subject to the code. DOE estimates national savings

in commercial buildings of approximately:

- 4.7 percent *site* energy
- 4.3 percent *source* energy
- 4.3 percent *energy cost*
- 4.2 percent *carbon emissions*”

ASHRAE is important because it is an IECC compliance option for commercial builders.

Thus, if the IECC’s standards were more costly or desirable than ASHRAE a builder could choose ASHRAE. PNNL also published a **September 2022 analysis of the 2021 IECC commercial efficiency standards compared to the 2018 Commercial**.¹¹ It found “Overall, the 2021 edition of the IECC results in site energy savings of 12.1% at the aggregate national level compared to the 2018 IECC edition.

In addition, on a national weighted average basis, the 2021 IECC is 6.5% more efficient for site energy use than Standard 90.1-2019.”

PROS/CONS OF THE ISSUE:

Requiring State-wide implementation of the most current ICC building energy efficiency codes for new commercial and multi-unit residential buildings (or alternatively, requiring DHCD to develop a second standard more stringent than the current USBC that localities could adopt) would create a level field for all builders. Maryland and DC already meet these standards, so most builders are familiar with and have experience building to these codes. No builder is placed at a competitive disadvantage by building to enhanced environmental standards, even if such may initially increase construction costs. Any additional costs to the consumer due to higher construction costs should be offset by savings in utility bills over the

life of the building, as well as by assisting in lowering the potential financial impact that climatic change can cause (e.g., from storm damage.) If legislation mandating statewide codes, an alternative supported by Fairfax county's 2022 and 2023 legislative agendas is legislation authorizing local jurisdictions to adopt standards more stringent than the USBC. Legislation proposed in 2022 would have required the DHCD to establish a "stretch" energy efficiency standard that local jurisdictions could adopt. That way, all local jurisdictions that adopted the stretch codes would be uniform. Benchmarking the energy intensity of commercial buildings is widely used nationwide and has been shown to reduce average energy use in benchmarked buildings.

POSSIBLE SUPPORT OR OPPOSITION BY ORGANIZATIONS:

All environmental groups should support this. Associations of government building inspectors support such laws and regulations. Fairfax county and the Virginia Association of Counties have supported such laws and regulations.

Builders may object to having to change building practices, as well as to possible increased construction costs. The greatest pushback against past proposed legislation in Virginia has come from home builders. The proposed legislation does not cover single family residential buildings. This should reduce the opposition of the home builders, who have successfully blocked past legislative proposals to incorporate more rigorous building energy efficiency standards for all new construction.

STAFF CONTACT PERSON(S):

(Provide name and phone number of County staff person(s) best able to assist in any further necessary research or best able to provide "expert testimony" at a General Assembly committee meeting, if deemed necessary by County legislative staff)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

Promotion of energy efficiency and conservation in new construction.

“A Proposal to Revise the Statewide Building Code.”

PROPOSAL:

To revise the Statewide Building Code to emphasize energy efficiency and energy conservation in new construction.

SOURCE: EQAC, June 2023.

BACKGROUND:

The Uniform Statewide Building Code, (VA Code section 36-97 et seq,) does not sufficiently emphasize energy conservation and efficiency in new construction. Buildings in the US are estimated to produce 40% of US carbon dioxide emissions and are responsible for 41% of energy consumption. Reducing these numbers will make it easier to achieve VA Clean Economy Act goals, as well as local goals such as Fairfax County’s Climate-wide Energy and Climate Action Plan (CECAP). This proposed legislation would require that the Building Code emphasize environmental and energy conservation/efficiency standards, such as by incorporating provisions from the International Green Construction Code (IGcc). The IGcc itself need not be adopted, although it has been adopted by Maryland, Florida, North Carolina, Oregon and Rhode Island.

STAFF RECOMMENDATION:

(Do not fill out-- This will be indicated by the Legislative Director and County Executive)

LEGISLATIVE INITIATIVE INFORMATION SHEET

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

Promotion of energy conservation and efficiency in new construction.

“Revision of the Statewide Building Code.”

PROPOSED NEW OR REVISED STATUTORY LANGUAGE:

Virginia Code section 36-98 is hereby amended to read: “The Board is hereby directed and empowered to adopt and promulgate a Uniform Statewide Building Code. *Such Code shall emphasize energy conservation and efficiency standards, comparable to those in the International Green Construction Code (IGcc).*” [New language in italics]

ADDITIONAL BACKGROUND INFORMATION:

The International Green Construction Code is a collaborative effort of several professional organizations, including the American Institute of Architects (AIA); the American Society of Heating, Air Conditioning Engineers (ASHRAE), the International Code Council (ICC), the Illuminating Engineering Society (IES); and the US Green Building Council (USGBC). The proposed legislation does not require adoption of the IGCC, but rather allows the Virginia Board of Housing and Community Development to use those international standards as guidance.

HB701, introduced by Del. Kory in January 2022, proposed allowing local building codes to adopt more rigorous environmental standards. It was not passed.

RELATED FEDERAL OR STATE STATUTES OR REGULATIONS, OR ANY PERTINENT COURT DECISIONS OR LEGAL OPINIONS:

None.

ANY APPROPRIATE ANALYSES, FINANCIAL ESTIMATES, STATISTICS:

It is possible that initial construction costs will increase, however there is no way to determine in advance what that might be.

PROS/CONS OF THE ISSUE:

Requiring State-wide implementation of these provisions means that all builders are equally impacted. No builder is placed at a competitive disadvantage by building to enhanced environmental standards, even if such may initially increase construction costs. Any additional costs to the consumer due to higher construction costs should be offset by savings in utility bills over the life of the building, as well as by assisting in lowering the potential financial impact that climatic change can cause (e.g., from storm damage.)

POSSIBLE SUPPORT OR OPPOSITION BY ORGANIZATIONS:

All environmental groups should support this.

Builders may object to having to change building practices, as well as to possible increased construction costs. However, the Inflation Reduction Act provides tax incentives for home builders, tied to two certification programs: [ENERGY STAR®](#) and the [Zero Energy Ready Program](#) of the U.S. Department of Energy. If a new single family dwelling passes ENERGY STAR requirements, builders can receive a \$2,500 tax credit; a credit of \$5,000 is available for meeting Zero Energy Ready Home requirements. These financial incentives may make builders more receptive to 'green' building code requirements.

STAFF CONTACT PERSON(S):

(Provide name and phone number of County staff person(s) best able to assist in any further necessary research or best able to provide "expert testimony" at a General Assembly committee meeting, if deemed necessary by County legislative staff)

INSTRUCTIONS FOR SUBMITTING LEGISLATIVE PROPOSALS

This document includes separate submission “**forms**” to be completed and submitted for a **legislative initiative**, a **budget initiative**, or a **position statement**. These completed forms will provide the information legislative staff need to draft items for the Board’s Legislative Committee.

- A **legislative initiative** is a proposal that the County intends to draft and submit as a bill or resolution; if an agency intends to submit any initiatives, such requests should be prioritized by importance so that County resources can be focused on key priorities for the session.
- A **budget initiative** is a proposal that the County intends to draft and submit as an amendment to the State budget for the biennium or fiscal year. Any budget requests should be prioritized by importance.
- A legislative or funding **position statement** represents a general Board position on issues which might be considered by the General Assembly (GA). These statements provide formal Board direction to County legislative staff on particular issues of importance to the County, and allow legislative staff some discretion to react immediately to actions that may arise during the session or throughout the year. Position statements should reflect the needs of the County as determined by the particular agency/department and in anticipation of legislative action by the GA. If you would like to propose changes to an existing position statement, please use [the 2023 state legislative program](#) as a base document and edit or augment existing language. *Please use track changes.*

Accompanying each submission form is an “**information sheet.**” These sheets will provide additional information to be used by the County Executive and the Legislative Director to make a recommendation to the Board, or if the proposal is adopted by the Board, to craft testimony, develop background information, or draft bill language.

Also attached are **examples** of a completed legislative initiative proposal and position statement form. If you have any questions about the “practicality” of pursuing particular proposals, or would like assistance in drafting your proposal, please call Claudia Arko (324-2647) or Jennifer Van Ee (324-2640) to discuss the pros/cons, previous legislative attempts by the County, or to answer any other questions you may have about submission or use of the forms.

AGENCY SUBMISSION PROCEDURE AND TIMEFRAME:

Completed forms should be sent by the agency/department director via e-mail to Claudia Arko by **July 7, 2023**, and copied to the appropriate Deputy County Executive. Claudia and her staff will compile all draft submission forms for consideration. A draft legislative package then will be presented to the Board’s Legislative Committee in early fall.

BOARD/AUTHORITY/COMMISSION SUBMISSION PROCEDURE AND TIMEFRAME:

If you receive this e-mail and you or your staff provide support to a Board, Authority or Commission appointed by the Board of Supervisors, please be certain that this information is provided to that entity for consideration. Submissions from Boards,

Authorities, and Commissions must be endorsed by the full entity and should not be proposals by individual group members. In order to provide additional response time, all such requests for proposals/positions should be sent via e-mail to Claudia and copied to the appropriate Deputy County Executive by **August 3, 2023**. Boards, Authorities, or Commissions may also recommend that existing positions be retained in the Legislative Program. All items submitted by Boards, Authorities, or Commissions will be presented to the Board as items for consideration, though these items will be edited to ensure the Board receives any necessary additional background information from County staff.

LEGISLATIVE INITIATIVE

(We intend to use what is submitted in this form to draft an item for consideration to present to the Legislative Committee; however, submissions will be edited, and additional background or other relevant information will be included in any item to be considered by the Legislative Committee)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

Low-Impact Landscaping – Property Owners’ Association Act

PROPOSAL: *(Provide a brief description of the proposal)*

Initiate Legislation to amend Virginia Code Chapter 18 Article 3 for the purpose of prohibiting restrictive covenants on use of Low-Impact Landscaping in property associations.

SOURCE: *(Provide the name of the agency, board, or commission generating the proposal and the date of the proposal)*

Environmental Quality Advisory Council (EQAC)

BACKGROUND:

*(Succinctly summarize the current law and explain why the law needs to be changed; identify the issues involved; note the impact of the proposal or why the proposal is important to Fairfax County; include any other information that might be helpful to the Board in making a decision as to the merits of the proposal; note any previous Board of Supervisors’ action or previous General Assembly study or action on this issue. **This section should provide a synthesis of the proposal and should be no more than one paragraph, two if necessary; the Board wants concise information in the Legislative Program. Please use “Additional Background Information” on the next page to more fully explain the proposal.**)*

Currently, Virginia code allows Property Associations to require the use of turf-grass and restrict the use of low-impact landscaping, including rain gardens, pollinator gardens, xeriscaping, bio-habitat gardens and landscaping designed to mitigate stormwater and other ecological benefits. As we face the current climate crisis and increase in the intensity and duration of rainstorms, residents must have the flexibility to more sustainably manage their private land.

STAFF RECOMMENDATION:

(Do not fill out-- This will be indicated by the Legislative Director and County Executive)

LEGISLATIVE INITIATIVE INFORMATION SHEET

(Supplemental background information to be used by staff)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

Common Interest Communities – Low-Impact Landscaping

PROPOSED NEW OR REVISED STATUTORY LANGUAGE:

(Indicate actual wording change to Va. Code; use Code citation and please indicate whether you have had the County Attorney's office review the proposed new or revised statutory language; specific Code language can be copied from the web by typing the specific Section number at: <http://law.lis.virginia.gov/vacode>)

1. No association may include or enforce a restrictive covenant that imposes unreasonable limitations on low-impact landscaping provided that the property owner:
 - a. Owns or has exclusive rights to the property
 - b. Maintains and regularly tends to the low-impact landscaping
2. An unreasonable limitation includes one that will:
 - a. Significantly increase the cost of low-impact landscaping
 - b. Significantly decrease the efficiency of low-impact landscaping
 - c. Requires cultivated vegetation to consist in whole or in part of turf-grass or of species known to be invasive to the state of Virginia as listed in DCR [Invasive Plants Species List \(virginia.gov\)](#)
 - d. Prohibits low-impact landscaping from being used in the front or visible areas of a property
3. The following words have the meanings indicated
 - a. “Low-impact landscaping” means landscaping techniques that conserve water, lower maintenance costs, provide pollution prevention, and create habitat for wildlife.
 - b. “Low-impact landscaping” includes:
 - i. Bio-habitat gardens and other features designed to attract wildlife;
 - ii. Pollinator gardens and other features designed to attract pollinator species;
 - iii. Rain gardens and other features that use natural biological principles to return stormwater to the soil and to filter stormwater of excess nutrients; and
 - iv. Xeriscaping and other forms of landscaping or gardening that reduce or eliminate the need for supplemental water from irrigation.
 - c. “Restriction on use” includes any covenant, restriction, or condition contained in:
 - i. A deed;
 - ii. A declaration;
 - iii. A contract;
 - iv. The bylaws or rules of a condominium or homeowners association;
 - v. a security instrument; or
 - vi. any other instrument affecting:
 1. The transfer or sale of real property; or
 2. Any other interest in real property.

ADDITIONAL BACKGROUND INFORMATION:

(Additional information may be necessary to fully develop the idea. Please assume that government relations staff may need additional technical information to fully explain the proposal and the necessity for the proposal.)

Current Virginia law does not address a Common Interest Community's ability to restrict environmentally friendly landscaping, such as requiring the use of turf-grass, restricting the type of plants that can be used in landscaping, restricting features designed to manage stormwater, restricting landscaping that will provide habitat for pollinators and wildlife. HOAs are prohibiting and restricting homeowners from using eco-friendly landscaping in their front yards and other areas of their landscapes.

RELATED FEDERAL OR STATE STATUTES OR REGULATIONS, OR ANY PERTINENT COURT DECISIONS OR LEGAL OPINIONS:

(Self-explanatory, the latter is particularly important)

A similar amendment regarding solar energy: [§ 55.1-1820.1. Installation of solar energy collection devices \(virginia.gov\)](#) Please note that this **does** allow for associations to prohibit solar collection if in the declaration. This loophole **is** being utilized by HOAs and should not be allowed in this low-impact landscaping change.

Other states:

- Maryland (House Bill 322, signed in 2021): [Laws - Statute Text \(maryland.gov\)](#)
- Texas: [Texas Property Code Section 202.007 - Certain Restrictive Covenants Prohibited \(public.law\)](#)
- Florida: [Chapter 373 Section 185 - 2022 Florida Statutes \(flsenate.gov\)](#)
- California : [California Civil Code Section 4735 \(public.law\)](#)

ANY APPROPRIATE ANALYSES, FINANCIAL ESTIMATES, STATISTICS:

(Provide any local, state or national information that would be helpful in persuading legislators as to the merits of the proposal; this is key technical information)

As of 2022 there were 8,725 HOAs in Virginia which house 1.98 million people, roughly 23.2% of the state's population. [HOA Statistics \[2023\]: Average HOA Fees + Number of HOAs \(ipropertymanagement.com\)](#)

According to the EPA:

- "Nationwide, landscape irrigation is estimated to account for nearly one-third of all residential water use, totaling nearly 8 billion gallons per day." [Outdoors | US EPA](#)
- Lawnmowers account for 5% of nations air pollution [National Emissions from Lawn and Garden Equipment](#)

Importance of Native plants for local wildlife

- [Nonnative plants reduce population growth of an insectivorous bird | PNAS](#)
- [New Smithsonian Study Links Declines in Suburban Backyard Birds to Presence of Nonnative Plants | Smithsonian's National Zoo](#)

- [Indigenous plants promote insect biodiversity in urban greenspaces - PubMed \(nih.gov\)](#)

PROS/CONS OF THE ISSUE:

(Why would a legislator want to support the proposal, what reasons would he/she give for opposing the proposal)

In general, public sentiment is pro-pollinator and in general legislators have been positive when being asked about this proposal.

One consideration is to see if we could find ways to have this appeal not just to more urbanized locales, but also to more rural communities and agricultural communities who may not have Common Interest Communities. By its nature, this legislation may not have broad state appeal because of where Common Interest Communities are located, but it would be good to recognize that limitation and aim to address it or work within that constraint.

The most significant opposition related to low impact landscaping is that resident fear gardens being “messy”. However, there are many ways to address this concern which would not need to be included in the legislation over and above the drafted language above.

POSSIBLE SUPPORT OR OPPOSITION BY ORGANIZATIONS:

(List any organizations or groups, if any, which might be in favor of or against the proposed legislative change)

Likely to Support:

- Nature Forward
- Chesapeake Bay Foundation
- Virginia Native Plant Society
- Wild Ones
- Chesapeake Bay Foundation
- National Audubon Society
- Xerces Society
- Plant Virginia Natives
- Sierra Club
- Loudoun Wildlife Conservancy
- Virginia Conservation Network
- Soil & Water Conservation Districts
- Community Associations Institute
- Clean Water Action
- National Wildlife Federation
- Piedmont Environmental Council
- Homegrown National Park (Doug Tallamy’s initiative)

Suggestion for partnership / outreach:

Washington Metro Chapter Community Associations Institute - <https://www.caidc.org/>
 Other community association chapters across the state / CAI

STAFF CONTACT PERSON(S):

(Provide name and phone number of County staff person(s) best able to assist in any further necessary research or best able to provide "expert testimony" at a General Assembly committee meeting, if deemed necessary by County legislative staff)

These are ideas of staff members who could likely speak to this – I'm sure there are many more:

- Ashley Palmer (NVSWCD) - Ashley.Palmer@fairfaxcounty.gov - 703-324-1423
- Suzy Foster (FxCo Stormwater) - Suzanne.Foster@fairfaxcounty.gov
- Eric Caldwell (FxCo Stormwater) - Eric.Caldwell@fairfaxcounty.gov - 703-324-8311

EXAMPLE OF INITIATIVE IN THE REQUESTED FORMAT

(We intend to use what is submitted in this form to draft an item for consideration to present to the Legislative Committee)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

HOUSING – INTEREST ON BLIGHT ABATEMENT TAX LIENS

PROPOSAL:

Initiate legislation to amend Virginia Code §15.2-1115 to allow the County to collect interest, at the judgment rate, on the costs of blight abatement.

SOURCE:

Department of Housing and Community Development
June 21, 2005

BACKGROUND:

Currently, Virginia Code allows the County to charge the costs of blight abatement to the property owner by collecting these costs through the tax collection provisions. The current process is to bill the property owner for the blight abatement costs; if the owner fails to pay within a sixty to ninety day timeframe from the date the work was completed, a lien is filed in the County land records. The existing law does not allow the County to charge and collect interest on these unpaid liens, essentially making the liens interest-free loans to property owners. The Code should be amended to allow interest to be accrued at the judgment rate in addition to the overall costs of blight abatement.

STAFF RECOMMENDATION: *(Do not fill out-- This will be indicated by the Legislative Director and County Executive)*

EXAMPLE OF INITIATIVE INFORMATION SHEET

(Supplemental background information to be used by staff)

PROPOSED NEW OR REVISED STATUTORY LANGUAGE:

The current Virginia Code should be amended by adding the following to §15.2-1115, Subsection B. This change has been reviewed by the County Attorney's Office.

B. Every charge authorized by this section in excess of \$200 which has been assessed against the owner of any such property and which remains unpaid shall constitute a lien against such property. Such liens shall *include interest thereon at the judgment rate, shall* have the same priority as other unpaid local taxes and shall be enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1. A locality may waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

ADDITIONAL BACKGROUND INFORMATION:

On June 20, 2005, the Board of Supervisors discussed the Department of Housing and Community Development's (HCD) program improvement strategies for the Blight Abatement Program (INFORMATION – 5). At that time, the Board asked HCD to return with an Action Item for the recommended strategies. Critical among those strategies is the proposed amendment to Virginia Code to permit the collection of interest on the cost of blight abatement. Currently, Virginia Code allows the County to charge the costs of blight abatement to the property owner by collecting these costs through the tax collection provisions. The current process is to bill the property owner for the blight abatement costs; if the owner fails to pay within a sixty to ninety day timeframe from the date the work was completed, a lien is filed in the County land records. The existing Virginia Code does not allow the County to charge and collect interest on these unpaid liens, essentially making the liens interest-free loans to property owners. The Virginia Code should be amended to allow interest to be accrued at the judgment rate in addition to the overall costs of blight abatement. By requesting an Action Item, the Board indicated its willingness to consider endorsing this proposed amendment to the Virginia Code.

RELATED FEDERAL OR STATE STATUTES OR REGULATIONS, OR ANY PERTINENT COURT DECISIONS OR LEGAL OPINIONS:

None cited.

ANY APPROPRIATE ANALYSES, FINANCIAL ESTIMATES, STATISTICS:

Under the current model, the Blight Abatement Program charges property owners for the costs of abatement. If an owner does not pay these costs within 60 to 90 days after the work is completed, the County is authorized to place a lien on the County land records. However, the County is not permitted by Virginia Code to accrue interest on such liens, as is done with tax liens. The result is that property owners who failed to voluntarily abate blight are getting an interest-free loan for the work performed by the County, and have no incentive to make timely repayment of these costs. If the County were permitted to accrue interest on blight-related liens, staff anticipates that voluntarily abatement would increase, and the number of liens recorded would decrease.

PROS/CONS OF THE ISSUE:

As stated above, the staff expects that the potential for interest accrual will be a powerful incentive for owners to voluntarily abate their blighted properties. This could result in fewer costly enforcement actions and a decrease in the number of liens filed. However, such interest charges could be a hardship for owners, such as the elderly,

whose limited incomes may be a root cause of the blighted condition.

POSSIBLE SUPPORT OR OPPOSITION BY ORGANIZATIONS:

None cited.

STAFF CONTACT PERSON(S):

..... Director, HCD, 324-xxxx

..... Blight Abatement Program Coordinator, HCD, 324-xxxx

BUDGET INITIATIVE FORM

(We intend to use what is submitted in this form to draft an item for consideration to present to the Legislative Committee; however, submissions will be edited, and additional background or other relevant information will be included in any item to be considered by the Legislative Committee)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

PROPOSAL: *(Provide a brief description of the proposal)*

SOURCE: *(Provide the name of the agency, board, or commission generating the proposal and the date of the proposal)*

BACKGROUND:

*(Briefly summarize why the funding is necessary to the County, note the impact of receiving or not receiving the State funding; briefly include any pertinent financial estimates, number of individuals served/not served; note whether this is "one time" or continued funding; note any previous Board of Supervisors' action or previous General Assembly study or action on this issue. **This section should provide a synthesis of the proposal and should be no more than one paragraph, two if necessary; the Board wants concise information in the Legislative Program. Please use "Additional Background Information" on the next page to more fully explain the proposal.**)*

STAFF RECOMMENDATION:

(Do not fill out-- This will be indicated by the Legislative Director and County Executive)

BUDGET INFORMATION SHEET

(Supplemental background information to be used by staff)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

STATE AGENCY SOURCE OF FUNDING:

(Provide information to determine what section of the State budget would need to be revised; if possible, provide suggested line item in current State budget)

ADDITIONAL BACKGROUND INFORMATION:

(Additional information may be necessary to fully develop the idea. Please assume that government relations staff may need additional technical information to fully explain the proposal and the necessity for the proposal.)

PREVIOUS STUDY OR STATE ACTION ON ISSUE:

(Indicate any previous State action or inaction that would be helpful to garnering support for the proposal)

POSSIBLE SUPPORT OR OPPOSITION BY ORGANIZATIONS:

(List any organizations or groups, if any, which might be in favor of or against the proposed budget amendment)

STAFF CONTACT PERSON(S):

(Provide name and phone number of County staff persons best able to provide any additional research or information necessary to initiate this proposal)

POSITION STATEMENT FORM

(We intend to use what is submitted in this form to draft an item for consideration to present to the Legislative Committee; however, submissions will be edited, and additional background or other relevant information will be included in any item to be considered by the Legislative Committee)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

PROPOSAL: *(Provide brief description of legislative or funding position)*

(Sample legislative position) Support legislation to eliminate caps on the use of job order construction contracts for localities. The job order construction (JOC) method of project delivery has long been used as an alternative to the traditional design/bid/build method, allowing for competitive bidding through a unit price book that provides preset costs for specific construction tasks, rather than requiring the separate procurement of each individual contract. The JOC method allows for a more streamlined procurement process, significantly reducing project timelines and yielding a more efficient allocation of resources.

(Sample funding position) Support additional State funding for critical unmet community-based services identified in the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) Comprehensive State Plan 2000-2006 for persons with mental health, mental retardation and alcohol and drug problems.

SOURCE: *(Provide the name of the agency, board, or commission generating the proposal and the date of the proposal)*

BACKGROUND:

(Briefly summarize why the position(s) is/are necessary to the County; list any pros/cons, note any previous Board of Supervisors action or previous General Assembly study or action on this issue; note any other helpful information. This section should provide a synthesis of the proposal and should be no more than one paragraph, two if necessary; the Board wants concise information in the Legislative Program. Please use "Additional Background Information" on the next page to more fully explain the proposal. If you are submitting more than one proposed position, please include background information for each position.)

STAFF RECOMMENDATION:

(Do not fill out-- This will be indicated by the Legislative Director and County Executive)

POSITION STATEMENT INFORMATION SHEET

(Supplemental background information to be used by staff)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

ADDITIONAL BACKGROUND INFORMATION:

(Additional information may be necessary to fully develop the idea. Please assume that government relations staff may need additional technical information to fully explain the proposal and the necessity for the proposal.)

POSSIBLE SUPPORT OR OPPOSITION BY ORGANIZATIONS:

(List any organizations or groups, if any, which might be in favor of or against the proposed position)

STAFF CONTACT PERSON(S):

(Provide name and phone number of County staff person(s) best able to provide any additional research or necessary information)