

Capitol Report - Summary of 2011 General Assembly

March 4, 2011



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IT WAS A GREAT SESSION!

Council Highlights Legislative Efforts Favorable to Agribusiness Industry

Council Press Release (3/2/11)- The Virginia Agribusiness Council and its members today praised the 2011 Session of the Virginia General Assembly for its passage of key legislative proposals that protect the interests and advance the commitment to water quality of the agribusiness industry across the Commonwealth.

Council members were pleased that the General Assembly strengthened constitutional protection of private property rights, provided funding for Virginia Cooperative Extension agents and set guidelines to restructure the extension program, and established sensible animal care standards. Virginia's professional turf and agriculture industries also joined with legislators in supporting proposals to protect the state's water resources.

"The Agribusiness Council took a proactive approach to several critical industry issues this year including industry-driven environmental stewardship in light of the Chesapeake Bay TMDL (Total Maximum Daily Load) amending Virginia's constitution to provide additional property rights protections, addressing the critical role of Virginia Cooperative Extension for the agribusiness community, and establishing basic care standards for agricultural animals in keeping with industry practices," noted Council Board Chairman Ollie W. Kitchen, Jr. of MeadWestvaco in Covington.

"We had great results working with the legislature to address these proactive, industry-driven measures. I'm very pleased to report that the Council's efforts to represent agribusinesses across the Commonwealth were met with successful results during this General Assembly session."

Summary of Key Issues

Agriculture- Water Quality

The Council took a proactive stance on our efforts to minimize the impacts of water quality issues, particularly in the Chesapeake Bay, during the General Assembly. We were successful with our two industry-requested bills, including legislation ([HB1830](#)) to create a "safe harbor" for Total Maximum Daily Load (TMDL) compliance for farmers who implement and maintain RMPs (Resource Management Plans). The bill passed the General Assembly with just one vote in opposition, even with many environmental groups voicing hesitancy about this one-of-a-kind program.

Another proactive measure approved will establish Virginia (versus EPA) as the controlling entity for water quality plans (such as the Bay TMDL). The Assembly also looked favorably on a proposal to allow farmers who implement Agricultural Best Management Practices (Ag BMPs) and receive a tax credit for their share of the cost, to receive a refund of the tax credit amount.

Value to You: Industry's proactive actions will provide incentives and certainty for farmers to implement conservation practices to meet statewide water quality goals. We were recognized, applauded, and rewarded for our efforts by the legislature with overwhelming support for our initiatives.

Animal Care

In response to animal rights extremist, the Council worked with the Virginia Alliance for Animal Agriculture to pursue a proactive bill to set basic standards of care for agricultural animals through [HB 1541/SB 1026](#). The measure, which will create new care standards based on animal husbandry practices for livestock and poultry, passed with near-unanimous support, despite extremist attacks that we were lessening animal rights protections.

Legislation to allow the appointment of additional humane investigators (citizen volunteers who enforce animal laws) failed to advance again this year as a result of our unified efforts in opposition.

Value to You: Reasonable, science-based care standards for agricultural animals in Virginia's laws better position our industry against extremist attacks, and protect your rights to raise agricultural animals in keeping with husbandry practices.

Boards and Government Reform

The McDonnell Administration recommended changes to the nomination process for a number of industry Boards. In these cases, existing law dictates that the Governor appoint Board members from nominations made by specific industry organizations. To ensure a timely and complete process, legislation passed that requires two or more nominations for each available position to be submitted at least 90 days before the expiration of the member's term. This change effective July 1, 2011, affects the Cattle Industry Board, the Corn Board, the Cotton Board, the Egg Board, the Horse Industry Board, the Potato Board, the Sheep Industry Board, the Small Grains Board, the Soybean Board, the Bright Flue-Cured and Dark-Fired Tobacco Boards, the Wine Board, and the Certified Seed Board. The Board of Forestry members will have staggered terms beginning July 1, 2011. (See [HB1842](#) and [SB1280](#) for details.)

Another step in government reform was to eliminate, among others, the Plant Pollination Advisory Board, the Migrant & Seasonal Farmworker Board, and the Rail Advisory Board.

Value to You: The Governor will still need to select from nominations submitted by industry organizations; however, more options on a timely basis will need to be provided.

Budget Items

With a slowly recovering economy, the budget process was not as brutal as in past years and there were opportunities to restore funding at least partially to a number of key state programs. The challenge was for the Governor, House and Senate to agree on which ones. Our agribusiness industry fared quite well in the final budget.

Staffing for the **Agriculture Stewardship** program will increase from one to three statewide. The **Agriculture Best Management Practice Cost-Share Program** funding will increase by \$27.8 million (a deposit from the year-end surplus) with \$4.9 million in a reserve fund for future years when funding is limited. The **Soil & Water Conservation Districts** will receive an additional \$1 million for operations. The **Purchase of Development Rights** program will increase by \$1.2 million for matching local funding. VDACS **international marketing** offices in China, India, and United Kingdom will become operational through an addition of \$460,000. Four **forester and firefighter positions** at VDOF were restored. Unfortunately, there was no increase in funding for the VDACS **weights and measures inspection** program. This will need to be a focus of our efforts in the coming year. **Virginia State University** received their necessary match to federal grant funds.

Value to You: There are no cuts in funding for important industry programs, there is increased funding for some, and sufficient funding (at least for one year) is provided for implementation of agriculture best management practices so we can move forward in meeting Chesapeake Bay TMDL goals.

Electricity and Energy Production

After a few years of "energy-intense" sessions, the General Assembly focused on tweaking programs governing electric generation and alternative energy production. Legislation that would have negative impacts on the electric cooperatives by placing limits on their charges for use of their infrastructure by other utilities will be studied this year by the State Corporation Commission, as will a proposal to create an agricultural net energy metering program in Virginia.

Legislation that was approved by the General Assembly includes bills to increase the threshold for those who can participate in net metering programs, shift energy incentive programs from production-based to economic development-based, and

streamline the local government siting process for renewable energy facilities .

Value to You: Costly mandates on Electric Cooperatives were not enacted in lieu of further study, resulting in lower-cost electric rates for agribusinesses served by these utilities.

Eminent Domain

It took four years, and lots of work by the Council, our property-rights partners, and dedicated elected officials, for a resolution to put further property right protections in the constitution ([HJ 693](#)) to cross the first hurdle of enactment. After a companion version failed in the Senate earlier in the year, the Senate approved the resolution in the last week of the Session. The constitutional amendment will tighten the definition of "public use" with regard to eminent domain and ensure that private property cannot be taken without just compensation to the owner.

Our battle for this priority issue is not over, as the exact same bill must be passed by the General Assembly next year and approved by voters in November, 2012, but we'll celebrate our success today!

Value to You: Additional constitutional protections for the rights of private property owners, a long-time priority issue for the Council due to the fundamental role of property for our industry, is now one step closer to reality with passage of the resolution.

Environmental Issues

Actions by the General Assembly on environmental issues continued at a brisk pace this year, although negative consequences and measures were averted. Legislation, originally introduced in 2010 and negotiated with the Council this year, was passed to enact a penalty for not reporting water withdrawals. Also approved: a request by DEQ to move their inspection programs to a "risk-based" program (particularly impacting permitted poultry, dairy, and swine farms), and a study on the use of the Chesapeake Bay Nutrient Credit program for Virginia's Bay TMDL plans.

Not all proposals passed the legislator's scrutiny, including one to increase the fees for groundwater permits. A bill that attracted a lot of attention by local governments, and the seafood, aquaculture, and agriculture industries to add aquaculture production to the definition of agriculture in the Right to Farm Act was also not approved by the General Assembly; however, the issue will be studied by a task force at the request of the House Agriculture Committee Chairman. We've requested a seat at the table for this study, as it's an important issue to be resolved.

Value to You: Environmental protections for water quality and water quantity continue to advance, largely without negative impacts to our agribusiness industry, and complicated topics such as aquaculture and the Right to Farm will have dedicated attention in the coming year.

E-Verify/Immigration

There were 8 bills introduced to address the employment of illegal immigrants. As a result, our business coalition, Virginia Employers for Sensible Immigrant Policy (VESIP) went to work. When it became clear that the General Assembly would be passing some measure mandating the use of the federal E-Verify program, VESIP worked with members of the Senate to draft legislation that would have the least impact possible. A review of other states in the nation indicates that many are already requiring the use of E-Verify by most, if not all, employers, not just those contracting with the state. The only measure to pass this General Assembly and agreed to by VESIP requires, beginning December 1, 2013, use of E-Verify by contractors with state agencies that have an annual average of 50 employees or more and a contract in excess of \$50,000. Any contractor not in compliance may be disbarred from contracting with the state for up to one year and can be reinstated when they participate in the E-Verify program. (See [SB1049](#) and [HB1859](#).)

Value to You: The resulting legislation appears very minimalist compared to other states. We have been able to delay a mandate to all employers to use the federal E-Verify program until hopefully it is more accurate and can accommodate what will be an enormous volume when required by all states (or the federal government).

Farmland Preservation and Land Conservation

Many small changes to laws this year should result in long-term improvements for farmland preservation efforts, particularly those geared towards "working farms." Legislation, resulting from several studies last year, passed that will expand the definition of open-space in the Land Conservation Law to expressly define agricultural or forestal production,

and streamline the process for localities and landowners who wish to put their lands into an Agricultural and Forestal District.

Funding for land conservation remains a difficult goal, particularly in times of budget shortfalls. However, measures were approved to ensure that the VDACS Farmland Preservation fund will now be non-reverting, meaning those funds should be protected from "raids" by the General Fund, and require a two year study of options for funding opportunities for land conservation.

Value to You: Our continuous advocacy for the preservation of working farms and forests, and funding for these state programs, has led to strong support by the General Assembly for mechanisms that streamline programs and processes for farmland conservation.

Fertilizer & Nutrient Management

Regulating urban nutrients was a high environmental priority for this General Assembly as they seek ways to meet the Chesapeake Bay TMDL. The decision to advocate our own proposals through Del. Ed Scott and Sen. Ryan McDougle proved to be a prudent strategy. After negotiating 7 fertilizer bills for many, many hours with legislators, environmental groups, home builders, commercial real estate developers, and local government, the results were positive. Also included in the bills are beneficial aspects for the production agriculture community.

[HB1831](#) and [SB1055](#) contain the following provisions:

- Beginning 12/31/13, no lawn maintenance fertilizer containing phosphorus can be registered in Virginia; retailers will be allowed to sell any existing inventory; this does not impact "starter" fertilizers with phosphorus
- Also beginning 12/31/13, lawn fertilizers must include "good housekeeping" language on the label (identical to Florida requirement)
- Contractor-applicators of fertilizer on non-agricultural land who are in compliance with training and nutrient management standards cannot be regulated by local government in regard to fertilizer use and application
- A promoted by the golf course industry, all courses must have a nutrient management plan by 2017 and DCR is to create a cost-share program by 2015 to help with the expense
- Golf courses who have a nutrient management plan cannot be regulated by local government in regard to fertilizer use and application
- Annual reporting by contractor-applicators is limited to those who apply lawn fertilizer on more than 100 acres beginning with calendar year 2012
- VDACS will publish a list of contractor-applicators who have completed required training and encourage consumers to consult the list when hiring a lawn care professional
- VDACS will prepare a report with stakeholder input on the use of slowly available nitrogen in lawn fertilizers
- The "use and application" of agricultural and non-agricultural fertilizer is added to the list of what local government cannot regulate, except when provided for in certain Acts
- DCR is to develop a flexible, tiered, voluntary nutrient management program that will allow certain farmers to prepare nutrient management plans for their own property

Value to You: The "green" industry has defined its own rules for the foreseeable future and we have delivered the message that managed turf is a good environmental practice. Regulation of fertilizer use and application will occur at the state level, thereby eliminating a hodgepodge of local rules. DCR will develop a new flexible program for voluntary nutrient management planning.

Food Safety

Honey and pickles make an odd combination, right? The General Assembly seems to have agreed, acting favorably upon a measure that we negotiated with honey processors and VDACS to remove certain inspection requirements. This will only apply to small honey producers who process under 250 gallons of this non-hazardous food product, and comply with labeling and annual reporting requirements.

Pickles, on the other hand, did not fare so well. We raised concerns about [SB 920](#), which would have exempted certain potentially hazardous foods like pickles and canned vegetables from VDACS food safety regulations and inspections, particularly the potential food safety issues these exemptions could cause, as well as the devastating impacts to the food industry. Thankfully, Senators responded favorably and amended the bill as we requested to require basic testing of products, training of personnel, and annual reporting; however, the patron decided not to pursue the legislation further with these amendments.

Value to You: Small producers of non-hazardous products like honey, will be afforded the opportunity to sell their products with minimal government oversight, however, consumers and industry alike are protected still against the sale of uninspected hazardous food products, like pickles.

Hunting/Wildlife Damages

While industry-supported legislation ([SB 868](#)) to address damages to crops by wildlife did not advance this year, the issue is far from "dead". The bill, which will be studied this year in detail, would have streamlined the time-consuming process of DGIF (Department of Game and Inland Fisheries) investigating crop damage from wildlife prior to providing farmers with a "kill permit". Good news on this front- legislators indicated if agriculture's concerns about crop damages by wildlife are not addressed over the year, legislation will be introduced in the future to do so.

Requested by the agriculture industry to address concerns about the re-introduction of elk into Southwest Virginia, [HB 2176/SB 1017](#) will require that DGIF get approval from local governments before introducing a new species in their locality. Bills allowing hunting on Sundays were defeated once again, although not without debate between hunters, the NRA, and DGIF's Chairman in support, and the farming community, horse industry, animal welfare groups, and landowners who were opposed.

Value to You: Ample discussion should ensue in the coming year about possible resolutions agriculture's concerns about wildlife damages to their crops (and profits), with the promise of legislative action if an adequate solution is not put into place.

Taxes and Fees

The promotion of local foods was evident in exempting certain agricultural produce and eggs from tax when annual sales in farmers markets do not exceed \$1,000. For a full explanation, [see fiscal impact statement](#).

There was only one attempt to reinstate the estate tax and that was for persons dying on or after July 1, 2011 with estates over \$3 million or not a working farm. The measure failed quickly and early in the process.

A provision which was also proposed in 2010 to increase funding to the VDACS Weights & Measures Program failed again as conservatives took a stand against any new fees. The funding would have come from an increase of 1/10 of 1-cent fee on each gallon of fuel collected for the Petroleum Storage Tank Fund.

Value to You: No additional fees or taxes will be imposed on the agribusiness community.

Transportation

While there were some clarifications of motor vehicle laws, there were no major changes made in this session. However, DMV has been instructed to develop a new permit fee schedule for overweight vehicles for submission in time for the 2012 session. It is expected that there will be no more "free" permits. The Council will be a participant in the upcoming discussions. Wrapped into this effort was a proposal by our poultry industry to allow overweight permits for specific vehicles that haul farm animal feed. While not approved this time, the proposal was seen as justified and assurance given that it would be addressed in the new permit fee schedule.

Legislation passed that clarifies farm machinery as being exempt from both size and weight limitations. And, vehicles validly registered in other states and used in conjunction with harvesting operations were more clearly defined as being engaged "principally" in transporting farm produce from the farm. The fee for this permit was increased from \$100 to \$150.

Value to You: The Council will be a participant representing your interests in the discussions that will develop a new permit fee schedule for overweight vehicles.

Virginia Cooperative Extension

What appeared to be a contentious issue that some felt demanded General Assembly action died down when Va. Tech President Steger announced that the restructuring plan for Virginia Cooperative Extension would be tabled and a new process begun to include agriculture industry stakeholders, local governments, and extension agents. Along those lines, language was written in the budget calling for a new restructuring plan to be developed with stakeholder involvement and a

focus on Extension's historical mission. The General Assembly asks for the revised plan to include costs and staffing levels for all options. In addition, the Governor and the General Assembly provided Extension an additional \$1.5 million for 25-30 positions.

Value to You: The Extension restructuring plan that was of great concern to many will not move forward. A new plan will be developed with our participation. Funding is provided to fill vacant positions.

Industry Promotions During Session

With the Council's leadership and assistance, member organizations delivered a small gift promoting their sector to the General Assembly members. Each week, the Delegates and Senators were given a reminder of the diversity and value of our agribusiness industry. We appreciate the participation of our dedicated industry members, including:

- Virginia Soybean Association
- Virginia Green Industry Council
- Virginia Egg Council & Virginia Poultry Federation
- Virginia Horse Council
- Virginia Nursery & Landscape Association
- Virginia Turfgrass Council
- Smithfield Foods, Saunders Brothers, Inc., Virginia Cattlemen's Association, Virginia Pork Industry Association, and First Colony Coffee
- MarvaMaid Dairy and Maryland Milk Producers Cooperative Association



Conclusion and Thank You!

As this summary demonstrates, the issues we work on throughout the year are as diverse as our membership. We hope you see value in our efforts to represent your interests during this year's General Assembly session. The Council took a proactive stance on a number of key issues, including agricultural water quality, fertilizer and nutrient management, animal agriculture, and eminent domain, to name a few -- and we celebrate our tremendous successes.

Many of these issues, and others in the report above, will continue to be debated in the coming months. We encourage you to read updates in our weekly AgReports and respond to requested information or action.

Thank you for your participation and support.

General Assembly Quick Links

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- [Bills and Resolutions](#)
- [Contact Info for Legislators](#)
- [Who's My Legislator?](#)
- [Governor's Office](#)
- [Code of Va \(searchable\)](#)
- [Council's 2011 Policy](#)

Quick Links

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 [Send to a Colleague](#)

Don't Forget--Council's National & State Issues Forum on March 21 in Richmond

Don't miss this event - a great opportunity to discuss components of the federal Farm Bill **AND** learn how actions of the General Assembly will impact you (there are plenty!) All Council members are invited to attend.

[See details and register here.](#)

QUESTIONS, RESPONSES, OPINIONS?

We look forward to hearing from you in regard to this e-newsletter, its content, and any of the issues we addressed or didn't address. Let us know your thoughts. Thanks for reading.

Va. Agribusiness Council

P.O. Box 718
Richmond, VA 23218

P- 804/643-3555; F- 804/643-3556

E- va.agribusiness@att.net