

VIRGINIA ACTS OF ASSEMBLY -- 2012 RECONVENED SESSION

CHAPTER 798

An Act to amend and reenact §§ 15.2-2303.1:1 and 15.2-2303.3 of the Code of Virginia, relating to the acceptance and terms of cash proffers.

[H 1253]

Approved April 18, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2303.1:1 and 15.2-2303.3 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2303.1:1. (Expires July 1, 2015) When certain cash proffers collected or accepted.

A. Notwithstanding the provisions of any cash proffer requested, offered, or accepted pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 for residential construction on a per-dwelling unit or per-home basis, cash payment made pursuant to such a cash proffer shall be collected or accepted by any locality only after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the subject property.

B. *Notwithstanding the provisions of any proffer to the contrary, the assertion of a right to delayed payment of cash proffers pursuant to this section shall not constitute cause for any action pursuant to § 15.2-2299.*

C. In addition to any other relief provided, the court may award reasonable attorney fees, expenses, and court costs to any person, group, or entity that prevails in an action successfully challenging an ordinance, administrative or other action as being in conflict with this section.

~~C. D.~~ The provisions of this section shall expire on July 1, 2015.

§ 15.2-2303.3. Cash proffers requested or accepted by a locality.

A. No locality may require payment of a cash proffer prior to payment of any fees for the issuance of a building permit for construction on property that is the subject of a rezoning. However, a landowner petitioning for a zoning change may voluntarily agree to an earlier payment, pursuant to §§ 15.2-2298 and 15.2-2303. If the petitioner voluntarily agrees to an earlier payment, the proffered condition may be enforced as to the petitioner and any successor in interest according to its terms as part of an approved rezoning.

B. No locality shall either request or accept a cash proffer whose amount is scheduled to increase annually, from the time of proffer until tender of payment, by a percentage greater than the annual rate of inflation, as calculated by referring to the Consumer Price Index for all urban consumers (CPI-U), 1982-1984=100 (not seasonally adjusted) as reported by the United States Department of Labor, Bureau of Labor Statistics or the Marshall and Swift Building Cost Index.

C. *No locality shall request or accept any provision of any proffer entered pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 in which the proffesor purports to waive future legal rights against the locality or its agents. Any such proffer provision contained in a proffer entered and enacted on or after January 1, 2012, shall be severable from the remainder of the proffer and shall be void ab initio. In the event that a proffer containing such a provision is entered and enacted on or after January 1, 2012, the rezoning to which the proffer containing such provision is attached shall not be nullified, rescinded, or repealed, however described or delineated, by reason of any alleged breach of such a provision by the proffesor, notwithstanding any provisions of the proffer to the contrary.*

2. That an emergency exists and this act is in force from its passage.