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HOUSE BILL NO. 770

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns
on January 29, 2016)

(Patron Prior to Substitute—Delegate Gilbert)

A BILL to amend the Code of Virginia by adding sections numbered 15.2-2303.4 and 15.2-2303.5, relating to conditional zoning.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 15.2-2303.4 and 15.2-2303.5 as follows:

§ 15.2-2303.4. Provisions applicable to all conditional rezoning proffers.

A. For purposes of this section, unless the context requires a different meaning:

"New residential development" means any construction or building expansion on residentially zoned property, including a residential component of a mixed-use development, that results in either one or more additional residential dwelling units or, otherwise, fewer residential dwelling units, beyond what may be permitted by right under the then-existing zoning of the property, when such new residential development requires a rezoning or proffer condition amendment.

"New residential use" means any use of residentially zoned property that requires a rezoning or proffer condition amendment.

"Offsite proffer" means a proffer addressing an impact outside the boundaries of the property to be developed and shall include all cash proffers.

"Onsite proffer" means a proffer addressing an impact within the boundaries of the property to be developed and shall not include any cash proffers.

"Proffer condition amendment" means an amendment to an existing proffer statement applicable to a property or properties.

"Public facilities" means public transportation facilities, public safety facilities, public school facilities, or public parks.

"Public facility improvement" means an offsite public transportation facility improvement, a public safety facility improvement, a public school facility improvement, or an improvement to or construction of a public park. No public facility improvement shall include any operating expense of an existing public facility, such as ordinary maintenance or repair, or any capital improvement to an existing public facility, such as a renovation or technology upgrade, that does not expand the capacity of such facility.

"Public safety facility improvement" means construction of new law-enforcement, fire, emergency medical, and rescue facilities or expansion of existing public safety facilities, to include all buildings, structures, parking, and other costs directly related thereto.

"Public school facility improvement" means construction of new primary and secondary public schools or expansion of existing primary and secondary public schools, to include all buildings, structures, parking, and other costs directly related thereto.

"Public transportation facility improvement" means (i) construction of new roads; (ii) improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality; and (iii) construction, improvement, or expansion of buildings, structures, parking, and other facilities directly related to transit.

"Residentially zoned property" means property zoned or proposed to be zoned for either single-family or multifamily housing.

B. Notwithstanding any other provision of law, general or special, no locality shall (i) request or accept any unreasonable proffer, as described in subsection C, in connection with a rezoning or a proffer condition amendment as a condition of approval of a new residential development or new residential use or (ii) deny any rezoning application or proffer condition amendment for a new residential development or new residential use where such denial is based in whole or in part on an applicant's failure or refusal to submit, or remain subject to, an unreasonable proffer.

C. Notwithstanding any other provision of law, general or special, (i) as used in this chapter, a proffer, or proffer condition amendment, whether onsite or offsite, offered voluntarily pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1, shall be deemed unreasonable unless it addresses an impact that is specifically attributable to a proposed new residential development or other new residential use applied for and (ii) an offsite proffer shall be deemed unreasonable pursuant to subdivision (i) unless it addresses an impact to an offsite public facility, such that (a) the new residential development or new residential use creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the

60 rezoning or proffer condition amendment and (b) each such new residential development or new
61 residential use applied for receives a direct and material benefit from a proffer made with respect to
62 any such public facility improvements.

63 *D. Notwithstanding any other provision of law, general or special:*

64 *1. Actions brought to contest the action of a locality in violation of this section shall be brought only*
65 *by the aggrieved applicant or the owner of the property subject to a rezoning or proffer condition*
66 *amendment pursuant to subsection F of § 15.2-2285.*

67 *2. In any action in which a locality has denied a rezoning or an amendment to an existing proffer*
68 *and the aggrieved applicant proves by a preponderance of the evidence that it refused or failed to*
69 *submit or remain subject to an unreasonable proffer that it has proven was suggested, requested, or*
70 *required, formally or informally, by the locality, the court shall presume, absent clear and convincing*
71 *evidence to the contrary, that such refusal or failure was the controlling basis for the denial.*

72 *3. In any successful action brought pursuant to this section contesting an action of a locality in*
73 *violation of this section, the applicant shall be entitled to an award of reasonable attorney fees and*
74 *costs as well as compensatory damages and to an order remanding the matter to the governing body*
75 *with a direction to approve the rezoning or proffer condition amendment without the inclusion of any*
76 *unreasonable proffer. If the locality fails or refuses to approve the rezoning or proffer condition*
77 *amendment within a reasonable time not to exceed 90 days from the date of the court's order to do so,*
78 *the court shall enjoin the locality from interfering with the use of the property as applied for without the*
79 *unreasonable proffer. Upon remand to the local governing body pursuant to this subsection, the*
80 *requirements of § 15.2-2204 shall not apply.*

81 *E. This section shall not apply to any new residential development or new residential use occurring*
82 *in an approved area comprehensive plan that allows unlimited density within one-quarter mile of an*
83 *existing or planned Metrorail station.*

84 **§ 15.2-2303.5. Certain conditional rezoning proffers prohibited.**

85 *Notwithstanding any provision of subdivision A 3 of § 15.2-2286 or § 36-98, no locality shall impose*
86 *or require, as part of a rezoning or proffer condition amendment, limitations on or requirements for*
87 *such matters as building materials, finishes, methods of construction, or design features on a new*
88 *residential development or new residential use as defined in § 15.2-2303.4 unless such new residential*
89 *development or new residential use is located within a historic district designated pursuant to*
90 *§ 15.2-2306, a redevelopment or rehabilitation district for which a locality provides an exemption from*
91 *taxation pursuant to § 58.1-3219.4, or an economic revitalization zone created pursuant to*
92 *§ 15.2-1129.2. In addition, this section shall not apply if the new residential development or new*
93 *residential use is located within a state-designated or federally designated airport noise attenuation*
94 *zone, is in close proximity to a military base or large commercial or industrial operation, or is located*
95 *within a flood zone in which applicable regulations allow for the use of flood-proofing construction*
96 *methods to minimize the risk of flood-related damages, provided that any such limitation or requirement*
97 *is specifically directed to flood or noise mitigation, respectively.*

98 **2. That this act shall not be construed to effect any proffer related to a nonresidential development**
99 **or use and shall be construed as supplementary to any existing provisions limiting or curtailing**
100 **proffers or proffer condition amendments for new residential development or new residential use**
101 **that are consistent with its terms, and shall be construed to supersede any existing statutory**
102 **provision with respect to proffers or proffer condition amendments for new residential**
103 **development or new residential use that are inconsistent with its terms.**

104 **3. That this act is prospective only and shall not be construed to apply to any proffer accepted**
105 **prior to the date of enactment or to any proffer condition amendment amending a proffer**
106 **accepted prior to such date.**