

Commission on Local Government

Estimate of Local Fiscal Impact

2016 General Assembly Session

Bill: HB 770

Patron: Gilbert

Date: 1/26/2016

In accordance with the provisions of §30-19.03 of the Code of Virginia, the staff of the Commission on Local Government offers the following analysis of the above-referenced legislation:

Bill Summary:

Conditional zoning. Provides that no locality shall (i) request or accept any unreasonable proffer 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, including an application for amendment to an existing proffer, for a new residential development or new residential use where such denial is based on an applicant's failure or refusal to submit, or remain subject to, an unreasonable proffer. A proffer shall be deemed unreasonable unless it addresses an impact that is specifically and uniquely attributable to a proposed new residential development or other new residential use applied for. An off-site proffer shall be deemed unreasonable pursuant to the above unless it addresses an impact to an off-site 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 rezoning or proffer condition amendment, and (b) each such new residential development or new residential use applied for receives a direct and material benefit from a proffer made with respect to any such public facility improvements. In any action in which a locality has denied a rezoning or an amendment to an existing proffer and the aggrieved applicant proves by a preponderance of the evidence that it refused or failed to submit, or remain subject to, an unreasonable proffer that it has proven was suggested, requested, or required, formally or informally, by the locality, the court shall presume, absent clear and convincing evidence to the contrary, that such refusal or failure was the controlling basis for the denial. The bill also provides that certain conditional rezoning proffers related to building materials, finishes, methods of construction, or design features on a new residential development are prohibited.

Executive Summary:

HB 770 prohibits local governments (1) from requesting or accepting any unreasonable proffer, as defined in this bill, in connection with rezoning or a proffer amendment as a condition of approval for a new residential development or use, and (2) from denying a rezoning or proffer amendment based on the applicant's failure or refusal to submit or remain subject to an unreasonable proffer. The bill also prohibits certain conditional rezoning proffers related to building materials, finishes, methods of construction, or design features on new residential development.

Localities have evaluated a negative fiscal impact of \$0.01 - \$200,000.00. The provisions of the bill will impact all local governments in some way. Localities without a proffer policy may not see an immediate impact unless they decide to establish a proffer policy in the future or would need a conditional zoning in the future. Localities with a proffer policy noted that the potential implications of this bill may have a negative impact on the number of rezoning permits and could impact property values which may affect the tax base.

Additional localities noted that the terms "unreasonable" and "addresses an impact" are too vague to have clear meaning, despite the law's attempt to define them, therefore, it could be difficult for localities to accept proffers that indirectly address public facility needs and issues within their jurisdictions.

Note: this bill is identical to SB 549.

Local Analysis:

Locality: City of Danville **Estimated Fiscal Impact:** \$0.01

Danville doesn't accept cash proffers and has very little residential development currently that this would effect.

Large growth localities would have a larger impact.

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**Locality:** City of Falls Church **Estimated Fiscal Impact:** \$1.00

As written, the prohibition covers both single-family and multi-family. Is that the intent? Not layering single-family with design criteria is understandable, but the implementation of a master plan must include the fit and finish of multi-family residential in a mixed-use development because of their immense size. These decisions are best left to the local jurisdiction, who can better decide if it wants an eclectic or uniform appearance to its master-planned developments.

Developers are not compelled to build in a given area and can decide to go elsewhere if they find a locality's rules too burdensome. It is reasonable to have them comply with the regulations of the areas in which they choose to work. Let the market decide which localities are overly unfriendly or friendly to development. This proposed change sounds more like an accommodation to a set of developers who want to do as they please, at the expense of the local jurisdiction.

Terms and phrases such as "unreasonable" and "addresses an impact" are too vague to have clear meaning, despite the law's attempt to define them.

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Locality: City of Harrisonburg **Estimated Fiscal Impact:** \$0.01

Provided by the City's Director of Planning and Community Development.

In short, and as I understand it, the proposal only impacts proffered (or conditional) rezoning requests for property owners wanting to develop residentially. It would not impact proffered developments for commercial or industrial development or on residential development that might be part of a mixed-use, multi-story building. The major changes include ensuring that the City only accepts proffers that are "specifically and uniquely" attributable to the impacts of new residential development rather than the existing provisions that requires proffers to be "roughly proportional" and "bears a reasonable relation" to potential impacts. I also believe the legislation may also curtail accepting internal and external architectural features of developments.

What the legislation is trying to prevent or prohibit are actions that we currently do not practice or recommend people consider. There are at times ideas for the applicant to consider for external architectural features, but as of late we have more or less shifted away from this practice.

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**Locality:** City of Lynchburg **Estimated Fiscal Impact:** \$200,000.00

The ambiguity of the language could result in additional infrastructure costs and staff time. Based on the residential rezonings we've had this last year, a determination of what traffic improvements may or may not be "specifically and uniquely" related to the development would be in excess of \$200,000.

This wording could lead to proffers addressing items such as traffic open to interpretation. For example, traffic in general is not specifically and uniquely attributable to a proposed development; rather all development. Therefore, traffic turn lanes or road extensions that serve the development could be interpreted as not "specific" to the development. Need more information.

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Locality: City of Norfolk

Estimated Fiscal Impact: \$1.00

Preliminary analysis. Identical to bill SB 549. The cost of the bill as proposed is indeterminate at this time. The City of Norfolk does not accept cash proffers. However, the city does accept non-cash proffers related to conditional rezoning. Specifically, the bill will restrict the city from accepting a non-cash proffer on property outside a historic district.

The implications of this action will have a negative impact on the number of rezoning permits approved by the City Council and that may impact the valuation of property within the city, which may affect the tax base. By restricting non-cash proffers on property outside a historic district, new residential construction and design for approved rezoning permits will decrease in quality without current limitations and requirements in place.

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**Locality:** City of Roanoke

**Estimated Fiscal Impact:** \$1.00

No impact.

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Locality: City of Virginia Beach

Estimated Fiscal Impact: \$1.00

Virginia Beach does not receive much in terms of dollars from proffers, but the City is concerned with this bill as proposed. According to our City Attorney's Office, the bill has far more effect than on cash proffers. It is true that the City does not collect much money in cash proffers, but to limit a discussion of the City's position on the bill to just the effect it has on cash proffers is to leave out the most important parts of the bill, which severely limit the proffers the City may accept and fundamentally alter the standards by which court cases on these matters are decided. The direct fiscal impact may not be great, but the City would not be able to keep its conditional zoning practices intact if the bill is enacted into law.

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**Locality:** City of Winchester

**Estimated Fiscal Impact:** \$100.00

We believe that this legislation will have low to minimum fiscal impact on the City of Winchester, and will likely have more direct impacts on localities that will continue to face large residential developments (such as Frederick County). Since the City is fairly built out with no large residential rezoning requests anticipated, there will be minimal applicability of this statute on future City rezonings. It makes sense to have the specific proffers proposed by a developer attributable to an impact that is specific to that new residential development. It appears from the language proposed in the bill, that any voluntary proffers would be limited to capital costs with new construction or expansion of public facilities. Depending on the interpretation of 15.2-2303.4(C), the ability of localities to accept voluntary proffers for ongoing operational costs for public facilities could be negatively impacted thus resulting in a negative fiscal impact on the locality. Also, the provisions of 15.2-2303.5 limit the ability of a locality to accept "quality of development" proffers outside of an historic district. This has an indirect fiscal effect on localities in allowing for a developer to proffer high quality development which could result in higher assessed property values.

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Locality: Henrico County

Estimated Fiscal Impact: \$1.00

Henrico County does not have a cash proffer policy, therefore that aspect of this bill would be of minimal impact.

With regards to other proffers, this bill could impact the quality of development that occurs. This could impact property values and, thus, real estate taxes. However, an exact impact cannot be determined.

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**Locality:** Rappahannock County

**Estimated Fiscal Impact:** \$10,000.00

While we use conditional zoning largely for uses of commercial nature, we have had sit location and "quality of construction" type proffers on a limited number of residential projects. The figure used is reflective both of some amendment language needed to make our Code comply (if adopted) and more for attorney fees to advise the Planning Commission and Board on the nuances of this proposed legislation on future proffers and to pay deductible costs of insurance for defending land use decisions that are ultimately challenged under it

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Locality: Richmond County

Estimated Fiscal Impact: \$1.00

Not so much a fiscal impact, more of the State once again infringing on local land use control. Much of the proposed bothers me, however it appears that design standards are being targeted. Building materials, design features and so forth are key components to positive developments for localities.

And if the proffer for improvements to off site facilities are only allowed based off of current capacity models, that is mighty short sighted for the future. What if the project proposes a 25 year build out and improvements are slated for 15 years out based off of the build out of the development. That should certainly not be a responsibility of the locality and the state to expend money for those projects.

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**Locality:** Rockingham County

**Estimated Fiscal Impact:** \$10,000.00

There is insufficient information for the County to determine the impact, if any, of this legislation. An impact of \$10,000 has been assigned. The County does not have a formal proffer or impact program and typically simply accepts those proffers that are made by the requester. We would consider any proffer voluntarily made by the requester to be reasonable.

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Locality: Spotsylvania County

Estimated Fiscal Impact: \$1,406.00

Based on actual re-zonings occurring in the past two calendar years, Spotsylvania estimates its added cost to be \$1,406 per year resulting from additional staff time that would be required.

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**Locality:** Town of Boones Mill

**Estimated Fiscal Impact:** \$0.01

The Town of Boones Mill does not have a zoning ordinance, therefore no conditional zoning and no proffers related to conditional zoning approvals.

This legislation would not directly affect development in this small towns or others in the similar situation (no zoning ordinance).

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Locality: Town of Front Royal

Estimated Fiscal Impact: \$0.01

Limiting a community's ability to regulate the appearance of new, large subdivision will potentially impact the desirability of our community. Currently, we seek brick veneer on the front for these large subdivision, as well as inclusion of energy star rated appliances with rezoning applications.

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**Locality:** Town of Pulaski

**Estimated Fiscal Impact:** \$0.01

The Town of Pulaski has not utilized conditional zoning for residential developments. Given the current economic conditions it is doubtful that the town would utilize conditional zoning regarding its application to a residential development.

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