

Commission on Local Government

Estimate of Local Fiscal Impact

2016 General Assembly Session

Bill: HB 770 **Amended** **Patron:** Gilbert

Date: 2/19/2016

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 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.

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### **Executive Summary:**

The amended version of the bill has the following changes compared to the original version of the bill:

- Clarifies that the provisions of the bill would be applicable to “certain” conditional zoning proffers and not “all” conditional zoning proffers.
- Definition of public facilities incorporated public transportation facility improvements and public parks, to compensate for the removal of “public road facility” improvements.
- The uniquely attributable standard has been removed from the definition of unreasonable proffers.
- In case of litigation, localities may not be obligated by law to pay reasonable attorney fees, costs and compensatory damage to the plaintiff, in the case of favorable judgement to the plaintiff. The original version of the bill mandates that localities would be obligated to pay.
- Proffer approval period would be extended to 90 days from 60 days from the court order.
- The advertisement and notification requirements of §15.2-2204 would not be applicable when such cases would be remanded back to the locality by the court.
- The existing prohibition of conditions on building materials, finishes, methods of construction, and design features for any new residential development or use located within a historic district designated pursuant to §15.2-2306 would be expanded per language.
- The bill would not apply to any proffer or proffer condition amendment accepted retroactively.

Localities have evaluated a negative fiscal impact of \$0.01 - \$200,000.00. The provisions of the bill would impact all local governments in some way. Localities noted that the ambiguity of the language could result in additional infrastructure costs and staff time including the cost for defending litigation. Some localities noted that court challenge of such developments would be easier for the applicants who wish to dispute the unreasonableness of the proffers. Localities also noted that the bill would allow the courts to direct approvals of such rezoning cases without the unreasonable proffers.

Additional localities also noted that the bill would restrict the localities from accepting a non-cash proffer on property outside a historic district, rehabilitation district, economic revitalization zone, airport noise zone or close to a military base or flood zone.

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**Local Analysis:**

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

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

Of note, Section 15.2-2303.5 could be problematic in that the City could not require any special types of building materials. This has come up in the past a few times in apartment rezoning's to make the units look more like the surrounding developments. This is also spurred by neighborhood objection, not staff's. As long as it meets the USBC it is fine, but neighbors in the area may not be.

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

I received this from our Community Development Director:

So within the context of fiscal impacts, I'm going to note the ambiguity of the language could result in additional infrastructure costs and staff time. Based on the residential rezonings (Candlewood Court, Ed Tam's project, Leesville Road townhomes, Rush Project, etc.) we've had this last year, I expect those traffic improvements would be in the neighborhood of a couple \$100,000 for the year.

I think the bills are just another attempt to erode local land use decision making.

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**Locality:** City of Norfolk

**Estimated Fiscal Impact:** \$1.00

This bill is similar to the substitute bill SB 549. The cost of the engrossed bill as proposed is indeterminate at this time. The City of Norfolk does not accept cash proffers. While a locality may not currently accept a cash proffer from improvements as part of past rezonings, this bill will preclude consideration of cash proffers in the future.

In addition, court challenges will be easier for applicants who wish to dispute the reasonableness of proffers accepted by the city. The bill allows an applicant to collect attorney’s fees and damages, which is not currently the case. Further, while the current remedy available to a court is a complete restart of the application process, this bill allows a court to direct approvals by the governing body without the unreasonable proffers.

The substitute bill adds language related to conditional rezoning proffers, which would have restricted a locality from accepting a non-cash proffer on property outside a historic district. In addition to a historic district, the new language includes new residential development or use within a redevelopment or rehabilitation district, an economic revitalization zone, an airport noise zone, or close to a military base or flood zone.

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Locality: Rappahannock County

Estimated Fiscal Impact: \$10,000.00

My comments mirror those on the companion house bill. This version improves upon the original (in terms of impact on local government operations) , but continues to shift the burden of proof away from the plaintiff. Other changes (proximity to a metrorail station) are irrelevant to my community. Costs would result from defending proffers in litigation.

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**Locality:** Rockingham County

**Estimated Fiscal Impact:** \$0.10

We are unable to estimate an impact because we do not accept cash proffers.

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Locality: Town of Buchanan

Estimated Fiscal Impact: \$2,500.00

As with SB 549, the estimated fiscal effect will be related to the locality's cost of the facility that would be necessary as a result of the new development. Proffers are voluntary so prohibiting a locality from requesting them is redundant. Taking away a locality's ability to offset its own related development cost is a burden to taxpayers.

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**Locality:** Town of Front Royal

**Estimated Fiscal Impact:** \$2,500.00

The bill appears to further restrict a locality's ability to mitigate direct and indirect impact from rezoned development in a community.

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