

Commission on Local Government

Estimate of Local Fiscal Impact

2016 General Assembly Session

Bill: SB 746

Patron: Wagner

Date: 2/8/2016

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:

Personal liability of government employees for certain inspections. Provides that a government employee who exceeds the scope of his authority when performing an inspection of a private entity to determine compliance with any law, regulation, or ordinance shall be personally liable for any damages arising from any enforcement action taken against the entity on the basis of the employee's inspection. The provisions of this bill do not apply to law-enforcement officers.

~~~~~

### Executive Summary:

As per the provisions of SB 746, government employees (except law enforcement officers) would be personally liable for damages due to any enforcement action taken against private entities when such action exceeds the scope of their inspection authority to determine compliance.

Localities have evaluated a negative fiscal impact of \$0.01 - \$1,000,000.00. The provisions of the bill would impact all localities in some way. Some localities noted that the cost would be associated with delays to development due to interpretation of codes by authorities and legal cost to determine if an employee action exceeds the scope of authority. Localities also noted that this bill would discourage employees from enforcing code or making any violation notices for fear of a lawsuit, this is not in the best interest of safety and would impact hiring cost and retention based on potential liability.

Some localities noted that this bill would provide a new avenue for citizens to challenge government inspections and would invite litigation.

\*\*\*\*\*

### Local Analysis:

**Locality:** City of Chesapeake

**Estimated Fiscal Impact:** \$1,000.00

We do not believe this bill creates a fiscal impact for the City of Chesapeake aside from training. Our understanding is that the bill would make government employees who exceed their authority personally liable for damages of an aggrieved party. Since the bill applies to those who act outside the scope of their duties or authority, we do not contemplate that the city would indemnify or pay damages in such an action. We do not believe we could/would purchase insurance to cover such claims either.

~~~~~

Locality: City of Danville

Estimated Fiscal Impact: \$10,000.00

This bill would most likely increase expenditures in Danville. Figure above is an estimate per year.

While the bill does make the employee will be personally liable, the City would most likely incur legal costs to determine if that action exceeds the scope of authority. This bill may prevent employees from enforcing code or making any violation notices for fear of a lawsuit - which is not in the best interest of safety. In Danville, we are experiencing both blight issues and redevelopment of older buildings. Many times, an inspector may have to visit multiple times (depending on which department the inspector is from). This increases the potential for a private entity to feel that the inspector has overstepped their authority, and could possibly lead to frivolous lawsuits.

~~~~~

**Locality:** City of Harrisonburg

**Estimated Fiscal Impact:** \$0.01

Comment provided by City Attorney.

I think we would end up defending claims against our employees even if we are not obligated to pay damages if they were found to have acted beyond their authority. Problem is it probably won't be very clear if they were or not.

~~~~~

Locality: City of Lynchburg

Estimated Fiscal Impact:
\$1,000,000.00

- Increased costs associated with delays to development. Local employees who “interpret” State codes such as the Universal Statewide Building Code, International Property Maintenance Code, Erosion and Sediment Control/Stormwater Management law will likely ask for State interpretations before approving an inspection. This would significantly delay development, especially with the significant increase in inquiries and limited resources in state offices.
- Increased costs associated with strict adherence to codes. In so many cases public employees are willing to work with owners, developers and contractors on alternatives that meet the intent of the code. This would likely significantly subside or cease due to fears of not enforcing the code verbatim, resulting in substantially increased costs to build/develop.
- Impacts associated with hiring and retention based on potential liability.

Off hand, ifyou had to put a number I would estimate in the millions based on the trickle down impact to the local economy.

~~~~~

**Locality:** City of Norfolk

**Estimated Fiscal Impact:** \$0.01

The cost of the bill as proposed is indeterminate at this time. The bill will make city inspectors personally liable for damages caused by an inspection which exceeded their scope of authority. Currently, city officials are not liable for inspection activity. The city indemnifies the inspectors from personal liability, if acting within their scope of authority. In this bill, the prerequisite is that the inspectors exceed their authority, which may take them out of the city's coverage.

~~~~~

Locality: City of Winchester

Estimated Fiscal Impact: \$10,000.00

From the City Attorney.. It seems to be an effort to negate sovereign immunity for governmental employees. I think if the statute applied only to "knowing and intentional" wrongful acts, it would be in line with the gross negligence/willful wanton conduct standard and would be palatable. But in its current form, local governments need to oppose it and win, otherwise, we are unlikely to have anyone willing to perform inspections.

~~~~~  
**Locality:** Henrico County

**Estimated Fiscal Impact:** \$25,000.00

It is difficult to estimate the fiscal impact of this bill because it provides a new avenue for citizens to challenge government inspections that localities have not had to deal with previously. The primary cost of this bill would be in employee time for the inspector, inspectors department, and the county attorney's office. There would also be related court costs as well as any potential judgment when the locality defends the employee.

~~~~~  
Locality: Mecklenburg County

Estimated Fiscal Impact: \$200,000.00

The costs are unknown since I won't have a Building Inspector or Zoning Administrator who will be will to do the job. I don't blame them. No one will do these jobs.

~~~~~  
**Locality:** Prince George County

**Estimated Fiscal Impact:** \$1.00

Municipalities/State may not be able to legally cover personal liability while an employee is on the job. Therefore, municipal insurance rates will not go up.  
But, an employee under this law may wish to have increased personal liability insurance just to hold employment. The employee's personal cost will go up. Will this amount be "covered" by increased salary requirements to offset the new personal insurance expense?  
The bill raises too many questions that cannot be answered at this time: Who determines the employee's scope of authority and did they violate it? Why does an employee's job turn from professional error to personal error? Will this "slippery slope" lead to all government employees becoming personally liable for mistakes committed on the job? i.e. Clerk with Commissioner of Revenue miscalculates business license fee for years...can they be held personally liable for any overpaid amounts?  
The bill should not move forward with the VA General Assembly.

~~~~~  
Locality: Rappahannock County

Estimated Fiscal Impact: \$1,000.00

Well, while I might personally suffer from the bill's provisions, I don't see how my employer (the County) would suffer significant fiscal impact, except perhaps for attorney's fees in defending over the question of whether or not I was indeed exceeding the scope of my authority. Mostly of course, the 'cost' would be the chilling effect on inspectors. I would add that the definition of inspection is so vague as to include almost any contact.

~~~~~

**Locality:** Spotsylvania County

**Estimated Fiscal Impact:** \$1.00

The information provided in the proposed legislation is insufficient to allow us to provide an estimate of the bill's financial impact at this time.

~~~~~  
Locality: Town of Boones Mill

Estimated Fiscal Impact: \$0.01

This kind of bill invites litigation, with the full consequences becoming clear in court rather than up front. I think that there would be minimal fiscal impact upon small towns. This town, for instance, defers to county staff for building code inspections and fire code inspections. Our only inspection as such are related to utility installation.

In any event, the personal liability of employees shifts cost away from the locality and its insurance. This also helps avoid moral hazard and deter inspectors from illegal action.

~~~~~