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SENATE BILL NO. 1524

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact § 15.2-2303.4 of the Code of Virginia, relating to conditional rezoning proffers.*

Patron—Black

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-2303.4 of the Code of Virginia is amended and reenacted as follows:****§ 15.2-2303.4. Provisions applicable to certain 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 that requires a proffer condition amendment to allow for new residential development.

"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~~ *includes* public transportation facilities, public safety facilities, public school facilities, *public libraries, stormwater facilities, affordable housing, or* public parks *and any other public facility identified in the locality's capital improvement program.*

"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 *but* shall not 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. For purposes of this section, the term "public park" shall include playgrounds and other recreational *and community* facilities.

"Public safety facility improvement" means construction of new law-enforcement, fire, emergency medical, and rescue facilities, *animal control-related facilities,* or expansion of existing public safety facilities, to include all buildings, structures, *capital equipment,* parking, and other costs ~~directly~~ *reasonably* 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, *buses, furniture, capital equipment,* parking, and other costs ~~directly~~ *reasonably* 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~~ *reasonably* related to transit.

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

"Small area comprehensive plan" means that portion of a comprehensive plan adopted pursuant to § 15.2-2223 that is ~~specifically~~ applicable to a delineated area within a locality rather than the locality as a whole.

B. Notwithstanding any other provision of law, general or special, no ~~locality~~ *local governing body* shall (i) ~~request or accept~~ *require* 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

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59 for a new residential development or new residential use where such denial is based in whole or in part
60 on an applicant's failure or refusal to submit an unreasonable proffer or proffer condition amendment.

61 C. Notwithstanding any other provision of law, general or special, (i) as used in this chapter, a
62 proffer, or proffer condition amendment, whether onsite or offsite, offered voluntarily pursuant to §
63 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1, shall be deemed unreasonable unless it addresses an
64 impact that is specifically reasonably attributable to a proposed new residential development or other
65 new residential use applied for and (ii) an offsite proffer shall be deemed unreasonable pursuant to
66 subdivision (i) unless it addresses an impact to an offsite public facility, such that ~~(a) the new residential~~
67 ~~development or new residential use creates a need, or an identifiable portion of a need, for one or more~~
68 ~~public facility improvements in excess of existing public facility capacity at the time of the rezoning or~~
69 ~~proffer condition amendment and (b) each such new residential development or new residential use~~
70 ~~applied for receives a direct and material benefit from a proffer made with respect to any such public~~
71 ~~facility improvements.~~ For the purposes of this section, a locality may base its assessment of public
72 facility capacity on the projected impacts specifically reasonably attributable to the new residential
73 development or new residential use, *including approved but not yet constructed development.*

74 D. *In addition to and notwithstanding the provisions of subsection C, an applicant or owner may*
75 *submit any proffer as the applicant or owner deems reasonable and appropriate, as conclusively*
76 *evidenced by the signed proffers. Failure to submit proffers as set forth in this subsection shall not be*
77 *the basis for the denial of any rezoning or proffer condition amendment application.*

78 E. Notwithstanding any other provision of law, general or special:

79 1. Actions brought to contest the action of a ~~locality~~ *local governing body in regard to an*
80 *unreasonable proffer* in violation of this section shall be brought only by the aggrieved applicant or the
81 owner of the property subject to a rezoning or proffer condition amendment pursuant to subsection F of
82 § 15.2-2285, *provided that the applicant objected to the proffer condition in writing prior to the grant*
83 *or denial.*

84 2. In any action in which a ~~locality~~ *local governing body* has denied a rezoning or an amendment to
85 an existing proffer and the aggrieved applicant proves by a preponderance of the evidence that it refused
86 ~~or failed to submit an unreasonable proffer or proffer condition amendment that it has proven~~
87 ~~suggested, requested, or required by the locality local governing body,~~ the court shall presume, absent
88 ~~clear and convincing a preponderance of the evidence to the contrary,~~ that such refusal or failure was
89 the controlling basis for the denial.

90 3. In any successful action brought pursuant to this section contesting an action of a ~~locality~~ *local*
91 *governing body* in violation of this section, the ~~applicant~~ *prevailing party* may be entitled to an award of
92 reasonable attorney fees and costs *in the court's discretion* and ~~to the court may enter an order~~
93 ~~remanding the matter to the governing body with a direction to approve the rezoning or proffer~~
94 ~~condition amendment without the inclusion of any unreasonable proffer or to amend the proffer to bring~~
95 ~~it into compliance with this section.~~ If the ~~locality~~ *local governing body* fails or refuses to approve the
96 rezoning or proffer condition amendment within a reasonable time not to exceed 90 days from the date
97 of the court's order to do so, the court shall enjoin the locality from interfering with the use of the
98 property as applied for without the unreasonable proffer. Upon remand to the local governing body
99 pursuant to this subsection, the requirements of § 15.2-2204 shall not apply.

100 E. F. The provisions of this section shall not apply to *communication regarding or consideration of*
101 *any new residential development or new residential use occurring proposed or approved* within any of
102 the following areas: (i) an approved small area comprehensive plan in which the delineated area is
103 designated as a revitalization area, encompasses mass transit as defined in § 33.2-100, includes mixed
104 use development, and allows a density of at least 3.0 floor area ratio in a portion thereof; (ii) an
105 approved small area comprehensive plan that encompasses an existing or planned Metrorail station, or is
106 adjacent to a Metrorail station located in a neighboring locality, and allows additional density within the
107 vicinity of such existing or planned station; ~~or~~ (iii) an approved service district created pursuant to
108 § 15.2-2400 that encompasses an existing or planned Metrorail station; (iv) *an approved small area*
109 *comprehensive plan where the local governing body determines that increased residential density of at*
110 *least 3.0 units per acre is desired in a portion thereof, the area is proximate to enhanced transportation*
111 *facilities, has planned or approved public or community water and sewer systems, and is planned, in*
112 *part, for residential development, redevelopment or infill development; or (v) a property owner-proposed*
113 *small area comprehensive plan that meets the criteria of either (i), (ii) or (iv) above, applied for prior*
114 *to or currently with a rezoning, whether or not such small area plan addition or rezoning is ultimately*
115 *approved by the local governing body.*

116 F. G. This section shall be construed as supplementary to any existing provisions limiting or
117 curtailing proffers or proffer condition amendments for new residential development or new residential
118 use that are consistent with its terms and shall be construed to supersede any existing statutory provision
119 with respect to proffers or proffer condition amendments for new residential development or new
120 residential use that are inconsistent with its terms.

121 *H. Notwithstanding any provision in this section to the contrary, nothing contained herein shall be*
122 *deemed or interpreted to prohibit or to require communications between an applicant or owner and the*
123 *locality. Furthermore, notwithstanding any provision in this section to the contrary, nothing contained*
124 *herein shall be deemed or interpreted to prohibit or require presentation, analysis, or discussion of the*
125 *potential impacts of new residential development or new residential use on the locality's public facilities.*

126 **2. That this act shall be effective as to any application for a rezoning or proffer condition**
127 **amendment filed on or after July 1, 2019, or to any then pending application in which the**
128 **applicant elects to proceed hereunder, by amendment of that pending application.**

129 **3. That an applicant with a pending application for a rezoning or proffer condition amendment**
130 **that was filed prior to July 1, 2016, shall proceed under the law as it existed prior to that date,**
131 **and an applicant with a pending rezoning or proffer condition amendment application filed after**
132 **July 1, 2016, but before July 1, 2019, may elect to proceed under the law as it existed during that**
133 **period.**