

Commission on Local Government

Estimate of Local Fiscal Impact

2023 General Assembly Session | 01/28/23

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 legislation impacting local governments.

SB 1495: Local enforcement action; willful disregard for applicable law, damages. (Patron: Senator Scott A. Surovell)

Bill Summary: Local enforcement action; willful disregard for applicable law; damages. Provides that any person aggrieved by an enforcement action by a locality, where the enforcement action was based upon a willful disregard for applicable law, regulation, or ordinance, shall be entitled to an award of compensatory damages and to an order remanding the matter to the locality with a direction to terminate such enforcement and may be entitled to reasonable attorney fees and court costs.

Local Fiscal Impact: Net Additional Expenditure: X Net Reduction of Revenues:

Summary Analysis:

Number of Localities Responding: 4 Cities, 3 Counties, 6 Towns, 1 Other

Localities estimated a negative fiscal impact ranging from \$0 to \$100,000 over the biennium.

Localities identified the bill's fiscal impact as the expenditures needed to address a potential increase in legal liability and legal suits brought against them.

Only two localities provided a numerical fiscal impact; however, most others responded by stating the bill's fiscal impact was indeterminate at this time. These localities indicated the bill's provisions (changing how citizens are compensated for certain legal cases) would potentially increase expenditures by increasing the number of legal claims brought against a local government. Some localities also noted that their insurance rates to cover potential losses could also rise given the increased legal risk, which would also increase expenditures. Several localities noted that the precise fiscal impact would depend upon how certain terms in the legislation were defined (e.g. "willful disregard").

A few localities responded with no fiscal impact, stating they would likely not be impacted by the bill.

Net Increase in Expenditures: Itemized Estimates by Responding Localities

Locality	Juris	Recurring Expense- Personnel		Recurring Expense - Operating		Recurring Expense - Capital		Recurring Expense - Other	
		FY23	FY24	FY23	FY24	FY23	FY24	FY23	FY24
City of Alexandria	City								
City of Harrisonburg	City	\$0	\$0	\$0	\$0	\$0			
City of Richmond	City	\$1,670	\$1,670						
City of Winchester	City								
Mecklenburg County	County								
Prince George County	County								
Rappahannock County	County								
Northern Neck PDC	Other								
Town of Blacksburg	Town								
Town of Christiansburg	Town								
Town of Leesburg	Town								
Town of Luray	Town			\$50,000	\$50,000				
Town of Marion	Town								
Town of Scottsville	Town								

Net Increase in Expenditures: Itemized Estimates by Responding Localities

Locality	Nonrecurring Expense - Operating		Nonrecurring Expense - Capital		Nonrecurring Expense - Other		Penny Value of Increase on Real Estate Rate*	Total Increase in Expenses (Biennium Total)
	FY23	FY24	FY23	FY24	FY23	FY24		
City of Alexandria								\$0
City of Harrisonburg							0	\$0
City of Richmond							0	\$3,340
City of Winchester								\$0
Mecklenburg County								\$0
Prince George County								\$0
Rappahannock County								\$0
Northern Neck PDC								\$0
Town of Blacksburg								\$0
Town of Christiansburg								\$0
Town of Leesburg								\$0
Town of Luray							0.01	\$100,000
Town of Marion							0	\$0
Town of Scottsville								\$0

Locality	Expenditure Narrative by Responding Localities
City of Alexandria	The fiscal impact of this bill is indeterminate at this time but could result in a financial cost to the City.
City of Harrisonburg	<p>This bill would subject a locality to legal action pretty much any time it loses an enforcement action, which does happen on occasion. "Willful disregard" is a high standard a plaintiff would have to meet to prevail, so an aggrieved person may not often win, but I fear this bill will make these types of cases against localities almost routine in any enforcement action a locality loses. This will have a chilling effect on enforcement actions if localities fear these lawsuits. And, even if a locality prevails in these damages cases they will be costly to defend. I can see localities settling these damages actions even if the underlying enforcement action was in good faith just to avoid the defense costs and mitigate the risk of an award of damages.</p> <p>The City's insurance carrier may refuse coverage or to provide a defense on the theory the action results from an intentional illegal act on the part of our employee, in which case the City would be on its own. If coverage is provided by the carrier, it may drive up our rates.</p> <p>“Compensatory damages” is a broad category and may subject the City to a large damage award for what was a minor enforcement action.</p> <p>Finally, there are already remedies to address such bad behavior on the part of localities and their employees. Malicious prosecution actions, 1983 actions, and sanctions for frivolous legal actions (and if it’s a willful disregard of applicable law it is certainly frivolous) undertaken by a locality already are available to a truly aggrieved party.</p> <p>This really could unnecessarily open an expensive Pandora's box for localities.</p>
City of Richmond	While the city does not anticipate a fiscal impact due to the “willfulness” nature of the bill, it does anticipate costs associated with the additional personnel needs to research, draft pleadings and appearing in court to disprove such allegations. The City anticipates \$1,670 for research, legal fees and attorney fees per case after familiarization with the statute and procedure. The complete fiscal impact is indeterminate at this time due to the unknown number of cases that will potentially be filed.
City of Winchester	This seems to be an attempt to change the threshold for overcoming qualified immunity officers and other governmental officials enjoy as a protection in Virginia. The fiscal impact, if approved, could be significant if damages were awarded for an officer violating procedures or local ordinances. It's difficult to put a dollar value on this, as it would be case specific.

Locality	Expenditure Narrative by Responding Localities
Mecklenburg County	If a local government runs afoul of this standard, then there would presumably be a net new cost to the local government; however, such actions cannot be forecast nor quantified. Do the limits contained Section 8.01-195.3 or in Section 8.01-38.1 of the Code of Virginia extend to this proposed section?
Prince George County	It is not possible to quantify potential fiscal impact of this proposed legislation. Potential costs include legal defense (insurer would not cover), plaintiff's legal costs, and compensatory damages. The amount and nature of compensatory damages cannot be quantified. Potential fiscal impacts are also predicated on willful actions of employees who would disregard policies, procedures and laws. Additionally, the number and severity of incidents can't be known. Localities typically take every measure to train employees and encourage fair and consistent enforcement actions that follow the law.
Rappahannock County	
Northern Neck PDC	Planning Districts have no enforceable policies so are not affected by this legislation.
Town of Blacksburg	Minimal impact TBD.
Town of Christiansburg	it would be very hard to predict a suit based on willful disregard of laws, regulations, or ordinances but my hope and expcation would be that the Town would not have such a suit. If we were found at fault in such a suit, it would likely be expensive and while we have insurance, any judgement would affect our insurance costs in the future.
Town of Leesburg	We believe the Town would be covered by insurance, so other than premiums going up, we don't know if there is much fiscal impact.
Town of Luray	Town would potentially be required to retain legal service to defend and define "willful disregard" in the event of an incident. Will the General Assembly define "wilful disregard"?
Town of Marion	Unknown without more context as far as award limits, if any
Town of Scottsville	<p>The bill presents a minor change to professional liability law, specifying a process for resolving professional negligence in local government work.</p> <p>Our small town carries pooled insurance for professional negligence, a widespread practice. Claims against these policies are fairly rare.</p> <p>I do not think the insurance premiums would increase if this law altered the process for liability claims.</p>

* Penny value is defined as the amount a locality would need to raise their real estate tax rate to cover the fiscal impacts of the bill, assuming no other changes to revenues or expenditures. It is represented in terms of dollars (e.g., 0.01 is a one cent increase in the real estate tax rate, etc.).