

Commission on Local Government

Estimate of Local Fiscal Impact
2014 General Assembly Session

Bill: HB 1084 **Patron:** Morris **Date:** January 17, 2014

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:

I. Bill Summary

HB 1084 provides that any applicant aggrieved by the grant or denial by a locality of any approval or permit, however described or delineated, where such grant included, or denial was based upon, an unconstitutional condition pursuant to the United States Constitution or Constitution of Virginia, shall be entitled to an award of damages, reasonable attorney fees, and court costs and to an order remanding the matter to the locality with a direction to grant or issue such permits or approvals without such conditions. The bill also provides that once an unconstitutional condition has been proven by the aggrieved applicant to have been a factor in the grant or denial of the approval or permit, the court shall presume, absent clear and convincing evidence to the contrary, that such applicant's acceptance of or refusal to accept the unconstitutional condition was the controlling basis for such impermissible grant or denial.

II. Fiscal Impact Analysis

The Commission on Local Government (CLG) received fiscal impact statements from 19 localities – the Counties of Campbell, Henrico, Rappahannock, Richmond, Rockingham, Scott, Spotsylvania, and Wise; the Cities of Alexandria, Chesapeake, Danville, Lynchburg, Newport News, Norfolk, Poquoson, Roanoke, and Virginia Beach; and the Towns of Marion, and Strasburg.

Nine of the responding localities – the Counties of Campbell, Henrico, Richmond, Scott, and Spotsylvania, the Cities of Alexandria, Lynchburg, Roanoke, and Virginia Beach – reported that they would not experience a net increase in expenditures. Most of these nine localities provided written comments related to HB 1084.

Campbell County did not estimate a cost associated with HB 1084, but noted concern that future litigation increases the risk that localities would be liable for reimbursements of legal fees, court costs, and damages.

Henrico County could not estimate the impact, but acknowledged that HB 1084 could generate a new liability for the county in the future.

Richmond County was unclear of how to determine the fiscal impact of HB 1084. They acknowledged that if the county were exposed to a lengthy litigation process that it could be costly for them.

Spotsylvania County could not generate an estimate, but indicated that the legislation is vague. They also noted that a cost estimate for the bill is difficult to generate because it assumes that localities are acting contrary to federal and state law when issuing permits.

The City of Lynchburg responded by saying that although they have never denied a permit for unconstitutional reasons in the past, they fear that HB 1084 will increase the volume of lawsuits brought against local governments in the future.

The City of Roanoke did not provide an estimate but noted that they could anticipate that persons disappointed by the determination of a board or commission will appeal the decision, seek a reversal of the decision, and assert the additional rights afforded by HB 1084.

The City of Virginia Beach also did not provide an estimate because impact would assume that the city issues permits through unconstitutional means.

One of the responding localities – the Town of Marion – indicated that they would experience an expenditure increase of less than \$5,000.

The remaining nine respondents – the Counties of Rappahannock, Rockingham, and Wise; the Cities of Chesapeake, Danville, Newport News, Norfolk, and Poquoson; and the Town of Strasburg – reported that they would experience an expenditure increase of over \$5,000. The estimates ranged from \$5,000 per year in Rappahannock County to \$500,000 per year in the City of Newport News. Most respondents noted that an estimate is not possible to calculate due to the nature of the bill. Listed below are the revenue estimates:

Rappahannock County:	\$5,000-10,000
Rockingham County:	100,000
Wise County:	unknown
Chesapeake City:	unknown
Danville City:	unknown
Newport News City:	500,000+
Norfolk City:	unknown
Poquoson City:	unknown
Strasburg Town:	unknown

Rappahannock County does not believe they have encountered a situation relevant to HB 1084 in the past, but fears additional actions against localities if the legislation is adopted.

Rockingham County noted that reimbursement for attorney's fees could reach \$100,000, however exact damages are not possible to estimate.

Wise County reported that HB 1084 exposes localities to additional costs and legal issues. They also stated that damages, court costs, and reasonable attorney fees cannot be determined.

The City of Chesapeake did not generate an estimate, but noted that if the passage of HB 1084 increased the number of suits filed against the City, costs to defend itself would increase. The City also states that 42 U.S.C. 1983 already exists to redress infringement of constitutional rights. They also raise an opportunity cost problem because the city attorney's office would need to review every permit before it is issued or denied. Due to the volume of permits that are appealed in the City at the present time, they fear that defense and damages could reach into the millions of dollars.

The City of Danville noted the difficulty in generating a fiscal estimate for HB 1084. They also expressed concern over being held liable if state law is found to be unconstitutional.

The City of Newport News stated that their estimate is based upon prior situations where they had to pay court costs.

The City of Norfolk did not generate a specific estimate; however, they noted that the impact could range from tens of thousands of dollars to over a million dollars. They are concerned that the bill will open new opportunities for the city to be sued. If passed, they may have to budget for additional legal contingency funds.

The City of Poquoson had difficulty generating an estimate, but acknowledged that the city would be exposed to a new liability. If the city were to be found liable, they believe that the impact would exceed \$5,000.

The Town of Strasburg could not generate an exact estimate, but feared that impact from a single case could cost them over \$1,000,000. They also expressed concern that their insurance premiums could increase.

III. Conclusion

The impact of HB 1084 can be difficult to estimate. To generate such an impact, one must assume that local governments within the Commonwealth have been using unconstitutional means to grant or deny permits. It is understandable why respondents have been unable to quantify the local fiscal impact of the legislation.

HB 1084 provides that an applicant aggrieved by the grant or denial by a locality of an approval or permit can seek damages, attorney fees, and court costs if the grant or denial was based upon an unconstitutional condition. The bill language exposes local governments of the Commonwealth to a new liability. Financial hardship from awards of

damages could be crippling. HB 1084 could have a heavy impact on localities that issue more permits than others. Local government attorneys may also need time to review permit applications to ensure that the approval or denial is constitutional.