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SENATE BILL NO. 1143

Offered January 9, 2019

Prefiled December 31, 2018

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

Patron—Peake

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 public transportation facilities, public safety facilities, public school facilities, or public parks.

"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 shall 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 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 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, capital equipment*, parking, and other costs directly 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 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 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 for a new residential development or new residential use where such denial is based in whole ~~or in part~~ on an applicant's failure or refusal to submit an unreasonable proffer or proffer condition amendment.

C. Notwithstanding any other provision of law, general or special, (i) as used in this chapter, a

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59 proffer, or proffer condition amendment, whether onsite or offsite, offered voluntarily pursuant to §
60 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1, shall be deemed unreasonable unless it addresses an
61 impact that is specifically attributable to a proposed new residential development or other new
62 residential use applied for and (ii) an offsite proffer shall be deemed unreasonable pursuant to
63 ~~subdivision clause~~ (i) unless it addresses an impact to an offsite public facility, such that (a) the new
64 residential development or new residential use creates a need, or an identifiable portion of a need, for
65 one or more public facility improvements ~~in excess of existing public facility capacity at the time of the~~
66 ~~rezoning or proffer condition amendment~~ and (b) each such new residential development or new
67 residential use applied for receives a direct and material benefit from a proffer made with respect to any
68 such public facility improvements. ~~For the purposes of this section, a locality may base its assessment of~~
69 ~~public facility capacity on the projected impacts specifically attributable to the new residential~~
70 ~~development or new residential use.~~

71 *D. In addition to and notwithstanding the provisions of subsection C:*

72 *1. An applicant or owner may submit:*

73 *a. Any offsite proffer for other than public transportation facilities, public safety facilities, public*
74 *school facilities, or public parks, provided that such proffer would not otherwise be deemed*
75 *unreasonable under subsection C;*

76 *b. Any offsite proffer for public transportation facilities, public safety facilities, public school*
77 *facilities, or public parks, provided that such proffer addresses an impact that is specifically attributable*
78 *to the proposed new residential development or other new residential use applied for; or*

79 *c. Any offsite proffer that the applicant or owner deems reasonable and appropriate, as conclusively*
80 *evidenced by the signed proffers.*

81 *2. Failure to submit proffers as set forth in subdivision 1 shall not be the sole basis for the denial of*
82 *any rezoning or proffer condition amendment application.*

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

84 *1. Actions brought to contest the action of a locality in violation of this section shall be brought only*
85 *by the aggrieved applicant or the owner of the property subject to a rezoning or proffer condition*
86 *amendment pursuant to subsection F of § 15.2-2285.*

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

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

100 ~~E. F.~~ *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.*

109 ~~F. G.~~ *G. This section shall be construed as supplementary to any existing provisions limiting or*
110 *curtailing proffers or proffer condition amendments for new residential development or new residential*
111 *use that are consistent with its terms and shall be construed to supersede any existing statutory provision*
112 *with respect to proffers or proffer condition amendments for new residential development or new*
113 *residential use that are inconsistent with its terms.*

114 *H. Notwithstanding any provision in this section to the contrary, nothing contained herein shall be*
115 *deemed or interpreted to prohibit communications between an applicant or owner and the locality*
116 *regarding the potential impacts of a new residential development or new residential use on the locality's*
117 *public facilities either onsite or offsite that are specifically attributable to such development.*
118 *Furthermore, notwithstanding any provision in this section to the contrary, nothing contained herein*
119 *shall be deemed or interpreted to prohibit presentation, analysis, or discussion of the potential impacts*
120 *of new residential development or other new residential use on the locality's public facilities either*

121 *onsite or offsite that are specifically attributable to such development.*

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

125 3. That an applicant with a pending application for a rezoning or proffer condition amendment
126 that was filed prior to July 1, 2016, may elect to proceed under the law as it existed prior to that
127 date, and an applicant with a pending application for a rezoning or proffer condition amendment
128 that was filed on or after July 1, 2016, but prior to July 1, 2019, may elect to proceed under the
129 law as it existed during that period.

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