

HOUSE COMMITTEE APPROVES SENATE

PROFFER REFORM BILL

"Crossover Week at the General Assembly Building"

On Wednesday afternoon of this week, the House CC&T Subcommittee 2 approved Senate Bill 549 on a vote of 7 to 0. On Friday morning of this week, the full 22-member House CC&T Committee approved the measure on a vote of 18 to 3. Voting against the measure in full Committee was freshman Northern Virginia Democrats John Bell, Loudoun County and Prince William County, Jennifer Boysko, Loudoun and Fairfax County and Paul Krizek, Fairfax County. Last week, the 40-member State Senate of Virginia approved Senate Bill 549, by Senator Mark Obenshain and Senator Dick Saslaw, on a vote of 29 to 8-2-1. Next Week, Senate Bill 549 will be considered by the 100-member House of Delegates that previously approved House Bill 770 by Delegate Todd Gilbert on a vote of 68 to 27.

The purpose of the Legislation is to bring a higher degree of "fairness" and "honesty" to the Proffer System that often lacks either, while preserving the right of landowners to volunteer to address their "fair share" of the local infrastructure impacts of a specific rezoning or development project.

Substitute for SB 549 would:

1. Change the current loose or vague limit on residential rezoning conditions (proffers) from those "roughly proportional" and "bears a reasonable relation" to impacts of new residential development to a new standard that would be "specifically attributable"* to the impacts of proposed new residential developments that are the subject of the rezoning. This new limit on new residential conditions (proffers) is designed to help make the Commonwealth's unique proffer system more honest and fair, or allow landowners to only address the impacts of their development project. This new standard would apply to on-site and off-site proffers

The provisions of this section shall not apply to any new residential development or new residential use occurring within any of the following areas: (i) an approved small area comprehensive plan in which the delineated area is designated as a revitalization area, encompasses mass transit as defined in § 33.2-100, includes mixed use development, and allows a density of at least 3.0 floor area ratio in a portion thereof; (ii) an approved small area comprehensive plan that encompasses an existing or planned Metrorail station and allows additional density within one quarter mile of such existing or planned station; or (iii) an approved service district created pursuant to § 15.2-2400 that encompasses an existing or planned Metrorail station (Fairfax and Loudoun Amendments).*

2. The measure would prohibit a locality from requesting, accepting or requiring an "unreasonable" proffer in conjunction with residential rezonings or, deny a rezonings where such a denial is based in whole or in part on an applicant's refusal to pay an "unreasonable" proffer.

A proffer shall be deemed unreasonable unless it addresses an impact that is specifically attributable to a proposed new residential development or other new residential use applied for and (ii) an offsite proffer shall be deemed unreasonable pursuant to subdivision (i) unless it addresses an impact to an offsite public facility, such that (a) the new residential development or new residential use creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the rezoning or proffer condition amendment and (b) each such new residential development or new residential use applied for receives a direct and material benefit from a proffer made with respect to any such public facility improvements.

3. Interior and exterior architectural proffers related to building materials and designs for new homes in conjunction with rezonings will be deleted through the Senate Floor Substitute.*

4. The measure would also prohibit localities from accepting (requiring) off-site residential proffers, except to address impacts specifically* attributable to public roads, public schools and public safety facilities and public parks*, including recreational facilities and ball fields. In many localities, current proffer policies include, but are not limited, to proffers for such public facilities as museums, affordable housing programs, libraries, off-site landscaping, community centers, mental health facilities and many others. Non-cash on-site proffers would continue to be allowed for these other facilities.

5. Importantly, the legislation will include an enforcement tool for rezoning applicants that is not currently available to them in the state courts. The legislation would create a presumption for courts that a denial of a rezoning, in cases where a rezoning applicant can prove to the court that a locality suggested, requested or tried to require an "unreasonable" proffer, was the real reason why the rezoning case was denied. In those cases where a landowner prevails, and the locality then refuses to approve the rezoning in a reasonable time, the court may order the locality to approve rezonings in not more than 60 days. In addition, in such cases where the rezoning applicant prevails, he may be entitled to reasonable attorney fees and costs (compensatory damages have been deleted)*.

6. Finally, the legislation will include an Enactment Clause that states that those many sections of 15.2 of the Code of Virginia that limit or curtail proffers shall continue to apply to residential proffers (i.e. the later payment requirement of per lot cash proffer after final inspection and before the issuance of a building permit.)

7. A Second Enactment Clause that the act is prospective only and shall not be construed to apply to any application filed for a rezoning prior to effective date of enactment or to any proffer condition amendment amending a proffer accepted prior to such date*.

*Amendments to SB 549