

HBAV LEGISLATIVE BULLETIN

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STATE SENATE NARROWLY APPROVES SB 768, HBAV-BACKED PROFFER REFORM BILL

“House Speaker Takes Control of Measure”

On Tuesday of this week, the 40-member Senate of Virginia narrowly approved SB 768, by Senator John Watkins, on a 21 to 19 vote. Tuesday, February 12th was the final day Senate bills could be considered in that legislative body. Upon passage, the Senate Bill was immediately communicated to the House of Delegates for their consideration.

The vote to approve Senate Bill 768 came after an attempt by Loudoun State Senator Mark Herring to have the bill re-referred to the Senate Committee on Local Government. Senator Herring also offered a Senate Floor amendment to exclude localities in Northern Virginia and Hampton Roads from the bill. The adoption of that amendment would have gutted the bill. Both Herring attempts to derail the measure for the 2008 session of the State Legislature were rejected by the State Senate on voice votes.

Powhatan Senator John Watkins presented the bill to the State Senate and reminded the 40 State Senators of the many benefits of the bill to the economy of Virginia and the notion of housing affordability. He reminded the Senate that in several localities a new housing tax of more than \$35,000 was being imposed through the cash proffer system, and that in 2007, the state legislature had layered road impact fees on top of cash proffers. **In a surprise, Senator Fred Quayle, who had previously voted for the bill in 2 committees of the upper chamber, spoke against the bill. Also urging their colleagues to join them in opposition to SB 768 were Senators Creigh Deeds of Charlottesville, Mark Herring of Loudoun, George Barker of Fairfax and Yvonne Miller of Norfolk.**

After receiving the approval of 2 committees of the Senate (Local Government and Finance), the 21 to 19 vote was much closer than anticipated. Voting against the bill after, voting for the measure in Senate Committee, were Senators Ken Cuccinelli of Fairfax, Ed Houck of Spotsylvania, Mark Obenshain of Harrisonburg, Toddy Puller of Prince William, Fred Quayle of Suffolk and Richard Stuart of Montross/Stafford.

The overall objective of Senate Bill 768 is to give localities the OPTION to broaden the base of those that make growth-related contributions to the cost of public infrastructure (public roads, public schools and public safety buildings), and consequently, to reduce the per unit cost. **IT IS ANTICIPATED THAT VERY FEW LOCALITIES WILL IMPLEMENT A STRUCTURED AND CAPPED IMPACT FEE SYSTEM, JUST A VERY FEW LOCALITIES HAVE**

ENACTED A CASH PROFFER ORDINANCE. While you would think the measure would be welcomed by localities with thousands and thousands of by-right building lots that have not been exposed to the cash proffer system, it is vehemently opposed by most all.

In short, Senate Bill 768 would eliminate cash from the current proffer system in Virginia and substitute it with the application of impact fees on most new residential and commercial development. The measure does not mandate localities to implement an impact fee system. Like with the proffer system, it would be at the option of the eligible locality. Senate Bill 768 retains the authority of local governments to accept non-cash, on-site proffers from residential developers and limited, but important off-site non-cash proffers. Localities may continue to accept on-site and off-site cash and non-cash proffers from commercial developers.

Voting for Senate 768 were Senators Howell, Hurt, Lucas, Marsh, Martin, McDougle, McEachin, Miller, J.C., Norment, Northam, Puckett, Reynolds, Ruff, Saslaw, Smith, Stolle, Stosch, Wagner, Wampler, Watkins, and Whipple (21).

Voting against the measure were Senators Barker, Blevins, Colgan, Cuccinelli, Deeds, Edwards, Hanger, Herring, Houck, Locke, Miller, Y.B., Newman, Obenshain, Petersen Puller, Quayle, Stuart, Ticer and Vogel (19).

It was reported that had the bill been a 20 to 20 tie-vote, Lieutenant Governor Bill Bolling was going to vote to KILL Senate Bill 768.

SPEAKER HOWELL TAKES CONTROL OF SENATE BILL 768

Once communicated to the House of Delegates, Senate Bill 768 came under the control of the Speaker of the House, William J. Howell of the City of Fredericksburg and Stafford County. The Speaker of the House has the authority to assign bills to House committee, that originate in the House of Delegates and Senate Bills that are advanced to the lower chamber. Most legislative bills that affect local government and housing are assigned to the House Committee on Cities, Counties and Towns or CC&T.

That was not the case with Senate Bill 768. The controversial bill, that is opposed by most every local government in Virginia, including Stafford County at last report, was assigned to the House Rules Committee, which is chaired by Speaker Howell. Several bills of significant interest to the House Speaker have been assigned to his House Committee this year. Some have advanced to the full 100 member House and others have died at the hand of the House Speaker.

The good news is that Senator Watkins and Speaker Howell have both requested HBAV and the representatives of local governments to continue to meet to resolve the major differences in the legislation.

The House of Delegates has until March, 3rd of this year to consider Senate Bills. The 2008 Session of the Virginia General Assembly is scheduled to adjourn on March 8th.

BILL SUMMARY

Senate Bill 768, by Senator Watkins

“ALTERNATIVE INFRASTRUCTURE FUNDING LEGISLATION FOR RESIDENTIAL DEVELOPMENT”

For Residential Development, eliminate cash from the current Proffer System in Virginia. But, grandfather cash proffers which have been pledged in conjunction with a residential development, but have not been paid. Require a full credit for the value of any cash proffers contracted to be paid (for which impact fees could be imposed) against any subsequent impact fees that may be collected in conjunction with final subdivision or site final plan approval in conjunction with the same development. Retain the current cash proffer reporting system.

Allows on-site and off-site cash and non-cash proffers in conjunction with commercial development to continue.

Retain, but reform, the non-cash Proffer System for Residential Development to allow high-growth localities to continue to accept non-cash, on-site proffers in conjunction with residential development, and limited non-cash, off-site proffers (i.e. off-site road entrance improvements). Most off-site non-cash proffers would be prohibited. Includes a full-credit for the value of any on-site proffers for which impact fees could be imposed against subsequent impact fees that may be collected in conjunction with final subdivision or final site plan approval of the same development.

Enact an Impact Fee Statute in Virginia for Public Roads, Public School Buildings and Public Safety Buildings (fire, rescue and police). Would “authorize, not require” all cities and high-growth (5% population growth between each 10-year census) localities, to enact an impact fee ordinance. If enacted by a locality, would apply to all residential and commercial rezonings and by-right residential and commercial development (so-called stale zoned land) within an impact fee service area at final subdivision or final site plan approval and recordation. Any subdivision or site plan having received final approval and has been recorded prior to adoption of an impact fee ordinance and the creation of an impact fee service area would not be subject to the impact fee statute.

The model for the Impact Fee statute would be the current road impact fee statute and its many planning requirements, capital improvement assessment requirements and capital improvement funding requirements, plus a cap. The cap could be adjusted annually based on an independent index. It is proposed that a cap of \$12,500 per single family detached unit would be established

for localities within the Northern Virginia Transportation Authority area and \$7,500 per single family detached unit cap be established for the remainder of the Commonwealth. The attached housing cap would be 2/3 of that amount per unit and multi-family cap would 1/2 of that amount per unit.

The cap for commercial development would be \$3.00 per gross foot for office, \$4.00 per gross foot for retail and \$2.00 per gross foot for industrial.

Impact fees could only be imposed for public roads, public school buildings and public safety buildings (fire, police and emergency services) necessitated by and attributable to new subdivisions or new site plans. Only road and public safety impact fees could be imposed on commercial development.

All residential dwelling units subject to the Affordable Dwelling Unit and Section 8 Housing statute would be exempt from an impact fee ordinance.

All monies received within an impact fee service area would have to be disbursed within the same impact fee service area within 15 years.

The January, 2008 Fuller Study or “Analysis of Alternative Infrastructure Financing Sources” concluded that by Enacting SB 768, substantially generated more cash revenues for local public facilities (roads, school buildings and public safety buildings) than would have been generated through the cash proffer system, in the past 4 years, in Chesterfield County and Prince William County. For Chesterfield County, more than \$72.5 million more would have been received, and in Prince William County, more than \$162.9 million more would have been received.

