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SENATE BILL NO. 393

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend the Code of Virginia by adding sections numbered 15.2-2230.2, 15.2-2242.1, 22.1-18.2 and 22.1-79.4, relating to adequate levels of service for educational facilities.

Patrons—Quayle, Blevins, Houck and Mims; Delegates: Barlow, Councill and May

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 15.2-2230.2, 15.2-2242.1, 22.1-18.2 and 22.1-79.4 as follows:

§ 15.2-2230.2. School facility levels of service.

A. Concurrent with its periodic review of the comprehensive plan, the planning commission in each locality meeting the criteria of subsection A of § 15.2-2298 or § 15.2-2303, in consultation with the school board and the division superintendent, shall make a study estimating the capacity in elementary, middle and high school facilities that would be needed to meet established levels of service for the locality based on anticipated growth in the locality during the period projected by the comprehensive plan. The study shall include an examination of whether the level of service currently provided or to be provided by: (i) existing educational facilities in the locality; (ii) those facilities under construction or expansion at the time of the study; and (iii) those for which full funding for construction or expansion has been allocated, will be adequate to meet the needs of the locality during the period covered by the comprehensive plan, based on estimated growth levels in the locality and the level of service established pursuant to § 22.1-79.4. The study shall include estimations of the annual prospective capital costs for funding construction of new school facilities and expansion of existing facilities. In preparing the study the planning commission shall consider applicable current estimates compiled pursuant to § 22.1-92.

B. The planning commission shall forward the results of the study prepared pursuant to subsection A to the local governing body, together with its recommendations for adopting an educational facilities plan for the locality to provide for school facilities adequate to meet the needs identified in the study. The recommendations shall be prepared with the active participation of the school board and division superintendent and must include a statement of their concurrence in the recommendations. The planning commission shall at the same time forward to the local governing body its recommendations for amendment of the capital improvements plan pursuant to § 15.2-2239, which it deems necessary to implement the educational facilities plan. Upon adoption by the local governing body, the educational facilities plan shall be incorporated into the comprehensive plan for the locality.

§ 15.2-2242.1. Educational facilities; levels of service.

A. Localities meeting the criteria of § 15.2-2298 or § 15.2-2303 that have in place: (i) a current capital improvements program; and (ii) an educational facilities plan developed in accordance with § 15.2-2230.2, may include in their ordinances provisions that no application for approval of the preliminary plat for a new residential subdivision, or for approval of a site plan or plan of development for any other new development incorporating more than five residential units, will be accepted unless it is accompanied by certification issued by the planning commission after consultation with the school board, that proposed subdivisions or other development is consistent with the adopted educational facilities plan for the locality, and will not cause the level of service for the schools available in the locality to serve the new development to decline below the standards established pursuant to § 22-79.4. Refusal of an application shall be without prejudice to refile at such time as the applicant is able to obtain certification as required by this section. Applications that have been denied and refiled in accordance with this section shall be given priority over applications that previously have not been denied.

B. Any applicant whose application for approval of a subdivision plat, site plan or plan of development has been refused pursuant to subsection A may reapply, without furnishing the certification required by this section, if the locality has failed to provide school facilities to serve the proposed subdivision or development in accordance with the educational facilities plan, and seven years have passed since the denial of the initial application.

C. Ordinances adopted under this section may provide that in lieu of the certification required by this section, if the proposed subdivision or development will cause the level of service for the schools available to serve the proposed subdivision or development to fall below the standard established pursuant to § 22-79.4, as a condition of approval the applicant may elect to pay, and the locality may

59 assess, an educational facilities fee sufficient to cover the costs of additional capital improvements that
60 will be imposed upon the school division in which the new proposed subdivision or development is to be
61 located, which improvements are necessitated by and attributable to the proposed subdivision or
62 development and which are required to maintain the level of service established for the schools serving
63 the proposed subdivision or development.

64 The amount of the educational facilities fee shall be determined by the locality in consultation with
65 the local school board, but shall not exceed the amount derived from multiplying the estimated number
66 of additional students generated from the proposed new subdivision or other development in excess of
67 the established level of service, by the average per pupil expenditure for capital costs necessary to
68 expand existing school facilities or construct new facilities in the affected school division based upon the
69 estimates prepared pursuant to subsection A of § 15.2-2230.2.

70 The applicant shall be advised of the amount of the educational facilities fee for the proposed new
71 subdivision or other development before the application for preliminary plat, site plan or plan of
72 development approval is submitted. The applicant shall remit the fee at the time the application is
73 submitted, unless the applicant and the locality agree upon a different payment schedule. The ordinance
74 shall provide that the educational facilities fee may be paid in a lump sum or paid in installments at a
75 reasonable rate of interest for a fixed number of years. The locality, by ordinance, may provide for
76 negotiated agreements with the owner of the property as to the time and method of paying the
77 educational facilities fee.

78 Building permits for any subdivision or development subject to the provisions of this section, and for
79 which an educational facilities fee has been assessed and paid, shall not be issued prior to 30 days
80 following the commencement of construction on school facilities for which the fee was assessed, or two
81 years following payment of the fee, whichever is sooner.

82 No certification or educational facilities fee shall be required for a development or subdivision if the
83 developer or subdivider has proffered conditions pursuant to § 15.2-2298 or § 15.2-2303 for school
84 construction within the school division where the proposed new subdivision or other development is to
85 be located and the proffered conditions have been accepted by the local government.

86 A separate school facilities improvement account shall be established for the school division and all
87 funds collected through educational facilities fees shall be deposited in the interest-bearing account.
88 Interest earned on deposits shall become funds of the account. Expenditure of funds from the account
89 must be approved by the local governing body and shall be applied solely for new school construction
90 or expansion of existing school facilities with the school division serving the new development as set out
91 in the locality's educational facilities plan.

92 § 22.1-18.2. Determining levels of service.

93 Not later than June 30, 2006, the Board of Education shall adopt regulations to be applied by local
94 school boards in determining levels of service for school division in localities subject to the provisions
95 of subsection A of § 15.2-2230.2. The regulations shall include methods for determining appropriate
96 enrollment-to-capacity levels at the elementary, middle and high school levels, to be applied by school
97 boards in affected localities to determine the impact of new development on the capacity of existing
98 facilities and resources within the school division. The regulations shall include acceptable methodology
99 to be applied by the local school board to estimate the number of school-aged children likely to be
100 generated by proposed new development and to determine the capital facilities necessary to meet the
101 increased demand for educational facilities.

102 § 22.1-79.4. Certain school boards to determine levels of service.

103 In localities subject to the provisions of § 15.2-2230.2, the school board, in accordance with
104 regulations promulgated by the State Board of Education, shall determine the level of service to be
105 maintained by each elementary, middle and high school within its jurisdiction. The school board shall
106 assist the planning commission in reviewing requests for certification of adequate school capacity
107 pursuant to § 15.2-2242.1.