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HOUSE BILL NO. 2476

Offered January 12, 2005

Prefiled January 12, 2005

A *BILL to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 8.1, consisting of sections numbered 15.2-2328 through 15.2-2336, relating to school impact fees.*

Patron—May

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 22 of Title 15.2 an article numbered 8.1, consisting of sections numbered 15.2-2328 through 15.2-2336 as follows:

*Article 8.1.**School Impact Fees.*

§ 15.2-2328. *Authority to assess and impose impact fees.*

Any locality may by ordinance, pursuant to the procedures and requirements of this article, assess and impose impact fees on new development to pay all or a part of the costs of school facility improvements attributable in substantial part to such development. Such fees may be assessed and imposed upon development anywhere within the locality, including incorporated towns, but only on new residential development. Nothing herein shall be construed to invalidate existing proffers or to prevent the voluntary contribution of land for school facilities.

"Cost" includes: (i) all labor, materials, machinery and equipment for construction; (ii) acquisition of land, rights-of-way, property rights, easements and interests; (iii) demolition or removal of any structure on land so acquired, including acquisition of land to which such structure may be moved; (iv) site improvements, including clearing, grading, and utility extensions; (v) survey, engineering, and architectural expenses; (vi) legal, administrative, and other related expenses; and (vii) interest charges and other financing costs if impact fees are used for the payment or principal and interest on bonds, notes or other obligations issued by the county to finance the school facility.

"Impact fee" means a charge or assessment imposed against new residential development in order to generate revenue to fund or recover the costs or a portion thereof of school facility improvements necessitated by and attributable in substantial part to new residential development. Impact fees may not be assessed and imposed for school facility repair, operation, and maintenance, nor to expand existing school facilities to meet demand that existed prior to the new development.

"School facility improvement" includes construction of new school facilities or improvement or expansion of existing facilities to meet the increased demand attributable in substantial part to the new development.

§ 15.2-2329. *Service areas or districts to be established.*

The governing body, upon the recommendation of the school board, shall delineate one or more service areas or districts within the locality, which may be an existing school district or districts, each area or district having clearly related school facility needs. Impact fees collected from new development within a service area shall be expended for school facility improvements within that service area. A service area may encompass more than one school facility improvement project. Service areas for school facility improvements may overlap, and their boundaries need not be coterminous.

§ 15.2-2330. *Adoption of school facility improvement program.*

Prior to adopting a system of impact fees for school facilities, assessments of school facility improvement needs within any proposed service area shall be conducted and school facility improvement plans for the area adopted enumerating the new school facilities proposed to be constructed and the existing school facilities to be improved or expanded and the schedule for undertaking such construction, improvement, or expansion. Once adopted, the improvement plans shall be incorporated into the locality's capital improvements plan.

Improvement plans shall be adopted only after a duly advertised public hearing is held. The public hearing notice shall identify the service area or areas to be designated, and shall include a summary of the needs assessment and the assumptions upon which the assessment is based, and information as to how a copy of the complete study may be examined. A copy of the complete study shall be available for public inspection and copying at reasonable times prior to the public hearing.

The needs assessment, public hearings, and adoption of improvement plans shall be by the local school board and shall in addition be adopted by the governing body.

The locality at a minimum shall include the following items in assessing improvement needs and

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59 *preparing improvement plans:*

60 *1. An analysis of the existing capacity, current usage, and existing commitments to future usage of*
61 *existing school facilities. If the current usage and commitments exceed the existing capacity of such*
62 *facilities, the locality also shall determine the costs of improving the facilities to meet such demand.*

63 *2. The projected need for and costs of construction of new school facilities, or improvement or*
64 *expansion of existing school facilities attributable in whole or in part to projected new development.*
65 *School facility needs shall be projected for the service area when fully developed in accord with the*
66 *comprehensive plan and, if full development is projected to occur more than 10 years in the future, at*
67 *the end of a 10-year period. The assumptions with regard to land uses, densities, intensities, and*
68 *population upon which school facility projections are based shall be presented.*

69 *3. The total number of new service units projected for the service area when fully developed and if*
70 *full development is projected to occur more than 10 years in the future, at the end of a 10-year period.*
71 *A "service unit" is a standardized measure of school facility use or demand. The locality shall develop a*
72 *method for attributing service units to various types of residential uses for school facility purposes and*
73 *project the total number of service units by estimating the total number of each type of residential use*
74 *at full development and, if full development is projected to occur more than 10 years in the future, at*
75 *the end of a 10 year period.*

76 *§ 15.2-2331. Adoption of impact fee.*

77 *After adoption of a school facility improvement program, the governing body may adopt an*
78 *ordinance establishing an impact fee to fund or recapture all or any part of the cost of providing school*
79 *building facility improvements required by new development. The ordinance shall set forth the impact*
80 *fees.*

81 *§ 15.2-2332. When impact fees assessed and imposed.*

82 *The calculation of impact fees to be imposed, including those on each dwelling unit in a specific*
83 *residential development or subdivision, shall be determined based on the new service units projected for*
84 *the service area as of the date of adoption of the ordinance. The ordinance shall specify that the fee is*
85 *to be imposed at the time of the issuance of a building permit for each residential unit, prior to the*
86 *issuance of the occupancy permit for each such residential unit. Further, the ordinance shall provide*
87 *that the fees shall be paid in a lump sum.*

88 *The maximum fee shall be determined by dividing (i) projected school facility improvement costs in*
89 *the service area necessitated by new residential development when fully developed by the number of*
90 *projected new service units when fully developed or (ii) for a reasonable period of time, but not less*
91 *than 10 years, by dividing the projected costs necessitated by development in the next 10 years by the*
92 *service units projected to be created in the next 10 years. After applying any credits pursuant to*
93 *§ 15.2-2335, in no event shall the maximum impact fee for school building facilities imposed on any*
94 *residential dwelling unit exceed \$15,000. This figure shall be adjusted annually to reflect changes in the*
95 *Consumer Price Index, published by the United States Department of Labor, with 2004 to serve as the*
96 *base year.*

97 *No impact fees shall be assessed or imposed upon a development or subdivision if the subdivider or*
98 *developer has proffered conditions pursuant to §§ 15.2-2298 or 15.2-2303 for school facility*
99 *improvements and the proffered conditions have been accepted by the county.*

100 *§ 15.2-2333. Updating plan and amending impact fee.*

101 *The locality shall update the needs assessment, and the assumptions and projections at least once*
102 *every two years. The school facility improvement plan shall be updated at least every two years to*
103 *reflect current assumptions and projections. The impact fee may be amended to reflect any substantial*
104 *changes in such assumptions and projections.*

105 *§ 15.2-2334. Use of proceeds.*

106 *Separate school facility funds or accounts shall be established for each service area, and all funds*
107 *collected through impact fees shall be deposited in such interest-bearing funds or accounts. Interest*
108 *earned on deposits shall become funds of that particular account. The expenditure of funds from each*
109 *account shall be only for school facility improvements within the service area as set out in the school*
110 *facility improvement plans for that service area or district.*

111 *§ 15.2-2335. Refund of impact fees.*

112 *The locality must refund any impact fee or portion thereof that has not been expended within 10*
113 *years or receipt of such impact fee.*

114 *Upon completion of a project, the locality shall recalculate the impact fee based on the actual cost*
115 *of the improvement. It shall refund the difference if the impact fee paid exceeds actual cost by more*
116 *than 15 percent. Refunds shall be made to the record owner of the property at the time the refund is*
117 *made.*

118 *§ 15.2-2336. Imposition of impact fee suspended under certain circumstances.*

119 *In order to impose and collect any impact fee, the locality shall budget and fund, for each*
120 *subsequent fiscal year after enactment of such ordinance, an amount for unspecified local capital*

121 *improvements, which shall be no less than the total amount collected in impact fees in the calendar year*
122 *just ended. In meeting this funding requirement, only the capital improvement funds used to pay for*
123 *capital projects or the debt service thereon which are appropriated after the adoption of such impact fee*
124 *ordinance shall apply. If in any year the locality fails to appropriate the funding amount equal to the*
125 *collected impact fees for such calendar year, the locality shall thereafter be prohibited from collecting*
126 *impact fees until such appropriation is made.*

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