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HOUSE BILL NO. 1193

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend the Code of Virginia by adding a section numbered 10.1-2109.1, relating to Chesapeake Bay Preservation Act; impact fees.

Patrons—Marshall, R.G. and Frederick

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 a section numbered 10.1-2109.1 as follows:

§ 10.1-2109.1. Impact fees.

A. This section shall apply to any locality that has designated Chesapeake Bay Preservation areas pursuant to § 10.1-2109.

B. As used in this section, unless the context requires a different meaning:

"Cost" includes, in addition to all labor, materials, machinery and equipment for construction, (i) acquisition of land, rights-of-way, property rights, easements and interests, including the costs of moving or relocating utilities, (ii) demolition or removal of any structure on land so acquired, including acquisition of land to which such structure may be moved, (iii) survey, engineering, and architectural expenses, (iv) legal, administrative, and other related expenses, and (v) interest charges and other financing costs if impact fees are used for the payment of principal and interest on bonds, notes or other obligations issued by the locality to finance the public facility.

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

"Impact fee service area" means land designated by ordinance within a locality, having clearly defined boundaries and clearly related public facility needs and within which development is to be subject to the assessment of impact fees.

"Public facility" means a public safety facility improvement, road improvement or school facility improvement.

"Public safety facility improvement" includes construction of new public safety facilities or improvement of existing facilities to meet the increased demand attributable in substantial part to new development.

"Road improvement" includes construction of new roads or improvement or expansion of existing roads, as required by applicable construction standards of the Virginia Department of Transportation to meet increased demand attributable to new development. Road improvements do not include on-site construction of roads that a developer may be required to provide pursuant to §§ 15.2-2241 through 15.2-2245.

"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 new development.

C. Any applicable locality may, by ordinance pursuant to the procedures and requirements of this section, assess and impose impact fees on new development to pay all or a part of the cost of public facilities attributable in substantial part to the new development.

Prior to the adoption of the ordinance, a locality shall establish an impact fee advisory committee. The committee shall be composed of not less than five nor more than 10 members appointed by the governing body of the locality, and at least 40 percent of the membership shall be representatives from the development, building or real estate industries. The planning commission or other existing committee that meets the membership requirements may serve as the impact fee advisory committee. The committee shall serve in an advisory capacity to assist and advise the governing body of the locality with regard to the ordinance. No action of the committee shall be considered a necessary prerequisite for any action taken by the locality in regard to the adoption of an ordinance.

D. The locality shall delineate one or more impact fee service areas within its jurisdiction. Impact fees collected from new development within an impact fee service area shall be expended for public facilities within that impact fee service area. An impact fee service area may encompass more than one public facility project.

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59 E. Prior to adopting a system of impact fees, the locality shall conduct an assessment of public
60 facility improvement needs within an impact fee service area and in the locality and shall adopt a
61 public facility improvements plan for the area showing the new public safety facilities, roads, or schools
62 proposed to be constructed and the existing public safety facilities, roads, or schools to be improved or
63 expanded and the schedule for undertaking such construction, improvement or expansion. The
64 improvements plan shall be adopted as an amendment to the required comprehensive plan and shall be
65 incorporated into the capital improvements program or, in the case of the counties where applicable,
66 the six-year plan for secondary road construction pursuant to § 33.1-70.01.

67 The locality shall adopt the improvements plan after holding a duly advertised public hearing. The
68 public hearing notice shall identify the impact fee service area or areas to be designated, and shall
69 include a summary of the needs assessment and the assumptions upon which the assessment is based,
70 the proposed amount of the impact fee, and information as to how a copy of the complete study may be
71 examined. A copy of the complete study shall be available for public inspection and copying at
72 reasonable times prior to the public hearing.

73 The locality at a minimum shall include the following items in assessing public facility needs and
74 preparing an improvements plan:

75 1. An analysis of the existing capacity, current usage and existing commitments to future usage of
76 existing public facilities, as indicated by (i) current valid building permits outstanding, (ii) approved
77 conditional rezonings, special exceptions, and special use permits, and (iii) approved site plans and
78 subdivision plats. If the current usage and commitments exceed the existing capacity of the public
79 facilities, the locality also shall determine the costs of improving the public facilities to meet the
80 demand. The analysis shall include a plan to fund the current usages and commitments that exceed the
81 existing capacity of the public facilities.

82 2. The projected need for and costs of construction of new public facilities or expansion of existing
83 public facilities attributable in whole or in part to projected new development. Public facility needs shall
84 be projected for the impact fee service area when fully developed in accord with the comprehensive plan
85 and, if full development is projected to occur more than 10 years in the future, at the end of a 10-year
86 period. The assumptions with regard to land uses, densities, intensities, and population upon which
87 public facility projections are based shall be presented.

88 3. The total number of new service units projected for the impact fee service area when fully
89 developed and, if full development is projected to occur more than 10 years in the future, at the end of
90 a 10-year period. For road improvements, a "service unit" is a standardized measure of traffic use or
91 generation, based upon the ITE manual (published by the Institute of Transportation Engineers) or
92 locally conducted trip generation studies. For public safety facilities and school facilities, a "service
93 unit" is a standardized measure of facility use or demand. The locality shall develop a table or method
94 for attributing service units to various types of development and land use, including but not limited to
95 residential, commercial and industrial uses.

96 F. After adoption of an improvement program, the locality may adopt an ordinance establishing a
97 system of impact fees to fund or recapture all or any part of the cost of providing reasonable public
98 facilities required by new development. The ordinance shall set forth the schedule of impact fees.

99 G. The amount of impact fees to be imposed on a specific development or subdivision shall be
100 determined before or at the time the site plan or subdivision is approved. The ordinance shall specify
101 that the fee is to be collected at the time of the issuance of a certificate of occupancy. The ordinance
102 shall provide that fees (i) may be paid in lump sum or (ii) be paid on installment at a reasonable rate
103 of interest for a fixed number of years. The locality by ordinance may provide for negotiated agreements
104 with the owner of the property as to the time and method of paying the impact fees.

105 The maximum impact fee to be imposed shall be determined (i) by dividing projected improvement
106 costs in the service area when fully developed by the number of projected service units when fully
107 developed, or (ii) for a reasonable period of time, but not less than 10 years, by dividing the projected
108 costs necessitated by development in the next 10 years by the service units projected to be created in the
109 next 10 years.

110 The ordinance shall provide for appeals from administrative determinations, regarding the impact
111 fees to be imposed, to the governing body or such other body as designated in the ordinance. The
112 ordinance may provide for the resolution of disputes over an impact fee by arbitration or otherwise.

113 H. 1. The provisions of this subdivision apply to any credits to be applied against impact fees for
114 road improvements. The value of any dedication, contribution or construction from the developer for
115 off-site road improvements within the impact fee service area shall be treated as a credit against the
116 impact fees imposed on the developer's project. The locality may by ordinance provide for credits for
117 approved on-site improvements in excess of those required by the development.

118 The locality also shall calculate and credit against impact fees the extent to which (i) developments
119 have already contributed to the cost of existing roads which will serve the development, (ii) new
120 development will contribute to the cost of existing roads, and (iii) new development will contribute to

121 the cost of road improvements in the future other than through impact fees.

122 2. The provisions of this subdivision apply to any credits to be applied against impact fees for public
123 safety facilities and school facilities. The value of any dedication, contribution, or construction from the
124 developer for public safety facility improvements and school facility improvements within the service
125 area shall be treated as a credit against the impact fee calculated pursuant to § 15.2-2323.

126 The locality shall also calculate and credit against impact fees (i) the extent to which developments
127 have already contributed to the cost of existing public safety facilities and school facilities which will
128 serve the development, (ii) the extent to which the new development will contribute to the cost of
129 existing public safety facilities and school facilities, and (iii) the extent to which new development will
130 contribute to the cost of public safety facilities and school facility improvements in the future other than
131 through impact fees.

132 I. The locality shall update the needs assessment and the assumptions and projections at least once
133 every two years. The improvements plan shall be updated at least every two years to reflect current
134 assumptions and projections. The impact fee schedule may be amended to reflect any substantial
135 changes in such assumptions and projections.

136 J. A separate improvement account shall be established for the impact fee service area and all funds
137 collected through impact fees shall be deposited in the interest-bearing account. Interest earned on
138 deposits shall become funds of the account. The expenditure of funds from the account shall be only for
139 public facilities within the impact fee service area as set out in the improvements plan for the impact fee
140 service area.

141 K. The locality shall refund any impact fee or portion thereof for which construction of a project is
142 not completed within a reasonable period of time, not to exceed 15 years.

143 Upon completion of a project, the locality shall recalculate the impact fee based on the actual cost
144 of the improvement. The locality shall refund the difference if the impact fee paid exceeds actual cost by
145 more than 15 percent. Refunds shall be made to the record owner of the property at the time the refund
146 is made.
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