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HOUSE BILL NO. 1506

Offered January 20, 2006

A BILL to amend and reenact §§ 15.2-2298 and 15.2-2303.2 of the Code of Virginia, relating to proffers for road improvements.

Patrons—Athey, Albo, Bell, Callahan, Cole, Cosgrove, Frederick, Gear, Gilbert, Hugo, Jones, S.C., Lingamfelter, Marshall, R.G., May, McQuigg, Morgan, Purkey, Sherwood, Tata and Wardrup

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2298 and 15.2-2303.2 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2298. Same; additional conditions as a part of rezoning or zoning map amendment in certain high-growth localities.

A. Except for those localities to which § 15.2-2303 is applicable, this section shall apply to (i) any locality which has had population growth of ~~ten percent~~ 5% or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census; (ii) any city adjoining such city or county; (iii) any towns located within such county; and (iv) any county contiguous with at least three such counties, and any town located in that county.

In any such locality, notwithstanding any contrary provisions of § 15.2-2297, a zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map, provided that (i) the rezoning itself gives rise to the need for the conditions; (ii) the conditions have a reasonable relation to the rezoning; and (iii) all conditions are in conformity with the comprehensive plan as defined in § 15.2-2223. *Reasonable conditions shall include the payment of cash for any off-site road improvement, as defined in § 15.2-2318, or any off-site transportation improvement, as defined in § 33.1-430, that is adopted as an amendment to the required comprehensive plan and incorporated into the capital improvements program.* Reasonable conditions shall not include, however, conditions that impose upon the applicant the requirement to create a property owners' association under Chapter 26 (§ 55-508 et seq.) of Title 55 which includes an express further condition that members of a property association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments, and other public facilities not otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation. Once proffered and accepted as part of an amendment to the zoning ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions; however, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

No proffer shall be accepted by a locality unless it has adopted a capital improvement program pursuant to § 15.2-2239 or local charter. In the event proffered conditions include the dedication of real property or payment of cash, the property shall not transfer and the payment of cash shall not be made until the facilities for which the property is dedicated or cash is tendered are included in the capital improvement program, provided that nothing herein shall prevent a locality from accepting proffered conditions which are not normally included in a capital improvement program. If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of the property or cash payment in the event the property or cash payment is not used for the purpose for which proffered.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to the property, shall be effective with respect to the property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of

58 substantial value, or substantial cash payments for or construction of substantial public improvements,
59 the need for which is not generated solely by the rezoning itself, but who has not substantially
60 implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail
61 prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. The notice
62 shall identify the property to be developed, the zoning district, and the proffers applicable thereto.
63 Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement
64 the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good
65 faith shall diligently pursue the completion of the development of the property. Any landowner who
66 complies with the requirements of this subsection shall be entitled to the protection against action
67 initiated by the governing body affecting use, floor area ratio, and density set out in subsection B above,
68 unless there has been mistake, fraud, or a change in circumstances substantially affecting the public
69 health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection
70 shall acquire no rights pursuant to this section.

71 D. The provisions of subsections B and C of this section shall be effective prospectively only, and
72 not retroactively, and shall not apply to any zoning ordinance text amendments which may have been
73 enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation
74 pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

75 Nothing in this section shall be construed to affect or impair the authority of a governing body to:

76 1. Accept proffered conditions which include provisions for timing or phasing of dedications,
77 payments, or improvements; or

78 2. Accept or impose valid conditions pursuant to provision 3 of § 15.2-2286 or other provision of
79 law.

80 § 15.2-2303.2. Proffered cash payments and expenditures.

81 A. The governing body of any locality accepting cash payments voluntarily proffered on or after July
82 1, 2005, pursuant to § 15.2-2298, 15.2-2303 or 15.2-2303.1 shall, within seven years of receiving full
83 payment of all cash proffered pursuant to an approved rezoning application, begin, or cause to begin (i)
84 construction, (ii) site work, (iii) engineering, (iv) right-of-way acquisition, (v) surveying, or (vi) utility
85 relocation on the improvements for which the cash payments were proffered. A locality that does not
86 comply with the above requirement, or does not begin alternative improvements as provided for in
87 subsection C, shall forward the amount of the proffered cash payments to the Commonwealth
88 Transportation Board no later than December 31 following the fiscal year in which such forfeiture
89 occurred for direct allocation to the secondary system construction program or the urban system
90 construction program for the locality in which the proffered cash payments were collected. The funds to
91 which any locality may be entitled under the provisions of Title 33.1 for construction, improvement, or
92 maintenance of primary, secondary, or urban roads shall not be diminished by reason of any funds
93 remitted pursuant to this subsection by such locality, regardless of whether such contributions are
94 matched by state or federal funds.

95 B. The governing body of any locality eligible to accept any proffered cash payments pursuant to
96 § 15.2-2298, 15.2-2303 or 15.2-2303.1 shall, for each fiscal year beginning with the fiscal year 2007, (i)
97 include in its capital improvement program created pursuant to § 15.2-2239, or as an appendix thereto,
98 the amount of all proffered cash payments received during the most recent fiscal year for which a report
99 has been filed pursuant to subsection D, and (ii) include in its annual capital budget the amount of
100 proffered cash payments projected to be used for expenditures or appropriated for capital improvements
101 in the ensuing year.

102 C. *Regardless of the date of rezoning approval, unless prohibited by the proffer agreement accepted*
103 *by the governing body of a locality pursuant to § 15.2-2298, a locality may utilize any cash payments*
104 *proffered for any road improvement, as defined in § 15.2-2318, or any transportation improvement, as*
105 *defined in § 33.1-430, that is incorporated into the capital improvements program as its matching*
106 *contribution under § 33.1-75.1.*

107 Regardless of the date of rezoning approval, unless prohibited by the proffer agreement accepted by
108 the governing body of a locality pursuant to § 15.2-2298, 15.2-2303.1 or 15.2-2304, a locality may
109 utilize any cash payments proffered for capital improvements for alternative improvements of the same
110 category within the locality in the vicinity of the improvements for which the cash payments were
111 originally made. Prior to utilization of such cash payments for the alternative improvements, the
112 governing body of the locality shall give at least 30 days' written notice of the proposed alternative
113 improvements to the entity who paid such cash payment mailed to the last known address of such entity,
114 or if proffer payment records no longer exist, then to the original zoning applicant, and conduct a public
115 hearing on such proposal advertised as provided in subsection F of § 15.2-1427. The governing body of
116 the locality prior to the use of such cash payments for alternative improvements shall, following such
117 public hearing, find: (i) the improvements for which the cash payments were proffered cannot occur in a
118 timely manner; (ii) the alternative improvements are within the vicinity of the proposed improvements
119 for which the cash payments were proffered; and (iii) the alternative improvements are in the public

interest.

D. The governing body of any locality with a population in excess of 3,500 persons accepting a cash payment voluntarily proffered pursuant to § 15.2-2298, 15.2-2303 or 15.2-2303.1 shall within three months of the close of each fiscal year, beginning in fiscal year 2002 and for each fiscal year thereafter, report to the Commission on Local Government the following information for the preceding fiscal year:

1. The aggregate dollar amount of proffered cash payments collected by the locality;
2. The estimated aggregate dollar amount of proffered cash payments that have been pledged to the locality and which pledges are not conditioned on any event other than time; and
3. The total dollar amount of proffered cash payments expended by the locality, and the aggregate dollar amount expended in each of the following categories:

Schools	\$_____	
Road and other Transportation Improvements		\$_____
Fire and Rescue/Public Safety	\$_____	
Libraries	\$_____	
Parks, Recreation, and Open Space		\$_____
Water and Sewer Service Extension		\$_____
Community Centers	\$_____	
Stormwater Management	\$_____	
Special Needs Housing	\$_____	
Affordable Housing	\$_____	
Miscellaneous	\$_____	
Total dollar amount expended		\$_____

E. The governing body of any locality with a population in excess of 3,500 persons eligible to accept any proffered cash payments pursuant to § 15.2-2298, 15.2-2303 or 15.2-2303.1 but that did not accept any proffered cash payments during the preceding fiscal year shall within three months of the close of each fiscal year, beginning in 2001 and for each fiscal year thereafter, so notify the Commission on Local Government.

F. The Commission on Local Government shall by November 30, 2001, and by November 30 of each fiscal year thereafter, prepare and make available to the public and the chairmen of the Senate Local Government Committee and the House Counties, Cities and Towns Committee an annual report containing the information made available to it pursuant to subsections D and E.