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HOUSE BILL NO. 5093

Offered September 21, 2006

A BILL to amend and reenact §§ 15.2-2317 through 15.2-2327 and 15.2-2403 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2403.1, relating to urban transportation service districts; impact fees.

Patrons—Frederick, Marshall, R.G., Albo, Athey, Cole, Cosgrove, Gear, Hamilton, Howell, W.J., Lingamfelter, May, Sherwood and Wardrup

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2317 through 15.2-2327 and § 15.2-2403 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2403.1 as follows:

§ 15.2-2317. Applicability of article.

~~This~~*The provisions of this article applicable to road impact fees shall apply to (i) any county having a population of 500,000 or more as determined by the most recent U.S. Census, (ii) any county or city adjacent thereto, (iii) any city contiguous to such adjacent county or city, (iv) any town within such county or an adjacent county, (v) any county having a population between 58,000 and 62,000 as determined by the 1990 U.S. Census, (vi) Fauquier County, (vii) Spotsylvania County and (viii) Frederick County.*

B. The provisions of this article shall apply in their entirety to any locality that has established an urban transportation service district in accordance with § 15.2-2403.1. However, such authority may only be exercised in areas outside of urban transportation service districts and on parcels that have previously been rezoned for by-right residential development. The authority granted under this subsection shall expire on July 1, 2009, for any locality that has not established an urban transportation service district and adopted an impact fee ordinance pursuant to this article by such date.

§ 15.2-2318. Definitions.

As used in this article, 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 ~~road improvement~~ *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 road improvements~~ *public facilities* necessitated by and attributable to the new development. Impact fees may not be assessed and imposed for ~~road public facility~~ *public facilities* repair, operation and maintenance, nor to expand existing ~~roads public facilities~~ *public facilities* to meet demand ~~which that~~ *which* 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 ~~traffic~~ *public facility* needs and within which development is to be subject to the assessment of impact fees.

"Public facility" means a road improvement or school facility improvement.

"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 ~~which that~~ *which* 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.

§ 15.2-2319. Authority to assess and impose impact fees.

Any ~~applicable~~ *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 cost of ~~reasonable road improvements~~ *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.

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

65 § 15.2-2320. Impact fee service areas to be established.

66 The locality shall delineate one or more impact fee service areas within its jurisdiction. Impact fees
67 collected from new development within an impact fee service area shall be expended for ~~road~~
68 ~~improvements~~ *public facilities* within that impact fee service area. An impact fee service area may
69 encompass more than one ~~road improvement~~ *public facility* project.

70 § 15.2-2321. Adoption of public facility improvements program.

71 Prior to adopting a system of impact fees, the locality shall conduct an assessment of ~~road~~ *public*
72 *facility* improvement needs within an impact fee service area and in the locality and shall adopt a ~~road~~
73 *public facility* improvements plan for the area showing the new roads *or schools* proposed to be
74 constructed and the existing roads *or schools* to be improved or expanded and the schedule for
75 undertaking such construction, improvement or expansion. The ~~road~~ improvements plan shall be adopted
76 as an amendment to the required comprehensive plan and shall be incorporated into the capital
77 improvements program or, in the case of the counties where applicable, the six-year plan for secondary
78 road construction pursuant to § 33.1-70.01.

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

85 The locality at a minimum shall include the following items in assessing ~~road improvement~~ *public*
86 *facility* needs and preparing a ~~road~~ *an* improvements plan:

87 1. An analysis of the existing capacity, current usage and existing commitments to future usage of
88 existing ~~roads~~ *public facilities*, as indicated by (i) current valid building permits outstanding, (ii)
89 approved conditional rezonings, special exceptions, and special use permits, and (iii) approved site plans
90 and subdivision plats. If the current usage and commitments exceed the existing capacity of the ~~roads~~
91 *public facilities*, the locality also shall determine the costs of improving the ~~roads~~ *public facilities* to
92 meet the demand. The analysis shall include a plan to fund the current usages and commitments that
93 exceed the existing capacity of the ~~roads~~ *public facilities*.

94 2. The projected need for and costs of construction of new ~~roads or improvement~~ *public facilities* or
95 expansion of existing ~~roads~~ *public facilities* attributable in whole or in part to projected new
96 development. ~~Road improvement~~ *Public facility* needs shall be projected for the impact fee service area
97 when fully developed in accord with the comprehensive plan and, if full development is projected to
98 occur more than ~~ten~~10 years in the future, at the end of a ~~ten~~10-year period. The assumptions with
99 regard to land uses, densities, intensities, and population upon which ~~road improvement~~ *public facility*
100 projections are based shall be presented.

101 3. The total number of new service units projected for the impact fee service area when fully
102 developed and, if full development is projected to occur more than ~~ten~~10 years in the future, at the end
103 of a ~~ten~~10-year period. ~~A For road improvements, a "service unit" is a standardized measure of traffic~~
104 ~~use or generation, based upon the ITE manual (published by the Institute of Transportation Engineers)~~
105 ~~or locally conducted trip generation studies. For school facilities, a "service unit" is a standardized~~
106 ~~measure of school facility use or demand.~~ The locality shall develop a table or method for attributing
107 service units to various types of development and land use, including but not limited to residential,
108 commercial and industrial uses. ~~The table shall be based upon the ITE manual (published by the~~
109 ~~Institute of Transportation Engineers) or locally conducted trip generation studies.~~

110 § 15.2-2322. Adoption of impact fee and schedule.

111 After adoption of a ~~road~~ *an* improvement program, the locality may adopt an ordinance establishing
112 a system of impact fees to fund or recapture all or any part of the cost of providing ~~reasonable road~~
113 ~~improvements~~ *public facilities* required by new development. The ordinance shall set forth the schedule
114 of impact fees.

115 § 15.2-2323. When impact fees assessed and imposed.

116 The amount of impact fees to be imposed on a specific development or subdivision shall be
117 determined before or at the time the site plan or subdivision is approved. The ordinance shall specify
118 that the fee is to be collected at the time of the issuance of a certificate of occupancy. The ordinance
119 shall provide that fees (i) may be paid in lump sum or (ii) be paid on installment at a reasonable rate of

interest for a fixed number of years. The locality by ordinance may provide for negotiated agreements with the owner of the property as to the time and method of paying the impact fees.

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

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

No impact fees shall be assessed or imposed upon a development or subdivision if the subdivider or developer has proffered conditions pursuant to §§ 15.2-2298 or 15.2-2303 for off-site road improvements and the proffered conditions have been accepted by the local government.

§ 15.2-2324. Credits against impact fee.

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

The locality also shall calculate and credit against impact fees the extent to which (i) developments have already contributed to the cost of existing roads which will serve the development, (ii) new development will contribute to the cost of existing roads, and (iii) new development will contribute to the cost of road improvements in the future other than through impact fees.

B. The provisions of this subsection apply to any credits to be applied against impact fees for school facilities. The value of any dedication, contribution or construction from the developer for school facility improvements within the service area shall be treated as a credit against the impact fee calculated pursuant to § 15.2-2323.

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

§ 15.2-2325. Updating plan and amending impact fee.

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

§ 15.2-2326. Use of proceeds.

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

§ 15.2-2327. Refund of impact fees.

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

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

§ 15.2-2403. Powers of service districts.

After adoption of an ordinance or ordinances or the entry of an order creating a service district, the governing body or bodies shall have the following powers with respect to the service districts:

1. To construct, maintain, and operate such facilities and equipment as may be necessary or desirable to provide additional, more complete, or more timely governmental services within a service district, including but not limited to water supply, sewerage, garbage removal and disposal, heat, light, fire-fighting equipment and power and gas systems and sidewalks; economic development services; promotion of business and retail development services; beautification and landscaping; beach and shoreline management and restoration; control of infestations of insects that may carry a disease that is dangerous to humans, gypsy moths, cankerworms or other pests identified by the Commissioner of the Department of Agriculture and Consumer Services in accordance with the Virginia Pest Law

181 (§ 3.1-188.20 et seq.); public parking; extra security, street cleaning, snow removal and refuse collection
182 services; sponsorship and promotion of recreational and cultural activities; upon petition of over 50
183 percent of the property owners who own not less than 50 percent of the property to be served,
184 construction, maintenance, and general upkeep of streets and roads that are not under the operation and
185 jurisdiction of the Virginia Department of Transportation; *construction, maintenance, and general upkeep*
186 *of streets and roads through creation of urban transportation service districts created pursuant to*
187 *§ 15.2-2403.1*; and other services, events, or activities that will enhance the public use and enjoyment of
188 and the public safety, public convenience, and public well-being within a service district. Such services,
189 events, or activities shall not be undertaken for the sole or dominant benefit of any particular individual,
190 business or other private entity.

191 2. To provide, in addition to services authorized by subdivision 1, transportation and transportation
192 services within a service district, including, but not limited to: public transportation systems serving the
193 district; transportation management services; road construction; rehabilitation and replacement of existing
194 transportation facilities or systems; and sound walls or sound barriers. However, any transportation
195 service, system, facility, roadway, or roadway appurtenance established under this subdivision that will
196 be operated or maintained by the Virginia Department of Transportation shall be established with the
197 involvement of the governing body of the locality and meet the appropriate requirements of the
198 Department. The proceeds from any annual tax or portion thereof collected for road construction
199 pursuant to subdivision 6 may be accumulated and set aside for such reasonable period of time as is
200 necessary to finance such construction; however, the governing body or bodies shall make available an
201 annual disclosure statement, which shall contain the amount of any such proceeds accumulated and set
202 aside to finance such road construction.

203 3. To acquire in accordance with § 15.2-1800, any such facilities and equipment and rights, title,
204 interest or easements therefor in and to real estate in such district and maintain and operate the same as
205 may be necessary and desirable to provide the governmental services authorized by subdivisions 1 and
206 2.

207 4. To contract with any person, municipality or state agency to provide the governmental services
208 authorized by subdivisions 1 and 2 and to construct, establish, maintain, and operate any such facilities
209 and equipment as may be necessary and desirable in connection therewith.

210 5. To require owners or tenants of any property in the district to connect with any such system or
211 systems, and to contract with the owners or tenants for such connections. The owners or tenants shall
212 have the right of appeal to the circuit court within 10 days from action by the governing body.

213 6. To levy and collect an annual tax upon any property in such service district subject to local
214 taxation to pay, either in whole or in part, the expenses and charges for providing the governmental
215 services authorized by subdivisions 1, 2 and 11 and for constructing, maintaining, and operating such
216 facilities and equipment as may be necessary and desirable in connection therewith; however, such
217 annual tax shall not be levied for or used to pay for schools, police, or general government services not
218 authorized by this section, and the proceeds from such annual tax shall be so segregated as to enable the
219 same to be expended in the district in which raised. In addition to the tax on property authorized herein,
220 in any city having a population of 350,000 or more and adjacent to the Atlantic Ocean, the city council
221 shall have the power to impose a tax on the base transient room rentals, excluding hotels, motels, and
222 travel campgrounds, within such service district at a rate or percentage not higher than five percent
223 which is in addition to any other transient room rental tax imposed by the city. The proceeds from such
224 additional transient room rental tax shall be deposited in a special fund to be used only for the purpose
225 of beach and shoreline management and restoration. Any locality imposing a tax pursuant to this
226 subdivision may base the tax on the full assessed value of the taxable property within the service
227 district, notwithstanding any special use value assessment of property within the service district for land
228 preservation pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, provided the owner
229 of such property has given written consent. In addition to the taxes and assessments described herein, a
230 locality creating a service district may contribute from its general fund any amount of funds it deems
231 appropriate to pay for the governmental services authorized by subdivisions 1, 2, and 11 of this section.

232 7. To accept the allocation, contribution or funds of, or to reimburse from, any available source,
233 including, but not limited to, any person, authority, transportation district, locality, or state or federal
234 agency for either the whole or any part of the costs, expenses and charges incident to the acquisition,
235 construction, reconstruction, maintenance, alteration, improvement, expansion, and the operation or
236 maintenance of any facilities and services in the district.

237 8. To employ and fix the compensation of any technical, clerical, or other force and help which from
238 time to time, in their judgment may be necessary or desirable to provide the governmental services
239 authorized by subdivisions 1, 2 and 11 or for the construction, operation, or maintenance of any such
240 facilities and equipment as may be necessary or desirable in connection therewith.

241 9. To create and terminate a development board or other body to which shall be granted and
242 assigned such powers and responsibilities with respect to a special service district as are delegated to it

by ordinance adopted by the governing body of such locality or localities. Any such board or alternative body created shall be responsible for control and management of funds appropriated for its use by the governing body or bodies, and such funds may be used to employ or contract with, on such terms and conditions as the board or other body shall determine, persons, municipal or other governmental entities or such other entities as the development board or alternative body deems necessary to accomplish the purposes for which the development board or alternative body has been created. If the district was created by court order, the ordinance creating the development board or alternative body may provide that the members appointed to the board or alternative body shall consist of a majority of the landowners who petitioned for the creation of the district, or their designees or nominees.

10. To negotiate and contract with any person or municipality with regard to the connections of any such system or systems with any other system or systems now in operation or hereafter established, and with regard to any other matter necessary and proper for the construction or operation and maintenance of any such system within the district.

11. To acquire by purchase, gift, devise, bequest, grant, or otherwise title to or any interests or rights of not less than five years' duration in real property that will provide a means for the preservation or provision of open-space land as provided for in the Open-Space Land Act (§ 10.1-1700 et seq.). Notwithstanding the provisions of subdivision 3, the governing body shall not use the power of condemnation to acquire any interest in land for the purposes of this subdivision.

12. To contract with any state agency or state or local authority for services within the power of the agency or authority related to the financing, construction, or operation of the facilities and services to be provided within the district; however, nothing in this subdivision shall authorize a locality to obligate its general tax revenues, or to pledge its full faith and credit.

13. In the Town of Front Royal, to construct, maintain, and operate facilities, equipment, and programs as may be necessary or desirable to control, eradicate, and prevent the infestation of rats and removal of skunks and the conditions that harbor them.

§ 15.2-2403.1. Creation of urban transportation service districts.

A. The boundaries of any urban transportation service district created pursuant to this article shall be agreed upon by both the local governing body of the locality and by the Virginia Department of Transportation. The overall density of an urban transportation service district shall be one residential unit per acre or greater. Any disagreement over such boundaries shall be mediated by and, if necessary, decided by the Commission on Local Government.

B. Any locality that has established an urban transportation service district in accordance with this section shall receive an amount equal to the urban allocation per lane mile for the area within the district for purposes of road maintenance. In addition, such locality shall receive an amount equal to the difference between the urban allocation and what VDOT would be spending within the service district if not for the creation of such district. Such money may be spent by the locality on any transportation need, including new construction.

C. In any instance in which a locality has taken over road maintenance within an urban transportation service district pursuant to this section, VDOT shall cooperate with such locality for purposes of transferring surplus equipment from VDOT to the locality. In addition, such locality shall receive a \$10,000 payment from the Commonwealth for each displaced VDOT employee who is hired by the locality. Each displaced VDOT employee who is hired by the locality shall also receive a \$10,000 payment from the Commonwealth upon completion of one year's service with the locality.