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HOUSE BILL NO. 1745

Offered January 10, 2007

Prefiled December 27, 2006

A *BILL to amend the Code of Virginia by adding in Chapter 38 of Title 58.1 an article numbered 11, consisting of a section numbered 58.1-3852, relating to impact fee assessments for residential development.*

Patron—Marshall, R.G.

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 38 of Title 58.1 an article numbered 11, consisting of a section numbered 58.1-3852, as follows:

*Article 11.**Impact Fee Assessments for Residential Development.**§ 58.1-3852. Impact fee assessments for residential development.*

A. Any locality may adopt an ordinance providing for payment of impact fees or cash proffers to be paid no later than at the time of issuance of a building permit for construction of a residential unit. The impact fee shall be in an amount representing the proportional total or partial cost of capital improvements reasonably related to the education, transportation, or public sewer or water needs generated by the additional residential development. However, if the development is solely for senior residents, then the impact fee shall be in an amount representing the proportional total or partial cost of capital improvements reasonably related only to public safety, or public sewer or water needs generated by the additional residential development. The cash proffer may be in an amount representing the proportional total or partial cost of capital improvements reasonably related to the education, transportation, or public sewer or water needs generated by the additional residential development. However, if the development is solely for senior residents, then the cash proffer may be in an amount representing the proportional total or partial cost of capital improvements reasonably related only to public safety, or public sewer or water needs generated by the additional residential development.

No locality shall assess impact fees or accept cash proffers unless such locality's comprehensive plan clearly identifies the transportation, education, public safety, or public sewer or water, if applicable, needs in the area of the locality that shall serve the proposed residential development.

B. Prior to adoption of any ordinance providing for impact fees or the acceptance of cash proffers, the locality shall have adopted a capital improvement program pursuant to § 15.2-2239 or local charter. No impact fee shall be assessed and no cash proffer shall be accepted unless the capital improvements related to the additional development have been included in the locality's capital improvement program. All impact fees collected and all cash proffers accepted shall be used by the locality for the purpose of completing capital improvements specified in the capital improvement program. If within six years of accepting a developer's cash proffers or a developer's pro rata share of impact fees agreed to under this section, the locality has not applied all such funds to the capital improvement project or projects that were the basis of its acceptance of the impact fees or cash proffers, then the developer may seek a writ of mandamus to compel the locality to do so. Nothing herein shall prevent a locality from assessing impact fees or accepting cash proffers for capital improvements that would not normally be included in a capital improvement program.

C. The impact fee ordinance and the cash proffer ordinance shall include provisions for the calculation and administration of impact fees and cash proffers, respectively, and may establish criteria for periodic fee adjustments to reflect changes in the estimated costs of the improvements designated in the capital improvement program and the inclusion of additional capital improvements.

D. For purposes of 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 capital improvement.

E. The impact fee ordinance shall provide that the developer shall be given a pro rata credit for cash contributions for capital costs of public facilities specified in the impact fee ordinance where such

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59 *contributions were proffered, accepted, and paid pursuant to § 15.2-2298 or § 15.2-2303. However,*
60 *nothing herein shall preclude a developer from proffering and the locality from accepting conditions,*
61 *including the payment of cash, designed to address any impacts related to a specific development that*
62 *are not addressed by a locality's impact fee ordinance.*
63 *F. Any ordinance adopted pursuant to this section shall expire six years after its original adoption.*
64 *Thereafter, impact fee ordinances and cash proffer ordinances may be adopted and renewed for*
65 *subsequent six-year periods.*