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HOUSE BILL NO. 1297

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 10, consisting of sections numbered 15.2-2330 through 15.2-2336, relating to adequate public facilities.

Patron—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 in Chapter 22 of Title 15.2 an article numbered 10, consisting of sections numbered 15.2-2330 through 15.2-2336 as follows:

ARTICLE 10.**ADEQUATE PUBLIC FACILITIES.**

§ 15.2-2330. Authority to adopt adequate public facilities ordinance.

Any locality that is subject to the provisions of the Chesapeake Bay Preservation Act (10.1-2100 et seq.) may by ordinance adopt provisions related to the provision of adequate public facilities consistent with the provisions of this article.

§ 15.2-2331. Requirements of ordinance.

A. Local adequate public facility provisions may be applied during the subdivision or site plan review and approval process with respect to public facilities.

B. In the implementation of its local adequate public facility provisions pursuant to this article, a locality may defer or approve with conditions a residential development proposal in a manner consistent with subsection A3 of § 15.2-2332.

C. Local adequate public facility provisions shall pertain only to physical facilities and associated costs for their construction and financing but shall not apply to operational costs.

D. The local adequate public facility provisions shall be adopted, or amended, by the governing body only after the governing body (i) has adopted a local comprehensive plan that includes the following or (ii) determines the current comprehensive plan includes the following:

1. A projection of capital facility needs based upon the projected development provided for in the comprehensive plan.

2. A statement of the level of service related to the physical capacity of such public facilities.

3. A capital improvement program that provides the funding of the capital improvements necessary to provide adequate public facilities as covered in the local provisions. As a condition of the continuing validity of the local adequate public facility provisions, the locality shall annually prepare a local capital improvement program and annually adopt a local capital budget.

§ 15.2-2332. Application to the plan of development review process.

A. A determination of adequacy of public facilities must be made during the preliminary site plan or development review process. Such a determination may be made by the governing body.

1. The locality may require a study from the applicant, or provide one on its own, with regard to assessment of the impact of the proposed development upon the facilities. The study shall take into consideration the timing of development along with approved or reserved development proposals.

2. If the locality determines that certain public facilities will not be adequate to accommodate the proposed development at the applicable level of service, it may take one of the following actions:

a. Conditional approval. The locality may approve the development proposal subject to a condition pertaining to the timing of the development including the phasing of development. In order to take such action, a project which will provide, or upgrade, the affected facility to an adequate level of service must be included in the locality's capital improvement program and must be scheduled to start construction within five years from the date of the determination. The conditional approval shall be triggered no later than one year from the start of construction of such project. Under the provisions of this section, such approved plats shall be valid for a period of seven years, notwithstanding other provisions of law.

b. Denial without prejudice. The locality may deny the development proposal based upon a finding of inadequate public facilities.

3. A locality may establish a reservation system that could be applied as a part of the plan of development review process, or to a development proposal that was denied, for the purpose of allowing construction to occur at a specified future date that is based upon the locality making the affected facility adequate.

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59 *B. For any development proposal that does not receive a determination of adequate public facilities*
60 *and is denied solely on this basis, the locality shall allow an applicant to provide the deficient facility*
61 *through direct construction; payment of an amount up to the full costs as acceptable by the locality;*
62 *through partnerships with others; or by other appropriate means concurrent with the construction of the*
63 *proposed development.*

64 *§ 15.2-2333. Level of service.*

65 *A. The local adequate public facility provisions shall include a level of service standard for public*
66 *facilities.*

67 *B. The locality shall establish a level of service standard that is appropriate to each facility, or type*
68 *of facility. The level of service standard and its rationale shall be contained in the locality's adopted*
69 *comprehensive plan. A level of service standard shall not be less than 100% of the capacity established*
70 *pursuant to subsection A of this section*

71 *C. A locality may establish a variable level of service standard within its jurisdiction for*
72 *accommodating other necessary public services or for the purpose of accommodating unique*
73 *circumstances that apply to a specific facility or for specific geographic areas, or zones. In all cases,*
74 *the rationale and basis for a variable level of service must be included in the locality's adopted*
75 *comprehensive plan and shall be approved by the governing body on a case by case basis. A variable*
76 *level of service standard may be applied for:*

- 77 *1. Affordable housing;*
- 78 *2. Designated economic development areas;*
- 79 *3. Constrained facilities;*
- 80 *4. Unique geographic areas.*

81 *§ 15.2-2334. Exemptions.*

82 *The locality shall provide a process for exemptions, including written agreements or other binding*
83 *provisions, to the adequate public facilities determination process for the following:*

- 84 *1. Demonstration of no demand on the affected facility;*
- 85 *2. A minimal degree of impact with such level of impact being described in the adopted*
86 *comprehensive plan; and*
- 87 *3. Proposals that have part-time demands that do not adversely affect the normal operation of the*
88 *affected facility.*

89 *§ 15.2-2335. Right to Proceed.*

90 *A. The denial or deferral of a development proposal based upon the inadequacy of public facilities is*
91 *based upon a consideration of the locality providing the necessary public facilities within a reasonable*
92 *period of time. If the locality fails to provide the necessary public facilities within such a reasonable*
93 *period of time, a new development proposal may be submitted upon the same land for the same, or*
94 *lesser intensity of use, and may not be denied by the locality on the basis of adequacy of the same*
95 *facilities considered in the previous action.*

96 *B. A reasonable period of time shall be determined pursuant to the following:*

- 97 *1. For an action of conditional approval as allowed pursuant to subsection A2.a. of § 4, [the*
98 *development shall be allowed to proceed] if [(i)] the locality does not provide the facility within the*
99 *time frame established in the conditions; [(ii)] the level of service of the facility is changed thus*
100 *allowing the project to otherwise proceed; [(iii)] the construction of the facility is removed from the*
101 *local capital improvement program; or [(iv)] circumstances change and affect the level of service at the*
102 *facility so it will not be exceeded by the proposed development.*

- 103 *2. For an action of denial as allowed pursuant to Subsection A2.b. of § 15.2-2332, if the locality has*
104 *not commenced construction of the required facility, or expansion thereof, within five years from the*
105 *date of denial, the applicant may reapply for approval of the original application and such application*
106 *shall be approved in an expedited manner.*

107 *§ 15.2-2336. Vested Rights.*

108 *Ordinances adopted under the provisions of this article shall not be deemed to impair vested rights*
109 *as established by § 15.2-2307 with regard to the timing of development. The vesting of a particular use*
110 *under such section shall not be affected by ordinances adopted under this article.*