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SENATE BILL NO. 768

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Rules
on February 28, 2008)

(Patron Prior to Substitute—Senator Watkins)

A BILL to amend and reenact §§ 15.2-2297, 15.2-2298, 15.2-2303, 15.2-2303.1, and 15.2-2317 through 15.2-2327 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2323.1, relating to conditional zoning; impact fees.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2297, 15.2-2298, 15.2-2303, 15.2-2303.1, and 15.2-2317 through 15.2-2327 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2323.1 as follows:

§ 15.2-2297. Same; conditions as part of a rezoning or amendment to zoning map.

A. 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 must give rise for the need for the conditions; (ii) the conditions shall have a reasonable relation to the rezoning; (iii) the conditions shall not include a cash contribution to the locality; (iv) the conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in § 15.2-2241; (v) the conditions shall not include a requirement that the applicant 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 owners' 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; (vi) the conditions shall not include payment for or construction of off-site improvements except those provided for in § 15.2-2241; (vii) no condition shall be proffered that is not related to the physical development or physical operation of the property; and (viii) all such conditions shall be in conformity with the comprehensive plan as defined in § 15.2-2223. The governing body may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal. 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.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendments 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 such property, shall be effective with respect to such 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 substantial value or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. The notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property.

Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no rights pursuant to this section.

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

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

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

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

E. A voluntary proffer of conditions as part of a rezoning or amendment to a zoning map for residential development or the residential portion of any mixed-use development made on or after July 1, 2009, shall be limited to reasonable, non-cash (i) proffers for on-site conditions for the new development; (ii) off-site proffers for a public facility that is not the subject of a public facilities improvements plan pursuant to § 15.2-2321, or any other proffered condition that is necessitated by and attributable to the new development, as a condition for rezoning for residential development or the residential portion of any mixed-use development; and (iii) conditions to implement incentive zoning as defined in § 15.2-2201. As used in this section "on-site" means within the property that is the subject of the rezoning petition.

F. Notwithstanding any other provision of law, no locality shall, on or after July 1, 2009, accept the dedication of cash as a proffered condition for rezoning for residential development or the residential portion of any mixed-use development.

G. Beginning July 1, 2008 and until July 1, 2009, an applicant may proffer, and a locality may accept, cash payments in accordance with existing law, but any such proffer shall provide for the adjustment of such cash payments following the locality's adoption of impact fees pursuant to Article 8 (§ 15.2-2317 et seq.) of Chapter 22. Any locality adopting such impact fees shall also provide for their application to any by-right development for which no preliminary subdivision plat or site plan had been filed as of February 1, 2008. Subsections E, F, and G shall not apply to any development on sites containing five acres or less.

§ 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 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. However, any such locality may by ordinance choose to utilize the conditional zoning authority granted under § 15.2-2303 rather than this section.

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 may include the payment of cash for any off-site road improvement or any off-site transportation improvement that is adopted as an amendment to the required comprehensive plan and incorporated into the capital improvements program, provided that nothing herein shall prevent a locality from accepting proffered conditions which are not normally included in a capital improvement program. For purposes of this section, "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. For purposes of this section, "transportation improvement" means any real or personal property acquired, constructed, improved, or used for constructing, improving, or operating any (i) public mass transit system or (ii) highway, or portion or interchange thereof, including parking facilities located within a district created pursuant to this title. Such improvements shall include, without limitation, public mass transit systems, public highways, and all buildings, structures, approaches, and facilities thereof and appurtenances thereto, rights-of-way, bridges, tunnels, stations, terminals, and all related equipment and fixtures.

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. The governing body may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal. 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 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, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. The notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B above, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no rights pursuant to this section.

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

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

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

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

E. A voluntary proffer of conditions as part of a rezoning or amendment to a zoning map for residential development or the residential portion of any mixed-use development made on or after July 1, 2009, shall be limited to reasonable, non-cash (i) proffers for on-site conditions for the new development; (ii) off-site proffers for a public facility that is not the subject of a public facilities improvements plan pursuant to § 15.2-2321, or any other proffered condition that is necessitated by and attributable to the new development, as a condition for rezoning for residential development or the residential portion of any mixed-use development; and (iii) conditions to implement incentive zoning as defined in § 15.2-2201. As used in this section "on-site" means within the property that is the subject of the rezoning petition.

F. Notwithstanding any other provision of law, no locality shall, on or after July 1, 2009, accept the dedication of cash as a proffered condition for rezoning for residential development or the residential

portion of any mixed-use development.

G. Beginning July 1, 2008 and until July 1, 2009, an applicant may proffer, and a locality may accept, cash payments in accordance with existing law, but any such proffer shall provide for the adjustment of such cash payments following the locality's adoption of impact fees pursuant to Article 8 (§ 15.2-2317 et seq.) of Chapter 22. Any locality adopting such impact fees shall also provide for their application to any by-right development for which no preliminary subdivision plat or site plan had been filed as of February 1, 2008. Subsections E, F, and G shall not apply to any development on sites containing five acres or less.

§ 15.2-2303. Conditional zoning in certain localities.

A. A zoning ordinance may include reasonable regulations and provisions for conditional zoning as defined in § 15.2-2201 and for the adoption, in counties, or towns therein which have planning commissions, wherein the urban county executive form of government is in effect, or in a city adjacent to or completely surrounded by such a county, or in a county contiguous to any such county, or in a city adjacent to or completely surrounded by such a contiguous county, or in any town within such contiguous county, and in the counties east of the Chesapeake Bay as a part of an amendment to the zoning map of reasonable conditions, in addition to the regulations provided for the zoning district by the ordinance, when such conditions shall have been proffered in writing, in advance of the public hearing before the governing body required by § 15.2-2285 by the owner of the property which is the subject of the proposed zoning map amendment. 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 owners' 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. The governing body may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal. Once proffered and accepted as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by such conditions. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

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 such property, shall be effective with respect to such 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 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, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subdivision shall acquire no rights pursuant to this section.

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

E. Nothing in this section shall be construed to affect or impair the authority of a governing body to (i) accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or (ii) accept or impose valid conditions pursuant to provision 3 of § 15.2-2286, provision 5 of § 15.2-2242, or other provision of law.

F. In addition to the powers granted by the preceding subsections, a zoning ordinance may include reasonable regulations to implement, in whole or in part, the provisions of §§ 15.2-2296 through 15.2-2302.

G. A voluntary proffer of conditions as part of a rezoning or amendment to a zoning map for residential development or the residential portion of any mixed-use development made on or after July 1, 2009, shall be limited to reasonable, non-cash (i) proffers for on-site conditions for the new development; (ii) off-site proffers for a public facility that is not the subject of a public facilities improvements plan pursuant to § 15.2-2321, or any other proffered condition that is necessitated by and attributable to the new development, as a condition for rezoning for residential development or the residential portion of any mixed-use development; and (iii) conditions to implement incentive zoning as defined in § 15.2-2201. As used in this section "on-site" means within the property that is the subject of the rezoning petition.

H. Notwithstanding any other provision of law, no locality shall, on or after July 1, 2009, accept the dedication of cash as a proffered condition for rezoning for residential development or the residential portion of any mixed-use development.

I. Beginning July 1, 2008 and until July 1, 2009, an applicant may proffer, and a locality may accept, cash payments in accordance with existing law, but any such proffer shall provide for the adjustment of such cash payments following the locality's adoption of impact fees pursuant to Article 8 (§ 15.2-2317 et seq.) of Chapter 22. Any locality adopting such impact fees shall also provide for their application to any by-right development for which no preliminary subdivision plat or site plan had been filed as of February 1, 2008. Subsections G, H, and I shall not apply to any development on sites containing five acres or less.

§ 15.2-2303.1. Development agreements in certain counties.

A. In order to promote the public health, safety and welfare and to encourage economic development consistent with careful planning, New Kent County may include in its zoning ordinance provisions for the governing body to enter into binding development agreements with any persons owning legal or equitable interests in real property in the county if the property to be developed contains at least one thousand acres.

B. Any such agreements shall be for the purpose of stimulating and facilitating economic growth in the county; shall not be inconsistent with the comprehensive plan at the time of the agreement's adoption, except as may have been authorized by existing zoning ordinances; and shall not authorize any use or condition inconsistent with the zoning ordinance or other ordinances in effect at the time the agreement is made, except as may be authorized by a variance, special exception or similar authorization. The agreement shall be authorized by ordinance, shall be for a term not to exceed fifteen years, and may be renewed by mutual agreement of the parties for successive terms of not more than ten years each. It may provide, among other things, for uses; the density or intensity of uses; the maximum height, size, setback and/or location of buildings; the number of parking spaces required; the location of streets and other public improvements; the measures required to control stormwater; the phasing or timing of construction or development; or any other land use matters. It may authorize the property owner to transfer to the county land, public improvements, money or anything of value to further the purposes of the agreement or other public purposes set forth in the county's comprehensive plan, but not as a condition to obtaining any permitted use or zoning. The development agreement shall not run with the land except to the extent provided therein, and the agreement may be amended or canceled in whole or in part by the mutual consent of the parties thereto or their successors in interest and assigns.

C. If, pursuant to the agreement, a property owner who is a party thereto and is not in breach thereof, (i) dedicates or is required to dedicate real property to the county, the Commonwealth or any other political subdivision or to the federal government or any agency thereof, (ii) makes or is required to make cash payments to the county, the Commonwealth or any other political subdivision or to the federal government or any agency thereof, or (iii) makes or is required to make public improvements for the county, the Commonwealth or any other political subdivision or for the federal government or any agency thereof, such dedication, payment or construction therefor shall vest the property owner's rights under the agreement. If a property owner's rights have vested, neither any amendment to the zoning map for the subject property nor any amendment to the text of the zoning ordinance with respect to the zoning district applicable to the property which eliminates or restricts, reduces, or modifies the use; the density or intensity of uses; the maximum height, size, setback or location of buildings; the number of parking spaces required; the location of streets and other public improvements; the measures required to control stormwater; the phasing or timing of construction or development; or any other land use or other matters provided for in such agreement shall be effective with respect to such property during the term of the agreement unless there has been a mistake, fraud or change in circumstances substantially affecting the public health, safety or welfare.

D. Nothing in this section shall be construed to preclude, limit or alter the vesting of rights in accordance with existing law; authorize the impairment of such rights; or invalidate any similar agreements entered into pursuant to existing law.

E. The provisions of this section authorizing cash payments shall not apply to the residential portion of any development agreement entered into after July 1, 2009.

Article 8.

~~Road~~*Public Facility* Impact Fees.

§ 15.2-2317. Applicability of article.

This article shall apply to any ~~locality~~ *city, any county enumerated in § 15.2-4831 or 33.1-391.7, any town within such county, any county that had the authority to accept proffers prior to July 1, 2009, and to any county* that has adopted zoning pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 and that ~~(i)~~ ~~has~~ ~~a~~ ~~population~~ ~~of~~ ~~at~~ ~~least~~ ~~20,000~~ ~~and~~ has a population growth rate of at least 5%*percent* ~~or~~ ~~(ii)~~ ~~has~~ ~~population~~ ~~growth~~ ~~of~~ ~~15%~~ ~~or~~ ~~more~~*, and to any town within such county*. For the purposes of this section, population growth shall be the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census.

§ 15.2-2318. Definitions.

As used in this article, unless the context requires a different meaning:

"Cost" ~~includes,~~ ~~in~~ ~~addition~~ ~~to~~ *means the actual charges to be paid by or on behalf of the locality for: (i)* all labor, materials, machinery and equipment for construction, ~~(i)~~*(ii) the* acquisition of land, rights-of-way, property rights, easements and interests, including the costs of moving or relocating utilities, ~~(ii)~~*(iii)* demolition or removal of any structure on land so acquired, including acquisition of land to which such structure may be moved, ~~(iii)~~*(iv)* survey, engineering, *consulting,* and architectural expenses, ~~(iv)~~*(v)* legal, administrative, and other related expenses, and ~~(v)~~*(vi)* 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 improvements.*

"Designated transportation improvement" means a public road or transportation improvement designated on any adopted local, state or federal transportation plan including the locality's capital improvements program, the locality's comprehensive plan, the locality's six-year improvement plan, the six-year improvement plan of the Virginia Department of Transportation or transportation plan of a regional transportation authority.

"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~~ *public facility* improvements ~~benefiting~~ *necessitated by and attributable to providing public facilities to* the new development. Impact fees may not be assessed and imposed for ~~road~~ *public facilities* repair, operation and maintenance, nor to meet demand which existed prior to the new development.

"Impact fee service area" means ~~an~~ *a geographic* area designated ~~within~~ *by an ordinance on the zoning map of a locality and reflected on* the comprehensive plan of ~~a~~ *such* locality ~~having~~*, which has* clearly defined boundaries and clearly related ~~traffic~~ *public facility* needs *that have a rational and reasonable relationship to projected new development* and within which development is to be subject to the assessment of impact fees.

"New development" means any new construction or building expansion that (i) for residential development, results in one or more additional residential dwelling units or (ii) for non-residential development, results in an increase of gross square footage.

"On-site" means within the boundaries of the property to be developed.

"Public facilities" means public roads, public safety facilities, or public school facilities.

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

"~~Road~~*Public road* improvement" ~~includes~~*means (i)* construction of new roads ~~or~~*; (ii)* improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality with road maintenance responsibilities*; and (iii) construction, improvement, or expansion of all buildings, structures, parking, and other facilities related to transit,* to meet increased demand *necessitated by and* attributable to new development. Road improvements do not include on-site construction of roads which a developer may be required to provide pursuant to §§ 15.2-2241 through 15.2-2245.

"Public safety facility improvement" means construction of new law-enforcement, fire, emergency medical, and rescue facilities or expansion of existing public safety facilities, to include all buildings, structures, parking, and other costs related thereto, to meet demand necessitated by and attributable to new development within a designated impact fee service area.

"Public school facility improvement" means construction of new primary and secondary public schools or expansion of existing primary and secondary public schools, to include all buildings, structures, parking, and other costs related thereto, to meet demand necessitated by and attributable to

new development within the designated impact fee service area.

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

A. Any applicable locality may, by ordinance pursuant to the procedures and requirements of this article, assess and impose impact fees on new *residential and nonresidential* development to pay all or a part of the cost of reasonable ~~road~~ *public facility* improvements that ~~benefit~~ *are necessitated by and attributable to* the new development.

B. 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 ten members appointed by the governing body of the locality and at least forty percent of the membership shall be representatives from the development, ~~building~~ *construction,* or real estate industries *who have been actively engaged in development, construction, or real estate for the past five years*. 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 *preparation of 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.

C. A locality shall exempt nonresidential development from the imposition of public school facility impact fees. A locality may reduce or waive any impact fee for all or part of a nonresidential development if the project is projected to create significant economic development and employment growth in the impact fee service area, or if the project is in a designated enterprise zone, as provided under applicable state or local law.

D. A locality may reduce or waive any impact fee authorized by this article in urban development areas established pursuant to § 15.2-2223.1.

E. No locality shall impose any impact fee authorized by this article on any unitsubject to an affordable dwelling unit program established pursuant to § 15.2-735.2, 15.2-2304, or 15.2-2305; on any rental housing that qualifies for federal low-income tax credit; or on any housing that qualifies as affordable within a locality under the guidelines included in the definition of affordable housing in § 15.2-2201.

F. A locality may exempt or reduce from impact fees any property that, once developed, will be exempt from real property taxes, if the locality determines that the property's use will not contribute significantly to the use of the public facilities of the locality.

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

A. The locality shall delineate *by ordinance on the zoning map* one or more impact fee service areas ~~within its comprehensive plan~~*; however, no locality shall designate the entire locality as a single impact fee service area*.

B. Prior to establishing any impact fee service area, the locality shall provide written notice to all owners of unimproved property located within the impact fee service area in a manner consistent with the requirements of subsection B of § 15.2-2204.

C. Impact fees collected from new development within an impact fee service area shall be expended *only* for ~~road~~ *public facility* improvements benefiting that impact fee service area. An impact fee service area may encompass more than one ~~road~~ *public facility* improvement project. ~~A locality may exclude urban development areas designated pursuant to § 15.2-2223.1 from impact fee service areas.~~

§ 15.2-2321. Adoption of public road, public school facilities, and public safety facility improvements program.

A. Prior to adopting a system of impact fees, the locality shall conduct an assessment of ~~road~~ *public facility* improvement needs benefiting an impact fee service area and shall adopt ~~a~~ *public* road, ~~improvements plan~~ *public school facility, or public safety facility improvements plans* for the area showing the new ~~roads~~ *public facilities* proposed to be constructed and the existing ~~roads~~ *public facilities* to be ~~improved or~~ expanded and the schedule for undertaking such construction~~, improvement~~ or expansion. The ~~road~~ *public facility* improvements ~~plan~~ *plans* shall be adopted as ~~an amendment~~ *amendments* to the required comprehensive plan and shall be incorporated into the capital improvements program ~~or, in the case of the counties where~~. *Where* applicable, *the road improvement plan shall be incorporated into* the six-year plan for secondary road construction pursuant to § 33.1-70.01.

B. The locality shall adopt the ~~road~~ *public facility* improvements ~~plan~~ *plans* after holding a duly advertised public hearing. The public hearing notice shall identify the impact fee service area or areas to be designated, and shall include a summary of the needs assessment and the assumptions upon which the assessment is based, the proposed amount of the impact fee, and information as to how a copy of the complete study may be examined. A copy of the complete study shall be available for public inspection and copying at ~~reasonable times~~ *least 30 days* prior to the public hearing.

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

1. An analysis of the existing capacity, current usage and existing commitments to future usage of existing ~~roads~~ *public facilities*, as indicated by (i) *both* current and projected service levels, (ii) current valid building permits outstanding, ~~and~~ (iii) approved and pending site plans and subdivision plats, *and (iv) approved conditional zonings, special exceptions, and special use permits*. If the current usage and commitments exceed the existing capacity of the ~~roads~~ *public facilities*, the locality also shall determine the costs of improving the ~~roads~~ *public facilities* to meet the demand *and shall identify any funding for such costs from sources other than impact fees. If the projected service levels exceed current service levels for the impact fee service area, the locality shall determine the costs of increasing the current service levels to the projected levels in the absence of new development and shall identify any funding for such costs from sources other than impact fees.* The analysis shall include any off-site ~~road~~ *public facility* improvements, or cash payments for ~~road~~ *public facility* improvements accepted by the locality and shall include a plan to fund the current usages and commitments that exceed the existing capacity of the ~~roads~~ *public facilities*.

2. The projected need for and costs of construction of new ~~roads or improvement~~ *public facilities* or expansion of existing ~~roads~~ *public facilities necessitated by and* attributable in whole or in part to projected new development. ~~Road~~*Public facility* improvement needs shall be projected for the impact fee service area when fully developed in accord with the comprehensive plan and, if full development is projected to occur more than 20 years in the future, at the end of a 20-year period. The assumptions with regard to land uses, densities, intensities, and population upon which ~~road~~ *public facility* improvement projections are based shall be presented.

3. An assessment of (i) such future revenues as shall be generated by the new development towards public facilities improvement within the impact fee service area and (ii) such funds as have been committed from the federal, state, or local government specifically to provide or pay for the public facilities for which the impact fees are to be imposed. The locality also shall consider the extent to which (a) other developments have already contributed to the cost of existing public roads, public school facilities, and public safety facilities, which will benefit new development, (b) new development will contribute to the cost of existing public roads, public school facilities, and public safety facilities, and (c) new development will contribute to the cost of public road, public school facilities, and public safety facilities improvements in the future other than through impact fees, including any special taxing districts, special assessments, or community development authorities.

~~3~~*4*. The total number of new *public facility* service units projected for the impact fee service area when fully developed and, if full development is projected to occur more than 20 years in the future, at the end of a 20-year period. *As used in this section, a service unit is a standardized measure of use or generation attributable to an individual unit of new development. The locality shall develop a table or method for attributing service units to various types of development and land use, including but not limited to residential, commercial, and industrial uses.*

D. A *road* "service unit" ~~is a standardized measure of traffic use or generation. The locality shall develop a table or method for attributing service units to various types of development and land use, including but not limited to residential, commercial and industrial uses. The table~~ *and its costs* shall be *established by the locality* based upon the ITE manual (published by the Institute of Transportation Engineers) or locally conducted trip generation studies, and consistent with the traffic analysis standards adopted pursuant to § 15.2-2222.1.

E. A public school facility "service unit" is the estimated average number of elementary, middle, and high school pupils generated by each type (single-family detached, single-family attached, and multifamily) of dwelling unit on a localitywide basis.

The need for new or expanded public school facilities within an impact fee service area shall be established by determining (i) the appropriate enrollment-to-capacity levels for elementary, middle, and high schools, (ii) the current available capacity of the existing elementary, middle, and high schools, (iii) the impact of a new development, on a service unit basis, on the capacity of existing elementary, middle, and high schools, and (iv) the elementary, middle, and high schools necessary to meet the projected increase in demand necessitated by and directly attributable to new residential development within the impact fee service area.

The enrollment-to-capacity level for each elementary, middle, and high school established within an impact fee service area shall be consistent with existing enrollment-to-capacity levels and the enrollment-to-capacity level established for the locality as a whole. If the projected enrollment-to-capacity levels provide a greater level of service than existing enrollment-to-capacity levels for the impact fee service area, the locality shall determine the costs of adjusting the existing levels to the projected levels in the absence of new development and shall identify funding for such costs from sources other than impact fees.

The locality shall determine the individual public school facility service unit cost within an impact fee service area by dividing the total site cost and facility cost by the student capacity of each public school facility necessitated by and directly attributable to a new residential development. The calculation

shall include a credit for each service unit for each type of dwelling unit equal to the pro rata share of total dollars received from the state for public school facility construction or expansion and a credit for the percentage of annual real estate tax paid by the owner to the locality that the locality dedicates to public school facilities capital improvements and public school facility debt service for each of the next 20 years after a certificate of occupancy has been issued.

F. The locality shall determine the individual public safety facility service unit cost within an impact fee service area by (i) determining the percentages of calls for public safety service made from residential units and from nonresidential properties; (ii) determining the costs of projected public safety facilities attributable to residential units and to nonresidential units by multiplying the total costs by such percentages; and (iii) dividing the percentage costs by the number of residential units and by the total nonresidential building square feet.

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

After adoption of ~~a road~~ *public facility* improvement ~~program~~ *programs*, the locality may adopt an ordinance establishing a system of impact fees to fund or recapture all or any part of the cost of providing reasonable ~~road~~ *public facility* improvements ~~benefiting~~ *necessitated by and attributable to* new development *in the designated impact fee service area as calculated pursuant to subsection C of § 15.2-2321*. The ordinance shall set forth the schedule of impact fees. *The public road, public school, or public safety facility impact fees to be imposed shall be determined by adding the unit cost for public roads, public school facilities, or public safety facilities to establish a public facilities unit cost.*

§ 15.2-2323. Impact fees assessed and imposed on non-residential development.

A. Impact fees may be assessed and imposed on all new non-residential development except those site plans recorded prior to July 1, 2008. The amount of impact fees to be ~~imposed~~ *assessed* on a specific development or subdivision shall be determined ~~before or~~ at the time *of the final approval of* the site plan or subdivision ~~is approved~~. The ordinance shall specify that the *impact* fee *assessed on the individual unit of development* is to be collected at the time of the issuance of a building permit *for that unit*. ~~The ordinance 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 impact fee 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 years, by dividing the projected costs necessitated by development in the next ten years by the service units projected to be created in the next ten 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, *and thereafter to the circuit court for the locality*. The ordinance may provide for the resolution of disputes over an impact fee by arbitration or otherwise.

B. Subject to the provisions of this subsection, the maximum impact fee assessed on non-residential development shall be as follows:

1. In the localities enumerated in § 15.2-4831 and subject to this article pursuant to § 15.2-2317, the maximum impact fee for public facility improvements shall be as follows:

a. For office use, $3/gross square foot;

b. For retail use, $4/gross square foot;

c. For industrial use, $2/gross square foot;

d. For hotel use, $1,000/room, plus $3/gross square foot for all other public space such as restaurants and meeting areas.

2. In all other localities subject to this article pursuant to § 15.2-2317, the maximum impact fee for public facility improvements shall be as follows:

a. For office use, $3/gross square foot;

b. For retail use, $4/gross square foot;

c. For industrial use, $2/gross square foot;

d. For hotel use, $1,000/room, plus $3/gross square foot for all other public space such as restaurants and meeting areas.

The sum total of public facility impact fees shall not exceed the maximum amounts enumerated in this subsection; provided, however, that beginning July 1, 2009, the locality may adjust the maximum impact fee by (i) a percentage not greater than the annual rate of inflation, as calculated by referring to the Consumer Price Index for all urban consumers (CPI-U), 1982-1984=100 (not seasonally adjusted) as reported by the United States Department of Labor, Bureau of Labor Statistics or the Marshall and Swift Building Cost Index, or (ii) one and one-half percent, whichever is lower.

§ 15.2-2323.1. Impact fees assessed and imposed on residential development.

A. Impact fees may be assessed and imposed on all new residential development or subdivisions except those residential subdivisions recorded and site plans approved during the three years preceding the date of adoption of an impact fee ordinance. The amount of impact fees to be assessed on a specific new development or subdivision shall be determined at the time of the final approval of the subdivision, or, for a new development or subdivision recorded prior to three years preceding the adoption date, at the time of the issuance of a building permit for that subdivision. For new development to be constructed in more than one phase, the amount of impact fees to be assessed shall be determined for each phase of development at the time of the final approval of each phase of the subdivision. The ordinance shall specify that the impact fee assessed on the individual unit of development is to be collected at the time of the issuance of a building permit for that unit. 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, and thereafter to the circuit court for the locality. The ordinance may provide for the resolution of disputes over an impact fee by arbitration or otherwise.

B. Subject to the provisions of this subsection, the maximum impact fee assessed on residential development prior to July 1, 2012, shall be as follows:

1. In the localities enumerated in § 15.2-4831 and subject to this article pursuant to § 15.2-2317, the maximum impact fee for public facility improvements shall be $12,500 per single-family detached dwelling unit, two-thirds of such maximum per single-family attached dwelling unit, and one-half of such maximum per multifamily dwelling unit.

2. In all other localities subject to this article pursuant to § 15.2-2317, the maximum impact fee for public facility improvements shall be $7,500 per single-family detached dwelling unit, two-thirds of such maximum per single-family attached dwelling unit, and one-half of such maximum per multifamily dwelling unit.

The sum total of public facility impact fees assessed prior to July 1, 2012, shall not exceed the maximum amounts enumerated in this subsection; provided, however, that beginning July 1, 2009, and until July 1, 2012, the locality may adjust the maximum impact fee by a percentage not greater than the annual rate of inflation, as calculated by referring to the Consumer Price Index for all urban consumers (CPI-U), 1982-1984=100 (not seasonally adjusted) as reported by the United States Department of Labor, Bureau of Labor Statistics or the Marshall and Swift Building Cost Index.

C. On and after July 1, 2012, the maximum impact fee assessed and imposed by a locality on residential development shall not exceed two percent of the average sale price of newly constructed homes in that locality for the previous calendar year, as calculated and reported by the Weldon Cooper Center for Public Service of the University of Virginia.

§ 15.2-2324. Credits against impact fee.

The *market* value of any *land* dedication, *cash* contribution or construction ~~from~~ *provided by* the developer for ~~off-site~~ *all on-site (i) public school facility improvements, (ii) public safety facility improvements, and (iii) public* road or other transportation improvements *that are designated* ~~benefiting the impact fee service area~~ *transportation improvements,* shall be treated as a credit against the impact fees imposed on the developer's project. The locality shall treat as a credit *against the impact fee imposed upon a new development the market value of* any off-site ~~transportation dedication, contribution, or construction, whether it is a condition of a rezoning or otherwise committed to the locality. The locality may by ordinance provide for credits for approved on-site transportation improvements in excess of those required by the development.~~ *improvements or cash contributions for off-site improvements provided by the developer not necessitated by or attributable to the new development. No credit shall be given for the market value of any bonuses granted pursuant to incentive zoning as defined in § 15.2-2201, or for public improvements required to be provided by ordinance adopted pursuant to § 15.2-2241 or § 15.2-2242. Market value may be negotiated and agreed to between the applicant and the locality. In the event of the parties cannot agree as to market value, the applicant and the locality may agree to obtain an appraisal of the market value of such improvements. Market value shall be determined at the time of approval of any conditional zoning application by the locality, or in an application made for other new development, at the time of the approval of any subdivision or site plan.*

~~The locality also shall calculate and credit against impact fees the extent to which (i) other developments have already contributed to the cost of existing roads which will benefit 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, including any special taxing districts, special assessments, or community development authorities.~~

§ 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~~ *five* years. The ~~road~~ *public facility* improvement plan shall be updated at least every ~~two~~ *five* years to reflect current assumptions and projections. The impact fee schedule may be amended to reflect

any substantial changes in such assumptions and projections. Any impact fees not yet paid shall be assessed at the updated rate.

§ 15.2-2326. Use of proceeds.

A. ~~A~~ ~~separate~~*Separate public* road*, public school facility, and public safety facility* improvement ~~account~~ *accounts* shall be established for ~~the~~ *each* impact fee service area *established by the locality,* and all funds collected through impact fees shall be deposited in ~~the~~ *such separate* interest-bearing~~account~~ *accounts*. Interest earned on deposits shall become funds of the account. The expenditure of funds from the ~~account~~ *accounts* shall be only for *public* road*, public school facility, and public safety facility* improvements benefiting the impact fee service area as set out in the ~~road~~ *public facility* improvement plan for the impact fee service area. *The expenditure of funds from the public school facility accounts shall be only for public school facility improvements benefiting the impact fee service area or any school district whose boundaries are within or adjacent to the impact fee service area. The governing body of any county that has adopted an ordinance pursuant to § 15.2-2322 may enter into one or more agreements with the governing body of any town within such county that has also adopted an ordinance pursuant to § 15.2-2322 to provide for the transfer or sharing of revenues from impact fees for public facility improvements consistent with this section. Any funds collected through impact fees may be used by a locality to meet matching requirements for any state or federal funding.*

B. The governing body of any locality imposing impact fees pursuant to the authority granted under this article shall within three months of the close of each fiscal year, beginning in fiscal year 2009 and for each fiscal year thereafter, report to the Commission on Local Government the following information for public road, public school facility, and public safety facility improvements for the preceding fiscal year:

1. The aggregate dollar amount of impact fees collected by the locality in each impact fee service area and for each improvement category;

2. The aggregate dollar amount expended in the impact fee service area in each improvement category;

3. The total dollar amount of impact fees collected and expended by the locality in each impact fee service area for all years to date; and

4. The total dollar amount expended by the locality to increase capacity to meet existing commitments or increase existing service levels pursuant to § 15.2-2321.1 as well as the funding sources and the amounts from each source.

C. The governing body of any locality eligible to collect impact fees pursuant to authority granted under this article but that did not collect any impact fees during the preceding fiscal year shall within three months of the close of each fiscal year, beginning in 2009 and for each fiscal year thereafter, so notify the Commission on Local Government.

D. The Commission on Local Government shall by November 30, 2009, 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 B and C.

§ 15.2-2327. Refund of impact fees.

The locality shall refund any impact fee or portion thereof ~~for which construction of a~~ *assessed and paid for a public facility improvement* project ~~is not completed~~ *for which property has not been acquired and design had not been completed* within a reasonable period of time, not to exceed fifteen years. In the event that *road* impact fees are not committed to road improvements benefiting the impact fee service area within seven years from the date of collection, the locality may commit any such impact fees to the secondary or urban system construction program of that locality for road improvements that benefit the impact fee service area.

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

2. That the provisions of this act shall not impair any proffer or proffered condition amendment accepted by a locality, nor any agreement entered into under § 15.2-2303.1 of the Code of Virginia, pursuant to authority granted prior the effective date of this Act.

3. That the provisions of this act amending §§ 15.2-2297, 15.2-2298, 15.2-2303, and 15.2-2303.1 of the Code of Virginia shall not apply to any urban development area created prior to July 1, 2011, pursuant to § 15.2-2223.1 of the Code of Virginia by any county having the urban county executive form of government.