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SENATE BILL NO. 768

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Local Government
 on January 29, 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 15.2-2322.1 and by adding in Article 8 of Chapter 22 of Title 15.2 a section numbered 15.2-2327.1, 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 15.2-2322.1 and by adding in Article 8 of Chapter 22 of Title 15.2 a section numbered 15.2-2327.1 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

60 affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements
61 of this subsection shall acquire no rights pursuant to this section.

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

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

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

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

71 *E. A voluntary proffer of conditions as part of a rezoning or amendment to a zoning map for*
72 *residential development and the residential portion of any mixed-use development made on or after July*
73 *1, 2009, shall be limited to reasonable non-cash, on-site conditions necessitated by and attributable to*
74 *the new development resulting from the rezoning. As used in this section "on-site" means within the*
75 *property that is the subject of the rezoning petition.*

76 *F. Notwithstanding any other provision of law, no locality shall accept (i) a cash proffer as a*
77 *condition for rezoning proffered on or after July 1, 2009 as a condition for rezoning for residential*
78 *development and the residential portion of any mixed-use development or (ii) an off-site proffer on or*
79 *after July 1, 2009, for a public facility that is the subject of a public facilities improvements plan*
80 *pursuant to § 15.2-2321, or any other proffered condition that is not necessitated by and attributable to*
81 *the new development, as a condition for rezoning for residential development and the residential portion*
82 *of any mixed-use development.*

83 *G. Between July 1, 2008, and July 1, 2009, an applicant may proffer, and a locality may accept,*
84 *cash payments in accordance with existing law, but any such proffer shall provide for the automatic*
85 *reduction of such cash payments following the locality's adoption of impact fees pursuant to Article 8*
86 *(§ 15.2-2317 et seq.) of Chapter 22. Any locality adopting such impact fees shall also provide for their*
87 *retroactive application to any by-right development for which no preliminary subdivision plat or site*
88 *plan had been filed as of February 1, 2008.*

89 § 15.2-2298. Same; additional conditions as a part of rezoning or zoning map amendment in certain
90 high-growth localities.

91 A. Except for those localities to which § 15.2-2303 is applicable, this section shall apply to (i) any
92 locality which has had population growth of 5% or more from the next-to-latest to latest decennial
93 census year, based on population reported by the United States Bureau of the Census; (ii) any city
94 adjoining such city or county; (iii) any towns located within such county; and (iv) any county
95 contiguous with at least three such counties, and any town located in that county. However, any such
96 locality may by ordinance choose to utilize the conditional zoning authority granted under § 15.2-2303
97 rather than this section.

98 In any such locality, notwithstanding any contrary provisions of § 15.2-2297, a zoning ordinance may
99 include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior
100 to a public hearing before the governing body, in addition to the regulations provided for the zoning
101 district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map, provided that
102 (i) the rezoning itself gives rise to the need for the conditions; (ii) the conditions have a reasonable
103 relation to the rezoning; and (iii) all conditions are in conformity with the comprehensive plan as
104 defined in § 15.2-2223.

105 Reasonable conditions may include the payment of cash for any off-site road improvement or any
106 off-site transportation improvement that is adopted as an amendment to the required comprehensive plan
107 and incorporated into the capital improvements program, provided that nothing herein shall prevent a
108 locality from accepting proffered conditions which are not normally included in a capital improvement
109 program. For purposes of this section, "road improvement" includes construction of new roads or
110 improvement or expansion of existing roads as required by applicable construction standards of the
111 Virginia Department of Transportation to meet increased demand attributable to new development. For
112 purposes of this section, "transportation improvement" means any real or personal property acquired,
113 constructed, improved, or used for constructing, improving, or operating any (i) public mass transit
114 system or (ii) highway, or portion or interchange thereof, including parking facilities located within a
115 district created pursuant to this title. Such improvements shall include, without limitation, public mass
116 transit systems, public highways, and all buildings, structures, approaches, and facilities thereof and
117 appurtenances thereto, rights-of-way, bridges, tunnels, stations, terminals, and all related equipment and
118 fixtures.

119 Reasonable conditions shall not include, however, conditions that impose upon the applicant the
120 requirement to create a property owners' association under Chapter 26 (§ 55-508 et seq.) of Title 55
121 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 and the residential portion of any mixed-use development made on or after January 1, 2009, shall be limited to reasonable non-cash, on-site conditions necessitated by and attributable to the new development resulting from the rezoning. 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 accept (i) a cash proffer as a condition for rezoning proffered on or after July 1, 2009, as a condition for rezoning for residential development and the residential portion of any mixed-use development or (ii) an off-site proffer on or after July 1, 2009, for a public facility that is the subject of a public facilities improvements plan pursuant to § 15.2-2321, or any other proffered condition that is not necessitated by and attributable to

183 *the new development, as a condition for rezoning for residential development and the residential portion*
184 *of any mixed-use development.*

185 *G. Between July 1, 2008, and July 1, 2009, an applicant may proffer, and a locality may accept,*
186 *cash payments in accordance with existing law, but any such proffer shall provide for the automatic*
187 *reduction of such cash payments following the locality's adoption of impact fees pursuant to Article 8*
188 *(§ 15.2-2317 et seq.) of Chapter 22. Any locality adopting such impact fees shall also provide for their*
189 *retroactive application to any by-right development for which no preliminary subdivision plat or site*
190 *plan had been filed as of February 1, 2008.*

191 § 15.2-2303. Conditional zoning in certain localities.

192 A. A zoning ordinance may include reasonable regulations and provisions for conditional zoning as
193 defined in § 15.2-2201 and for the adoption, in counties, or towns therein which have planning
194 commissions, wherein the urban county executive form of government is in effect, or in a city adjacent
195 to or completely surrounded by such a county, or in a county contiguous to any such county, or in a
196 city adjacent to or completely surrounded by such a contiguous county, or in any town within such
197 contiguous county, and in the counties east of the Chesapeake Bay as a part of an amendment to the
198 zoning map of reasonable conditions, in addition to the regulations provided for the zoning district by
199 the ordinance, when such conditions shall have been proffered in writing, in advance of the public
200 hearing before the governing body required by § 15.2-2285 by the owner of the property which is the
201 subject of the proposed zoning map amendment. Reasonable conditions shall not include, however,
202 conditions that impose upon the applicant the requirement to create a property owners' association under
203 Chapter 26 (§ 55-508 et seq.) of Title 55 which includes an express further condition that members of a
204 property owners' association pay an assessment for the maintenance of public facilities owned in fee by
205 a public entity, including open space, parks, schools, fire departments, and other public facilities not
206 otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street
207 signs or markers, or special street lighting in public rights-of-way not maintained by the Department of
208 Transportation. The governing body may also accept amended proffers once the public hearing has
209 begun if the amended proffers do not materially affect the overall proposal. Once proffered and accepted
210 as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a
211 subsequent amendment changes the zoning on the property covered by such conditions. However, such
212 conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a
213 new or substantially revised zoning ordinance.

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

223 C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of
224 substantial value, or substantial cash payments for or construction of substantial public improvements,
225 the need for which is not generated solely by the rezoning itself, but who has not substantially
226 implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail
227 prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice
228 shall identify the property to be developed, the zoning district, and the proffers applicable thereto.
229 Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement
230 such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good
231 faith shall diligently pursue the completion of the development of the property. Any landowner who
232 complies with the requirements of this subsection shall be entitled to the protection against action
233 initiated by the governing body affecting use, floor area ratio, and density set out in subsection B, unless
234 there has been mistake, fraud, or a change in circumstances substantially affecting the public health,
235 safety, or welfare, but any landowner failing to comply with the requirements of this subdivision shall
236 acquire no rights pursuant to this section.

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

241 E. Nothing in this section shall be construed to affect or impair the authority of a governing body to
242 (i) accept proffered conditions which include provisions for timing or phasing of dedications, payments,
243 or improvements; or (ii) accept or impose valid conditions pursuant to provision 3 of § 15.2-2286,
244 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 and the residential portion of any mixed-use development made on or after January 1, 2009, shall be limited to reasonable non-cash, on-site conditions necessitated by and attributable to the new development resulting from the rezoning. 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 accept (i) a cash proffer as a condition for rezoning proffered on or after July 1, 2009, as a condition for rezoning for residential development and the residential portion of any mixed-use development or (ii) an off-site proffer on or after July 1, 2009, for a public facility that is the subject of a public facilities improvements plan pursuant to § 15.2-2321, or any other proffered condition that is not necessitated by and attributable to the new development as a condition for rezoning for residential development and the residential portion of any mixed-use development.

I. Between July 1, 2008, and 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 automatic reduction 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 retroactive application to any by-right development for which no preliminary subdivision plat or site plan had been filed as of February 1, 2008.

§ 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

306 accordance with existing law; authorize the impairment of such rights; or invalidate any similar
 307 agreements entered into pursuant to existing law.

308 *E. The provisions of this section authorizing cash payments shall not apply to the residential portion*
 309 *of any development agreement entered into.*

310 Article 8.

311 ~~Road~~Public Facility Impact Fees.

312 § 15.2-2317. Applicability of article.

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

320 § 15.2-2318. Definitions.

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

322 "Cost" ~~includes, in addition to~~ means the actual charges to be paid by or on behalf of the locality
 323 for: (i) all labor, materials, machinery and equipment for construction, ~~(i)~~(ii) the acquisition of land,
 324 rights-of-way, property rights, easements and interests, including the costs of moving or relocating
 325 utilities, ~~(ii)~~(iii) demolition or removal of any structure on land so acquired, including acquisition of land
 326 to which such structure may be moved, ~~(iii)~~(iv) survey, engineering, and architectural expenses, ~~(iv)~~(v)
 327 legal, administrative, and other related expenses, and ~~(v)~~(vi) interest charges and other financing costs if
 328 impact fees are used for the payment of principal and interest on bonds, notes or other obligations
 329 issued by the locality to finance the ~~road improvement~~ public facility improvements.

330 "Impact fee" means a charge or assessment imposed against new development in order to generate
 331 revenue to fund or recover the costs of reasonable ~~road~~ public facility improvements ~~benefiting~~
 332 necessitated by and attributable to providing public facilities to the new development at service levels
 333 consistent with those currently experienced within the locality. Impact fees may not be assessed and
 334 imposed for ~~road~~ public facilities repair, operation and maintenance, nor to meet demand which existed
 335 prior to the new development.

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

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

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

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

345 "~~Road~~Public road improvement" ~~includes~~means construction of new roads or improvement or
 346 expansion of existing roads and related appurtenances as required by applicable standards of the Virginia
 347 Department of Transportation, or the applicable standards of a locality with road maintenance
 348 responsibilities, to meet increased demand necessitated by and attributable to new development. Road
 349 improvements do not include on-site construction of roads which a developer may be required to
 350 provide pursuant to §§ 15.2-2241 through 15.2-2245.

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

355 "Public school facility improvement" means construction of new primary and secondary public
 356 schools or expansion of existing primary and secondary public schools, to include all buildings,
 357 structures, parking, and other costs related thereto, to meet demand necessitated by and attributable to
 358 new development within the designated impact fee service area.

359 § 15.2-2319. Authority to assess and impose impact fees.

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

364 B. Prior to the adoption of the ordinance, a locality shall establish an impact fee advisory committee.
 365 The committee shall be composed of not less than five nor more than ten members appointed by the
 366 governing body of the locality and at least forty percent of the membership shall be representatives from
 367 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 commercial and industrial development from the imposition of public school facility impact fees.

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 unit subject to an affordable dwelling unit program established pursuant to § 15.2-2304 or 15.2-2305, or on any development constructed pursuant to § 8 of the federal Housing and Community Development Act of 1974, as amended.

§ 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 the affected property owners 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, and 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 60 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 funding for such costs from sources other than impact fees. If the projected service levels exceed current service levels, 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 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 pursuant to authority granted prior to January 1, 2009, 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. RoadPublic 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

429 with regard to land uses, densities, intensities, and population upon which road improvement projections
430 are based shall be presented.

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

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

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

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

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

463 The enrollment-to-capacity level for each elementary, middle, and high school established within an
464 impact service area shall be consistent with existing enrollment-to-capacity levels and the
465 enrollment-to-capacity level established for the locality as a whole.

466 The locality shall determine the individual public school facility service unit cost within an impact
467 fee service area by dividing the total site cost and facility cost by the student capacity of each public
468 school facility necessitated by and directly attributable to a new residential development. The calculation
469 shall include a credit for each service unit for each type of dwelling unit equal to the pro rata share of
470 total dollars received from the state for public school facility construction or expansion and a credit for
471 the percentage of annual real estate tax paid by the owner to the locality that the locality dedicates to
472 public school facilities capital improvements and public school facility debt service for each of the next
473 20 years after a certificate of occupancy has been issued.

474 F. Public safety "service units" shall be established by (i) allocating the number of existing public
475 safety facilities between residential and nonresidential uses in proportion to historical telephone records
476 of calls for public safety service, (ii) dividing the residential proportion of public safety facilities by the
477 residential population served to determine a "residential service unit," and (iii) dividing the
478 nonresidential proportion of public safety facilities by the total nonresidential building square feet
479 served to determine a "nonresidential service unit."

480 § 15.2-2322. Adoption of impact fee and schedule.

481 A. After adoption of a road public facility improvement program programs, the locality may adopt an
482 ordinance establishing a system of impact fees to fund or recapture all or any part of the cost of
483 providing reasonable road public facility improvements benefiting necessitated by and attributable to
484 new development in the designated impact fee service area. The ordinance shall set forth the schedule
485 of impact fees.

486 B. The public road, public school, and public safety facility impact fees to be imposed shall be
487 determined (i) by dividing projected public road, public school, and public safety facility construction or
488 expansion costs in the impact fee service area when fully developed by the number of projected public
489 road, public school, and public safety facility service units when fully developed, or (ii) for a reasonable
490 period of time, but not less than 10 years, by dividing the projected public road, public school, or

public safety facility construction or expansion costs necessitated by and attributable to development in the next 10 years by the public road, public school, and public safety facility service units projected to be created in the next 10 years.

§ 15.2-2322.1. Maximum impact fees to be imposed by localities.

A. The sum total of public facility impact fees assessed shall not exceed the maximum amounts as enumerated in subsections B and C; provided, however, that beginning January 1, 2009, and annually thereafter, 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.

B. Except as provided for in subsection A, the maximum impact fee assessed on 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 improvement shall be \$8,000 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 improvement shall be \$5,000 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.

C. Except as provided for in subsection A, the maximum impact fee assessed on commercial or industrial 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 improvement 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 improvement 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.

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

Impact fees may be assessed and imposed on all new development or subdivisions except those subdivisions and site plans recorded prior to January 1, 2009; however, impact fees may be assessed and imposed on any subdivision recorded prior to January 1, 2009, that has not vested pursuant to § 15.2-2307. 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.

§ 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 designated on any local, state

552 or federal transportation plan including the locality's capital improvements program, the locality's
553 comprehensive plan, the locality's six-year improvement plan, the six-year improvement plan of the
554 Virginia Department of Transportation or transportation plan of a regional transportation authority
555 benefiting the impact fee service area shall be treated as a credit against the impact fees imposed on the
556 developer's project. The locality shall treat as a credit against the impact fee imposed upon a
557 development any off-site transportation public facility improvement, land dedication, cash contribution, or
558 construction, whether it is a condition of a rezoning or otherwise committed to the locality provided by
559 the developer. The locality may by ordinance provide for credits for approved on-site transportation
560 improvements in excess of those required by the development. Market value shall be determined at the
561 time of dedication, contribution, or construction.

562 The locality also shall calculate and credit against impact fees the extent to which (i) other
563 developments have already contributed to the cost of existing roads which will benefit the development,
564 (ii) new development will contribute to the cost of existing roads, and (iii) new development will
565 contribute to the cost of road improvements in the future other than through impact fees, including any
566 special taxing districts, special assessments, or community development authorities.

567 § 15.2-2325. Updating plan and amending impact fee.

568 The locality shall update the needs assessment and the assumptions and projections at least once
569 every two years. The road public facility improvement plan shall be updated at least every two five
570 years to reflect current assumptions and projections. The impact fee schedule may be amended to reflect
571 any substantial changes in such assumptions and projections. Any impact fees not yet paid shall be
572 assessed at the updated rate.

573 § 15.2-2326. Use of proceeds.

574 A. A separate Separate public road, public school facility, and public safety facility improvement
575 account accounts shall be established for the each impact fee service area, and all funds collected
576 through impact fees shall be deposited in the such separate interest-bearing account accounts. Interest
577 earned on deposits shall become funds of the account. The expenditure of funds from the account
578 accounts shall be only for public road, public school facility, and public safety facility improvements
579 benefiting the impact fee service area as set out in the road public facility improvement plan for the
580 impact fee service area.

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

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

588 2. The estimated aggregate dollar amount of impact service fees the locality expects to collect in the
589 coming fiscal year for each improvement category;

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

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

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

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

601 D. The Commission on Local Government shall by November 30, 2009, and by November 30 of each
602 fiscal year thereafter, prepare and make available to the public and the chairmen of the Senate Local
603 Government Committee and the House Counties, Cities and Towns Committee an annual report
604 containing the information made available to it pursuant to subsections B and C.

605 § 15.2-2327. Refund of impact fees.

606 The locality shall refund any impact fee or portion thereof for which construction of a public facility
607 improvement project is not completed within a reasonable period of time, not to exceed fifteen years. In
608 the event that impact fees are not committed to road improvements benefiting the impact fee service
609 area within seven years from the date of collection, the locality may commit any such impact fees to the
610 secondary or urban system construction program of that locality for road improvements that benefit the
611 impact fee service area.

612 Upon completion of a public facility improvement project, the locality shall recalculate the impact fee
613 based on the actual cost of the improvement. It shall refund the difference if the impact fee paid exceeds

614 actual cost by more than fifteen percent. Refunds shall be made to the record owner of the property at
 615 the time the refund is made.

616 § 15.2-2327.1. Severability.

617 *If any provision of this article is held invalid, such adjudication shall not affect, impair, or invalidate*
 618 *the remaining provisions thereof, but shall be confined in its operation to the specific provisions held*
 619 *invalid, and to this end the provisions of this article are severable.*

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