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HOUSE BILL NO. 2239

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns
on February 1, 2013)

(Patron Prior to Substitute—Delegate Marshall, D.W.)

A BILL to amend and reenact § 15.2-2303.2 of the Code of Virginia, relating to cash proffers.

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2303.2 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2303.2. Proffered cash payments and expenditures.

A. The governing body of any locality accepting cash payments voluntarily proffered on or after July 1, 2005, pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 shall, within seven years of receiving full payment of all cash proffered pursuant to an approved rezoning application, begin, or cause to begin (i) construction, (ii) site work, (iii) engineering, (iv) right-of-way acquisition, (v) surveying, or (vi) utility relocation on the improvements for which the cash payments were proffered. A locality that does not comply with the above requirement, or does not begin alternative improvements as provided for in subsection C, shall forward the amount of the proffered cash payments to the Commonwealth Transportation Board no later than December 31 following the fiscal year in which such forfeiture occurred for direct allocation to the secondary system construction program or the urban system construction program for the locality in which the proffered cash payments were collected. The funds to which any locality may be entitled under the provisions of Title 33.1 for construction, improvement, or maintenance of primary, secondary, or urban roads shall not be diminished by reason of any funds remitted pursuant to this subsection by such locality, regardless of whether such contributions are matched by state or federal funds.

B. The governing body of any locality eligible to accept any proffered cash payments pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 shall, for each fiscal year beginning with the fiscal year 2007, (i) include in its capital improvement program created pursuant to § 15.2-2239, or as an appendix thereto, the amount of all proffered cash payments received during the most recent fiscal year for which a report has been filed pursuant to subsection D, and (ii) include in its annual capital budget the amount of proffered cash payments projected to be used for expenditures or appropriated for capital improvements in the ensuing year.

C. Regardless of the date of rezoning approval, unless prohibited by the proffer agreement accepted by the governing body of a locality pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1, a locality may utilize any cash payments proffered for any road improvement or any transportation improvement that is incorporated into the capital improvements program as its matching contribution under § 33.1-23.05. 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.

Regardless of the date of rezoning approval, unless prohibited by the proffer agreement accepted by the governing body of a locality pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1, a locality may utilize any cash payments proffered for capital improvements for alternative improvements of the same category within the locality in the vicinity of the improvements for which the cash payments were originally made. Prior to utilization of such cash payments for the alternative improvements, the governing body of the locality shall give at least 30 days' written notice of the proposed alternative improvements to the entity who paid such cash payment mailed to the last known address of such entity, or if proffer payment records no longer exist, then to the original zoning applicant, and conduct a public hearing on such proposal advertised as provided in subsection F of § 15.2-1427. The governing body of the locality prior to the use of such cash payments for alternative improvements shall, following such public hearing, find: (i) the improvements for which the cash payments were proffered cannot occur in a timely manner or the functional purpose for which the cash payment was made no longer exists; (ii) the alternative improvements are within the vicinity of the proposed improvements for which the cash payments were proffered; and (iii) the alternative improvements are in the public interest. Notwithstanding the provisions of the Virginia Public Procurement Act, the governing body may negotiate and award a contract without competition to an entity that is constructing road improvements

60 pursuant to a proffered zoning condition or special exception condition in order to expand the scope of
61 the road improvements by utilizing cash proffers of others or other available locally generated funds.
62 The local governing body shall adopt a resolution stating the basis for awarding the construction
63 contract to extend the scope of the road improvements. All road improvements to be included in the
64 state primary or secondary system of highways must conform to the adopted standards of the Virginia
65 Department of Transportation.

66 *Notwithstanding any provision of this section or any other provision of law, general or special, no*
67 *cash payment proffered pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 shall be used for any capital*
68 *improvement to an existing local government facility, such as a renovation or technology upgrade, that*
69 *does not expand the capacity of such facility or for any operating expense of any existing facility such*
70 *as ordinary maintenance or repair.*

71 D. The governing body of any locality with a population in excess of 3,500 persons accepting a cash
72 payment voluntarily proffered pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 shall within three
73 months of the close of each fiscal year, beginning in fiscal year 2002 and for each fiscal year thereafter,
74 report to the Commission on Local Government the following information for the preceding fiscal year:

75 1. The aggregate dollar amount of proffered cash payments collected by the locality;

76 2. The estimated aggregate dollar amount of proffered cash payments that have been pledged to the
77 locality and which pledges are not conditioned on any event other than time; and

78 3. The total dollar amount of proffered cash payments expended by the locality, and the aggregate
79 dollar amount expended in each of the following categories:

80 Schools	\$ _____
81 Road and other Transportation Improvements	\$ _____
82 Fire and Rescue/Public Safety	\$ _____
83 Libraries	\$ _____
84 Parks, Recreation, and Open Space	\$ _____
85 Water and Sewer Service Extension	\$ _____
86 Community Centers	\$ _____
87 Stormwater Management	\$ _____
88 Special Needs Housing	\$ _____
89 Affordable Housing	\$ _____
90 Miscellaneous	\$ _____
91 Total dollar amount expended	\$ _____

92 E. The governing body of any locality with a population in excess of 3,500 persons eligible to accept
93 any proffered cash payments pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 but that did not accept
94 any proffered cash payments during the preceding fiscal year shall within three months of the close of
95 each fiscal year, beginning in 2001 and for each fiscal year thereafter, so notify the Commission on
96 Local Government.

97 F. The Commission on Local Government shall by November 30, 2001, and by November 30 of
98 each fiscal year thereafter, prepare and make available to the public and the chairmen of the Senate
99 Local Government Committee and the House Counties, Cities and Towns Committee an annual report
100 containing the information made available to it pursuant to subsections D and E.