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**HOUSE BILL NO. 1666**

Offered January 10, 2007

Prefiled December 5, 2006

A *BILL to amend the Code of Virginia by adding a section numbered 33.1-12.02, relating to impact fees.*

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Patron—Marshall, R.G.

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Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:****1. That the Code of Virginia is amended by adding a section numbered 33.1-12.02 as follows:**

*§ 33.1-12.02. Impact fee against negative transportation impact.*

*A. As used in this section, unless the context requires a different meaning:*

*"Cost" includes, in addition to all labor, materials, machinery, and equipment for construction, (i) acquisition of land, rights-of-way, property rights, easements and interests, including the costs of moving or relocating utilities; (ii) demolition or removal of any structure on land so acquired, including acquisition of land to which such structure may be moved; (iii) survey, engineering, and architectural expenses; (iv) legal, administrative, and other related expenses; and (v) interest charges and other financing costs if impact fees are used for the payment of principal and interest on bonds, notes, or other obligations issued by the locality to finance the road improvement.*

*"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 improvements necessitated by and attributable to the new development. Impact fees may not be assessed and imposed for road repair, operation, and maintenance, nor to expand existing roads to meet demand which existed prior to the new development.*

*"Impact fee service area" means land designated by the Virginia Department of Transportation within a locality, having clearly defined boundaries and clearly related traffic needs and within which development is to be subject to the assessment of impact fees.*

*"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. 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.*

*B. In addition to the duties set forth in §§ 33.1-12 and 33.1-12.01, the Commonwealth Transportation Board shall assess and impose reasonable impact fees to be collected by the Virginia Department of Transportation on new development or new subdivisions that are situated on an access road which has become, or which is to become, part of the primary system of state highway. Such impact fees shall be used to pay all or a part of the cost of reasonable road improvements, as defined by § 15.2-2318, that are (i) attributable in substantial part to the new development or new subdivision and (ii) necessary to render that access road which has become, or which is to become, part of the primary system of state highway operable at the Level of Service, as that term is described in the Highway Capacity Manual, that existed as of January 1, 2007.*

*C. The Virginia Department of Transportation shall hold a duly advertised public hearing; the public hearing shall identify each area that is situated on an access road which has become, or which is to become, part of the primary system of state highway and for which an impact fee shall be imposed.*

*D. The amount of impact fees to be imposed on a specific development or subdivision shall be determined before or at the time the locality approves the site plan or subdivision but after the Virginia Department of Transportation completes its final review of the plan of development, site plan, or subdivision plat pursuant to § 15.2-2222.1. No locality shall issue a building permit for any building or structure that is situated on an access road which has become, or which is to become, part of the primary system of state highway until the locality either (i) collects such impact fee and deposits such impact fee in accordance with subsection F or (ii) directs the developer or subdivider to pay such impact fee to the Virginia Department of Transportation, provided the developer or subdivider has previously made a significant showing to the locality of its ability to pay such impact fee. 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 10 years, by dividing the projected costs necessitated by development in the next 10 years by the service units projected to be created in the next 10 years. For purposes of this section, a "service unit" is a standardized measure of traffic use or*

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59 generation. The Virginia Department of Transportation shall develop a table or method for attributing  
60 service units to various types of development and land use, including but not limited to residential,  
61 commercial, and industrial uses. The table shall be based upon the ITE manual (published by the  
62 Institute of Transportation Engineers) or locally conducted trip generation studies

63 The Commonwealth Transportation Board shall provide for appeals from administrative  
64 determinations regarding the impact fees to be imposed; the Commonwealth Transportation Board may  
65 provide for the resolution of disputes over an impact fee by arbitration or otherwise.

66 No impact fees shall be assessed or imposed upon a development or subdivision if the subdivider or  
67 developer has proffered conditions pursuant to § 15.2-2298 or 15.2-2303 for off-site road improvements  
68 and the proffered conditions have been accepted by the local government.

69 E. The value of any dedication, contribution, or construction from the developer for off-site road  
70 improvements that are situated on an access road which has become, or which is to become, part of the  
71 primary system of state highway shall be treated as a credit against the impact fees imposed on the  
72 developer's project. The Virginia Department of Transportation may provide for credits for approved  
73 on-site improvements in excess of those required by the development.

74 The Virginia Department of Transportation also shall calculate and credit against impact fees the  
75 extent to which (i) developments have already contributed to the cost of existing roads which will serve  
76 the development, (ii) new development will contribute to the cost of existing roads, and (iii) new  
77 development will contribute to the cost of road improvements in the future other than through impact  
78 fees.

79 F. A separate road improvement account shall be established for all areas that are situated on  
80 access roads which have become, or which are to become, part of the primary system of state highway;  
81 all funds collected through impact fees shall be deposited in the interest-bearing account. Interest  
82 earned on deposits shall become funds of the account. The expenditure of funds from the account shall  
83 be only for road improvements that are situated on an access road which has become, or which is to  
84 become, part of the primary system of state highway.

85 G. The Virginia Department of Transportation shall refund any impact fee or portion thereof for  
86 which construction of a project is not completed within a reasonable period of time, not to exceed 15  
87 years. Upon completion of a project, the Virginia Department of Transportation shall recalculate the  
88 impact fee based on the actual cost of the improvement. It shall refund the difference if the impact fee  
89 paid exceeds actual cost by more than 15 percent. Refunds shall be made to the record owner of the  
90 property at the time the refund is made.