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**HOUSE BILL NO. 2986**

Offered January 10, 2007

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A *BILL to amend and reenact §§ 15.2-975, 15.2-2296, 15.2-2297, 15.2-2300, 15.2-2303.1, and 15.2-2303.2 of the Code of Virginia, relating to conditional zoning.*

Patrons—Ingram and Hall

Referred to Committee on Counties, Cities and Towns

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 15.2-975, 15.2-2296, 15.2-2297, 15.2-2300, 15.2-2303.1, and 15.2-2303.2 of the Code of Virginia are amended and reenacted as follows:**

§ 15.2-975. Use of cash payments in land use matters.

Localities which are authorized to accept voluntary cash proffers *or enter into development agreements* may also issue bonds under the provisions of the Public Finance Act and other applicable law including local charters, to finance improvements contained in ~~the construction~~ *a local capital improvement program*, to the extent that the costs of such improvements have been pledged by landowners as ~~voluntary cash proffers during the land development process~~. ~~Authorized localities~~ *Localities* may pledge the proceeds of such ~~proffers~~ *monetary commitments* as a specific undertaking from which revenue is derived pursuant to Article VII, Section 10 (a) (3) of the Constitution of Virginia. The use of pledged cash ~~proffers~~ to finance improvements shall be limited to the improvements or class of improvements for which the ~~proffer cash~~ was originally pledged, and all or any part of the total amount pledged through the conditional zoning process may be further pledged by the locality to support repayment of any such debt.

§ 15.2-2296. Conditional zoning; declaration of legislative policy and findings; purpose.

It is the general policy of the Commonwealth in accordance with the provisions of § 15.2-2283 to provide for the orderly development of land, for all purposes, through zoning and other land development legislation. Frequently, where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptable zoning methods are needed to permit differing land uses and the same time to recognize effects of change. It is the purpose of ~~§§ 15.2-2296 through 15.2-2300~~ *conditional zoning* to provide a more flexible and adaptable zoning method to cope with situations found in such zones ~~through conditional zoning~~, whereby a zoning reclassification may be ~~allowed~~ *subjected* to ~~certain~~ conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned. The exercise of authority granted pursuant to §§ 15.2-2296 through 15.2-2302 shall not be construed to limit or restrict powers otherwise granted to any locality, nor to affect the validity of any ordinance adopted by any such locality which would be valid without regard to this section. The provisions of this section and the following ~~six~~ *nine* sections shall not be used for the purpose of discrimination in housing.

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

A. A zoning ordinance *in any locality* 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 *or modification of* 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 such~~ 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) and (iv) 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~~

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59 overall proposal. Once proffered and accepted as part of an amendment to the zoning ordinance, the  
60 conditions shall continue in effect until a subsequent amendment changes the zoning on the property  
61 covered by the conditions. However, the conditions shall continue if the subsequent amendment is part  
62 of a comprehensive implementation of a new or substantially revised zoning ordinance. *There shall be*  
63 *no amendment or variation of conditions created pursuant to provisions hereof until after a public*  
64 *hearing before the governing body advertised pursuant to the provisions of § 15.2-2204.*

65 B. In the event proffered conditions include a ~~requirement~~ for the dedication of real property of  
66 substantial value or construction of substantial public improvements, the need for which is not generated  
67 solely by the rezoning itself, then no amendments to the zoning map for the property subject to such  
68 conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with  
69 respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or  
70 materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the  
71 zoning district applicable to such property, shall be effective with respect to such property unless there  
72 has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or  
73 welfare.

74 C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of  
75 substantial value or construction of substantial public improvements, the need for which is not generated  
76 solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1,  
77 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to  
78 proceed with the implementation of such proffers. The notice shall identify the property to be developed,  
79 the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice  
80 shall have until July 1, 1995, substantially to implement the proffers, or such later time as the governing  
81 body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the  
82 development of the property.

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

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

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

- 93 1. Accept proffered conditions which include provisions for timing or phasing of dedications,  
94 payments, or improvements; or  
95 2. Accept or impose valid conditions pursuant to provision 3 of § 15.2-2286 or other provision of  
96 law.

97 E. *In addition to the powers granted by the preceding subsections, a zoning ordinance may include*  
98 *reasonable provisions to implement, in whole or in part, the provisions hereof.*

99 § 15.2-2300. Same; records.

100 The zoning map shall show by an appropriate symbol on the map the existence of conditions  
101 attaching to the zoning on the map. The zoning administrator shall keep in his office and make available  
102 for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance  
103 creating conditions in addition to the regulations provided for in a particular zoning district or zone. The  
104 Index shall also provide ready access to ~~all proffered cash payments and expenditures revenue and~~  
105 ~~expenditure~~ disclosure reports prepared by the local governing body pursuant to § 15.2-2303.2. The  
106 zoning administrator shall update the Index annually and no later than November 30 of each year.

107 § 15.2-2303.1. Development agreements.

108 A. In order to promote the public health, safety and welfare and to encourage economic development  
109 consistent with careful planning, ~~any county with a population between 10,300 and 11,000 according to~~  
110 ~~the 1990 United States Census through which an interstate highway passes may every locality located in~~  
111 *Planning District 8 shall* include in its zoning ordinance provisions for the governing body to enter into  
112 binding development agreements with any persons owning legal or equitable interests in real property in  
113 the ~~county locality if the property to be developed contains at least one thousand acres.~~

114 B. Any such agreements shall be for the purpose of stimulating and facilitating economic growth in  
115 the county; shall not be inconsistent with the comprehensive plan at the time of the agreement's  
116 adoption, except as may have been authorized by existing zoning ordinances; and shall not authorize any  
117 use or condition inconsistent with the zoning ordinance or other ordinances in effect at the time the  
118 agreement is made, except as may be authorized by a variance, special exception or similar  
119 authorization. ~~The agreement~~ Such agreements shall be authorized by ordinance, shall be for a term not  
120 to exceed fifteen years, and may be renewed by mutual agreement of the parties for successive terms of

not more than ten years each.

C. ~~It~~ *Development agreements* may provide, among other things, for *specific land* uses; the density or intensity of *such* 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~~ *They* may authorize the ~~property owner~~ to transfer to the county of land, public improvements, money, or anything of value *reasonably necessary* to further the purposes of the agreement or other public purposes set forth in the ~~county's~~ comprehensive plan, ~~but provided that such transfer shall not be made~~ as a condition ~~to~~ of 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. *No locality may establish or employ a uniform schedule of cash payments for the estimated cost of capital improvements caused by residential, commercial, or industrial development in conjunction with development agreements.*

D. *No locality shall either request or accept a cash payment as part of a development agreement whose amount is scheduled to increase annually, from the time of agreement until tender of payment, by a percentage 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.*

E. 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.

F. Nothing in this section shall be construed to preclude, limit or alter the vesting of rights in accordance with ~~existing~~ other law; authorize the impairment of such rights; or invalidate any similar agreements entered into pursuant to existing law; *except that the provisions of §§ 15.2-2297, 15.2-2298, and 15.2-2303 shall not apply to any locality located in Planning District 8.*

§ 15.2-2303.2. 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 *or as part of a development agreement pursuant to § 15.2-2303.1* shall, within seven years of receiving full payment of all *such* 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. *All proffered cash payments shall be reported regardless of whether such payment*

182 *is only to be made upon the occurrence of a future condition, such as, but not limited to, the issuance*  
 183 *of a building permit.*

184 C. Regardless of the date of rezoning approval, unless prohibited by the proffer agreement accepted  
 185 by the governing body of a locality pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1, a locality may  
 186 utilize any cash payments proffered for any road improvement or any transportation improvement that is  
 187 incorporated into the capital improvements program as its matching contribution under § 33.1-23.05. For  
 188 purposes of this section, "road improvement" includes construction of new roads or improvement or  
 189 expansion of existing roads as required by applicable construction standards of the Virginia Department  
 190 of Transportation to meet increased demand attributable to new development. For purposes of this  
 191 section, "transportation improvement" means any real or personal property acquired, constructed,  
 192 improved, or used for constructing, improving, or operating any (i) public mass transit system or (ii)  
 193 highway, or portion or interchange thereof, including parking facilities located within a district created  
 194 pursuant to this title. Such improvements shall include, without limitation, public mass transit systems,  
 195 public highways, and all buildings, structures, approaches, and facilities thereof and appurtenances  
 196 thereto, rights-of-way, bridges, tunnels, stations, terminals, and all related equipment and fixtures.

197 Regardless of the date of rezoning approval, unless prohibited by the proffer agreement accepted by  
 198 the governing body of a locality pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1, a locality may  
 199 utilize any cash payments proffered for capital improvements for alternative improvements of the same  
 200 category within the locality in the vicinity of the improvements for which the cash payments were  
 201 originally made. Prior to utilization of such cash payments for the alternative improvements, the  
 202 governing body of the locality shall give at least 30 days' written notice of the proposed alternative  
 203 improvements to the entity who paid such cash payment mailed to the last known address of such entity,  
 204 or if proffer payment records no longer exist, then to the original zoning applicant, and conduct a public  
 205 hearing on such proposal advertised as provided in subsection F of § 15.2-1427. The governing body of  
 206 the locality prior to the use of such cash payments for alternative improvements shall, following such  
 207 public hearing, find: (i) the improvements for which the cash payments were proffered cannot occur in a  
 208 timely manner; (ii) the alternative improvements are within the vicinity of the proposed improvements  
 209 for which the cash payments were proffered; and (iii) the alternative improvements are in the public  
 210 interest. Notwithstanding the provisions of the Virginia Public Procurement Act, the governing body  
 211 may negotiate and award a contract without competition to an entity that is constructing road  
 212 improvements pursuant to a proffered zoning condition in order to expand the scope of the road  
 213 improvements by utilizing cash proffers of others or other available locally generated funds. The local  
 214 governing body shall adopt a resolution stating the basis for awarding the construction contract to extend  
 215 the scope of the road improvements. All road improvements to be included in the state primary or  
 216 secondary system of highways must conform to the adopted standards of the Virginia Department of  
 217 Transportation.

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

- 223 1. The aggregate dollar amount of ~~proffered~~ cash payments collected by the locality;
- 224 2. The estimated aggregate dollar amount of ~~proffered~~ cash payments that have been pledged to the  
 225 locality and which pledges are not conditioned on any event other than time; and
- 226 3. The total dollar amount of ~~proffered~~ cash payments expended by the locality, and the aggregate  
 227 dollar amount expended in each of the following categories:

228 Schools	\$ _____
229 Road and other Transportation Improvements	\$ _____
230 Fire and Rescue/Public Safety	\$ _____
231 Libraries	\$ _____
232 Parks, Recreation, and Open Space	\$ _____
233 Water and Sewer Service Extension	\$ _____
234 Community Centers	\$ _____
235 Stormwater Management	\$ _____
236 Special Needs Housing	\$ _____
237 Affordable Housing	\$ _____
238 Miscellaneous	\$ _____
239 Total dollar amount expended	\$ _____

240 E. The governing body of any locality with a population in excess of 3,500 persons eligible to accept  
 241 any proffered cash payments pursuant to § 15.2-2298, 15.2-2303 or 15.2-2303.1, *or payments pursuant*  
 242 *to a development agreement*, but that did not accept any ~~proffered cash~~ *such* payments during the

243 preceding fiscal year shall within three months of the close of each fiscal year, beginning in 2001 and  
244 for each fiscal year thereafter, so notify the Commission on Local Government.  
245 F. The Commission on Local Government shall by November 30, 2001, and by November 30 of  
246 each fiscal year thereafter, prepare and make available to the public and the chairmen of the Senate  
247 Local Government Committee and the House Counties, Cities and Towns Committee an annual report  
248 containing the information made available to it pursuant to subsections D and E.

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