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HOUSE BILL NO. 1571

Offered January 18, 2008

A BILL to amend and reenact §§ 15.2-2317 through 15.2-2327 of the Code of Virginia, and to repeal §§ 15.2-2328 and 15.2-2329 of the Code of Virginia, relating to impact fees.

Patron—Hull

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2317 through 15.2-2327 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2317. Applicability of article.

This article shall apply to any locality that has adopted zoning pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 and that (i) has a population of at least 20,000 and has a population growth rate of at least 5% or (ii) has population growth of 15% or more. For the purposes of this section, population growth shall be the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census (i) any county having a population of 500,000 or more as determined by the most recent U.S. Census, (ii) any county or city adjacent thereto, (iii) any city contiguous to such adjacent county or city, (iv) any town within such county or an adjacent county, (v) Stafford County, (vi) Fauquier County, (vii) Spotsylvania County, and (viii) Frederick County.

§ 15.2-2318. Definitions.

As used in this article, 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 ~~benefiting 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 ~~an area designated within the comprehensive plan of a locality land designated by ordinance 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 ~~and related appurtenances~~ as required by applicable ~~construction~~ standards of the Virginia Department of Transportation, ~~or the applicable standards of a locality with road maintenance responsibilities,~~ 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.

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

Any applicable locality may, by ordinance pursuant to the procedures and requirements of this article, assess and impose impact fees on new development to pay all or a part of the cost of reasonable road improvements ~~that benefit attributable in substantial part to~~ the new development.

Prior to the adoption of the ordinance, a locality shall establish an impact fee advisory committee. The committee shall be composed of not less than five nor more than ~~ten~~ 10 members appointed by the governing body of the locality and at least ~~forty~~ 40 percent of the membership shall be representatives from the development, building or real estate industries. 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 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.

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

The locality shall delineate one or more impact fee service areas within its ~~comprehensive plan~~

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

63 § 15.2-2321. Adoption of road improvements program.

64 Prior to adopting a system of impact fees, the locality shall conduct an assessment of road
65 improvement needs ~~benefiting within~~ an impact fee service area *and in the locality* and shall adopt a
66 road improvements plan for the area showing the new roads proposed to be constructed and the existing
67 roads to be improved or expanded and the schedule for undertaking such construction, improvement or
68 expansion. The road improvements plan shall be adopted as an amendment to the required
69 comprehensive plan and shall be incorporated into the capital improvements program or, in the case of
70 the counties where applicable, the six-year plan for secondary road construction pursuant to
71 § 33.1-70.01.

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

78 The locality at a minimum shall include the following items in assessing road improvement needs
79 and preparing a road improvements plan:

80 1. An analysis of the existing capacity, current usage and existing commitments to future usage of
81 existing roads, as indicated by (i) ~~current and projected service levels~~, (ii) current valid building permits
82 outstanding, (ii) *approved conditional rezonings, special exceptions, and special use permits*, and (iii)
83 approved ~~and pending~~ site plans and subdivision plats. If the current usage and commitments exceed the
84 existing capacity of the roads, the locality also shall determine the costs of improving the roads to meet
85 the demand. The analysis shall ~~include any off-site road improvements or cash payments for road~~
86 ~~improvements accepted by the locality and shall include a plan to fund the current usages and~~
87 commitments that exceed the existing capacity of the roads.

88 2. The projected need for and costs of construction of new roads or improvement or expansion of
89 existing roads attributable in whole or in part to projected new development. Road improvement needs
90 shall be projected for the impact fee service area when fully developed in accord with the
91 comprehensive plan and, if full development is projected to occur more than ~~20~~ 10 years in the future,
92 at the end of a ~~20-year~~ 10-year period. The assumptions with regard to land uses, densities, intensities,
93 and population upon which road improvement projections are based shall be presented.

94 3. The total number of new service units projected for the impact fee service area when fully
95 developed and, if full development is projected to occur more than ~~20~~ 10 years in the future, at the end
96 of a ~~20-year~~ 10-year period. A "service unit" is a standardized measure of traffic use or generation. The
97 locality shall develop a table or method for attributing service units to various types of development and
98 land use, including but not limited to residential, commercial and industrial uses. The table shall be
99 based upon the ITE manual (published by the Institute of Transportation Engineers) or locally conducted
100 trip generation studies; ~~and consistent with the traffic analysis standards adopted pursuant to~~
101 ~~§ 15.2-2222.1.~~

102 § 15.2-2322. Adoption of impact fee and schedule.

103 After adoption of a road improvement program, the locality may adopt an ordinance establishing a
104 system of impact fees to fund or recapture all or any part of the cost of providing reasonable road
105 improvements ~~benefiting required by~~ new development. The ordinance shall set forth the schedule of
106 impact fees.

107 § 15.2-2323. When impact fees assessed and imposed.

108 The amount of impact fees to be imposed on a specific development or subdivision shall be
109 determined before or at the time the site plan or subdivision is approved. The ordinance shall specify
110 that the fee is to be collected at the time of the issuance of a ~~building permit~~ *certificate of occupancy*.
111 The ordinance shall provide that fees (i) may be paid in lump sum or (ii) be paid on installment at a
112 reasonable rate of interest for a fixed number of years. The locality by ordinance may provide for
113 negotiated agreements with the owner of the property as to the time and method of paying the impact
114 fees.

115 The maximum impact fee to be imposed shall be determined (i) by dividing projected road
116 improvement costs in the ~~impact fee~~ service area when fully developed by the number of projected
117 service units when fully developed, or (ii) for a reasonable period of time, but not less than ~~ten~~ 10
118 years, by dividing the projected costs necessitated by development in the next ~~ten~~ 10 years by the
119 service units projected to be created in the next ~~ten~~ 10 years.

120 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. The ordinance may provide for the resolution of disputes over an impact fee by arbitration or otherwise.

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

§ 15.2-2324. Credits against impact fee.

The value of any dedication, contribution or construction from the developer for off-site road or other transportation improvements benefiting within the impact fee service area shall be treated as a credit against the impact fees imposed on the developer's project. The locality shall treat as a credit any off-site transportation dedication, contribution, or construction, whether it is a condition of a rezoning or otherwise committed to the locality. The locality may by ordinance provide for credits for approved on-site transportation improvements in excess of those required by the development.

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

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

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

§ 15.2-2326. Use of proceeds.

A separate road improvement account shall be established for the impact fee service area and all funds collected through impact fees shall be deposited in the interest-bearing account. Interest earned on deposits shall become funds of the account. The expenditure of funds from the account shall be only for road improvements benefiting within the impact fee service area as set out in the road improvement plan for the impact fee service area.

§ 15.2-2327. Refund of impact fees.

The locality shall refund any impact fee or portion thereof for which construction of a project is not completed within a reasonable period of time, not to exceed fifteen 15 years. In the event that impact fees are not committed to road improvements benefiting the impact fee service area within seven years from the date of collection, the locality may commit any such impact fees to the secondary or urban system construction program of that locality for road improvements that benefit the impact fee service area.

Upon completion of a project, the locality shall recalculate the impact fee based on the actual cost of the improvement. It shall refund the difference if the impact fee paid exceeds actual cost by more than fifteen 15 percent. Refunds shall be made to the record owner of the property at the time the refund is made.

2. That §§ 15.2-2328 and 15.2-2329 of the Code of Virginia are repealed.