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SENATE BILL NO. 944

Offered January 19, 2018

A *BILL to amend and reenact §§ 15.2-2298, 15.2-2303, and 15.2-2303.1:1 of the Code of Virginia and to repeal §§ 15.2-2328 and 15.2-2303.3 of the Code of Virginia, relating to cash proffers; impact fees.*

Patron—Stuart

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2298, 15.2-2303, and 15.2-2303.1:1 of the Code of Virginia are amended and reenacted as follows:

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

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

In any such locality, notwithstanding any contrary provisions of § 15.2-2297, 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) (a) the rezoning itself gives rise to the need for the conditions; (ii) (b) the conditions have a reasonable relation to the rezoning; and (iii) (c) all conditions are in conformity with the comprehensive plan as defined in § 15.2-2223.

Reasonable conditions may include the payment of cash for any off-site road improvement or any off-site transportation improvement that is adopted as an amendment to the required comprehensive plan and incorporated into the capital improvements program, provided that nothing herein shall prevent a locality from accepting proffered conditions which are not normally included in a capital improvement program. 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.

Reasonable conditions shall not include, ~~however,~~ conditions that impose upon the applicant the requirement to 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. 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~~

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59 until the facilities for which the property is dedicated ~~or cash is tendered~~ are included in the capital
60 improvement program, provided that nothing herein shall prevent a locality from accepting proffered
61 conditions which are not normally included in a capital improvement program. If proffered conditions
62 include the dedication of real property ~~or the payment of cash~~, the proffered conditions shall provide for
63 the disposition of the property ~~or cash payment~~ in the event the property ~~or cash payment~~ is not used
64 for the purpose for which proffered.

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

74 C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of
75 substantial value, or substantial cash payments for or construction of substantial public improvements,
76 the need for which is not generated solely by the rezoning itself, but who has not substantially
77 implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail
78 prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. The notice
79 shall identify the property to be developed, the zoning district, and the proffers applicable thereto.
80 Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement
81 the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good
82 faith shall diligently pursue the completion of the development of the property. Any landowner who
83 complies with the requirements of this subsection shall be entitled to the protection against action
84 initiated by the governing body affecting use, floor area ratio, and density set out in subsection B above,
85 unless there has been mistake, fraud, or a change in circumstances substantially affecting the public
86 health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection
87 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 subdivision A 3 of § 15.2-2286 or other provision
96 of law.

97 **§ 15.2-2303. Conditional zoning in certain localities.**

98 A. A zoning ordinance may include reasonable regulations and provisions for conditional zoning as
99 defined in § 15.2-2201 and for the adoption, in counties, or towns therein which have planning
100 commissions, wherein the urban county executive form of government is in effect, or in a city adjacent
101 to or completely surrounded by such a county, or in a county contiguous to any such county, or in a
102 city adjacent to or completely surrounded by such a contiguous county, or in any town within such
103 contiguous county, and in the counties east of the Chesapeake Bay as a part of an amendment to the
104 zoning map of reasonable conditions, in addition to the regulations provided for the zoning district by
105 the ordinance, when such conditions shall have been proffered in writing, in advance of the public
106 hearing before the governing body required by § 15.2-2285 by the owner of the property which is the
107 subject of the proposed zoning map amendment. Reasonable conditions shall not include, however,
108 conditions that impose upon the applicant the requirement to create a property owners' association under
109 Chapter 26 (§ 55-508 et seq.) of Title 55 which includes an express further condition that members of a
110 property owners' association pay an assessment for the maintenance of public facilities owned in fee by
111 a public entity, including open space, parks, schools, fire departments, and other public facilities not
112 otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street
113 signs or markers, or special street lighting in public rights-of-way not maintained by the Department of
114 Transportation. The governing body may also accept amended proffers once the public hearing has
115 begun if the amended proffers do not materially affect the overall proposal. Once proffered and accepted
116 as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a
117 subsequent amendment changes the zoning on the property covered by such conditions. However, such
118 conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a
119 new or substantially revised zoning ordinance.

120 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 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 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. Such 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 such 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 affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subdivision shall acquire no rights pursuant to this section.

D. 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.

E. Nothing in this section shall be construed to affect or impair the authority of a governing body to (i) accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or (ii) accept or impose valid conditions pursuant to subdivision A 3 of § 15.2-2286, subdivision 5 of § 15.2-2242, or other provision of law.

F. In any instance in which a locality has accepted proffered conditions that include pedestrian improvements, and the Virginia Department of Transportation has reviewed and not objected to the proposed pedestrian improvements during the processing of the rezoning, the Virginia Department of Transportation shall allow the proffered improvements to be constructed, except when such improvements will violate local, state, or federal laws, regulations, or mandated engineering and safety standards.

G. 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.

§ 15.2-2303.1:1. When certain cash proffers collected or accepted.

A. Notwithstanding the provisions of any cash proffer requested, offered, or accepted pursuant to § ~~15.2-2298, 15.2-2303, or~~ 15.2-2303.1 for residential construction on a per-dwelling unit or per-home basis, cash payment made pursuant to such a cash proffer shall be collected or accepted by any locality only after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the subject property.

B. Notwithstanding the provisions of any proffer to the contrary, the assertion of a right to delayed payment of cash proffers pursuant to this section shall not constitute cause for any action pursuant to § 15.2-2299.

C. In addition to any other relief provided, the court may award reasonable attorney fees, expenses, and court costs to any person, group, or entity that prevails in an action successfully challenging an ordinance, administrative or other action as being in conflict with this section.

2. That §§ 15.2-2328 and 15.2-2303.3 of the Code of Virginia are repealed.