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HOUSE BILL NO. 1782

Offered January 19, 1995

A BILL to amend and reenact §§ 15.1-498.1 through 15.1-498.10 of the Code of Virginia, relating to imposition of impact fees by certain local governments.

Patrons—Katzen and Mims

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-498.1 through 15.1-498.10 of the Code of Virginia are amended and reenacted as follows:

Article 8.1.

Road, School and Public Safety Impact Fees.

§ 15.1-498.1. Applicability of article.

This article shall apply to any county having a population of 500,000 or more as determined by the most recent U.S. Census, any county or city adjacent thereto, any city contiguous to such adjacent county or city, and any town within such county or adjacent county and any county having a population between 48,000 and 50,000.

§ 15.1-498.2. Authority to assess and impose impact fees.

Any such county, city or town 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, school and public safety improvements attributable in substantial part to such development.

Prior to the adoption of such ordinance, any such county, city or town shall establish an impact fee advisory committee. Such committee shall be composed of not less than five nor more than ten members appointed by the governing body of the locality and at least forty 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 such 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 such ordinance.

"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 county, city or town to finance the road, school or public safety 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, school and public safety improvements necessitated by and attributable to such new development. Impact fees may not be assessed and imposed for road repair, operation and maintenance, nor to expand existing roads or facilities to meet demand which existed prior to the new development.

"Impact fee service area" means land designated by ordinance within a county, city or town, having clearly defined boundaries and clearly related traffic road, school or public safety improvement needs and within which development is to be subject to the assessment of impact fees.

"Public safety improvement" includes construction of new public safety facilities, including police and fire stations, or improvement or expansion of existing public safety facilities to meet increased demand attributable to new development.

"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 § 15.1-466.

"School improvement" includes construction of new public schools or improvement or expansion of existing schools to meet increased demand attributable to new development.

§ 15.1-498.3. Impact fee service areas to be established.

The county, city or town shall delineate one or more impact fee service areas within its jurisdiction.

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60 Impact fees collected from new development within an impact fee service area shall be expended for
61 road, *school or public safety* improvements within that impact fee service area. An impact fee service
62 area may encompass more than one road, *school or public safety* improvement project.

63 § 15.1-498.4. Adoption of road, *school or public safety* improvements program.

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

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

79 The county, city or town at a minimum shall include the following items in assessing road, *school*
80 *and public safety* improvement needs and preparing a road, *school and public safety* improvements plan:

81 1. An analysis of the existing capacity, current usage and existing commitments to future usage of
82 existing roads, *schools and public safety facilities*, as indicated by (i) current valid building permits
83 outstanding, (ii) approved conditional rezonings, special exceptions, and special use permits, and (iii)
84 approved site plans and subdivision plats. If the current usage and commitments exceed the existing
85 capacity of such roads, *schools and public safety facilities*, the locality also shall determine the costs of
86 improving such roads, *schools and public safety facilities* to meet such demand. The analysis shall
87 include a plan to fund the current usages and commitments that exceed the existing capacity of such
88 roads, *schools and public safety facilities*.

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

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

103 § 15.1-498.5. Adoption of impact fee and schedule.

104 After adoption of a road, *school and public safety* improvement program, the county, city or town
105 may adopt an ordinance establishing a system of impact fees to fund or recapture all or any part of the
106 cost of providing reasonable road, *school or public safety* improvements required by new development.
107 The ordinance shall set forth the schedule of impact fees.

108 § 15.1-498.6. When impact fees assessed and imposed.

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

115 The maximum impact fee to be imposed shall be determined by dividing (i) projected road, *school*
116 *and public safety* improvement costs in the service area when fully developed by the number of
117 projected service units, *students or other measure, as may be applicable*, when fully developed, or (ii)
118 for a reasonable period of time, but not less than ten years, by dividing the projected costs necessitated
119 by development in the next ten years by the service units, *or other applicable measure*, projected to be
120 created in the next ten years.

121 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 § 15.1-491 (a) or § 15.1-491.2:1 for off-site road, *school or public safety* improvements and such proffered conditions have been accepted by the local government.

§ 15.1-498.7. Credits against impact fee.

The value of any dedication, contribution or construction from the developer for off-site road, *school or public safety* improvements within the impact fee service area shall be treated as a credit against the impact fees imposed on the developer's project. The local governing body may by ordinance provide for credits for approved on-site improvements in excess of those required by the development.

The locality also shall calculate and credit against impact fees (i) the extent to which developments have already contributed to the cost of existing roads, *schools or public safety facilities* which will serve the development, (ii) the extent to which the new development will contribute to the cost of existing roads, *schools and public safety facilities*, and (iii) the extent to which new development will contribute to the cost of road, *school and public safety* improvements in the future other than through impact fees.

§ 15.1-498.8. Updating plan and amending impact fee.

The county, city or town shall update the needs assessment and the assumptions and projections at least once every two years. The road, *school and public safety* 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.

§ 15.1-498.9. Use of proceeds.

A separate road, *school and public safety* improvement account shall be established for the impact fee service area and all funds collected through impact fees shall be deposited in such 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, *school and public safety* improvements within the impact fee service area as set out in the road, *school and public safety* improvement plan for the impact fee service area.

§ 15.1-498.10. Refund of impact fees.

The county, city or town 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 years.

Upon completion of a project, the county, city or town shall recalculate the impact fee based on the actual cost of the improvement. ~~‡~~ *The locality* shall refund the difference if the impact fee paid exceeds actual cost by more than fifteen percent. Refunds shall be made to the record owner of the property at the time the refund is made.