

LD8650236

HOUSE BILL NO. 2234

Offered January 23, 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—Forbes (By Request) and Jones, J.C.

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 and School 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 city having a population between 140,000 and 160,000.*

§ 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 *and school* 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 *or school* 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 *and school* 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 or expansion of~~ 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 or school improvement* 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 § 15.1-466.

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

§ 15.1-498.4. Adoption of road or school improvements program.

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

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

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

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

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

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

97 § 15.1-498.5. Adoption of impact fee and schedule.

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

102 § 15.1-498.6. When impact fees assessed and imposed.

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

109 The maximum impact fee to be imposed shall be determined (i) by dividing ~~(+)~~ projected road *and*
110 *school* improvement costs in the service area when fully developed by the number of projected service
111 units, *students or other measure, as may be applicable*, when fully developed, or (ii) for a reasonable
112 period of time, but not less than ten years, by dividing the projected costs necessitated by development
113 in the next ten years by the service units, *or other applicable measure*, projected to be created in the
114 next ten years.

115 The ordinance shall provide for appeals from administrative determinations, regarding the impact fees
116 to be imposed, to the governing body or such other body as designated in the ordinance. The ordinance
117 may provide for the resolution of disputes over an impact fee by arbitration or otherwise.

118 No impact fees shall be assessed or imposed upon a development or subdivision if the subdivider or
119 developer has proffered conditions pursuant to § 15.1-491 (a) or § 15.1-491.2:1 for off-site road *or*
120 *school* improvements and such proffered conditions have been accepted by the local government.

121 § 15.1-498.7. Credits against impact fee.

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

126 The locality also shall calculate and credit against impact fees (i) the extent to which developments
127 have already contributed to the cost of existing roads or schools which will serve the development, (ii)
128 the extent to which the new development will contribute to the cost of existing roads and schools, and
129 (iii) the extent to which new development will contribute to the cost of road and school improvements
130 in the future other than through impact fees. *However, in cities having a population between 140,000*
131 *and 160,000, credit against the impact fee may be authorized up to 100 percent of the fee where the*
132 *new development has a demonstrated fiscal benefit to the city; in any event, in such city the impact fee*
133 *shall not exceed \$3,000 per unit of new development.*

134 § 15.1-498.8. Updating plan and amending impact fee.

135 The county, city or town shall update the needs assessment and the assumptions and projections at
136 least once every two years. The road and school improvement plan shall be updated at least every two
137 years to reflect current assumptions and projections. The impact fee schedule may be amended to reflect
138 any substantial changes in such assumptions and projections.

139 § 15.1-498.9. Use of proceeds.

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

145 § 15.1-498.10. Refund of impact fees.

146 The county, city or town shall refund any impact fee or portion thereof for which construction of a
147 project is not completed within a reasonable period of time, not to exceed fifteen years.

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