

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 15.2-2297, 15.2-2298, 15.2-2303, 15.2-2303.1, and 15.2-2317 through
2 15.2-2327 of the Code of Virginia, relating to conditional zoning; impact fees.

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

4 **1. That §§ 15.2-2297, 15.2-2298, 15.2-2303, 15.2-2303.1, and 15.2-2317 through 15.2-2327 of the**
5 **Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding**
6 **a section numbered 15.2-2323.1 as follows:**

7 § 15.2-2297. Same; conditions as part of a rezoning or amendment to zoning map.

8 A. A zoning ordinance may include and provide for the voluntary proffering in writing, by the
9 owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the
10 regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or
11 amendment to a zoning map; provided that (i) the rezoning itself must give rise for the need for the
12 conditions; (ii) the conditions shall have a reasonable relation to the rezoning; (iii) the conditions shall
13 not include a cash contribution to the locality; (iv) the conditions shall not include mandatory dedication
14 of real or personal property for open space, parks, schools, fire departments or other public facilities not
15 otherwise provided for in § 15.2-2241; (v) the conditions shall not include a requirement that the
16 applicant create a property owners' association under Chapter 26 (§ 55-508 et seq.) of Title 55 which
17 includes an express further condition that members of a property owners' association pay an assessment
18 for the maintenance of public facilities owned in fee by a public entity, including open space, parks,
19 schools, fire departments and other public facilities not otherwise provided for in § 15.2-2241; however,
20 such facilities shall not include sidewalks, special street signs or markers, or special street lighting in
21 public rights-of-way not maintained by the Department of Transportation; (vi) the conditions shall not
22 include payment for or construction of off-site improvements except those provided for in § 15.2-2241;
23 (vii) no condition shall be proffered that is not related to the physical development or physical operation
24 of the property; and (viii) all such conditions shall be in conformity with the comprehensive plan as

25 defined in § 15.2-2223. The governing body may also accept amended proffers once the public hearing
26 has begun if the amended proffers do not materially affect the overall proposal. Once proffered and
27 accepted as part of an amendment to the zoning ordinance, the conditions shall continue in effect until a
28 subsequent amendment changes the zoning on the property covered by the conditions. However, the
29 conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a
30 new or substantially revised zoning ordinance.

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

40 C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of
41 substantial value or construction of substantial public improvements, the need for which is not generated
42 solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1,
43 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to
44 proceed with the implementation of such proffers. The notice shall identify the property to be developed,
45 the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice
46 shall have until July 1, 1995, substantially to implement the proffers, or such later time as the governing
47 body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the
48 development of the property.

49 Any landowner who complies with the requirements of this subsection shall be entitled to the
50 protection against action initiated by the governing body affecting use, floor area ratio, and density set
51 out in subsection B, unless there has been mistake, fraud, or a change in circumstances substantially

52 affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements
53 of this subsection shall acquire no rights pursuant to this section.

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

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

- 60 1. Accept proffered conditions which include provisions for timing or phasing of dedications,
61 payments, or improvements; or
- 62 2. Accept or impose valid conditions pursuant to subdivision A 3 of § 15.2-2286 or other
63 provision of law.

64 E. A voluntary proffer of conditions as part of a rezoning or amendment to a zoning map for
65 residential development or the residential portion of any mixed-use development made after June 30,
66 2011, shall be limited to reasonable, non-cash (i) proffers for on-site conditions for the new
67 development; (ii) off-site proffers for a public facility that is not the subject of a public facilities
68 improvements plan pursuant to § 15.2-2321, or any other proffered condition that is necessitated by and
69 attributable to the new development, as a condition for rezoning for residential development or the
70 residential portion of any mixed-use development; and (iii) conditions to implement incentive zoning as
71 defined in § 15.2-2201. As used in this section, “on-site” means within the property that is the subject of
72 the rezoning petition.

73 F. Notwithstanding any other provision of law, no locality shall, after June 30, 2010, accept the
74 dedication of cash as a proffered condition for rezoning for residential development or the residential
75 portion of any mixed-use development.

76 G. Beginning July 1, 2010, and until 11:59 p.m. on June 30, 2011, an applicant may proffer, and
77 a locality may accept, cash payments in accordance with existing law, but any such proffer shall provide
78 for the adjustment of such cash payments following the locality’s adoption of impact fees pursuant to §

15.2-2318. Any locality adopting such impact fees shall also provide for their application to any by-right development for which no preliminary subdivision plat or site plan had been filed as of February 1, 2010.

H. Subsections E, F, and G shall not apply to any development on sites containing five acres or less.

§ 15.2-2298. Same; 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% 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) the rezoning itself gives rise to the need for the conditions; (ii) the conditions have a reasonable relation to the rezoning; and (iii) 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

106 Virginia Department of Transportation to meet increased demand attributable to new development. For
107 purposes of this section, "transportation improvement" means any real or personal property acquired,
108 constructed, improved, or used for constructing, improving, or operating any (i) public mass transit
109 system or (ii) highway, or portion or interchange thereof, including parking facilities located within a
110 district created pursuant to this title. Such improvements shall include, without limitation, public mass
111 transit systems, public highways, and all buildings, structures, approaches, and facilities thereof and
112 appurtenances thereto, rights-of-way, bridges, tunnels, stations, terminals, and all related equipment and
113 fixtures.

114 Reasonable conditions shall not include, however, conditions that impose upon the applicant the
115 requirement to create a property owners' association under Chapter 26 (§ 55-508 et seq.) of Title 55
116 which includes an express further condition that members of a property association pay an assessment
117 for the maintenance of public facilities owned in fee by a public entity, including open space, parks,
118 schools, fire departments, and other public facilities not otherwise provided for in § 15.2-2241; however,
119 such facilities shall not include sidewalks, special street signs or markers, or special street lighting in
120 public rights-of-way not maintained by the Department of Transportation. The governing body may also
121 accept amended proffers once the public hearing has begun if the amended proffers do not materially
122 affect the overall proposal. Once proffered and accepted as part of an amendment to the zoning
123 ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on
124 the property covered by the conditions; however, the conditions shall continue if the subsequent
125 amendment is part of a comprehensive implementation of a new or substantially revised zoning
126 ordinance.

127 No proffer shall be accepted by a locality unless it has adopted a capital improvement program
128 pursuant to § 15.2-2239 or local charter. In the event proffered conditions include the dedication of real
129 property or payment of cash, the property shall not transfer and the payment of cash shall not be made
130 until the facilities for which the property is dedicated or cash is tendered are included in the capital
131 improvement program, provided that nothing herein shall prevent a locality from accepting proffered
132 conditions which are not normally included in a capital improvement program. If proffered conditions

133 include the dedication of real property or the payment of cash, the proffered conditions shall provide for
134 the disposition of the property or cash payment in the event the property or cash payment is not used for
135 the purpose for which proffered.

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

145 C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of
146 substantial value, or substantial cash payments for or construction of substantial public improvements,
147 the need for which is not generated solely by the rezoning itself, but who has not substantially
148 implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail
149 prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. The notice
150 shall identify the property to be developed, the zoning district, and the proffers applicable thereto.
151 Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement
152 the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith
153 shall diligently pursue the completion of the development of the property. Any landowner who complies
154 with the requirements of this subsection shall be entitled to the protection against action initiated by the
155 governing body affecting use, floor area ratio, and density set out in subsection B above, unless there has
156 been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or
157 welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no
158 rights pursuant to this section.

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

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

- 165 1. Accept proffered conditions which include provisions for timing or phasing of dedications,
166 payments, or improvements; or
- 167 2. Accept or impose valid conditions pursuant to subdivision A 3 of § 15.2-2286 or other
168 provision of law.

169 E. A voluntary proffer of conditions as part of a rezoning or amendment to a zoning map for
170 residential development or the residential portion of any mixed-use development made after June 30,
171 2011, shall be limited to reasonable, non-cash (i) proffers for on-site conditions for the new
172 development; (ii) off-site proffers for a public facility that is not the subject of a public facilities
173 improvements plan pursuant to § 15.2-2321, or any other proffered condition that is necessitated by and
174 attributable to the new development, as a condition for rezoning for residential development or the
175 residential portion of any mixed-use development; and (iii) conditions to implement incentive zoning as
176 defined in § 15.2-2201. As used in this section, “on-site” means within the property that is the subject of
177 the rezoning petition.

178 F. Notwithstanding any other provision of law, no locality shall, after June 30, 2010, accept the
179 dedication of cash as a proffered condition for rezoning for residential development or the residential
180 portion of any mixed-use development.

181 G. Beginning July 1, 2010, and until 11:59 p.m. on June 30, 2011, an applicant may proffer, and
182 a locality may accept, cash payments in accordance with existing law, but any such proffer shall provide
183 for the adjustment of such cash payments following the locality’s adoption of impact fees pursuant to §
184 15.2-2318. Any locality adopting such impact fees shall also provide for their application to any by-right

185 development for which no preliminary subdivision plat or site plan had been filed as of February 1,
186 2010.

187 H. Subsections E, F, and G shall not apply to any development on sites containing five acres or
188 less.

189 § 15.2-2303. Conditional zoning in certain localities.

190 A. A zoning ordinance may include reasonable regulations and provisions for conditional zoning
191 as defined in § 15.2-2201 and for the adoption, in counties, or towns therein which have planning
192 commissions, wherein the urban county executive form of government is in effect, or in a city adjacent
193 to or completely surrounded by such a county, or in a county contiguous to any such county, or in a city
194 adjacent to or completely surrounded by such a contiguous county, or in any town within such
195 contiguous county, and in the counties east of the Chesapeake Bay as a part of an amendment to the
196 zoning map of reasonable conditions, in addition to the regulations provided for the zoning district by
197 the ordinance, when such conditions shall have been proffered in writing, in advance of the public
198 hearing before the governing body required by § 15.2-2285 by the owner of the property which is the
199 subject of the proposed zoning map amendment. Reasonable conditions shall not include, however,
200 conditions that impose upon the applicant the requirement to create a property owners' association under
201 Chapter 26 (§ 55-508 et seq.) of Title 55 which includes an express further condition that members of a
202 property owners' association pay an assessment for the maintenance of public facilities owned in fee by
203 a public entity, including open space, parks, schools, fire departments, and other public facilities not
204 otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street
205 signs or markers, or special street lighting in public rights-of-way not maintained by the Department of
206 Transportation. The governing body may also accept amended proffers once the public hearing has
207 begun if the amended proffers do not materially affect the overall proposal. Once proffered and accepted
208 as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a
209 subsequent amendment changes the zoning on the property covered by such conditions. However, such
210 conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a
211 new or substantially revised zoning ordinance.

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

221 C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of
222 substantial value, or substantial cash payments for or construction of substantial public improvements,
223 the need for which is not generated solely by the rezoning itself, but who has not substantially
224 implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail
225 prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice
226 shall identify the property to be developed, the zoning district, and the proffers applicable thereto.
227 Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement
228 such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good
229 faith shall diligently pursue the completion of the development of the property. Any landowner who
230 complies with the requirements of this subsection shall be entitled to the protection against action
231 initiated by the governing body affecting use, floor area ratio, and density set out in subsection B, unless
232 there has been mistake, fraud, or a change in circumstances substantially affecting the public health,
233 safety, or welfare, but any landowner failing to comply with the requirements of this subdivision shall
234 acquire no rights pursuant to this section.

235 D. Subsections B and C of this section shall be effective prospectively only, and not
236 retroactively, and shall not apply to any zoning ordinance text amendments which may have been
237 enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation
238 pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

239 E. Nothing in this section shall be construed to affect or impair the authority of a governing body
240 to (i) accept proffered conditions which include provisions for timing or phasing of dedications,
241 payments, or improvements; or (ii) accept or impose valid conditions pursuant to subdivision A 3 of §
242 15.2-2286, subdivision 5 of § 15.2-2242, or other provision of law.

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

249 G. In addition to the powers granted by the preceding subsections, a zoning ordinance may
250 include reasonable regulations to implement, in whole or in part, the provisions of §§ 15.2-2296 through
251 15.2-2302.

252 H. A voluntary proffer of conditions as part of a rezoning or amendment to a zoning map for
253 residential development or the residential portion of any mixed-use development made after June 30,
254 2011, shall be limited to reasonable, non-cash (i) proffers for on-site conditions for the new
255 development; (ii) off-site proffers for a public facility that is not the subject of a public facilities
256 improvements plan pursuant to § 15.2-2321, or any other proffered condition that is necessitated by and
257 attributable to the new development, as a condition for rezoning for residential development or the
258 residential portion of any mixed-use development; and (iii) conditions to implement incentive zoning as
259 defined in § 15.2-2201. As used in this section, “on-site” means within the property that is the subject of
260 the rezoning petition.

261 I. Notwithstanding any other provision of law, no locality shall, after June 30, 2010, accept the
262 dedication of cash as a proffered condition for rezoning for residential development or the residential
263 portion of any mixed-use development.

264 J. Beginning July 1, 2010, and until 11:59 p.m. on June 30, 2011, an applicant may proffer, and a
265 locality may accept, cash payments in accordance with existing law, but any such proffer shall provide

266 for the adjustment of such cash payments following the locality's adoption of impact fees pursuant to §
267 15.2-2318. Any locality adopting such impact fees shall also provide for their application to any by-right
268 development for which no preliminary subdivision plat or site plan had been filed as of February 1,
269 2010.

270 K. Subsections H, I, and J shall not apply to any development on sites containing five acres or
271 less.

272 § 15.2-2303.1. Development agreements in certain counties.

273 A. In order to promote the public health, safety and welfare and to encourage economic
274 development consistent with careful planning, New Kent County may include in its zoning ordinance
275 provisions for the governing body to enter into binding development agreements with any persons
276 owning legal or equitable interests in real property in the county if the property to be developed contains
277 at least one thousand acres.

278 B. Any such agreements shall be for the purpose of stimulating and facilitating economic growth
279 in the county; shall not be inconsistent with the comprehensive plan at the time of the agreement's
280 adoption, except as may have been authorized by existing zoning ordinances; and shall not authorize any
281 use or condition inconsistent with the zoning ordinance or other ordinances in effect at the time the
282 agreement is made, except as may be authorized by a variance, special exception or similar
283 authorization. The agreement shall be authorized by ordinance, shall be for a term not to exceed fifteen
284 years, and may be renewed by mutual agreement of the parties for successive terms of not more than ten
285 years each. It may provide, among other things, for uses; the density or intensity of uses; the maximum
286 height, size, setback and/or location of buildings; the number of parking spaces required; the location of
287 streets and other public improvements; the measures required to control stormwater; the phasing or
288 timing of construction or development; or any other land use matters. It may authorize the property
289 owner to transfer to the county land, public improvements, money or anything of value to further the
290 purposes of the agreement or other public purposes set forth in the county's comprehensive plan, but not
291 as a condition to obtaining any permitted use or zoning. The development agreement shall not run with

292 the land except to the extent provided therein, and the agreement may be amended or canceled in whole
293 or in part by the mutual consent of the parties thereto or their successors in interest and assigns.

294 C. If, pursuant to the agreement, a property owner who is a party thereto and is not in breach
295 thereof, (i) dedicates or is required to dedicate real property to the county, the Commonwealth or any
296 other political subdivision or to the federal government or any agency thereof, (ii) makes or is required
297 to make cash payments to the county, the Commonwealth or any other political subdivision or to the
298 federal government or any agency thereof, or (iii) makes or is required to make public improvements for
299 the county, the Commonwealth or any other political subdivision or for the federal government or any
300 agency thereof, such dedication, payment or construction therefor shall vest the property owner's rights
301 under the agreement. If a property owner's rights have vested, neither any amendment to the zoning map
302 for the subject property nor any amendment to the text of the zoning ordinance with respect to the
303 zoning district applicable to the property which eliminates or restricts, reduces, or modifies the use; the
304 density or intensity of uses; the maximum height, size, setback or location of buildings; the number of
305 parking spaces required; the location of streets and other public improvements; the measures required to
306 control stormwater; the phasing or timing of construction or development; or any other land use or other
307 matters provided for in such agreement shall be effective with respect to such property during the term
308 of the agreement unless there has been a mistake, fraud or change in circumstances substantially
309 affecting the public health, safety or welfare.

310 D. Nothing in this section shall be construed to preclude, limit or alter the vesting of rights in
311 accordance with existing law; authorize the impairment of such rights; or invalidate any similar
312 agreements entered into pursuant to existing law.

313 E. The provisions of this section authorizing cash payments shall not apply to the residential
314 portion of any development agreement entered into after June 30, 2010.

315 § 15.2-2317. Applicability of article.

316 This article shall apply to any locality that has adopted zoning pursuant to Article 7 (§ 15.2-2280
317 et seq.) ~~of Chapter 22 of Title 15.2 of this chapter~~ and that (i) has a population of at least 20,000 and has
318 a population growth rate of at least 5% or (ii) has population growth of 15% or more. For the purposes

319 of this section, population growth shall be the difference in population from the next-to-latest to the
320 latest decennial census year, based on population reported by the United States Bureau of the Census.

321 § 15.2-2318. Definitions.

322 As used in this article, unless the context requires a different meaning:

323 "Cost" includes, in addition to all labor, materials, machinery and equipment for construction, (i)
324 acquisition of land, rights-of-way, property rights, easements and interests, including the costs of
325 moving or relocating utilities, (ii) demolition or removal of any structure on land so acquired, including
326 acquisition of land to which such structure may be moved, (iii) survey, engineering, and architectural
327 expenses, (iv) legal, administrative, and other related expenses, and (v) interest charges and other
328 financing costs if impact fees are used for the payment of principal and interest on bonds, notes or other
329 obligations issued by the locality to finance the ~~road~~ public facility improvement.

330 "Impact fee" means a charge or assessment imposed against new development in order to
331 generate revenue to fund or recover the costs of reasonable ~~road~~ public facility improvements benefiting
332 the new development. Impact fees may not be assessed ~~and or~~ imposed for ~~road~~ public facility repair,
333 operation ~~and or~~ maintenance, nor to meet demand which existed prior to the new development.

334 "Impact fee service area" means an area designated within the comprehensive plan of a locality
335 having clearly defined boundaries and clearly related ~~traffic~~ needs for public facility improvements and
336 within which development is to be subject to the assessment of impact fees.

337 "Model ordinance" means the ordinance described in subsection A of § 15.2-2319.

338 "Public facility" means a public safety facility, a public school facility, or road.

339 "Public facility improvement" means a public safety facility improvement, a public school
340 facility improvement, or a road improvement.

341 "Public safety facility improvement" means construction of a new law-enforcement, fire, emergency
342 medical, and rescue facility or expansion of an existing public safety facility, to include all buildings,
343 structures, parking, and other costs related thereto, to meet demand necessitated by and attributable to
344 new development within a designated impact fee service area.

345 “Public school facility improvement” means construction of a new primary and secondary public
346 school or expansion of an existing primary and secondary public school, to include all buildings,
347 structures, parking, and other costs related thereto, to meet demand necessitated by and attributable to
348 new development within the designated impact fee service area.

349 "Road improvement" includes construction of new roads or improvement or expansion of
350 existing roads and related appurtenances as required by applicable standards of the Virginia Department
351 of Transportation, or the applicable standards of a locality with road maintenance responsibilities, to
352 meet increased demand attributable to new development. Road improvements do not include on-site
353 construction of roads which a developer may be required to provide pursuant to §§ 15.2-2241 through
354 15.2-2245.

355 § 15.2-2319. Commission on Local Government to promulgate model ordinance; authority to
356 assess and impose impact fees.

357 A. The Commission on Local Government shall make available to localities a model ordinance,
358 which shall contain provisions mandated by this article and which shall be used by a locality in its
359 assessment and imposition of impact fees. Before making available the model ordinance, the
360 Commission on Local Government shall conduct at least five public hearings in the various regions of
361 the Commonwealth on the proposed model ordinance. Each such public hearing shall be duly advertised
362 in some newspaper having general circulation in the region, and each such advertisement shall state the
363 time and place of the hearing, summarize the terms of the proposed model ordinance, and appear not
364 less than six days nor more than 21 days prior to the public hearing.

365 B. Any applicable locality may, by ordinance pursuant to the procedures and requirements of this
366 article upon adoption of the model ordinance, assess and impose impact fees on new development to pay
367 all or a part of the cost of reasonable road public facility improvements that benefit the new
368 development.

369 ~~Prior to the adoption of the ordinance, a locality shall establish an impact fee advisory~~
370 ~~committee. The committee shall be composed of not less than five nor more than ten members appointed~~
371 ~~by the governing body of the locality and at least forty percent of the membership shall be~~

372 ~~representatives from the development, building or real estate industries. The planning commission or~~
373 ~~other existing committee that meets the membership requirements may serve as the impact fee advisory~~
374 ~~committee. The committee shall serve in an advisory capacity to assist and advise the governing body of~~
375 ~~the locality with regard to the ordinance. No action of the committee shall be considered a necessary~~
376 ~~prerequisite for any action taken by the locality in regard to the adoption of an ordinance.~~

377 § 15.2-2320. Impact fee service areas to be established.

378 The locality shall delineate one or more impact fee service areas within its comprehensive plan.
379 Impact fees collected from new development within an impact fee service area shall be expended for
380 ~~road public facility~~ improvements benefiting that impact fee service area. An impact fee service area
381 may encompass more than one ~~road public facility~~ improvement project. A locality may exclude urban
382 development areas designated pursuant to § 15.2-2223.1 from impact fee service areas.

383 § 15.2-2321. Adoption of public facility improvements program.

384 Prior to adopting a system of impact fees, the locality shall conduct an assessment of ~~road public~~
385 ~~facility~~ improvement needs benefiting an impact fee service area and shall adopt a ~~road public facility~~
386 improvements plan for the area showing the new ~~roads public facilities~~ proposed to be constructed and
387 the existing ~~roads public facilities~~ to be improved or expanded and the schedule for undertaking such
388 construction, improvement or expansion. The ~~road public facility~~ improvements plan shall be adopted as
389 an amendment to the required comprehensive plan and shall be incorporated into the capital
390 improvements program ~~or, in the case of the counties and~~ where applicable, the six-year plan for
391 secondary road construction pursuant to § 33.1-70.01.

392 The locality shall adopt the ~~road public facility~~ improvements plan after holding a duly
393 advertised public hearing. The public hearing notice shall identify the impact fee service area or areas to
394 be designated, and shall include a summary of the needs assessment and the assumptions upon which the
395 assessment is based, the proposed amount of the impact fee ~~as calculated pursuant to § 15.2-2323~~, and
396 information as to how a copy of the complete study may be examined. A copy of the complete study
397 shall be available for public inspection and copying at reasonable times prior to the public hearing.

398 The locality at a minimum shall include the following items in assessing ~~road public facility~~
399 improvement needs and preparing a ~~road public facility~~ improvements plan:

400 1. An analysis of the existing capacity, current usage and existing commitments to future usage
401 of existing ~~roads public facilities~~, as indicated by (i) current and projected service levels, (ii) current
402 valid building permits outstanding, and (iii) approved and pending site plans and subdivision plats. If the
403 current usage and commitments exceed the existing capacity of the ~~roads public facilities~~, the locality
404 also shall determine the costs of improving the ~~roads public facilities~~ to meet the demand. The analysis
405 shall include any off-site ~~road public facility~~ improvements or cash payments for ~~road public facility~~
406 improvements accepted by the locality and shall include a plan to fund the current usages and
407 commitments that exceed the existing capacity of the ~~roads public facilities~~.

408 2. The projected need for and costs of construction of new ~~roads public facilities~~ or improvement
409 or expansion of existing ~~roads public facilities~~ attributable in whole or in part to projected new
410 development. ~~Road Public facility~~ improvement needs shall be projected for the impact fee service area
411 when fully developed in accord with the comprehensive plan and, if full development is projected to
412 occur more than 20 years in the future, at the end of a 20-year period. The assumptions with regard to
413 land uses, densities, intensities, and population upon which ~~road public facility~~ improvement projections
414 are based shall be presented.

415 3. The total number of new service units projected for the impact fee service area when fully
416 developed and, if full development is projected to occur more than 20 years in the future, at the end of a
417 20-year period. A "service unit" is a standardized measure of ~~traffie public facility~~ use or generation
418 attributable to an individual unit of new development. The ~~locality Commission on Local Government~~
419 shall develop or designate a table or method, which shall be used by the locality, for attributing service
420 units to various types of development and land use, including but not limited to residential, commercial
421 and industrial uses. ~~The table shall be based upon the ITE manual (published by the Institute of~~
422 ~~Transportation Engineers) or locally conducted trip generation studies, and consistent with the traffic~~
423 ~~analysis standards adopted pursuant to § 15.2-2222.1.~~

424 § 15.2-2322. Adoption of impact fee and schedule.

425 After adoption of a ~~road improvement program public facility improvements plan~~, the locality
426 may adopt ~~an the model ordinance, establishing which establishes~~ a formulaic system of impact fees to
427 fund or recapture all or any part of the cost of providing reasonable ~~road public facility~~ improvements
428 benefiting new development. The adopted ordinance shall set forth the schedule of impact fees.

429 § 15.2-2323. Model ordinance to state when impact fees assessed and imposed; amount.

430 ~~The amount of impact fees to be imposed on a specific development or subdivision shall be~~
431 ~~determined before or at the time the site plan or subdivision is approved. The ordinance shall specify~~
432 ~~that the fee is to be collected at the time of the issuance of a building permit. The ordinance shall~~
433 ~~provide that fees (i) may be paid in lump sum or (ii) be paid on installment at a reasonable rate of~~
434 ~~interest for a fixed number of years. The locality by ordinance may provide for negotiated agreements~~
435 ~~with the owner of the property as to the time and method of paying the impact fees.~~

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

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

444 The model ordinance shall contain:

445 1. A formula to be used by the locality in calculating the maximum amount of an impact fee such
446 locality may assess and impose;

447 2. A provision limiting the maximum amount of an impact fee imposable within an urban
448 development area to two-thirds of the amount of an impact fee actually assessed and imposed outside of
449 the urban development area;

450 3. A provision providing for a developer's right to appeal the wrongful assessment or imposition
451 of an impact fee; and

452 4. A provision prescribing the time and method by which an impact fee shall be imposed,
453 collected, and paid. However, such provision shall condition the locality's imposition of impact fees on
454 the locality requesting and receiving from the Commission on Local Government a finding that the
455 locality (a) has amended its comprehensive plan pursuant to § 15.2-2223.1, or (b) in the case of a
456 locality that has adopted a resolution pursuant to subsection E of § 15.2-2223.1, has a comprehensive
457 plan that accommodates growth in a manner consistent with § 15.2-2223.1.

458 § 15.2-2324. Credits against impact fee.

459 A. The model ordinance shall contain provisions mandating that, and regulating how, the
460 following shall be treated as credits against impact fees imposed on a developer's project:

461 1. The value of any dedication, contribution or construction from the developer for off-site road
462 or other transportation improvements benefiting the impact fee service area shall be treated as a credit
463 against the impact fees imposed on the developer's project. The locality shall treat as a credit any:

464 2. Any off-site transportation dedication, contribution, or construction, whether it is a condition
465 of a rezoning or otherwise committed to the locality; and

466 The locality may by ordinance provide for credits for approved on-site transportation
467 improvements in excess of those required by the development.

468 The locality also shall calculate and credit against impact fees the 3. The extent to which (i) other
469 developments have already contributed to the cost of existing roads public facilities which will benefit
470 the development, (ii) new development will contribute to the cost of existing roads public facilities, and
471 (iii) new development will contribute to the cost of road public facility improvements in the future other
472 than through impact fees, including any special taxing districts, special assessments, or community
473 development authorities.

474 B. The model ordinance shall contain a provision allowing a locality, in its discretion, to treat
475 approved on-site transportation improvements in excess of those required by the development as a credit
476 against impact fees imposed on a developer's project.

477 § 15.2-2325. Updating plan and amending impact fee.

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

483 The model ordinance shall prescribe the frequency by, and the manner in, which a locality shall
484 (i) update the needs assessment and the assumptions and projections; (ii) update its public facility
485 improvements plan to reflect current assumptions and projections; and (iii) amend its impact fee
486 schedule to reflect any substantial changes in such assumptions and projections.

487 § 15.2-2326. Use of proceeds.

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

493 § 15.2-2327. Refund of impact fees.

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

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

504 The model ordinance shall contain provisions that mandate and regulate (i) a locality's refund of
505 any impact fee or portion thereof for which construction of a project is not completed within a
506 reasonable period of time and (ii), upon completion of a project, a locality's recalculation of the impact
507 fee based on the actual cost of the improvement.

508 **2. That the provisions of this act shall not impair any proffer or proffered condition amendment**
509 **accepted by a locality, nor any agreement entered into under § 15.2-2303.1 of the Code of Virginia,**
510 **pursuant to authority granted prior to the effective date of this act.**

511 #

