INTERIM REPORT OF
THE JOINT SUBCOMMITTEE STUDYING

LAND DEVELOPMENT PATTERNS AND WAYS TO ADDRESS DEMANDS FOR INCREASED SERVICES AND INFRASTRUCTURE RESULTING FROM RESIDENTIAL GROWTH

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 65

COMMONWEALTH OF VIRGINIA
RICHMOND
1999

MEMBERS OF THE JOINT SUBCOMMITTEE

The Honorable Gladys B. Keating, *Chair*
The Honorable Stephen H. Martin, *Vice-Chair*
The Honorable William J. Howell
The Honorable Dwight C. Jones
The Honorable S. Chris Jones
The Honorable Michele B. McQuigg
The Honorable W. Tayloe Murphy, Jr.
The Honorable William C. Mims
The Honorable Edward L. Schrock
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To: The Honorable James C. Gilmore, III, Governor of Virginia
and
The General Assembly of Virginia

Richmond, Virginia
January, 1999

I. INTRODUCTION

The 11-member joint subcommittee created by House Joint Resolution No. 195 (1998) (Appendix A) is the result of a merger of several proposed study resolutions. The joint subcommittee was chaired by Delegate Gladys B. Keating and vice-chaired by Senator Stephen H. Martin.

The initial focus of HJR 195 was on the impact of rapid growth upon land development patterns. Proposed SJR 107 (Appendix A) was to examine proffer zoning and impact fees, while proposed SJR 53 (Appendix A) would emphasize local infrastructure needs and land use taxation. The resulting HJR 195 instructed the joint subcommittee to examine the cost and impact of land development patterns and identify approaches by which local governments can address demands for increased services and infrastructure resulting from residential growth and to specifically study the use of proffer zoning and impact fees. The joint subcommittee was further instructed to communicate with the Commission on the Future of the Environment regarding any overlapping issues in order to minimize duplication of effort.

II. BACKGROUND

A. Previous Studies

There have been several previous studies relevant to the joint subcommittee's work.

The Joint Subcommittee Studying Off-Site Road Improvements (HJR No. 125, 1988) studied off-site road improvements, local zoning and subdivision authority, and the impact of land development on the public infrastructure. In its final report (House Document No. 7, 1990) the study group found that:

> Constitutional requirements, statutory provisions, Virginia court decisions, and general case law place significant constraints on the ability of a locality to use capital improvement plans, public facilities ordinances, and other land use and planning techniques to control or limit the pace of development. The capital budgets of localities where significant growth is taking place thus face a heavy burden in meeting public facility demands. Evidence presented to the joint subcommittee as well as in numerous other forums in recent years indicate that local governments have not been able to keep up with this demand from existing resources. Recent efforts by the Commonwealth, as in expanded funding for roads, provide valuable assistance but fall well short of fully and completely closing the gap. (p.1)

The group concluded, however, that growth and its development consequences were not a statewide issue and therefore addressed its recommendations to the areas of growth. The most important recommendations of the group included granting road impact fee authority and "old" conditional zoning authority to high-growth localities. Both proposals were successful, although road impact fees were granted only to Northern Virginia localities.

The Commission Studying Local and State Infrastructure and Revenue Resources met during the early 1990s and issued an interim report (House Document No. 47, 1991) and a final report (House Document No. 51, 1992.) The commission distributed a questionnaire to localities, the results of which concluded that localities had at least $4.5 billion in unmet infrastructure needs with roads and schools representing the greatest needs by far. Commission recommendations included establishment of the Revenue Resources and Economic Development Commission.

The Commission on Population Growth and Development, created under House Bill 862 (1990), existed for approximately five years and recommended adoption of the Virginia Strategic Planning Act (HB 1068, 1994). The Act, which would have established a state strategic planning process, was carried over to the 1995 Session where it was defeated. The Commission also recommended the establishment of a Virginia geographic information network.

B. Conditional Zoning and Impact Fee Authority in Virginia

1. Conditional Zoning

Under Virginia law, there are three different types of conditional zoning (also known as proffer zoning) which localities are authorized to use:

a. Conditional zoning as authorized by §§ 15.2-2296 through 15.2-2302 (excluding §15.2-2298).

This form of conditional zoning is available to all localities but is quite restrictive. The proffered condition must arise from the rezoning application and may not include cash proffers nor dedication of real or personal property.

b. Conditional zoning authorized by § 15.2-2298.

This is the most recently authorized form of conditional zoning and is available to any locality which has had a population increase of 10 percent or greater from 1980 to 1990. Cash proffers are permitted under this type of conditional zoning. However, there are restrictions on how this type of conditional zoning can be used that are not applicable to the type authorized by § 15.2-2303. (See c below.)

c. Conditional zoning authorized by § 15.2-2303.

This type of conditional zoning applies generally to Northern Virginia and the Eastern Shore and is the most flexible of the three types with few restrictions on what may be proffered and accepted. Cash proffers are permitted.

2. Impact Fees

Under current law, the use of impact fees is limited to roads only. The General Assembly authorized the use of road impact fees in 1989 (§ 15.2-2317 et seq.) This authorization applies only to Northern Virginia localities; however, to date, no locality has used the current impact fee enabling legislation. Numerous other localities have unsuccessfully sought impact fee authorization for roads, schools and other public uses in recent years. (See Appendix B, for example.)

C. Adequate Public Facilities

An adequate public facilities ordinance, generally speaking, allows a locality to prohibit new development that is not served by adequate public facilities, or to time new development so that it occurs in conjunction with the provision of adequate public facilities. Growth control advocates argue that such ordinances allow localities to provide for more efficient, less expensive growth patterns that are less likely to cause congested roads and overcrowded schools. Some opponents of such ordinances argue that localities have a responsibility to provide governmental

services to its citizens and that "adequate" can be defined by a locality in such a way as to stop growth completely.

Virginia law does not provide explicit authority for localities to adopt adequate public facilities ordinances. However, several bills to authorize such ordinances have been introduced in recent years. House Bill No. 987 (Appendix C) was introduced in 1990 and carried over to the 1991 Session where it was defeated. House Bill 987 stated, in part, that:

> A subdivision ordinance may provide that the approval of a subdivision or a plan of development shall be contingent upon the availability of adequate public facilities when public facilities, including utilities, transportation, education, public safety, and recreational facilities, are not deemed by the governing body to be adequate to support development otherwise permitted. The exercise of the regulatory power provided by this subsection shall not be deemed to create an obligation on the part of such governing body or of the locality to furnish any such public facilities.

D. Transfer of Development Rights

A transfer of development rights (TDR) ordinance allows the transfer of density from one parcel to another. Virginia law does not currently provide explicit authority for TDR ordinances. Senate Bill No. 711 (1991) (Appendix D) would have allowed localities to develop TDR ordinances. Senate Bill 711 defined a TDR as:

> The right to develop and use property under a zoning ordinance which is hereby declared to be severable from the parcel to which the right applies and transferable to another parcel of land for development and use in accordance with the zoning ordinance. A transferable development right means the level and quantity of development permitted by the zoning ordinance expressed in terms of housing units per acre, floor area ratio or equivalent local measure.

Senate Bill 711 would also have permitted the locality to designate receiving and sending zones and to buy and sell TDRs in order to promote their use. Senate Bill 711 and several similar bills were introduced during the early 1990s, and all failed to pass.

E. Maryland's Smart Growth Areas Act

The Maryland 1997 Smart Growth Areas Act has generated a great deal of interest among growth control advocates. The Growth Act directs state spending to "priority funding areas." These areas are existing communities and other locally designated areas where the state and local governments want to encourage and support economic development and new growth. (See Appendix E for a more complete description.)

III. ACTIVITIES OF THE JOINT SUBCOMMITTEE

The joint subcommittee met five times during the interim. At the initial joint subcommittee meeting, in June 1998, staff provided background materials to the members including a summary of existing conditional zoning and impact fee authority in Virginia, examples of proposed new impact fee authority which have failed to pass the General Assembly in recent years, examples of proposed transferable development rights legislation, and proposed adequate public facilities legislation. In addition, previous legislative studies of local infrastructure needs were summarized. (See Section II of this report.)

A member of the Loudoun County Board of Supervisors then addressed the joint subcommittee and explained the impact of high growth in his county. Loudoun is growing at the rate of seven percent, the highest in the Commonwealth, while the school-age population is growing at an even faster rate. Loudoun anticipates needing approximately 20 new schools in the next six years. The board member believes that a locality can adequately sustain growth of only two percent to three percent over an extended period of time. He also described the creation of the Virginia Coalition of High Growth Communities, a group of high-growth localities seeking ways to address the growth-related problems that many of these localities face.

At the second meeting of the joint subcommittee, a day-long public hearing in September, local governments, the development community, environmental groups and other interested parties were invited to make presentations. The speakers were instructed to emphasize the success or failure of current growth management tools and the impediments which hinder improved growth management, including lack of authority to implement new tools. The Commission on the Future of Virginia's Environment was also invited to participate with the subcommittee in the hearing.

Nearly 40 speakers addressed the subcommittee, and numerous others submitted written remarks. The Virginia Coalition of High Growth Communities made the following recommendations: (1) seek continued and expanded school construction funding assistance from the Commonwealth, (2) seek authority to assess impact fees and continue to allow localities to accept cash proffers, (3) support significant clarifying amendments to the vested rights statute approved in 1998 (SB 570), (4) seek authority to enact adequate public facility ordinances, and (5) oppose HB 1362, carried over from the 1998 Session (creative use of special exceptions to review certain large subdivisions before approving them.) Later in the year, the Coalition revealed a sixth recommendation: restructure the tax system so that local governments will be less dependent on property taxes.

Other recommendations to the subcommittee included (1) grant localities the authority to pass transfer of development rights ordinances, (2) reverse the trend of exempting certain industries or activities from local land use regulation, (3) enact flexible road design standards, (4) allow more local input into state capital projects, especially roads, (5) require VDOT to look at the growth impact of its projects, (6) increase funding for rail and bus transit, (7) require larger residential developments to be rezoned progressively, rather than all at once, (8) target more state resources toward upgrading and repairing existing infrastructure, (9) conduct research from an independent source to determine the true cost borne by localities for each new housing unit, and (10) establish an infrastructure and revenue resources commission.

Due to time constraints, those persons representing business and development interests did not have a full opportunity to address the subcommittee at the September public hearing. Those persons, therefore, were invited to address the joint subcommittee at its third meeting, a joint meeting of the joint subcommittee and the Commission on the Future of the Environment in October. The written remarks submitted to the joint subcommittee at the two hearings can be examined on the internet at: www.radco.state.va.us/hjr195. For a more complete listing of recommendations to the joint subcommittee, see Appendix F.

The joint subcommittee met for a fourth time in December. The joint subcommittee spent a considerable amount of time examining Virginia law related to downzonings and vested rights. After a brief presentation discussing the regional fiscal impact of a large development, the joint subcommittee discussed possible recommendations for the 1999 Session.

The Culpeper County Attorney gave the joint subcommittee an overview of Virginia's law related to downzonings. He explained that a downzoning is a change in zoning that results in a decrease in intensity. Virginia's law on this issue is determined mainly by case law, not by statute. The county attorney further explained that the critical issue for courts to decide is whether a downzoning is a comprehensive downzoning or a piecemeal downzoning. If the court determines that a downzoning is comprehensive, it will apply a standard of review that is deferential to localities, whereas with a piecemeal downzoning, the burden shifts to localities to demonstrate fraud, mistake or a change in circumstances. The county attorney proceeded to explain that courts have rarely found downzonings to be comprehensive and that for this and other reasons, downzonings are among the most disfavored of local land use actions.

The joint subcommittee then heard from the Spotsylvania County Attorney, on behalf of the coalition, and from legal counsel of the Virginia Homebuilders' Association with regard to Senate Bill No. 570 (1998). Senate Bill 570 codified a test for determining when a property owner is vested in a particular use. Previously, this issue was determined primarily by case law. The county attorney

argued that SB 570 went much further than previous case law and would hurt localities' planning efforts. He then recommended several amendments to the vested rights statute (Appendix G). The homebuilders' counsel agreed that SB 570 in its entirety was not a codification of existing vested rights law, but argued that the amendments offer greater certainty to the land use process and provide property owners with needed protection.

In addition, the joint subcommittee learned of the creation of a coalition called Virginians for Economic Prosperity. This coalition is made up of approximately 20 organizations, including the Home Builders' Association of Virginia, the Virginia Association of Realtors, the Manufactured Housing Association, and the Associated Builders and Contractors.

The joint subcommittee concluded the December meeting by discussing possible recommendations. There was agreement that the vested rights statute should be amended to clarify that the 1998 amendments were intended to be prospective and not retroactive. There was also agreement that the joint subcommittee should seek to have the study extended for one additional year in order to examine the issues before it in greater detail.

The joint subcommittee concluded its first year's work with its fifth meeting in January. Subcommittee staff presented a draft of the interim report, and members of the joint subcommittee recommended several additions to the report. Joint subcommittee members then discussed possible recommendations for the 1999 Session. The members agreed that the study ought to be continued for an additional year; however, several members agreed that the continuation of the study should not be construed as opposition to, or used as a reason to oppose, growth-related legislation which may be introduced at the 1999 Session.

A majority of members also agreed to recommendations related to clarification of the vested rights law, a study of state and local tax structure, and full funding for the Virginia Outdoors Foundation. With regard to clarification of the vested rights law, there was also some support on the subcommittee for significant changes beyond the subcommittee recommendation.

IV. RECOMMENDATIONS

1. Continue the study.

2. Amend the vested rights statute to clarify that the amendments passed in 1998 (SB 570) are prospective, not retroactive (Appendix I).

3. Support a comprehensive study of the state and local tax structure, as proposed by the Commission on the Condition and Future of Virginia's Cities and as recommended by speakers at public hearings (Appendix J).

4. Support full funding for the Virginia Outdoors Foundation conservation easement program - $180,000 increase in funding (Appendix K).

V. ISSUES NEEDING ADDITIONAL STUDY

The subcommittee members agreed that many issues deserve more in depth study during the 1999 interim. Some of the issues specifically mentioned include adequate public facilities ordinances and transfer of development rights ordinances; however, the members delayed any decision on a detailed work plan until the first meeting of the 1999 interim.

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APPENDIX A

summary

HOUSE JOINT RESOLUTION NO. 195

Establishing a joint subcommittee to study land development patterns and ways to address demands for increased services and infrastructure resulting from residential growth.

Agreed to by the House of Delegates, March 13, 1998
Agreed to by the Senate, March 13, 1998

WHEREAS, many areas of the Commonwealth have experienced rapid growth in recent years and can be expected to continue such growth; and

WHEREAS, this growth has resulted in significant impacts on development patterns; and

WHEREAS, much of the development in the Commonwealth is occurring at the fringes of urbanized areas and is having a significant impact on land development patterns; and

WHEREAS, the development of residentially zoned properties will increase dramatically the need for capital facilities to provide public services for their residents; and

WHEREAS, existing state enabling legislation does not provide sufficient tools to require new development to fund the resulting infrastructure and service requirements; and

WHEREAS, the utilization of funding mechanisms currently available to localities, such as proffer zoning, to finance the cost of such infrastructure has often proven inadequate or undesirable to fund the needs that rapid growth can create; and

WHEREAS, Article 4 (§58.1-3229 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia authorizes local governments to establish land use taxation programs providing for the special assessment and deferral of real estate taxes on real estate devoted to agricultural, horticultural, forest, or open-space uses; and

WHEREAS, land use taxation programs tend to preserve existing uses of property by reducing the likelihood that increased real estate tax assessments will induce owners to develop their property; and

WHEREAS, Section 2 of Article X of the Virginia Constitution authorizes the General Assembly to define and classify real estate devoted to agricultural, horticultural, forest, or open-space uses, and to authorize any locality to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate, subject to certain conditions and restrictions; and

WHEREAS, localities are not authorized to establish a class of property for land use taxation purposes consisting of underdeveloped or unimproved property zoned for residential use; and

WHEREAS, incentives for deferring the development of property zoned for residential use, including land use taxation programs, may assist localities to cope with demands for increased services and infrastructure resulting from growth; and

WHEREAS, impact fees may offer an alternative to proffer zoning which is fairer and more equitable and which will inject greater certainty into the development process; and

WHEREAS, professional arbitration offers another method in resolving the problems arising from economic development and growth; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study land development patterns and ways to address demands for increased services and infrastructure resulting from residential growth. In conducting its study, the joint subcommittee shall examine the cost and impact of land development patterns and identify approaches by which localities can address the increased demands for infrastructure and services, including the imposition of impact fees, the use of professional arbitrators, and the addition of a class of property for land use taxation purposes consisting of underdeveloped or unimproved property zoned for residential use, provided that no changes are made to the existing agricultural and forestal land use taxation program that would diminish present benefits. The joint subcommittee shall communicate with the Commission on the Future of the Environment regarding any overlapping issues in order to minimize duplication of effort.

The joint subcommittee shall be composed of 11 members to be appointed as follows: 6 members of the House of Delegates to be appointed by the Speaker of the House in accordance with Rule 16 of the House Rules; and 5 members of the Senate to be appointed by the Senate Committee on Privileges and Elections.

The direct costs of this study shall not exceed $8,250.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

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SENATE JOINT RESOLUTION NO. 53
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Rules
on February 10, 1998)
(Patron Prior to Substitute--Senator Quayle)

Establishing a joint subcommittee to identify approaches by which local governments can address demands for increased services and infrastructure resulting from residential growth.

WHEREAS, many localities within the Commonwealth must make provision for major capital improvements to meet the demands of residential growth; and

WHEREAS, much of the development in the Commonwealth is occurring at the fringes of urbanized areas.

WHEREAS, many localities contain a large inventory of properties which are zoned for residential use: and

WHEREAS, the development of these residentially-zoned properties will increase dramatically the need for capital facilities to provide public services for their residents ; and

WHEREAS, existing state enabling legislation does not provide sufficient tools to require new development to fund the resulting infrastructure and service requirements; and

WHEREAS, the utilization of funding mechanisms currently available to localities, such as proffer zoning, to finance the cost of such infrastructure has often proven inadequate or undesirable to fund the needs that rapid growth can create; and

WHEREAS, Article 4 (§58.1-3229 et seq.) of Title 58.1 of the Code of Virginia authorizes local governments to establish land use taxation programs providing for the special assessment of, and deferral of real estate taxes on, real estate devoted to agricultural, horticultural, forest, or open-space uses; and

WHEREAS, land use taxation programs tend to preserve existing uses of property by reducing the likelihood that increased real estate tax assessments will induce owners to develop their property; and

WHEREAS, Section 2 of Article X of the Virginia Constitution authorizes the General Assembly to define and classify real estate devoted to agricultural, horticultural, forest, or open-space uses, and to authorize any locality to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate, subject to certain conditions and restrictions; and

WHEREAS, localities are not authorized to establish a class of property for land use taxation purposes consisting of underdeveloped or unimproved property zoned for residential use; and

WHEREAS, incentives for deferring the development of property zoned for residential use, including land use taxation programs, may assist localities to cope with demands for increased services and infrastructure resulting from growth; and

WHEREAS, smart growth initiatives are another alternative for containing the costs for infrastructure by directing state expenditures on economic growth and development to existing communities and other locally-designated areas; and

WHEREAS, impact fees may offer an alternative to proffer zoning which is more fair and equitable and which will inject greater certainty into the development process;

WHEREAS, professional arbitration offers another method in resolving the problems arising from economic development and growth; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be established to identify approaches by which local governments can address demands for increased services and infrastructure resulting from residential growth, including, but not limited to, smart growth initiatives, the imposition of impact fees, the use of professional arbitrators, and the addition of a class of property for land use taxation purposes consisting of underdeveloped or unimproved property zoned for residential use, provided that no changes are made to the existing land use taxation program that would diminish present benefits.

The joint subcommittee shall be composed of 15 members, to be appointed as follows: four members of the Senate, to be appointed by the Senate Committee on Privileges and Elections; five members of the House of Delegates, to be appointed by the Speaker of the House according to Rule 16. B. of the House Rules; two local elected officials from localities with rapidly-growing school-age populations, one of whom shall be nominated by the Virginia Municipal League and appointed by the Senate Committee on Privileges and Elections and one of whom shall be nominated by the Virginia Association of Counties and appointed by the Speaker of the House; one citizen member from a list of nominees submitted by the State Land Evaluation Advisory Council, to be appointed by the Senate Committee on Privileges and Elections; one citizen member representing an environmental organization, to be appointed by the Senate Committee on Privileges and Elections; one citizen from a list of nominees submitted by the Virginia Association of Realtors, to be appointed by the Speaker of the House; and one citizen from a list of nominees submitted by the Home Builders Association of Virginia, to be appointed by the Speaker of the House.

The direct costs of this study shall not exceed $9,750.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

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SENATE JOINT RESOLUTION NO. 107
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Rules
on February 10, 1998)
(Patron Prior to Substitute--Senator Mims)

Directing the joint subcommittee identifying approaches by which local governments can address demands for increased services and infrastructure resulting from residential growth to study the use of proffer zoning and impact fees.

WHEREAS, many of Virginia's localities are experiencing rapid population growth and a corresponding growth in school-age population; and

WHEREAS, one of the primary consequences of such growth is an increasing need for infrastructure, such as schools, transportation, and public safety facilities; and

WHEREAS, the utilization of funding mechanisms currently available to localities, such as proffer zoning, to finance the cost of such infrastructure has often proven inadequate or undesirable to fund the needs that rapid growth can create; and

WHEREAS, many rapidly growing localities have significant areas which were zoned for residential use prior to the adoption of proffer zoning and therefore are not subject to the proffer zoning process; and

WHEREAS, the three different types of proffer zoning often cause confusion and uncertainty in the rezoning process and are often portrayed by the development community as being unfairly and unevenly applied; and

WHEREAS, not only government officials but also the development community and the general citizenry recognize the need for localities to be able to obtain revenue to pay for infrastructure in a fair and equitable manner; and

WHEREAS, impact fees may offer an alternative to proffer zoning which is more fair and equitable and which will inject greater certainty into the development process; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the joint subcommittee identifying approaches by which local governments can address demands for increased services and infrastructure resulting from residential growth be directed to study the use of proffer zoning and impact fees.

In conducting its study, the joint subcommittee shall study the current use of proffer zoning and consider the merits of allowing localities to replace such zoning practices with the use of impact fees.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in Senate Joint Resolution No. 53 (1998) and in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

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APPENDIX B

summary

SENATE BILL NO. 693
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Local Government
on February 10, 1998)
(Patron Prior to Substitute--Senator Mims)

A BILL to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 8.1, consisting of sections numbered 15.2-2328 through 15.2-2339, relating to school impact fees.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 22 of Title 15.2 an article numbered 8.1, consisting of sections numbered 15.2-2328 through 15.2-2339, as follows:

Article 8.1.
School Impact Fees.

§15.2-2328. Authority to assess and impose impact fees.

The local governing body of any county with a population between 80,000 and 90,000 may by ordinance, and only after approval by voter referendum, 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 school facility improvements attributable in substantial part to such development. Such fees may be assessed and imposed only on new residential development. In the event such ordinance is adopted, no proffered conditions providing for the payment of cash for school facility improvements relating to a rezoning pursuant to §15.2-2298 shall be accepted.

"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; (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 to finance the school facility.

"Impact fee" means a charge or assessment imposed against new residential development in order to generate revenue to fund or recover the costs or a portion thereof of school facility improvements necessitated by and attributable in substantial part to such new development. Impact fees may not be assessed and imposed for school facility repair, operation, and maintenance, nor to expand existing school facilities to meet demand which existed prior to the new development.

"School facility improvement" includes construction of new school facilities or improvement or expansion of existing facilities to met the increased demand attributable in substantial part to new development.

§15.2-2329. Request for referendum filed with court; order for election; notice.

A copy of the ordinance initially adopted pursuant to §15.2-2328, certified by the clerk of the governing body, requesting that a referendum on the question of whether the locality shall have the authority to impose school impact fees as provided in this article, shall be filed with the circuit court for the locality. The circuit court shall order a special election, in accordance with Article 5 (§24.2-681 et seq.) of Chapter 6 of Title 24.2, requiring the election officers of the locality on the day fixed in the order to open the polls and take the sense of the voters of the locality on the question of whether the locality shall have the authority to impose school impact fees as provided in this article. Notice of the election in the form prescribed by the court shall be published at least once but not less than ten days before the election in a newspaper published or having general circulation in the locality.

§15.2-2330. Holding of election; order authorizing bonds; authority of governing body.

The regular election officers of the county at the time designated in the order authorizing the vote shall open the polls at the various voting places in the locality and conduct the election in the manner provided by law for other elections. The votes shall be counted, the returns made and canvassed and the results certified as provided in Article 5 (§24.2-681 et seq.) of Chapter 6 of Title 24.2. If it appears from the returns that a majority of the voters

of the locality voting on the question at the election are against the locality having the authority to impose school impact fees, an order shall be entered by the court to such effect. If a majority of the voters of the locality voting on the question are in favor of the locality having the authority to impose school impact fees, the court shall enter an order to such effect, a copy of which shall be promptly certified by the clerk of the court to the governing body of the locality, and the ordinance adopted by the locality pursuant to §15.2-2328 shall become effective.

§15.2-2331. Service areas or districts to be established.

The local governing body, upon the recommendation of the school board, shall delineate one or more service areas or districts within the locality, which may be an existing school district or districts, each area or district having clearly related school facility needs. Impact fees collected from new development within a service area shall be expended for school facility improvements within that service area. A service area may encompass more than one school facility improvement project. Service areas for school facility improvements may overlap, and their boundaries need not be coterminous.

§15.2-2332. Adoption of school facility improvement program.

Prior to adopting a system of impact fees for school facilities, assessments of school facility improvement needs within any proposed service area shall be conducted and school facility improvement plans for the area adopted enumerating the new school facilities proposed to be constructed and the existing school facilities to be improved or expanded and the schedule for undertaking such construction, improvement, or expansion. Once adopted, the improvement plans shall be incorporated into the locality's capital improvements plan.

Improvement plans shall be adopted only after a duly advertised public hearing is held. The public hearing notice shall identify the service area or areas to be designated, and shall include a summary of the needs assessment and the assumptions upon which the assessment is based, and information as to how a copy of the complete study may be examined. A copy of the complete study shall be available for public inspection and copying at reasonable times prior to the public hearing.

The needs assessment, public hearings, and adoption of improvement plans shall be by the local school board and shall in addition be adopted by the local governing body.

The locality at a minimum shall include the following items in assessing improvement needs and preparing improvement plans:

1. An analysis of the existing capacity, current usage, and existing commitments to future usage of existing school facilities. If the current usage and commitments exceed the existing capacity of such facilities, the locality also shall determine the costs of improving the facilities to meet such demand.

2. The projected need for and costs of construction of new school facilities, or improvement or expansion of existing school facilities attributable in whole or in part to projected new development. School facility needs shall be projected for the service area when fully developed in accord with the comprehensive plan and, if full development is projected to occur more than ten years in the future, at the end of a ten-year period. The assumptions with regard to land uses, densities, intensities, and population upon which school facility projections are based shall be presented.

3. The total number of new service units projected for the service area when fully developed and, if full development is projected to occur more than ten years in the future, at the end of a ten-year period. A "service unit" is a standardized measure of school facility use or demand. The locality shall develop a table or method for attributing service units to various types of residential uses for school facility purposes.

§15.2-2333. Adoption of impact fee and schedule.

After adoption of a school facility improvement program, the local governing body may adopt an ordinance establishing a system of impact fees to fund or recapture all or any part of the cost of providing school building facility improvements required by new development. The ordinance shall set forth the schedule of impact fees.

§15.2-2334. When impact fees assessed and imposed.

The calculation of impact fees to be imposed, including those on each dwelling unit in a specific residential development or subdivision, shall be determined based on the new service units projected for the service area as

of the date of adoption of the ordinance. The ordinance shall specify that the fee is to be imposed at the time of the issuance of a building permit. Further, the ordinance shall provide that fees shall be paid in a lump sum.

The maximum fee shall be determined by dividing (i) projected school facility improvement costs in the service area when fully developed by the number of projected service units when fully developed or (ii) for a reasonable period of time, but not less than ten years, by dividing the projected costs necessitated by development in the next ten years by the service units projected to be created in the next ten years. In no event shall the maximum impact fee for school building facilities on any residential dwelling unit imposed exceed $3,000.

§15.2-2335. Credits against impact fee.

The value of any dedication, contribution or construction from the developer for school facility improvements within the service area shall be treated as a credit against the impact fees calculated pursuant to §15.2-2334.

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

§ 15.2-2336. 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 school facility 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.

§15.2-2337. Use of proceeds.

Separate school facility funds or accounts shall be established for each service area, and all funds collected through impact fees shall be deposited in such interest-bearing funds or accounts. Interest earned on deposits shall become funds of that particular account. The expenditure of funds from each account shall be only for school facility improvements within the service area as set out in the school facility improvement plan for that service area or district.

§15.2-2338. Refund of impact fees.

The locality shall refund any impact fee or portion thereof that has not been expended within ten years of receipt of such impact fee.

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 percent. Refunds shall be made to the record owner of the property at the time the refund is made.

§15.2-2339. Imposition of impact fees suspended under certain circumstances.

In order to impose and collect any impact fee, the locality shall budget and fund, for each subsequent fiscal year after enactment of such ordinance, an amount for unspecified local capital improvements which shall be no less than the total amount collected in impact fees in the calendar year just ended. In meeting this funding requirement, only the capital improvement funds used to pay for capital projects or the debt service thereon which are appropriated after the adoption of such impact fee ordinance shall apply. If in any year the locality fails to appropriate the funding amount equal to the collected impact fees for such calendar year, the locality shall thereafter be prohibited from collecting impact fees until such appropriation is made.

Go to (General Assembly Home)

1990 SESSION

LD1646113

HOUSE BILL NO. 987

Offered January 23, 1990

A BILL to amend and reenact §§ 15.1-466, 15.1-486, and 15.1-489 of the Code of Virginia, relating to subdivision ordinance provisions and to the subjects and purposes of zoning ordinances generally.

Patrons--Byrne, Marshall, Mayer, Stambaugh, Keating, Plum, Almand, Croshaw, Tata, Grayson, Jackson and Cunningham, J.W.; Senators: DuVal and Gartlan

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Referred to the Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-466, 15.1-486, and 15.1-489 of the Code of Virginia are amended and reenacted as follows:

§ 15.1-466. Provisions of subdivision ordinance.--A. A subdivision ordinance shall include reasonable regulations and provisions that apply to or provide:

(a) For plat details which shall meet the standard for plats as adopted under § 42.1-82 of the Virginia Public Records Act (§ 42.1-76 et seq.);

(b) [Repealed.]

(c) For the coordination of streets within and contiguous to the subdivision with other existing or planned streets within the general area as to location, widths, grades and drainage, including, for ordinances and amendments thereto adopted on or after January 1, 1990, for the coordination of such streets with existing or planned streets in existing or future adjacent subdivisions;

(d) For adequate provisions for drainage and flood control and other public purposes, and for light and air;

(e) For the extent to which and the manner in which streets shall be graded, graveled or otherwise improved and water and storm and sanitary sewer and other public utilities or other community facilities are to be installed;

(f) For the acceptance of dedication for public use of any right-of-way located within any subdivision or section thereof, which has constructed or proposed to be constructed within the subdivision or section thereof, any street, curb, gutter, sidewalk, bicycle trail, drainage or sewerage system, waterline as part of a public system or other improvement dedicated for public use, and maintained by the locality, the Commonwealth, or other public agency, and for the provision of other site-related improvements required by local ordinances for vehicular ingress and egress, for public access streets, for structures necessary to ensure stability of critical slopes, and for storm water management facilities, financed or to be financed in whole or in part by private funds only if the owner or developer (1) certifies to the governing body that the construction costs have been paid to the person constructing such facilities; or (2) furnishes to the governing body a certified check or cash escrow in the amount of the estimated costs of construction or a personal, corporate or property bond, with surety satisfactory to the governing body, in an amount sufficient for and conditioned upon the construction of such facilities, or a contract for the construction of such facilities and the contractor's bond, with like surety, in like amount and so conditioned; or (3) furnishes to the governing body a bank or savings and loan association's letter of credit on certain designated funds satisfactory to the governing body as to the bank or savings and loan association, the amount and the form. The amount of such certified check, cash escrow, bond, or letter of credit shall not exceed the total of the estimated cost of construction based on unit prices for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs, inflation, and potential damage to existing roads or utilities.

If a developer records a final plat which may be a section of a subdivision as shown on an approved preliminary plat and furnishes to the governing body a certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction

of the facilities to be dedicated within said section for public use and maintained by the locality, the Commonwealth, or other public agency, the developer shall have the right to record the remaining sections shown on the preliminary plat for a period of five years from the recordation date of the first section, subject to the terms and conditions of this subsection and subject to engineering and construction standards and zoning requirements in effect at the time that each remaining section is recorded. In the event a governing body of a county, wherein the highway system is maintained by the Department of Transportation, has accepted the dedication of a road for public use and such road due to factors other than its quality of construction is not acceptable into the secondary system of state highways, then such governing body may, if so provided by its subdivision ordinance, require the subdivider or developer to furnish the county with a maintenance and indemnifying bond, with surety satisfactory to the governing body, in an amount sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways. In lieu of such bond, the governing body may accept a bank or savings and loan association's letter of credit on certain designated funds satisfactory to the governing body as to the bank or savings and loan association, the amount and the form, or accept payment of a negotiated sum of money sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways and assume the subdivider's or developer's liability for maintenance of such road. "Maintenance of such road" shall be deemed to mean maintenance of the streets, curb, gutter, drainage facilities, utilities or other street improvements, including the correction of defects or damages and the removal of snow, water or debris, so as to keep such road reasonably open for public usage;

(g) For monuments of specific types to be installed establishing street and property lines;

(h) That unless a plat is filed for recordation within six months after final approval thereof or such longer period as may be approved by the governing body such approval shall be withdrawn and the plat marked void and returned to the approving official;

(i) For the administration and enforcement of such ordinance, not inconsistent with provisions contained in this chapter, and specifically for the imposition of reasonable fees and charges for the review of plats and plans, and for the inspection of facilities required by any such ordinance to be installed; such fees and charges shall in no instance exceed an amount commensurate with the services rendered taking into consideration the time, skill and administrator's expense involved. All such charges heretofore made are hereby validated;

(j) For payment by a subdivider or developer of land of his pro rata share of the cost of providing reasonable and necessary sewerage, water, and drainage facilities, located outside the property limits of the land owned or controlled by him but necessitated or required, at least in part, by the construction or improvement of his subdivision or development; however, no such payment shall be required until such time as the governing body or a designated department or agency thereof shall have established a general sewer, water, and drainage improvement program for an area having related and common sewer, water, and drainage conditions and within which the land owned or controlled by the subdivider or developer is located. Such regulations shall set forth and establish reasonable standards to determine the proportionate share of total estimated cost of ultimate sewerage, water, and drainage facilities required adequately to serve a related and common area when and if fully developed in accord with the adopted comprehensive plan, that shall be borne by each subdivider or developer within the area. Such share shall be limited to the proportion of such total estimated cost which the increased sewage flow, water flow, and/or increased volume and velocity of storm water runoff to be actually caused by his subdivision or development bears to total estimated volume and velocity of such sewage, water, and/or runoff from such area in its fully developed state.

Each such payment received shall be expended only for the construction of those facilities for which the payment was required, and until so expended shall be held in an

interest-bearing account for the benefit of the subdivider or developer; however, in lieu of such payment the governing body may provide for the posting of a personal, corporate or property bond, cash escrow or other method of performance guarantee satisfactory to it conditioned on payment at commencement of such construction;

(k) For reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner, subject only to any express requirement contained in the Code of Virginia and to any requirement imposed by the local governing body that all lots of less than five acres have reasonable right-of-way of not less than ten feet or more than twenty feet providing ingress and egress to a dedicated recorded public street or thoroughfare. Only one such division shall be allowed per family member, and shall not be for the purpose of circumventing this subdivision. For the purpose of this subdivision, a member of the immediate family is defined as any person who is a natural or legally defined offspring, spouse, or parent of the owner. The provisions of this subdivision shall apply only to subdivision ordinances adopted by counties and the City of Suffolk;

(k1) For reasonable provisions, notwithstanding subdivision (k), in a county having the urban county executive form of government permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner, subject only to any express requirement contained in the Code of Virginia and to any requirement imposed by the local governing body that all lots of less than five acres have frontage of not less than ten feet or more than twenty feet on a dedicated recorded public street or thoroughfare. Only one such division shall be allowed per family member, and the division shall not be for the purpose of circumventing a local subdivision ordinance. For the purpose of this subsection, a member of the immediate family is defined as any person who is a natural or legally defined offspring or parent of the owner.

(l) For the periodic partial and final complete release of any bond, escrow, letter of credit, or other performance guarantee required by the governing body under this section within thirty days after receipt of written notice by the subdivider or developer of completion of part or all of any facilities required to be constructed hereunder unless the governing body or its designated administrative agency notifies said subdivider or developer in writing of nonreceipt of approval by applicable state agency, or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the thirty-day period.

If no such action is taken by the governing body or administrative agency within the time specified above, the request shall be deemed approved, and a partial release granted to the subdivider or developer. No final release shall be granted until after expiration of such thirty-day period and there is an additional request in writing sent by certified mail return receipt to the chief administrative officer of such governing body. The governing body or its designated administrative agency shall act within ten working days of receipt of the request; then if no action is taken the request shall be deemed approved and final release granted to the subdivider or developer.

No governing body or administrative agency shall refuse to make a periodic partial or final release of a bond, escrow, letter of credit, or other performance guarantee for any reason not directly related to the specified defects or deficiencies in construction of the facilities covered by said bond, escrow, letter of credit or other performance guarantee.

Upon written request by the subdivider or developer, the governing body or its designated administrative agency shall be required to make periodic partial releases of such bond, escrow, letter of credit, or other performance guarantee in a cumulative amount equal to no less than eighty percent of the original amount for which the bond, escrow, letter of credit, or other performance guarantee was taken, based upon the percentage of facilities completed and approved by the governing body, local administrative agency, or state agency having jurisdiction. Periodic partial releases may not occur before the completion of at least thirty percent of the facilities covered by any bond, escrow, letter of credit, or other performance guarantee, or after completion of more than eighty percent of

said facilities. The governing body or administrative agency shall not be required to execute more than three periodic partial releases in any twelve-month period. Upon final completion and acceptance of said facilities, the governing body or administrative agency shall release any remaining bond, escrow, letter of credit, or other performance guarantee to the subdivider or developer. For the purpose of final release the term "acceptance" is deemed to mean: when said public facility is accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority which is responsible for maintaining and for operating such facility upon acceptance.

For the purposes of this subsection, a certificate of partial or final completion of such facilities from either a duly licensed professional engineer or land surveyor, as defined in and limited to § 54.1-400, or from a department or agency designated by the local government may be accepted without requiring further inspection of such facilities.

B. A subdivision ordinance may include provisions for variations in or exceptions to the general regulations of the subdivision ordinance in cases of unusual situations or when strict adherence to the general regulations would result in substantial injustice or hardship.

C. A subdivision ordinance may require the furnishing of a preliminary opinion from the applicable health official regarding the suitability of a subdivision for installation of subsurface sewage disposal systems where such method of sewage disposal is to be utilized in the development of a subdivision.

D. A subdivision ordinance may require that, in the event streets in a subdivision will not be constructed to meet the standards necessary for inclusion in the secondary system of state highways or for state street maintenance moneys paid to municipalities, the subdivision plat and all approved deeds of subdivision, or similar instruments, must contain a statement advising that the streets in the subdivision do not meet state standards and will not be maintained by the Department of Transportation or the county or the municipalities enacting the ordinance. Grantors of any subdivision lots to which such statement applies must include the statement on each deed of conveyance thereof. However, counties and municipalities in their ordinance may establish minimum standards for construction of streets that will not be built to state standards.

For streets constructed or to be constructed, as provided for in this subsection, a subdivision ordinance may require that the same procedure be followed as that set forth in subdivision A (f) of this section. Further, the subdivision ordinance may provide that the developer's financial commitment shall continue until such time as the local government releases such financial commitment in accordance with the provisions of subdivision A (f) of this section.

E. A subdivision ordinance may include reasonable provision for the voluntary funding of off-site road improvements and reimbursements of advances by the governing body. If a subdivider or developer makes an advance of payments for or construction of reasonable and necessary road improvements located outside the property limits of the land owned or controlled by him, the need for which is substantially generated and reasonably required by the construction or improvement of his subdivision or development, and such advance is accepted, the governing body may agree to reimburse the subdivider or developer from such funds as the governing body may make available for such purpose from time to time for the cost of such advance together with interest, which shall be excludable from gross income for federal income tax purposes, at a rate equal to the rate of interest on bonds most recently issued by the governing body on the following terms and conditions:

(a) The governing body shall determine or confirm that the road improvements were substantially generated and reasonably required by the construction or improvement of the subdivision or development and shall determine or confirm the cost thereof, on the basis of a study or studies conducted by qualified traffic engineers and approved and accepted by the subdivider or developer.

(b) The governing body shall prepare, or cause to be prepared, a report accepted and approved by the subdivider or developer, indicating the governmental services required by

be furnished to the subdivision or development and an estimate of the annual cost thereof for the period during which the reimbursement is to be made to the subdivider or developer.

(c) The governing body may make annual reimbursements to the subdivider or developer from funds made available for such purpose from time to time, including but not limited to real estate taxes assessed and collected against the land and improvements on the property included in the subdivision or developments in amounts equal to the amount by which such real estate taxes exceed the annual cost of providing reasonable and necessary governmental services to such subdivision or development.

F. A subdivision ordinance may provide that the approval of a subdivision or a plan of development shall be contingent upon the availability of adequate public facilities when public facilities, including utilities, transportation, education, public safety, and recreational facilities, are not deemed by the governing body to be adequate to support development otherwise permitted. The exercise of the regulatory power provided by this subsection shall not be deemed to create an obligation on the part of such governing body or of the locality to furnish any such public facilities.

§ 15.1-486. Zoning ordinances generally; jurisdiction of counties and municipalities respectively.–The governing body of any county or municipality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

(a) The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;

(b) The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;

(c) The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used;

(d) The excavation or mining of soil or other natural resources ~~.~~ *; and*

(e) [Repealed.]

(f) The timing of the development of uses otherwise permitted, when public facilities, including utilities, transporation, education, public safety, and recreational facilities, are not deemed by the governing body to be adequate to support development otherwise permitted in the district. The exercise of the regulatory power provided by this subsection shall not be deemed to create an obligation on the part of such governing body or of the locality to furnish any such public facilities.

For the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorporated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.

§ 15.1-489. Purpose of zoning ordinances.–Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.1-427. To these ends, such ordinances shall be designed to give reasonable consideration to each of the following purposes, where applicable: (1) to provide for adequate light, air, convenience of access, and safety from fire, flood and other dangers; (2) to reduce or prevent congestion in the public streets; (3) to facilitate the creation of a convenient, attractive and harmonious community; (4) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; (5) to protect against destruction of or encroachment upon historic areas; (6) to protect against one or more of the following: overcrowding of land, undue density of population *or rate of development* in relation to ~~the community facilities~~ existing or available *public facilities* , obstruction of

light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic or other dangers; (7) to encourage economic development activities that provide desirable employment and enlarge the tax base; (8) to provide for the preservation of agricultural and forestal lands; and (9) to protect approach slopes and other safety areas of licensed airports. Such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in § 62.1-44.85 (8).

Official Use By Clerks	
Passed By The House of Delegates	**Passed By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the House of Delegates	Clerk of the Senate

SP7508109

1991 SESSION
ENGROSSED

SENATE BILL NO. 711
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Local Government)
(Patron Prior to Substitute—Senator Calhoun)
Senate Amendments in [ ] - February 1, 1991

A BILL to amend and reenact §§ 15.1-430, 58.1-810 and 58.1-3200 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.1-491.03 and 58.1-3284.2, the amended and added sections relating to definitions in land use, transferable development rights and taxation of such rights.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-430, 58.1-810 and 58.1-3200 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.1-491.03 and 58.1-3284.2 as follows:

§ 15.1-430. Definitions.—As used in this chapter the words listed below shall have the meaning given:

(a) "Governing body" means the board of supervisors of a county or the council of a city or town.

(b) "Historic area" means an area containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

(c) "Local planning commission" or "local commission" means a municipal planning commission or a county planning commission.

(d) "Municipality" means a city or town incorporated under the laws of Virginia.

(e) "Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by the governing body of a county or municipality in accordance with the provisions of Article 5 (§ 15.1-458 et seq.) hereof.

(f) "Person" means individual, firm, corporation or association.

(g) [Repealed.]

(h) "Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

(i) "Special exception" means a special use, that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

(j) "Planning district commission" means a regional planning agency chartered under the provisions of Title 15.1, Chapter 34 (§ 15.1-1400 et seq.).

(k) "Zoning" or "to zone" means the process of classifying land within a governmental entity into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

(l) "Subdivision," unless otherwise defined in a local ordinance adopted pursuant to § 15.1-465, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.1-475.

(m) "Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any property which will be principally devoted to

agricultural production.

(n) "Plat of subdivision" means the schematic representation of land divided or to be divided.

(o) "Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

(p) "Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done. It shall not include a change in use which change shall be accomplished by a rezoning or by a conditional zoning.

(q) "Conditional zoning" means, as part of classifying land within a governmental entity into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

(r) "Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

(s) "Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

(t) "Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features or amenities desired by the locality within the development.

(u) "Transferable development right" means the right to develop and use property under a zoning ordinance which is hereby declared to be severable from the parcel to which the right applies and transferable to another parcel of land for development and use in accordance with the zoning ordinance. A transferable development right means the level and quantity of development permitted by the zoning ordinance expressed in terms of housing units per acre, floor area ratio or equivalent local measure.

(v) "Receiving zone" or "receiving parcel" means that property or properties designated by the zoning ordinance as an area in which transferable development rights may be used in order to achieve additional development.

(w) "Sending zone" or "sending parcel" means that property or properties designated by the zoning ordinance as an area to which transferable development rights shall be allocated and from which such rights may be transferred.

§ 15.1-491.03. Transfer of development rights.—A. Authority to adopt ordinances. The governing body of any [~~*county, city, or town located within the 7th, 8th, or 10th congressional districts as of 1982*~~ *counties that have adopted the urban county executive form of government and any county, city or town adjacent to or surrounded by such counties, counties that have adopted the county executive form of government and any county, city or town adjacent to or surrounded by such counties and which are situated east of the Blue Ridge Mountains, counties having a population of between 6,600 and 7,200, counties having a population of between 11,700 and 12,000, counties having a population of between 12,100 and 12,200, and counties having a population of between 27,400 and 28,000*] *, as part of its zoning ordinance, may provide for (i) the voluntary transfer of development rights permitted on one parcel of land (sending parcel) to another*

parcel of land (receiving parcel), (ii) restricting or prohibiting further development of the parcel from which such rights are transferred, and (iii) increasing additional development on the parcel to which such rights are transferred.

B. Requirements prior to adoption of transfer of development right ordinance. Prior to the adoption of a transfer of development right amendment to its zoning ordinance the county, city, or town must have (i) a comprehensive plan as required by § 15.1-446.1 of this Code, which plan shall specify sending and receiving areas for the purposes of transferable development rights, and (ii) a capital improvement program authorized by § 15.1-464 of this Code, which program the local government shall maintain to ensure that the receiving zone has adequate infrastructure to accommodate development rights authorized for use in the receiving zone.

Property in the receiving zone shall not be downzoned within twenty-four months prior to the adoption of a transfer of development right amendment to the zoning ordinance.

C. Change in zoning. Once a transferable development right ordinance has been adopted, property in the receiving zones shall not be subject to rezoning except upon approval of a landowner application therefor or except when there has been mistake, fraud, or a change of circumstances substantially affecting the public health, safety, or welfare.

1. The zoning ordinance shall provide that the receiving zones shall permit the use of transferable development rights as a matter of right at the level of development specified by the governing body at the time of the implementation of the transferable development rights ordinance for a specific receiving zone.

2. The zoning ordinance may provide for rezoning to increased levels of development in a receiving zone over that initially designated pursuant to subdivision 1 of this subsection upon approval of a landowner application therefor. The landowner may not make use of such additional development unless he utilizes transferable development rights to achieve the level of development initially designated by the governing body pursuant to subdivision 1 of this subsection.

Conditional zoning shall be allowed upon the terms and conditions set forth in §§ 15.1-491(a), 15.1-291.2, and 15.1-491.2:1 with respect to landowner applications for rezoning under this subdivision.

D. Designation of sending and receiving zones. The ordinance shall simultaneously designate and cause to be shown on a zoning map prepared in accordance with the provisions of section 15.1-493, the sending zones from which development rights may be transferred and the receiving zones to which such rights may be transferred and used for additional development. Sending zones may be designated as separate use districts or as overlaying other zoning districts.

A transferable development right ordinance shall not be deemed to have been adopted with respect to any sending or receiving zone until such zone has been designated as provided in this subsection.

E. Allocation of transferable development rights to sending parcels. Transferable development rights attached to parcels located in the sending zones may be calculated and allocated in accordance with such factors as area, soil characteristics, assessed valuation, current zoning, or any other criteria that will effectively reflect the relative reasonable development potential of the sending parcels in a manner consistent with the objectives of this section. Each transferable development right created in a sending zone shall equate to one development right which may be constructed in a receiving zone. For every one transferable development right authorized in a sending zone, there shall be the capacity to accommodate at least one and one-half additional development rights in a receiving zone.

F. Use of transferable development rights. The zoning ordinance shall provide for the method of transfer of such rights and shall provide for the granting of easements and reasonable regulations to effect and control such transfers and ensure compliance with the provisions of such ordinance. The easement shall be a perpetual conservation or

preservation easement in gross restricting future use or development of the sending parcel for purposes set forth in the zoning ordinance provisions applicable to such sending parcel at the time of the severance of the development rights therefrom, less the development and use of the transferable development rights which have been severed. Such easement shall be conveyed to the county, city, or town wherein the sending parcel lies as grantee or to any body authorized to acquire property interests pursuant to the Open Space Land Act (§ 10.1-1700 et seq.) or the Conservation Easement Act (§ 10.1-1009 et seq.). Once accepted by the local governing body, an easement shall be subject to the provisions of § 10.1-1704 concerning conversion or diversion of open space land.

No plat for a subdivision or site plan for development in a receiving zone relying upon the additional level or quantity of development allowed by zoning provisions enacted in pursuance of a scheme of transferable development rights under this section shall be finally approved until documents have been recorded with the clerk of the circuit court of the county or city, or county within which the town is located, transferring from a sending parcel to the owner, contract purchaser or optionee of the land subject to such plat, title to a sufficient number of development rights to equal such additional level or quantity of development represented upon such plat, and providing for the subsequent extinguishment of such rights as to the sending parcel by the imposition of a perpetual conservation or preservation easement as described in this subsection.

An instrument in substantially the following form shall be used in the sale of transferable development rights and recorded in the records of the appropriate circuit court.

DEED OF TRANSFER OF DEVELOPMENT RIGHTS

This deed, made the ..... day of ..... in the year ....., between [here insert names of parties as grantors and grantees].

[Recitals, if any]

W I T N E S S E T H :

That in consideration of [here state the consideration], the said ..... do grant unto the said ..... [here state total number] Development Rights, numbered ..... attached to the following described property.

[here describe the sending parcel, including the name of the city or county in which the parcel is located, and insert covenants or any other provisions.]

Being the same parcel conveyed by ..... to ..... by deed recorded in Deed Book ....., page .....

Witness the following signature and seal [or signatures and seals].

..... [seal]

..... [seal]

[acknowledgements]

When the transferable development rights are transferred to a parcel of land in a receiving area, there shall be a similar instrument recorded which shall state the source of the rights by deed book and page number and the index of the instrument shall also state the source by deed book and page number.

A transferable development right shall be treated the same as an interest in real property. Once transferable development rights have been sold, conveyed, or otherwise transferred by the owner of the parcel from which the development rights are derived, the transferable development rights shall vest in the new owner and become freely alienable.

G. Transfers among local governments. Any county, city or town, by adoption of mutual provisions providing for transfer of development rights, may provide by agreement for the transfer of development rights on land located in one to land located in the other.

H. Relation to taxation. For the purpose of ad valorem real property taxation under Chapter 32 (§ 58.1-3200 et seq.) of Title 58.1, the value of a transferable development right shall be treated as applicable to the sending parcel until the transferable development right is severed. A transferable development right shall not be defined or classified as

intangible personal property subject to taxation under Chapter 11 (§ 58.1-1100 et seq.) of Title 58.1 and shall not be defined or classified as tangible personal property subject to taxation under Chapter 35 (§ 58.1-3500 et seq) of Title 58.1.

I. Relation to securities laws. A transferable development right shall not be defined or treated as a security for the purposes of Chapter 5 (§ 13.1-501 et seq.) of Title 13.1.

J. Promoting use; buying and selling of rights. The governing body of any county, city, or town adopting an amendment to its zoning ordinance pursuant to this section may establish such mechanisms as necessary to promote the use of transferable development rights, including but not limited to the county, city, or town engaging in the buying and selling of transferable development rights.

K. The local governing body shall review the performance of the transferable development right program every five years. If, after ten years, at least thirty percent of the development potential available on the market has not been transferred, the program shall expire. If, after twenty years, at least sixty percent of the development potential available on the market has not been transferred, the program shall expire.

L. Savings clause. Nothing herein shall in any way affect the power of a local governing body under any other statute to acquire and hold conservation easements or to exercise its zoning powers. The powers contained herein shall be in addition to and supplemental to the powers of a local body conferred by any other law.

§ 58.1-810. What other deeds not taxable.—When the tax has been paid at the time of the recordation of the original deed, no additional recordation tax shall be required for admitting to record:

1. A deed of confirmation;

2. A deed of correction;

3. A deed to which a husband and wife are the only parties;

4. A deed arising out of a contract to purchase real estate; if the tax already paid is less than a proper tax based upon the full amount of consideration or actual value of the property involved in the transaction, an additional tax shall be paid based on the difference between the full amount of such consideration or actual value and the amount on which the tax has been paid; ~~or~~

5. A notice of assignment of a note secured by a deed of trust or mortgage ~~.~~ *; or*

6. A deed or other instrument extinguishing a transferable development right.

§ 58.1-3200. Real estate subject to local taxation; taxable real estate defined; leaseholds.—All taxable real estate, having been segregated for and made subject to local taxation only by Article X, § 4 of the Constitution of Virginia, shall be assessed for local taxation in accordance with the provisions of this chapter and other provisions of law. For purposes of the assessment of real estate for taxation, the term "taxable real estate" shall include a leasehold interest in every case in which the land or improvements, or both, as the case may be, are exempt from assessment for taxation to the owner *and shall also include transferable development rights while such rights are severed* . The provisions of this chapter relating to the assessment of real estate shall not apply to property required by law to be assessed by the State Corporation Commission or the Department of Taxation.

§ 58.1-3284.2. Assessment for taxation of transferable development rights.—Transferable development rights shall be assessed for taxation only during that period when they are severed by deed from the sending parcel and until they are extinguished following their attachment to a receiving parcel. During such period transferable development rights shall be assessed by the county, city, or town wherein the sending parcel is located.

Smart Growth Fact Sheet

Smart Growth Areas Act: An Overview

Maryland Office of Planning

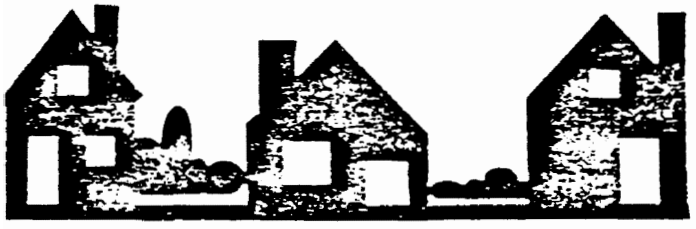
Smart Growth Areas or "Priority Funding Areas" reflect Maryland's policy to support, and where necessary, revitalize existing communities. These are areas where the State, local governments, and citizens, already have a significant financial investment in existing infrastructure. Maryland wants to foster economic vitality and improve the quality of life by maintaining and improving infrastructure and services provided in existing communities.

Background

The 1997 Smart Growth Areas Act builds on the foundation created by the set of Visions for Maryland's future adopted as State policy in the 1992 Growth Act. The first three Visions[1] adopted in 1992 guide the location of growth:

- Concentrate development in suitable areas;
- Protect sensitive areas; and
- In rural areas, direct growth to existing population centers and protect resource areas.

The 1992 Growth Act requires local governments to revise and periodically update their comprehensive plans to reflect these Visions.



[1]The four other visions are:

- Stewardship of the Chesapeake Bay and the land is a universal ethic,
- Practice conservation of resources and reduce consumption of resources,
- To assure the achievement of (these visions) encourage economic growth and streamline regulatory mechanisms, and
- Address funding mechanisms to achieve these visions.

The 1997 Smart Growth Areas Act capitalizes on the influence of State expenditures on economic growth and development. This legislation directs State spending to "Priority Funding Areas." Priority Funding Areas are existing communities and other locally designated areas, consistent with the 1992 Visions, where the State and local governments want to encourage and support economic development and new growth. Focusing State spending in these areas will:

- provide the most efficient and effective use of taxpayer dollars.
- avoid higher taxes which would be necessary to fund infrastructure for sprawl development, and
- encourage development there and, thus, reduce the pressure for sprawl.

Initially Established Priority Funding Areas

The Smart Growth Act legislatively designates certain areas as Priority Funding Areas which form the traditional core of Maryland's urban development. It also designates locations that are targets for economic development.

Initially Established Funding Areas

- **Municipalities,**
- **Baltimore City,**
- **Areas inside the Baltimore and Washington Beltways,**
- **Neighborhoods which have been designated by the Maryland Department of Housing and Community Development for revitalization,**
- **Enterprise Zones, and**
- **Heritage Areas within county designated growth areas.**

County Designated Priority Funding Areas

The Smart Growth legislation recognizes the importance of local government's role in managing growth and determining the locations most suitable for development. Thus, the legislation authorizes counties to designate additional Priority Funding Areas which meet established minimum criteria. Priority Funding Areas designated by counties must be based on their analysis to determine:

1. the capacity of land areas available for development, and
2. the land area which will be necessary to satisfy demand for development.

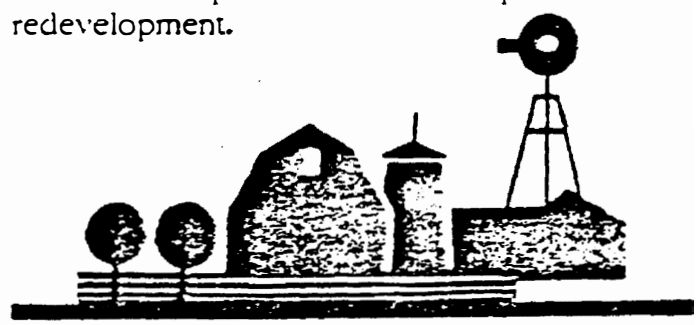
With this analysis in hand, counties may designate areas as Priority Funding Areas if they meet specified requirements for use, water and sewer service, and residential density[2].

Areas Eligible for County Designation

• Areas with industrial zoning (Areas with new industrial zoning after January 1,1997 must be in a county-designated growth area and be served by a sewer system.)
• Areas with employment as the principal use which are served by, or planned for, a sewer system (Areas zoned after January 1,1997 must be in a county-designated growth area.)
• Existing communities (as of January 1,1997) within county-designated growth areas which are served by a sewer or water system and which have an average density of 2 or more units per acre.
• Rural villages designated in the Comprehensive Plan before July 1, 1998.
• Other areas within county-designated growth areas that:
- **reflect a long-term policy for promoting an orderly expansion of growth and an efficient use of land and public services,**
- **are planned to be served by water and sewer systems, and**
- **have a permitted density of 3.5 or more units per acre for new residential development.**

[2] Average number of homes per acre of land developed excluding land reserved for recreational uses or protected for environmental purposes.

Counties are not required to designate Priority Funding Areas nor to designate all eligible areas. Counties may choose to confine State funded projects to certain portions of their designated growth areas. In addition, county designation of Priority Funding Areas does not restrict the location of private sector or county development. County-designated Priority Funding Areas are simply areas the county wants to be eligible for State funded projects. One goal of directing State projects to Priority Funding Areas is to make these areas more attractive for residents and potential residents, as well as for private sector development and redevelopment.



Implementation

Beginning October 1, 1998, the State must direct funding for "growth related" projects to Priority Funding Areas. "Growth related" projects defined in the legislation include most State programs which encourage or support growth and development such as highways, sewer and water construction, economic development assistance, and State leases or construction of new office facilities.

State funding in communities with only water service (without a sewer system) and in rural villages is restricted to projects which maintain the character of the community. The projects must not increase the growth capacity of the village or community except for limited peripheral and in-fill development.

Prior to funding a growth related project, State agencies must obtain a written statement from the local government that the proposal is in a Priority Funding Area. In addition, local governments must demonstrate a commitment to these growth areas by insuring that non-State funding for planned water and sewer systems moves forward in advance of, or concurrent with, State funding for growth related projects.

Local governments must provide the Maryland Office of Planning with maps and other information which show the precise location of their Priority Funding Areas based on criteria in the legislation. The Maryland Office of Planning is responsible for providing State agencies with maps that illustrate the Priority Funding Areas along with any comments by the Office of Planning on locally designated areas. These maps and comments will be available for review by the counties and public. In addition, the Maryland Office of Planning will establish a review process to insure that State funding for projects is consistent with this law. State agencies will report annually on the implementation of this law to the Maryland Office of Planning.

Exceptions

The Smart Growth bill recognizes that there are times when the State will need to fund projects that are outside Priority Funding Areas.

General State Agency Exceptions

State agencies may fund projects outside of Priority Funding Areas as exceptions for projects that:

- are necessary to protect public health or safety,
- involve federal funds that cannot be constrained by State law, or
- are related to commercial or industrial activity that must be located away from other development.

The Maryland Office of Planning, in cooperation with other State agencies, will establish a procedure for notification, review, and comment on these general exceptions.

Board of Public Works Exceptions

The Board of Public Works may approve funding for some transportation projects outside Priority Funding Areas such as those with physical or operational aspects that must be located away from other development, highway maintenance, access control, and the connection of Priority Funding Areas. The Board of Public Works may also approve funding for other projects when "extraordinary circumstances" exist and there is no reasonable alternative for the project in the county or adjacent county. The Board of Public Works may request an advisory opinion from the Economic Growth, Resource Protection and Planning Commission on proposals for an exception. The Board may also require remedial action to mitigate any negative impacts for projects it approves outside Priority Funding Areas.

Grandfathered Projects

The Smart Growth Areas Act exempts projects which are approved prior to October 1998 or have completed final review through the State Clearinghouse for Intergovernmental Assistance by January 1, 1999. Projects are considered approved if:

- permits are issued,
- final reviews are completed for State or federal environmental impact statements,
- commitments are made for grants, loans, loan guarantee or insurance for capital projects.

Grandfathered projects must still comply with the 1992 Growth Act.

Other Provisions

Planning and Funding Education Facilities

The legislation formalizes a State school construction funding policy that facilities in established neighborhoods should be of equal quality to new schools. The legislation also requires coordination and cooperation between counties and their municipalities for school facility planning to avoid overcrowding and to help to defray the cost of school construction required to serve new residential development. Toward this end:

- Municipalities must help counties collect impact fees assessed on new residential development for the cost of school construction or adopt school capacity standards if the county has school capacity standards.
- Counties must confer with municipalities before establishing or changing school capacity standards in an adequate public facility ordinance.
- County Boards of Education are required to annually provide the county, and its municipalities that exercise zoning authority, with five-year enrollment projections for schools servicing students in or near municipalities and information about the student capacity of each school.

Infrastructure Survey

The legislation requires the Maryland Office of Planning to survey municipal, county, and State governments for infrastructure needs and the governments' financial capacity to undertake these projects. The list of projects developed through this survey will be available to the General Assembly, local government officials, and the general public.

Questions and Additional Information

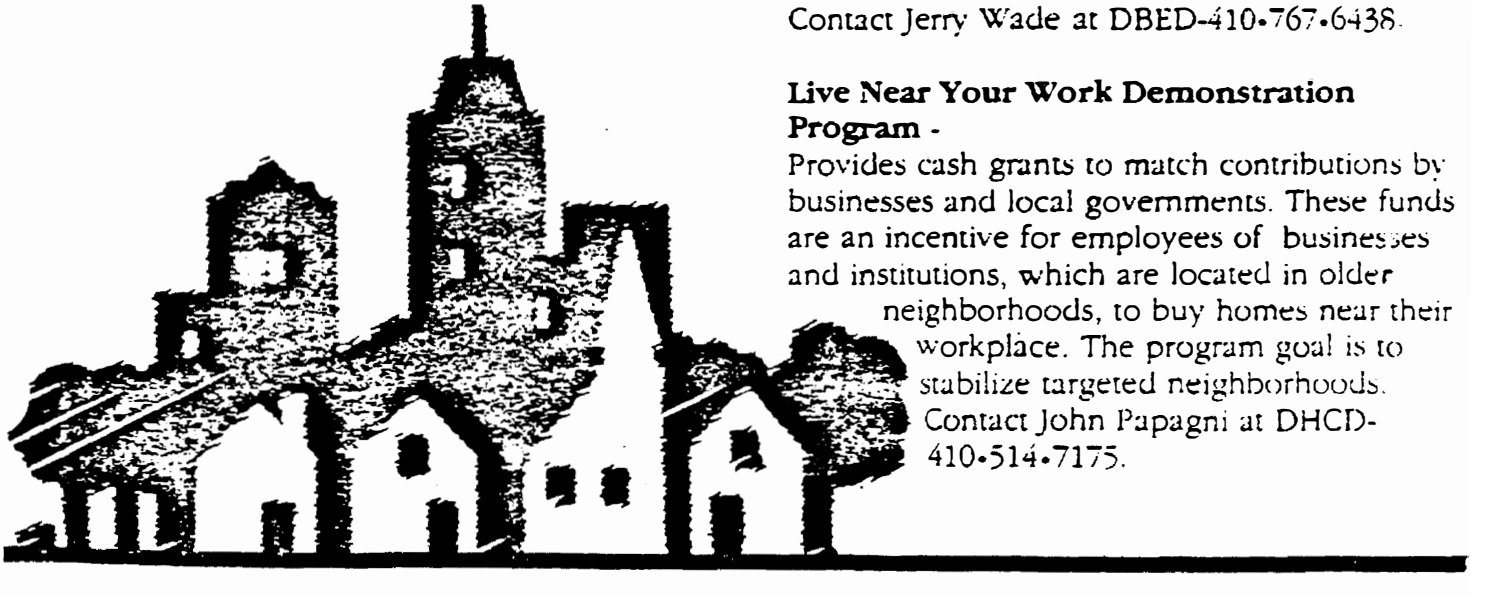
For additional information on Maryland's Smart Growth Act, the Economic Growth, Resource Protection, and Planning Act of 1992, or other Statewide growth management information, contact the:

Maryland Office of Planning
301 West Preston Street, Suite 1100
Baltimore, Maryland 21201
Phone: 410-767-4562

Or visit our homepage on the internet at: www.mop.md.gov

Parris N. Glendening, Governor
State of Maryland

Ronald M. Kreitner, Director
Maryland Office of Planning



Related Smart Growth/ Legislative Initiatives

Brownfields - Voluntary Cleanup and Revitalization Incentive Programs -
These programs spur redevelopment of industrial and commercial properties that are, or are perceived to be, contaminated by hazardous waste. Many brownfields are abandoned or underutilized sites that are located in the urban core of municipalities or other older communities. These areas are typically served by transit and have infrastructure, such as sewer and water, already in place. These programs:

- Clarify and expedite the clean-up and redevelopment process; and
- Target financial incentives such as loans, grants, and property tax credits toward cleanup and redevelopment of brownfields.

Contact Jim Metz at MDE-410•631•3437; and Steve Lynch at DBED-410•767•6390.

Rural Legacy -
Establishes a grant program to protect targeted rural greenbelts from sprawl through the purchase of easements and development rights in "Rural Legacy Areas". This program will protect regions rich in agricultural, forestry, natural and cultural resources that, if conserved, will promote resource based economies, protect greenbelts, and maintain the fabric of rural life. Contact H. Grant Dehart at DNR-410•260•8403.

Job Creation Tax Credit -
Provides income tax credits to business owners who create 25 or more new jobs in municipalities and certain other Priority Funding Areas.
Contact Jerry Wade at DBED-410•767•6438.

Live Near Your Work Demonstration Program -
Provides cash grants to match contributions by businesses and local governments. These funds are an incentive for employees of businesses and institutions, which are located in older neighborhoods, to buy homes near their workplace. The program goal is to stabilize targeted neighborhoods. Contact John Papagni at DHCD-410•514•7175.

Joint Subcommittee to Study Land Development Patterns and Ways to Address Demands for Increased Services and Infrastructure Resulting from Residential Growth (HJR 195)

Selected Recommendations from HJR 195 Hearings

L - recommended by one or more localities
E - recommended by one or more environmental, planning, or citizen interests
B - recommended by one or more business or development interests

1. Continued and expanded school construction funding assistance from the Commonwealth. **L**

2. Authority to assess impact fees and continue to allow localities to accept cash proffers. **L, E**

3. Seek significant clarifying amendments to the vested rights statute approved last year (SB570). **L, E**

4. Authority to enact adequate public facility (APF) ordinances. **L, E**

5. Continue to allow creative use of special exceptions to deliberately review large subdivisions before approving them. **L**

6. Authority to pass transfer of development rights (TDR) ordinances. **L, E**

7. Greater state support/incentives for conservation easements and purchase of development rights. **L, E**

8. Prohibit land that is zoned for development from eligibility for agricultural use tax assessment. **E**

9. Revise land use value taxation program; allow localities to increase tax break and roll back period; grant local authority to waive all or a portion of roll back taxes if development meets local economic development goals; allow localities to require that land use value be factored into the composite index. **E**

10. Reverse trend of exempting certain industries or activities from local land use regulation. **L**

11. Conduct research from an independent source to determine the true cost borne by localities for each new housing unit. **E**

12. Flexible road design standards. **L, E**

13. More local input into state capital projects, especially roads. **L, E**

14. Require VDOT to look at, and possibly mitigate, the growth impact of its projects. **E**

15. Increased state aid for road construction and maintenance. **L**

16. Increase funding for rail and bus transit. **E**

17. Increased funding for the Regional Competitiveness Act. **E**

18. Tax reform; allow localities share in the benefits of growth; greater local flexibility. **L, E, B**

19. Tax reform; consider a split-rate tax - tax land higher, buildings lower, in downtowns. **E**

20. Consider a real estate transfer tax. **L**

21. Equalize the taxing authority of localities. **B**

22. Require larger developments (i.e. 50 plus acres) to be rezoned progressively, rather than all-at-once. **E**

23. Enact a process whereby major developments with regional transportation or environmental impacts must be reviewed and approved by a regional or state commission. **E**

24. Target more state resources toward upgrading and repairing existing infrastructure. **E**

25. Provide indemnity and flexibility in clean-up standards in order to promote reinvestment in old industrial sites. **E**

26. Require state and local government offices to be located in or near downtown areas. **E**

27. Amend stormwater regulations to allow urban developers flexibility in how they meet the standards. **E**

28. Establish an Infrastructure and Revenue Resources Commission. **B**

29. Dedicate certain revenue streams to localities such as recordation taxes. **B**

30. Allow localities flexibility on the referendum requirements of certain revenue and bond measures. **B**

Note: The text of written comments submitted at the hearings can be downloaded over the internet at: **www.radco.state.va.us/hjr195**

Proposal of Coalition

[Vested Rights
November 30, 1998- Coalition Draft]

Bill No. ____

A BILL to amend and reenact § 15.2-2307 of the Code of Virginia, relating to vested rights

Be it enacted by the General Assembly of Virginia:

1. That § 15.2307 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2307. Vested rights not impaired; nonconforming uses.

Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance *affecting use, floor area ratio or density, unless the change is required to comply with state law or there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety or welfare,* when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses, *exclusive of purchasing the land,* in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

For purposes of this section, *without prejudice to rights which might otherwise have vested* and without limitation, the following ~~are deemed to be significant affirmative governmental~~ acts allowing development of a specific project *provided such acts occur after July 1, 1998:* (i) the governing body has accepted proffers or ~~proffered conditions~~ which specify use related ~~to~~ a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant ~~diligently pursues approval of~~ *submits* the final plat or plan within *12 months after approval of the preliminary plat or plan* ~~a reasonable period of time under the circumstances;~~ or (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property

A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of such buildings or structures shall conform to such regulations whenever they are enlarged, extended, reconstructed or structurally altered and may further provide that no nonconforming building or structure may be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming use.

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HOUSE JOINT RESOLUTION NO. _____

Continuing the joint subcommittee to study land development patterns and ways to address demands for increased services and infrastructure resulting from residential growth.

WHEREAS, House Joint Resolution No. 195 (1998) established a joint subcommittee to study land development patterns and ways to address demands for increased services and infrastructure resulting from residential growth; and

WHEREAS, House Joint Resolution No. 195 also incorporated Senate Joint Resolution No. 53 (1998) and Senate Joint Resolution No. 107 (1998) for study; and

WHEREAS, the joint subcommittee met five times, including two joint meetings with the Commission on the Future of the Environment; and

WHEREAS, the joint subcommittee held an all-day public hearing and received considerable testimony from representatives of local government, building interests, real estate organizations, environmental and citizen groups, and others; and

WHEREAS, the joint subcommittee has begun the process of organizing and evaluating the multitude of proposals before it and is prepared to make certain interim recommendations to the 1999 Session of the General Assembly; and

WHEREAS, due to the significant complexity of issues remaining before the joint subcommittee, it will be of great benefit to continue the joint subcommittee's work for one additional year; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the joint subcommittee to study land development patterns and ways to address demands for increased services and infrastructure resulting from residential growth be continued for one additional year.

The direct costs of this study shall not exceed $8,250.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the Division, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 2000 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

#

99 - 6952320 01/11/99 10:14 AM Jeff Sharp

SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact § 15.2-2307 of the Code of Virginia, relating to vested rights.

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2307 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2307. Vested rights not impaired; nonconforming uses.

Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

For purposes of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project provided such acts occur after July 1, 1998: (i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property.

A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of such buildings or structures shall conform to such regulations whenever they are enlarged, extended, reconstructed or structurally altered and may further provide that no nonconforming building or structure may be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming use.

#

1999 SESSION

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HOUSE JOINT RESOLUTION NO. 578
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Rules
on February 8, 1999)
(Patrons Prior to Substitute—Delegates Clement, May [HJR 590], Rhodes [HJR 641], and Tate [HJR 686])

Establishing a commission to study Virginia's state and local tax structure for the 21st century.

WHEREAS, the past few decades have seen unprecedented changes in the way society operates in the new global economy; and

WHEREAS, these changes have occurred in technology, computers, medicine, telecommunications, and the retail environment and have changed the way every person works, lives and operates; and

WHEREAS, we are witnessing the deregulation of the electric and telecommunications industries; the consolidation of the banking and finance sector; and the growth of the world economies, which affect every aspect of the Commonwealth and its citizens; and

WHEREAS, one aspect of our society, the tax system, has changed little from when the economy was primarily agrarian and the measure of wealth was the amount of farm land one owned; and

WHEREAS, the local real estate tax was first imposed in 1645 under the reign of England's King Charles I, the personal property tax was enacted in 1654 under Lord Oliver Cromwell, and the BPOL tax was first imposed on a blacksmith to fund the War of 1812; and

WHEREAS, the Commonwealth enacted its sales and use tax in 1966 and since that time has had very few changes except for a one-half cent increase; and

WHEREAS, the Commonwealth adopted its current income tax structure in 1971 when Virginia "conformed" its income tax structure to the federal structure for taxpayer convenience and administrative simplification; and

WHEREAS, sales and income taxes generate 89 percent of the general fund revenues for the Commonwealth; and

WHEREAS, to this day, the main source of local tax revenue is the property tax, which generates over 61 percent of total local revenues in Virginia and therefore gives little flexibility to local government officials in collecting tax revenue needed to fund local government services, such as education; and

WHEREAS, in the cities of Virginia over 22 percent of the fair market value of real property and in the counties over 10 percent of real property is owned by the government or some other tax-exempt entity and cannot be taxed; and

WHEREAS, Virginia's cities with no realistic annexation option and a limited and stagnant tax base are among Virginia's most fiscally stressed localities; and

WHEREAS, society's trend towards purchasing an increasing share of goods and services that are nontaxable under the current sales tax means a higher resulting tax burden on the remaining goods than if the tax were extended to a broader base of taxation; and

WHEREAS, the traditional nexus for sales taxation, that is, having a physical presence in the state, was decided by the Supreme Court in the 1967 *National Bellas Hess* decision, is rapidly becoming an antiquated concept and should be addressed by the U.S. Congress; and

WHEREAS, in 1998, Congress passed the Internet Tax Freedom Act, declared a three-year moratorium on taxation over the Internet, and created the National Commission on Electronic Commerce; and

WHEREAS, the current tax structure may inhibit continued growth of Virginia's emerging information, knowledge and service-based economy, or, in turn, further strain the ability of local governments to invest and reinvest in critical infrastructure needs; and

WHEREAS, the state income tax structure has evolved in a way that creates inequitable shifts with respect to the burden on the citizens of the Commonwealth, particularly by failing to make changes paralleling the Internal Revenue Code; and

WHEREAS, since Virginia's enactment of the Tax Conformity Act in 1971, inflation and other changes in the economic environment have eroded the value of certain deductions and other components of the state income tax structure; and

WHEREAS, the failure to make corresponding adjustments has resulted in Virginia placing a

higher state tax burden on families with incomes below the federal poverty level guidelines than 38 of the 43 states taxing personal income; and

WHEREAS, Virginia and other governments must adapt and harness this inevitable change and use it to improve the way they deliver and pay for the public goods and services that Virginia citizens need and demand; now, therefore, be it,

RESOLVED by the House of Delegates, the Senate concurring, That a commission be created to study Virginia's state and local tax structure for the 21st century. The commission shall study the proper division of revenues and responsibilities for services between the state and local governments and how the state and local tax structure should be changed to adapt to the tremendous economic, social, demographic, and technological trends that are clearly overwhelming the current tax structure.

The commission shall be comprised of 13 members with significant expertise in state and local taxation, public or private budgeting and finance, or public services delivery, none of whom shall be currently serving in an elected capacity. The Secretary of Finance and the State Tax Commissioner shall serve as nonvoting members of the commission. The members of the commission shall be appointed by an ad hoc committee consisting of the Speaker of the House, the co-chairs of the House Appropriations Committee, the co-chairs of the House Finance Committee, the co-chairs of the House Committee on Counties, Cities and Towns, the chair of the Senate Privileges and Elections Committee, the co-chairs of the Senate Finance Committee and the chair and one other member of the Senate Committee on Local Government to be designated by the chair of such committee. The Speaker of the House shall chair the ad hoc committee which shall solicit nominations and recommendations from the Virginia Municipal League, the Virginia Association of Counties, the Virginia Chamber of Commerce, the Virginia State Bar, taxpayer associations and the public.

The commission shall examine all aspects of the state and local tax structure to ensure its viability, fairness, and appropriateness for the 21st century. It shall analyze the relationship between state and local tax authority and service responsibilities in order to determine whether the duty to provide services at the appropriate level of government is matched by the ability to generate sufficient revenues. In conducting its study, the commission shall examine what other states have done to assist their localities with raising revenues paying particular attention to those states in which a local income tax is imposed. The commission is specifically directed to develop revenue-neutral recommendations that will not increase Virginia's per capita state and local tax burden.

The Weldon Cooper Center at the University of Virginia shall provide staff support for the study and is hereby allocated $250,000 from the General Assembly's contingent fund to provide such staff support. All agencies of the Commonwealth shall provide assistance to the commission upon request.

The commission shall complete its work by December 1, 2000, and submit its findings and recommendations to the Governor and the 2001 Session of the Virginia General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Official Use By Clerks

Passed By The House of Delegates		**Passed By The Senate**	
without amendment	☐	without amendment	☐
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐

Date: _____ Date: _____

_____ _____

Clerk of the House of Delegates Clerk of the Senate

Virginia Outdoors Foundation

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☐ Northern Virginia Office
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Encouraging the preservation of open space

VIA FAX

January, 4, 1998

Jeffrey Sharp, Staff Attorney
Keating Commission
Division of Legislative Services
General Assembly Building, 2nd Floor
910 Capitol Street
Richmond VA, 23219

Re: Information for the Keating Commission

Dear Mr. Sharp,

Senator Bill Mims has requested that we provide the following information to you relating to his motion adopted by the Keating Commission recommending increased support for the Virginia Outdoors Foundation (VOF) easement program.

1. Background Information Regarding the Conservation Easement Program:

VOF was established by the General Assembly in 1966 (Section 10.1-1800 *et.seq.*) "to promote the preservation of open-space lands and to encourage private gifts of money, securities, land or other property to preserve the natural, scenic, historic, scientific, open-space and recreational areas of the Commonwealth." In its 33 year history, VOF has acquired conservation easements on approximately 125,000 acres, in 50 local jurisdictions, permanently protecting open space land (farming and forestry) through voluntary action on the part of landowners. VOF also owns 3500 acres at six sites and has assisted in several transfers of land for state parks and state forest lands.

Conservation easements are legal agreements between landowners and VOF that set out certain restrictions on the use of land for industrial, commercial, and intensive residential development. Once these easements are in effect, VOF must monitor them for compliance. During this year's development of VOF's strategic plan, it was revealed that

compliance monitoring frequency has been averaging once per six years, well below the accepted national standard of once annually.

VOF has seen a very large increase in easement donations this year. Our five-year average is 5700 new acres (30-40 properties) placed under easement annually. In 1998, depending on final year-end recordations, VOF is likely to have an additional 14,000 acres (75 new properties) under easement. The reasons for this huge increase are several. They include the enactment of a new Federal estate tax benefit for conservation easements, the first year of new state financial incentives for preserving the family farm using conservation easements (the Open-Space Lands Preservation Trust Fund) and a growing appreciation at all levels of the state for the need to preserve Virginia's land heritage.

2. Current Level and Purpose of State Funding:

State Appropriation - Fiscal Year 1999: $200,000 for operating support.

This funding level supports about half of the VOF overall budget. The remainder of VOF funding is expected to come from private sector fundraising efforts, interest and rental income.

The Open-Space Lands Preservation Trust Fund received an initial capitalization of $225,000 in FY98. Approximately $103,000 of this initial funding has been committed to date. No additional funds were requested for FY 99. This Fund can be used to reimburse legal fees and other costs of easement donations and to enable VOF to purchase all or part of the value of an easement. Priority may be given to family farms where financial need is established. This fund may not be used for VOF administrative costs.

3. Details on Budget Request and Possible Budget Amendments for 1999:

The Governor's budget for FY 00 contains $500,000 for the Open-Space Lands Preservation Trust Fund. Once again, none of this money can be used for VOF operating expenses.

The Parks and Open Space Conservation Subcommittee of the Commission on The Future of Virginia's Environment (HJR 136), the Moss Commission, has recommended full state funding for VOF's conservation easement program with a proposed increase of $180,000 in VOF funding. Commission staff attorney, Shannon Varner, has indicated the likelihood that this recommendation will result in a budget amendment.

In a December 29, 1998 meeting between Senator Bill Mims and Mr. Paul Ziluca, Chairman of VOF, Senator Mims said that he supported the $180,000 full-funding of

VOF's conservation easement program for his motion referred to above. He asked that this information be included in this letter.

If you require additional information, please contact me at (540) 951-2822.

Sincerely,

Tamara A. Vance
Executive Director

cc: Senator Bill Mims
Paul G. Ziluca, Chairman, VOF Board of Trustees