Local Transportation Infrastructure Financing Methods

Research Study

HAMPTON ROADS
PLANNING DISTRICT COMMISSION

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LOCAL TRANSPORTATION INFRASTUCTURE FINANCING METHODS

RESEARCH STUDY

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ABSTRACT

The purpose of this research study is to provide information to Chesapeake and other localities in Hampton Roads that are considering using any forms of development impact fee from new development. The research consisted of a review of different local financing methods for transportation including impact fee or impact fee type activities across the country and within the Commonwealth of Virginia. Current practices, applicable laws and existing programs are briefly summarized in the report.

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BACKGROUND

Transportation funding has become a critical issue for the Commonwealth of Virginia as well as the respective localities, leaving many transportation needs unmet. Furthermore, traditional funding streams can no longer be counted on as the sole source to meet the ever-growing demand for infrastructure improvements. Recognizing this situation, the City of Chesapeake has requested the HRPDC to perform a research study on different methods of financing local transportation infrastructure projects. At the time this study was requested, the City had already begun its work to consider some form of traffic impact or pro rata fee for road construction. On July 28, 2005, the Chesapeake City Council amended its Comprehensive Plan to include a revised proffer policy to address the acceptance of voluntary cash contributions for the improvement of roads impacted by residential rezoning. Details of this revised cash proffer policy will be covered in the last section of the report.

PURPOSE

The purpose of this research study is to offer information to Chesapeake and other localities in Hampton Roads that are considering using any forms of traffic impact fee from new development. The research consisted of a review of different local financing methods for transportation including impact fee or impact fee type activities in other states and within the Commonwealth of Virginia. Current practices, applicable laws and existing programs are summarized in the report.

REPORT ORGANIZATION

This report is organized into the following sections:

- Overview of Local Transportation Financing Methods
    - Pay-as-you-go Financing
    - Debt Financing

- Transportation Development Impact Fees
    - State Legislation
    - Examples
    - Economic Impacts of Development Impact Fees

- Review of Virginia Law
    - Transportation Development Financing Tools
    - Existing Programs

- Summary

OVERVIEW OF LOCALTRANSPORTATION FINANCING METHODS

Public financing methods available to most local jurisdictions for infrastructure improvements are included in one of two forms. "Pay-as-you-go" financing and debt financing. A brief description of the most widely accepted methods follows.

PAY-AS-YOU-GO FINANCING

Pay-as-you-go infrastructure financing methods raise funds for infrastructure projects as they progress. The funds are generally collected and budgeted for expenditure within one or successive fiscal years. They include impact fees; taxes (property, gasoline, school, general sales, excise, etc.); special assessments and special districts; user fees; reserves; and other development fees. **Table 1** summarizes advantages and disadvantages of their use.

Table 1 – "Pay-As-You-Go" Financing Tools

Revenue Source	Advantages to Jurisdiction	Disadvantages to Jurisdiction
Taxes- Property, Income, General Sales, Excise, and Impact Taxes	Included in general revenue to benefit jurisdiction as a whole. Available as needed. Require familiar accounting procedures. Preserve borrowing capacity. Avoid interest charges.	May be illegal if not authorized. Insufficient revenues to fund large projects. Collected in increments and thus require saving for anticipated expenditures. Often unpopular among residents. Limits on assessments.
Special Assessments Special Districts	Most funds available immediately.	Collection delayed if residents assessed in installments. Local government pays in default.
User Fees	Eliminates need for borrowing or reserves. Equalizes costs and benefits.	Cannot fund large projects. No lump sum capital provided.
Reserves	Eliminates need for borrowing.	Difficult to protect and project reserves for intended use.
Impact Fees	New residents pay fair share.	Often insufficient revenue to provide needed services.
Negotiated Exactions	New residents pay variable share.	Administratively cumbersome. Easily politicized.

Source: Impact Fees and the Role of the State: Guidance for Drafting Legislation, U.S. Department of Housing and Urban Development Office of Policy Development and Research, December 1993.

Taxes:

A local jurisdiction must be authorized by the state to levy any form of tax. Tax collections are included in the general revenue and must be used for the general good. Forms most commonly used as pay-as-you-go revenue raising mechanisms by local governments include property tax, income tax, general sales tax, and excise tax. California authorizes impact taxes.

Property taxes are the most important local revenue source in the United States. They account for nearly 75 percent of all local tax revenue and differ from other taxes in that their assessment basis is wealth rather income [1]. Wealth is most frequently on immobile assets, such as land and buildings and therefore not easily evaded. Property taxes are broadly unpopular with taxpayers because of its high visibility, lump sum collections, and uncertainty of assessment and appraisal. However, property taxes provide a stable source of revenue; are assessed on nonresident property owners who benefit from local services; are difficult to evade; provide revenue for services that add value to property; and provide a degree of independence to counties and municipalities from the state and federal governments.

Local income taxes are authorized in sixteen states, which are primarily located in the Mid-Atlantic, the Midwest, and the South. As shown in **Table 2**, the majority of these states authorize income taxes, as a general revenue source for their cities or counties while the use of income taxes to generate transportation revenues is rather limited.

Table 2- Local Option Income and Payroll Taxes

State	Allowable uses	Voter Approval Required?	Areas of Imposing tax
Alabama	General Revenues	No	None
Arkansas	General Revenues	Yes	None
Delaware	General Revenues	No	None
Georgia	General Revenues	Yes	None
Indiana	*Transit, Infrastructure*	*No*	*Transit: 2 Districts*
Kentucky	*Transit, Parking*	*Yes*	*Transit: 1 county, 1 district*
Maryland	General Revenues	No	None
Michigan	General Revenues	Yes	None
Missouri	General Revenues	No	None
New Jersey	General Revenues	No	None
New York	General Revenues	No	None
Ohio	*Economic development*	*Yes*	*Transit: 1 district*
Oregon	*Transit, services*	*Yes*	*Transit: 2 districts*
Pennsylvania	General Revenues	Yes	None
Virginia	*Transportation facilities*	*Yes*	*None*
Washington	Various	Yes	Congestion relief: 30 cities

Source: Institute of Transportation Studies University of California at Berkeley, Local Option Transportation Taxes in the United States, March 2001.

[1] Impact Fees and the Role of the State: Guidance for Drafting Legislation, U.S. Department of Housing and Urban Development Office of Policy Development and Research, December 1993.

As shown in Table 2 on page 3, only four states (Kentucky, Indiana, Oregon, and Virginia) make a specific statutory connection between income taxes and transportation-related expenditures. In a fifth state, Ohio, one city voluntarily earmarked a portion of its income tax for transit purposes. Virginia permits voters in cities and counties meeting certain size criteria to approve an income tax of up to 1% to fund the construction, operation and maintenance of transportation facilities, including highways, transit systems, airports, and ports. While voter approval is required this tax has not been adopted anywhere in the state of Virginia.

The general sales tax is relatively popular among taxpayers because it is collected in small increments over many transactions. An important characteristic of the sales tax is its broad base with the total amount of retail goods and services purchase within an area. Despite some variation in this base from state to state (depending on whether or not food and services are included), it universally produces high revenues for a low marginal tax rate. Several states have authorized local option sales taxes for transportation purposes including capital projects and transit [2]. In most of those states a local approval is required. Like the income tax, general sales taxes are subject to the economic cycle; a dip in the economy adversely affects tax collections.

Excise taxes are sales taxes imposed on specific goods or services. Although excise taxes are used more widely than general sales taxes, they generate less income. Excise taxes are commonly assessed on lodging, alcoholic beverages and tobacco products, utilities, and motor fuel. Some local jurisdictions are beginning to levy an excise tax on new construction, sometimes in addition to an impact fee.

Impact taxes are commonly levied in California and are comparable to excise taxes.

Special Levies:

Local jurisdictions occasionally charge residents of a specific area for services the government provides. The two commonly types used are special assessments and special districts.

Special assessments are levied on property to fund improvements that benefit a particular property rather than the community at large. The charge is directly related to the benefit received, usually measured as increased property value. Local governments are generally authorized to collect special assessments only on existing development. Residents usually have the option of paying the assessment in a single, lump-sum payment or in a series of payments over many years. Local jurisdictions normally advance construction funds from general revenues and collect special assessments as reimbursement.

[2] Institute of Transportation Studies University of California at Berkeley, Local Option Transportation Taxes in the United States, March 2001.

Special districts are separate units of government set up by local governments to provide particular services to a specific area. Special districts may be authorized by the state to levy taxes, issue debt, and contract for services. A special district differs from a special assessment in that the district acts independently of the jurisdiction that created it; a special assessment simply provides funds for the parent jurisdiction to provide benefits.

User Fees:

User fees pay for the costs of operating and maintaining public facilities and services, as well as repay outstanding bonds. Road tolls, park admission fees, and sewer charges are user fees.

Development Fees:

The two common types of development fees are impact fees and exactions. When determining the best method to pay for facility expansion to serve new development, a jurisdiction should consider the local housing market, the extent of need for the improved facilities by new development, and the effect of each method on housing affordability.

Impact fees are one method used by local jurisdictions to fund infrastructure only for benefits accruing to the development assessed. Impact fees are not designed to pay for the total cost, or even a major portion of the cost of off-site facility improvement. The larger share of costs is paid from the general revenue or other financing sources. The next section of the report covers additional details regarding the use and application of development impact fees in a number of states across the country.

Exactions are in-kind contributions (land or facilities) or in-lieu payments (fees) by developers, dedicated to provide specific infrastructure for new development. Exactions, unlike impacts fees that are calculated by formula and applied to all development uniformly across the community, are negotiated on a project-by-project basis.[3]

DEBT FINANCING

By borrowing money to finance infrastructure, a jurisdiction is able to raise large amounts of capital in a short period of time and pay for facility costs and debt service over a long period of time. While debt allows up-front financing of needed infrastructure, the addition of debt service or interest increases the overall cost. Forms

[3] Impact Fees and the Role of the State: Guidance for Drafting Legislation, U.S. Department of Housing and Urban Development Office of Policy Development and Research, December 1993.

of debt financing available to local jurisdictions include: bonds (general obligation, revenue, taxable, tax increment financing, etc); lease-purchase contracts; revolving loan funds; and bond banks. **Table 3** on page 7 summarizes their advantages and disadvantages for providing infrastructure improvements.

General Obligation (GO) bonds, are accepted by most investor groups, offer the issuer a low interest rate (depending on credit rating), and do not require a debt service reserve. GO bonds are usually used to finance long-lived projects that benefit the community as a whole, thereby, spreading costs over the useful life of the project. GO bonds are limited by set debt ceilings and require voter approval.

Revenue bonds are used to provide front-end financing for revenue-generating facilities and are backed by a revenue stream pledged from charges for sewer, water, and other services. The interest rates are higher than GO bonds because variable revenues rather than stable taxes back revenue bonds. Revenue bonds are usually tax-exempt and do not require voter approval.

Taxable bonds are similar to commercial bonds and allow more leeway in the types of projects funded. To attract investors, a higher rate of interest is required than on tax-exempt bonds.

Tax Increment Financing (TIF) bonds are similar to special assessments in that they define a particular geographic area for special treatment. They are also known as tax allocation financing bonds and usually reserved for a jurisdiction's economically depressed areas. Property owners in the TIF area are levied at the same tax rate as all other owners in the jurisdiction. However, the jurisdiction assesses property within the TIF area at both predevelopment and present values. Taxes on predevelopment values are deposited with the general funds. The difference between the two values serves as the tax base for the specified area, with all collections allocated to infrastructure development in that area. Bonds secured for the TIF area carry the jurisdiction's general obligation pledge.

Lease-purchase contracts, allow communities to purchase equipment or property on an installment basis while using the purchased item. Financing is arranged typically through a financial institution or manufacturer, and the contracts generally carry higher interest rates. Lease-purchases are more expensive than revenue bonds and have the same problems. They do not however, represent a form of debt.

Revolving Loan funds are established with a specific amount of federal and/or state money for clearly defined purposes, and function as permanent line of credit for local governments being often too small or poorly rated to enter the bond market. As loans are repaid, the money is lent to other governments, continually turning over the original amount.

Bond Banks are created by state statue to purchase small bond issues of participating local governments and, in turn, to issue bonds large enough to float on the national market. Interest rates are lower than local governments could obtain on their own.

Table 3- Debt Financing Tools

Revenue Source	Advantages to Jurisdiction	Disadvantages to Jurisdiction
General Obligation (GO) Bonds	Lowest interest charge. Relatively easy to market.	Interest paid through increased taxes. Debt ceilings. Voter resistance.
Revenue Bonds	Not often subject to debt limit.	Higher interest charges than GO bonds Higher taxes may be required to pay debt service on over built facilities.
Taxable Bonds	Not subject to federal tax deduction limitations.	Highest bond interest rates.
Tax Increment Financing Bond	Defines benefit subarea well.	Revenues dependent on growth of assessed value within subarea.
Lease Purchase Contracts Certificates of Participation	Provide a means of buying on credit without issuing debt.	Higher interest rates than for revenue bonds with the same problems.
Revolving Loan Funds	Funds available immediately. Potential for lower interest costs.	Increased rates. Burdensome reporting and administration.
Bond Banks	Lower issuance cost for small communities.	Require a sufficient number of participant communities.

Source: Impact Fees and the Role of the State: Guidance for Drafting Legislation, U.S. Department of Housing and Urban Development Office of Policy Development and Research, December 1993.

TRANSPORTATION DEVELOPMENT IMPACT FEES

Development Impact Fees are one time charges applied to new developments. Their goal is to raise revenue for the construction or expansion of capital facilities located outside the boundaries of the new development that benefit the contributing development. Impact fees are assessed and dedicated principally for the provision of additional water and sewer systems, roads, schools, libraries, parks and recreation facilities made necessary by the presence of new residents in the area. Impact fees are assessed for construction of new roads or improvement or expansion of existing roads to meet demand due to new development. The funds collected cannot be used for operation, maintenance, repair, alteration or replacement of capital facilities. [4]

Under the U.S. Constitution, the police power as well as the power to tax initially resides with the state. A local government has authority to use either police power or taxation powers only so granted under a home-rule charter or delegated by state statute. **Table 4** shows state legislative authority systems. Under the "home-rule" doctrine, states can maintain a hands free approach by directly prohibiting or aligning the actions of local jurisdictions on a statewide basis. Under the home-rule, qualifying local jurisdictions are granted the authority to use the police power and tax power except where the state reserves specific power. States without home-rule authority directly authorize all powers of individual jurisdictions. These states are sometimes called "Dillon Rule" states.

Table 4 – State Legislative Authority Systems

Home-Rule States			
Alaska	Indiana	Nebraska	Rhode Island
Arizona	Iowa	Nevada	South Carolina
California	Kansas	New Hampshire	South Dakota
Colorado	Louisiana	New Jersey	Tennessee
Connecticut	Maine	New Mexico	Texas
Delaware	Maryland	New York	Utah
Florida	Massachusetts	North Dakota	Washington
Georgia	Michigan	Ohio	West Virginia
Hawaii	Minnesota	Oklahoma	Wisconsin
Idaho	Missouri	Oregon	Wyoming
Illinois	Montana	Pennsylvania	

States in which local powers are directly authorized by state (Dillon Rule)			
Alabama	Kentucky	North Carolina	Virginia
Arkansas	Mississippi	Vermont	

[4] Carmen Carrion and Lawrence W. Libby, Development Impact Fees: A Primer, Ohio State University, Columbus, Ohio.

State Legislation

Several states have passed enabling legislation that grants explicit authorization to localities to impose impact fee ordinances as part of the land development approval process. No two statutes are identical because of differences in state authority systems, lack of standard terminology, and unique population growth patterns. The statutes include various requirements and technical provisions to guide localities, ranging from comprehensive and restrictive to superficial and loose. These inconsistencies make comparisons among the statutes difficult.

The literature review conducted for this study showed that sixteen states currently have statewide legislation that specifically enables localities to impose impact fees: Arizona, Georgia, Idaho, Illinois, Indiana, Maine, Maryland, Nevada, New Hampshire, Oregon, Pennsylvania, Texas, Vermont, Virginia, Washington, and West Virginia. Other states with a form of impact fee enabling legislation include: California, Colorado, Delaware, Hawaii, New Jersey, New Mexico, and Tennessee.

Comparison of legislation even in these sixteen states is difficult. For example, several states limit the jurisdictions eligible to impose impact fees. Idaho requires a local population of 200,000 for fee imposition (only Ada County). Virginia legislation limits the imposition of impact fees to counties over 500,000 population (Fairfax County). West Virginia legislation limits the imposition of impact fees to “growth counties” with an average population growth in excess of one percent (only three or four counties). Maryland legislation authorizes “code home-rule counties” by name. (A code home-rule county is not a charter county but has adopted the optional powers of home rule).

Examples [5]

Arizona – Municipal development impact fee statutes enable municipalities to assess development impact fees for a legitimate public purpose. They establish procedures that follow the constitutional requirements for development impact fees; that the fees are assessed for facilities that benefit the development; that money be used only for specific purposes; and there is a relationship between the fee amount and the development. Counties have had the development impact fees authority since 1999, when they were included in the Growing Smarter Legislative package.
The 2002 Study Report by Maricopa Association of Governments (MAG) included a comparative study comparing impact fees from a large sample of states across the country. According to the study, the national average for single-family residential was $3,654 per 1,000 square feet. The highest impact fees were in San Diego, California

[5] The main source of information used for Examples listed in this section of the report is: Impact Fees and the Role of the State: Guidance for Drafting Legislation, Prepared for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research.

($17,247), and the lowest were in Franklin, Tennessee ($213). The Phoenix average, by comparison, was $5,558 – 58% higher than the national sample. [6]

California - Jurisdictions in California began imposing development fees under their broad tax authority. In 1987, California enacted statutes authorizing a statewide bill for impact fees. This Bill became effective on January 1, 1989 and regulates the way impact fees are imposed on development projects. The agency imposing the fee must (1) identify the purpose of the fee; (2) identify the use to which the fee is to be put including the public facilities to be financed; (3) show a reasonable relationship between the fee's use and the type of development project; (4) show the reasonable relationship between the public facility to be constructed and the type of development; and (5) account for and spend the fees collected only for the purposes and projects specifically used in calculating the fee.

Florida - The Growth Management Act of 1985 requires local agencies to maintain adequate service levels for public facilities and prohibits approval of development that would cause a reduction in service level for existing users. The act also requires local government to provide public facilities that are consistent with the community's land use plan. The act does not specifically allow impact fees but "concurrency" as a development rule accomplishes much the same purpose.

Georgia – The Georgia Development Impact Fee Act of 1990 authorized municipalities and counties to impose impact fees once they have adopted a comprehensive plan containing a capital improvements element. Legislation requires that local ordinances include a schedule of impact fees for various land uses per unit of development on a service area basis.

Idaho – The Idaho Development Impact Fees Act became effective on July 1, 1992. Under this act, only government entities with population over 200,000 are eligible to impose impact fees for new development. (Effectively the act limits application to Ada County). Idaho Building Contractors Association has tried to extend eligible jurisdictions to include all counties.

Illinois – The Illinois Road Improvement Impact Fees adopted in 1988 became effective on July 26, 1989. This legislation allows counties with population over 400,000 and all home rule municipalities to collect transportation impact fees for roads that are directly affected by traffic demands generated by new development.

Indiana – The impact fee legislation adopted by state of Indiana in 1991 reflects the public concern for affordable housing. An impact fee ordinance must establish an "impact zone" for each type of infrastructure covered by the ordinance. A zone improvement plan (ZIP) must be prepared for each impact zone. Legislation specifies

6 Maricopa Association of Governments, development Impact Fees, Best practices paper#3: growing Smarter Implementation Project, January 15, 2002.

information that must be included in the ZIP. A comprehensive plan, capital improvements program, and ZIP are required before impact fees can be imposed. Ordinances must include either a schedule of impact fees imposed in each impact zone or a formula to determine the fees.

Maryland – The Development Impact Fee legislation was passed in 1992. Maryland legislation authorizes "code-home-rule counties" by name. (A code home-rule county is not a charter county but has adopted the optional powers of home rule). Maryland takes a hands-off approach to home-rule counties. Most of Maryland counties and Baltimore City have adopted impact fee ordinances. Impact fees can be used to finance all or part of the costs associated with additional or expanded facilities required to accommodate new construction or development.

New Jersey – The Transportation Development District Act of 1989 allows the creation of transportation improvement districts and transportation development districts. The districts are formed by the New Jersey Department of Transportation on petition of local officials. The legislation provides for the development of a master traffic plan to measure the extent of existing deficiencies and the impact of future development. Impact fees may then be charged to new development based on specific impacts and any projects necessary to offset the impacts.

Oregon – The System Development Charges legislation became effective on July 1, 1991. Cities, counties, special districts, regional governments, and school districts are authorized to impose impact fees. Local governments adopting a system development charge (impact fee) must prepare a capital improvements plan, public facilities plan, master plan or comparable plan that lists the capital improvements approved for funding with impact fee revenues and the estimated cost and timing for each improvement.

Pennsylvania - The Municipal Capital Improvement legislation became effective on June 1, 1990. Impact fees are used for costs incurred for improvements designated in the transportation capital improvement program that are attributable to new development, including the acquisition of land and right-of-way; engineering, legal, and planning costs; and all other costs directly related to road improvements within the service area or areas.

Texas - The state of Texas is cited as having the first legislation that specifically allows cities to impose impact fees. A Capital Improvements Plan is required that identifies capital improvements or facility expansions for which impact fees are assessed. The Texas law, unlike other states' legislation, specifies not only the procedure for calculating fees but also the formulas to be used and those improvements that may be financed by impact fees.

Washington – Mitigation Payment System (MPS) Program: the King County Department of Transportation is authorized to impose impact fees on new development pursuant to King County's powers as a home rule charter county. The MPS provides funding for transportation road improvements necessary to mitigate traffic impacts of new development on the roadway system. The MPS program implements Chapter 82.02 Revised Code of Washington. RCW 82.02 stresses the importance that new development should pay its fair share of roadway improvements necessary to accommodate the new traffic generated. A computer model is used to forecast traffic volumes, simulate PM peak hour traffic flow, and calculate the fair share charge needed to mitigate the impact. MPS fees are calculated according to the type of residential unit (single vs. multi family) and commercial uses for each service district in the County. [7]

Economic Impact of Development Impact Fees

There are a series of direct and indirect impacts as the cost of public infrastructure improvements rebounds through a local economy. Of particular relevance are the direct impacts – the costs placed upon residential and nonresidential markets. Impact fees will cause an increase of development costs in both markets. The economic impact of that depends upon who pays for the increase. It is possible for the landowner, the developer, and the consumer to bear costs or to share them.

Impact fees may lead to certain type of inequities. Fees are equitable horizontally if the new developments are the same size and kind but impact fees are non-equitable vertically in that lower value developments pay more (per unit of assessed fee) in impact fees than higher value developments of comparable community impact. Also impact fee scheme may discriminate against low-income households because it raises housing prices. [8]

From the research conducted for this study, it can be concluded that development impact fees have an effect on economic development and on housing affordability. It is therefore important to note that when determining the best method to pay for facility expansion to serve new development, a jurisdiction should consider the local housing market, the extent of need for the improved facilities by new development and the effect of each method on housing affordability.

[7] Source of information from the website - http://www.metrokc.gov/kcdot
[8] Carmen Carrion and Lawrence W. Libby, Development Impact Fees: A Primer, Ohio State University, Columbus, Ohio.

REVIEW OF VIRGINIA LAW

Virginia is a "Dillon Rule" state. The Dillon Rule is a common law doctrine that limits the powers of local governments, so that towns, cities and counties can perform only those functions that are expressly granted by state statute [9.] In contrast with the Dillon Rule is "Home Rule", which transfers broad powers to local governments.

In Virginia, local authority for land use planning and zoning is provided in Chapter 22, Code of Virginia [10], which grants powers to local governments for the development and adoption of a comprehensive plan, zoning ordinance, subdivision regulations, and capital improvements program. The following describes a number of financing tools available to local governments for road construction and improvements.

TRANSPORTATION DEVELOPMENT FINANCING TOOLS

This section describes the different tools available to local governments to finance and pace the construction of public roads to keep up with the demands of new residential development. These primary tools include provisions for a fiscal impact analysis, level of service standards, conditional use permitting, conditional zoning, cash proffers, impact fees, and pro rata development fees.[11]

These tools are all enhanced by a strong comprehensive plan that includes a locality's land use policies and a solid fiscal impact analysis which shows the costs of public facilities needed to serve new development. These tools are almost all limited by Virginia law. A brief description of these tools follows.

Fiscal Impact Analysis

Virginia Code, Sections 15.2-2223-2280 allows any locality to incorporate fiscal impact analysis into their planning, zoning, and land use decisions. A fiscal impact analysis is used to project the operating expenditures and capital outlays for public services required to serve a proposed development. The revenues local government is expected to receive as a result of the development offset these expenditures.

Several high growth jurisdictions that have applied fiscal impact studies to test alternative patterns of development are Loudoun, Prince William, Chesapeake and Fairfax. Chesapeake regularly uses fiscal impact modeling to examine the costs and revenues associated with all proposed rezoning applications. This tool is primarily used

9 States under "Dillon Rule" doctrine are Alabama, Arkansas, Kentucky, Mississippi, North Carolina, Vermont, and Virginia.
10 http://leg1.state.va.us/
11 Virginia's Growth Management Tools, Prepared by The Virginia Chapter of The American Planning Association, January 2002.

to gather information as a basis for employing other tools such as level of service standards and is not in itself used to regulate development.

Level of Service Standards

Virginia Code, Sections 15.2-2223-2280 allows any locality to incorporate level of service (LOS) standards as a means in determining adequacy of facilities for future development. This does not apply to land already zoned for development. Level of service standards specify the public facilities needed for new residential developments in an effort to determine if those facilities are adequate to support a proposed rezoning.

By Virginia Law, this tool can only be used if a rezoning of the property is required for development and cannot be applied on land already zoned. This could be enhanced if enabling legislation would allow localities to adopt Adequate Public Facilities ordinances (APFO) permitting localities to apply LOS at time of plan review and building permit issuance. The LOS tool requires an advanced technical analysis and fiscal impact model for setting the standards and criteria.

Conditional Use Permitting

Virginia Code, Sections 15.2-2286 and 15.2-2297, allows all localities to place specific conditions on a use proposed to mitigate any adverse effects the use may have on adjacent property owners or the general public. Conditional use permitting can be applied at the time of development.

Conditional Zoning (Proffers)

Virginia Code, Section 15.2-2296-2297 enables all localities to accept non-cash and non-mandatory proffers that are reasonably related to a rezoning request. Conditional zoning is used extensively by Virginia localities to mitigate the impact of development and gain community support for a project. This results in the approval of rezoning applications that might otherwise be denied. Examples of proffers accepted for road improvements include turn lanes, road widening or reconstruction, intersection improvements, and construction of new roads.

Cash Proffers

A cash proffer is a voluntary offer of money, submitted as part of a rezoning application to offset the impact of a particular development. Virginia Code, Sections 15.2-2298-2303 allows only the “high-growth” localities accept cash proffers. High-growth is generally defined as any locality that had a population growth of ten percent or more from the most decennial census year.

Virginia Code does not require localities using a proffer system to develop clear guidelines. Due to the voluntary nature of this program, cash proffers are only a supplemental revenue tool to be used in conjunction with the locality's capital improvement program to mitigate the impacts of the new development on existing facilities.

Impact Fees

An impact fee is a charge or assessment imposed against new development in order to generate revenue to fund the costs of reasonable public facility improvements necessitated by the new development. Virginia Code, section 15.2-2317-2327 specifically authorizes a county with a population of 500,000 or more (Fairfax County) and adjacent localities to enact an impact fee program for roads. For water and sewer system the Virginia law applies to all localities.

Impact fees for water and sewer are used extensively by all localities with public water and sewer systems. In contrast, impact fees for road improvements are not being utilized in any of the Northern Virginia localities authorized to implement the program. This is due to the required administrative procedures that are cumbersome. In addition, Northern Virginia localities are authorized to accept cash proffers and have not found it necessary to implement impact fees as an alternative.

There are several limitations to the current impact fees program in Virginia:[12]

- Impact fees cannot be applied to any development with previously approved proffers for off-site road improvements.
- Impact fees can only be used for capital projects and cannot be assessed or imposed for road repair, operation and maintenance, nor to expand existing roads to meet demand that existed prior to the new development.
- Impact fees are only a supplemental revenue tool to be used in conjunction with the locality's capital improvement program, and they cannot be considered as guaranteed funding since they are dependent upon the rate of growth.

Impact fees are assessed at the time a building permit is issued for new development and are not limited to a rezoning application. The main components of an impact fee program include:

- Delineation of the service area
- Development of a facility plan.
- Adoption of a capital improvement budget/program.
- Tracking procedures.

12 Virginia's Growth Management Tools, Prepared by The Virginia Chapter of The American Planning Association, January 2002.

Pro Rata Development Program

Section 15.2-2242 (4) of the Code of Virginia allows localities to adopt subdivision provisions for the voluntary funding of off-site road improvements and reimbursements of advances by the governing body. The Code specifies the following terms and conditions:

- The governing body should determine that road improvements were reasonably required by the construction or improvement of the subdivision or development. The cost should be based on a study conducted by qualified traffic engineers and approved by the developer.

- The governing body shall prepare a report approved by the developer, indicating the governmental services required to be furnished to development and an estimate of the annual cost for the period during which the reimbursement is to be made to the developer.

- The governing body may make annual reimbursements to the developer from funds made available for such purpose.

Furthermore, Section 15.2-2242 (5) of the Code of Virginia allows only localities of certain populations to adopt subdivision provisions requiring pro rata payments for reasonable and necessary off-site road improvements serving an area with related traffic needs. The adopting locality must develop a pro rata reimbursement program to:

- Identify areas of “related traffic needs”

- Determine estimated or actual road costs to adequately serve each area of related traffic needs

- Determine the proportionate share by which “subsequent subdividers” will reimburse the “initial subdivider” who constructs or pays for a particular road improvement

- Provide for the payment of interest to the “initial subdivider” by the subsequent subdividers.

Collection of a “pro rata share” of the cost of “reasonable and necessary” roadway improvements is specifically authorized to localities with certain population. This ordinance has many attributes of an impact fee system in that it relates to improvements other than “on-site” improvements. It also spreads the cost of needed improvements among all new developments, which benefit from the improvement. The significant difference between pro rata share and a traditional impact fee ordinance is the fact that monies collected under this system may only be used to repay an initial developer who “advanced such costs or constructed such road improvements”. The legislation does not allow the City to collect fees and accumulate those funds for future roadway improvements. Repayment is strictly to the developer.

EXAMPLES OF EXISTING PROGRAMS

Several localities in Virginia have been able to take advantage of the above-mentioned financing tools to plan and pay for development-related public road improvements. Examples are listed below:

Examples from Fairfax County [13]

- In 1992, the Subdivision Control Ordinance of the Code of the County of Fairfax was amended to include provisions for the Pro Rata Road Reimbursement Districts. As Article 3 in Chapter 101, the ordinance includes 11 sections describing:
    - Purpose and intent
    - Applicability
    - Exemptions
    - Definitions
    - Initiation of pro rata road reimbursement districts
    - Identification of an area having related traffic needs
    - Submission requirements
    - Calculation of pro rata road reimbursement payments
    - Adoption of pro rata road reimbursement districts
    - Amendment of adopted Pro rat road reimbursement districts
    - Payment of pro rata road reimbursements

To date, Fairfax County has not received an application for a pro rata road reimbursement district. In early 1990's, there was one developer who was potentially interested (and who generated the interest that led to the Virginia and Fairfax County Code changes) but then decided to not to pursue it. According to Fairfax County staff, the reason for not having received any applications is that so much of the County where any such district might be considered would include mostly land subject to rezoning proffers that include some sort of proffer for an off-site transportation improvement (for instance, a traffic light that would be off-site would count).

- Fairfax Center Area Proffer System - In November 1982, the Fairfax County Board of Supervisors adopted Procedural Guidelines for the Annual Review of Fairfax Center Area. The guidelines were revised in March 2002 and served to direct staff in the implementation of the Fairfax Center Area Plan. Procedures were also adopted with respect to the monitoring of development

[13] Per telephone conversation and email exchange with Kathy Ichter, Acting Director, Fairfax County Department of Transportation, December 2005.

in the Area as well as a procedure for reviewing contribution formula. A road fund account was established and monies received prior to or upon site plan approval, subdivision plat approval, or building permit issuance were placed in the account. The monies in this account are used to fund and implement roadway projects in the Fairfax Center Area.

- Proffer systems were also established for Centerville and Tyson's Corner.

- Route 28 Tax District – Additional taxes from private owners on commercial and industrial uses are used to make roadway improvements along this corridor. Among 10 Interchanges planned, four are already built and in place.

Road Level of Service Standard: Prince William, Loudoun, James City, and Chesapeake

As mentioned previously, the level of service standards specify the public facilities needed for new residential developments in an effort to determine if those facilities are adequate to support a proposed rezoning. Several localities in Virginia have incorporated the LOS in their comprehensive plan or in a guidance document. An example of localities currently utilizing LOS include:

- The City of Chesapeake requires all rezoning applications to be subject to level of service standards for roads, schools, and sewer capacity. If the proposed development fails to meet any of the standards included in the plan, the staff recommends denial of the application. The policy exempts a development that will have minimal impact on schools and roads.

- Prince William County applies a similar policy if a development does not meet the LOS as established in the plan, either a proffer for improvements or cash proffer can be used to offset the impact.

- James City County has recently adopted a version of a level of service policy.

Cash Proffer Plan: James City County [14]

On September 14, 2005, The James City County Board of Supervisors adopted the school cash proffer policy. This policy includes the amount of money the County wants to receive from developers for every new home built on rezoned land. That amount- $4,011 for a single-family house and $4,275 for apartments and other multi-family housing- will be used to pay for building schools.

[14] Newspaper article, http://www.dailypress.com/news/local/williamsburg, September 15, 2005.

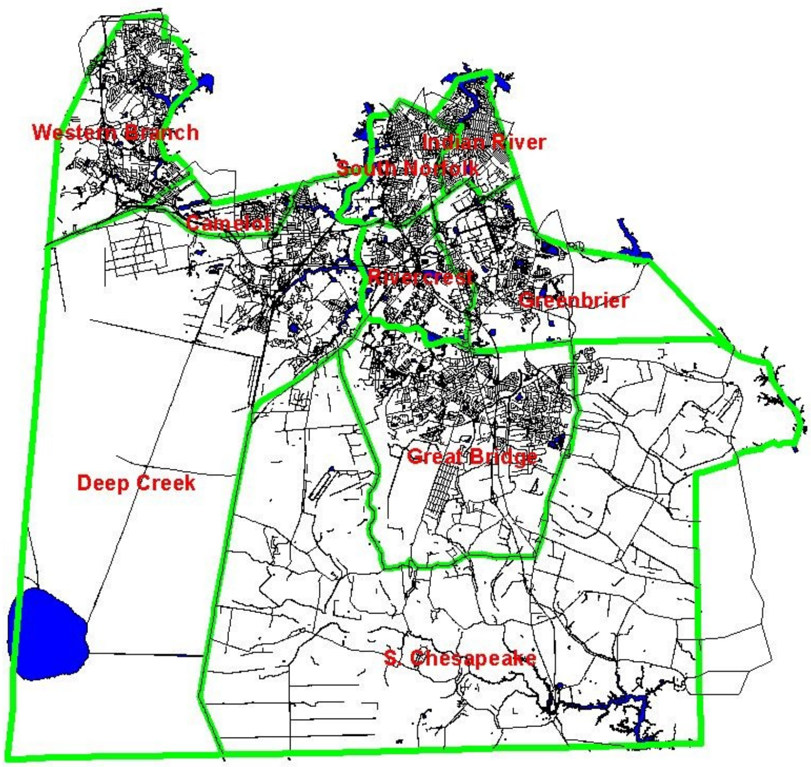
Road proffer Policy: City of Chesapeake [15]

On July 28, 2005, the Chesapeake City Council adopted an amendment to the Chesapeake Comprehensive Plan Rezoning Proffer Policy for public schools, roads, libraries, and emergency service facilities. The revised "Proffer Policy" applies to all residential components of any rezoning application. In order to ensure that cash proffers are used to fund public facilities necessitated or impacted by the proposed development, service districts were developed for public roads. Proffers collected for public roads shall be used to improve and benefit the service district impacted by the proposed rezoning. Road proffer calculation and cost by dwelling type by service district summarized below:

Road Proffer Calculation

- Service districts for road proffers are based upon traffic sheds. These districts are depicted on the following map:

Voluntary Cash Proffers for Public Roads Service Districts



1) Western Branch
2) Camelot + Deep Creek
3) South Norfolk + Indian River
4) Rivercrest
5) Greenbrier
6) South Chesapeake + Great Bridge

[15] City of Chesapeake, Public Works Department.

- Rezoning requests will be analyzed by identifying the service district that will be impacted by the majority of vehicular traffic generated by the proposed development and applying the calculated proffer amount associated with that service district to the traffic generated by the new development. Some developments may impact more than one service district, but only the costs from the district receiving the most traffic will be used for the proffer calculation.

- Road costs for the service districts will be calculated based on the cost of right-of-way acquisition, design, project management, and road construction for arterial and collector streets, with consideration to the following:

    - The approved Master Transportation Plan
        - The current Regional Long Range Plan

    - The most current LOS Study, with special consideration for roads already at service levels E and F since their congestion is the result of current, not future traffic

    - Exclusion of projects fully funded in VDOT's Six Year Program

    - Exclusion of major bridge projects due to high cost and broader use

    - Exclusion of new road extensions through undeveloped property where it is assumed that future development will at least partially construct the extension

    - Exclusion of projects not included in the 2021 and 2026 Long Range Plan

    - Priority is given to relieving the most congested corridors, except in the case of roads already at a service level of E or F, and those projects identified in City Council Six-Year Plan resolutions

    - Consideration given to phased improvements with intersection improvements coming before segment widening

    - Allowances for Tax Increment Financing (TIF) contributions

- The total amount of road project costs for each service district shall be divided by the estimated number of vehicle trips per day (vpd) on the road segments to be improved to determine the fiscal impact per vehicle trip. **Table 5** shows the result of these calculations:

Table 5: Road Project Cost by Planning District – City of Chesapeake

		Cost by Dwelling Type		
Planning District(s)	**Cost / trip**	**Single Family Detached**	**Single Family Attached**	**Multi-Family**
Western Branch	$175	$1,746	$1,519	$1,048
Camelot/Deep Creek	$241	$2,407	$2,094	$1,444
South Norfolk /	$277	$2,774	$2,414	$1,665
Indian River				
River Crest	$319	$3,186	$2,772	$1,912
Greenbrier	$124	$1,240	$1,079	$744
S. Chesapeake /	$318	$3,179	$2,766	$1,907
Great Bridge				

- An estimate of the total number of vpd for the proposed development based upon the maximum densities or intensities of the proposed zoning shall be developed.

- The estimated total vpd will be multiplied by the per vehicle cost to determine the maximum road cash proffer amount.

Loudoun County: [16]

- Loudoun County uses cash proffers for rezoning.
- Loudoun County has never implemented the pro rata reimbursement ordinance authorized under the subdivision law.
- Loudoun County has never implemented the transportation impact fee legislation largely because it cannot overlap with proffers when drawing the district. The County has been unsuccessful in getting the impact fee legislation amended to correct this flaw. A bill is expected to be reintroduced again at the 2006 General Assembly for school and road impact fees.

[16] Information received from the Loudoun County staff via email.

SUMMARY

Local governments faced with deteriorating infrastructure and over-stressed public facilities have begun to react to the impacts of new growth and development on the quality of life in their communities as available revenues fail to keep pace with the cost of needed facilities. Alternative funding sources, such as impact fees and other developer "fair share" programs are being implemented throughout the country to provide new facilities.

All components of the transportation planning process combined, the future of transportation funding is clear. Relying on traditional federal and state funding to adequately maintain and improve transportation infrastructure is no longer viable. While traditional sources remain an important part of the transportation funding picture, they no longer represent the entire answer to transportation fiscal shortfalls. Alternative funding sources as described in this research study report, once an option for localities, now represent a necessity.

The research conducted for this report indicated that communities across the country have been using some form of impact fees to pay for the cost of infrastructure expansion due to new developments. Impact fees have roots in longstanding land use and planning legislation as well as community application at the local, state and national level and represent a necessary funding mechanism for needs associated with new development.

The report also included a brief overview of Virginia Law and summarized tools and mechanisms available to local jurisdictions for managing local growth and development needs. Proffers are frequently used in communities across Virginia as part of the approval process for major subdivisions that will result in traffic or other demands on public facilities and services. The subdivision enabling statute allows an applicant to proffer a cash payment for the cost of off-site public road improvements.

In contrast to cash proffers, impact fees for road improvements are not being utilized in any of the Northern Virginia localities authorized to implement the program. This is due to the required administrative procedures that are cumbersome. In addition, Northern Virginia localities are authorized to accept cash proffers and have not found it necessary to implement impact fees as an alternative.