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SENATE BILL NO. 257

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation
on February 5, 2004)

(Patron Prior to Substitute—Senator Hawkins)

A BILL to amend and reenact § 33.1-72.1 of the Code of Virginia, relating to taking subdivision streets into the secondary system of state highways.

Be it enacted by the General Assembly of Virginia:**1. That § 33.1-72.1 of the Code of Virginia is amended and reenacted as follows:**

§ 33.1-72.1. Taking certain streets into secondary system.

A. "Street," as used in this section, means a street or highway shown on a plat which was recorded or otherwise opened to public use prior to July 1, 1990/1992, at which time it was open to and used by motor vehicles, and which, for any reason, has not been taken into the secondary system of state highways and serves at least three families per mile.

B. "County," as used in this section, means a county in which the secondary system of the state highways is constructed and maintained by the Department of Transportation and which has adopted a local ordinance for control of the development of subdivision streets to the necessary standards for acceptance into the secondary system.

C. "Speculative interest," as used in this section means that the original developer or a successor developer retains ownership in any lot abutting such street for development or speculative purposes. In instances where it is determined that speculative interest is retained by the original developer, developers, or successor developers and the governing body of the county deems that extenuating circumstances exist, the governing body of the county shall require a pro rata participation by such original developer, developers, or successor developers as prescribed in subsection G of this section as a condition of the county's recommendation pursuant to this section.

D. "Qualifying rural addition cost," as used in this section, means that portion of the estimated engineering and construction cost to improve the street to the minimum standards for acceptance remaining after reducing the total estimated cost by any prorated amount deemed the responsibility of others based on speculative interests as defined in subsection C.

~~E.~~ E. Whenever the governing body of a county recommends in writing to the Department of Transportation that any street in the county be taken into and become a part of the secondary system of the state highways in such county, the Department of Transportation thereupon, within the limit of available funds and the mileage available in such county for the inclusion of roads and streets in the secondary system, shall take such street into the secondary system of state highways for maintenance, improvement, construction and reconstruction if such street, at the time of such recommendation, either: (i) has a minimum dedicated width of ~~forty~~40 feet or (ii) in the event of extenuating circumstances as determined by the Commonwealth Transportation Commissioner, such street has a minimum dedicated width of ~~thirty~~30 feet at the time of such recommendation. In either case such streets must have easements appurtenant thereto which conform to the policy of the Commonwealth Transportation Board with respect to drainage. After the streets are taken into the secondary system of state highways, the Department shall maintain the same in the manner provided by law. ~~For streets whose plans are submitted on or after July 1, 1998, if the local government requires street pavement widths other than those set forth in the Virginia Department of Transportation's Subdivision Street Requirements (24 VAC 30-90-10 et seq. of the Virginia Administrative Code), any increase in the annual cost of maintenance attributable to such other pavement widths shall be paid to the Department by the local government.~~

F. Such street shall only be taken into the secondary system of state highways if the governing body of the county ~~has identified and made available the funds required to improve the street to the required minimum standards~~ The county may consider the following options to fund the required improvements for streets accepted under this section:

1. The local governing body of the county may use a portion of the county's annual secondary highway system construction allocation designated as "rural addition funds" to fund the qualifying rural addition costs for qualifying streets if the county agrees to contribute from county revenue or the special assessment of the landowners on the street in question one-half of the *qualifying rural addition* cost to bring the streets up to the necessary minimum standards for acceptance. No such special assessment of landowners on such streets shall be made unless the governing body of the county receives written declarations from the owners of ~~seventy-five~~75 percent or more of the platted parcels of land abutting upon such street stating their acquiescence in such assessments. The basis for such special assessments, at the option of the local governing body, shall be either (i) the proportion the value of each abutting parcel bears to total value of all abutting parcels on such street as determined by the current evaluation

60 of the property for real estate tax purposes, or (ii) the proportion the abutting road front footage of each
61 parcel abutting the street bears to the total abutting road front footage of all parcels abutting on the
62 street, or (iii) an equal amount for each parcel abutting on such street. No such special assessment on
63 any parcel shall exceed one-third of the current evaluation of such property for real estate tax purposes.
64 Such streets are eligible under this provision only if neither the original developer, developers, nor
65 successor developers retain a speculative interest in property abutting such streets. For the purpose of
66 this section, ownership or partnership in two or more parcels, or equivalent frontage, abutting such
67 streets shall constitute speculative interest. Special assessments under this section shall be conducted in
68 the manner provided in Article 2 (§ 15.2-2404 et seq.) of Chapter 24 of Title 15.2, mutatis mutandis, for
69 assessments for local improvements.

70 D. 2. Whenever the governing body of a county recommends in writing to the Department of
71 Transportation that any street in the county be taken into the secondary system of state highways as a
72 rural addition to the secondary system in such county, the Department of Transportation thereupon shall,
73 *The local governing body of any county may use a portion of its annual secondary highway system*
74 *construction allocation designated as "rural addition funds" to fund the qualifying rural addition cost*
75 *for qualifying streets* within the limitation of funds and the mileage limitation of the Commonwealth
76 Transportation Board's policy on rural additions; take such street into the secondary system of state
77 highways as a rural addition thereto for maintenance, improvement, construction, and reconstruction.
78 Any street added to the secondary system under this provision shall be constructed to the Department's
79 standards for the traffic served. Such streets are eligible under this provision only if neither the original
80 developer, developers, nor successor developers retain a speculative interest, as herein defined, in
81 property abutting such streets.

82 3. The local governing body of any county may use revenues derived from the sale of bonds to
83 finance the construction of rural additions to the secondary system of such county. In addition, from the
84 funds allocated by the Commonwealth for the construction of secondary road improvements, such
85 governing body may use funds allocated within the Commonwealth Transportation Board policy for the
86 construction of rural additions to pay principal and interest on bonds associated with rural additions in
87 such county, provided the revenue derived from the sale of such bonds is not used as the county
88 matching contribution under § 33.1-75.1. The provisions of this section shall not constitute a debt or
89 obligation of the Commonwealth Transportation Board or the Commonwealth of Virginia.

90 4. *The local governing body of the county may expend general county revenue for the purposes of*
91 *this section.*

92 5. *The local governing body of the county may permit one or more of the landowners on the street*
93 *in question to pay to the county a sum equal to one-half of the qualifying rural addition cost to bring*
94 *the street up to the necessary minimum standards for acceptance into the secondary system of state*
95 *highways, which funds the county shall then utilize for such purpose. Thereafter, upon collection of the*
96 *special assessment of landowners on such street, the county shall use such special assessment funds to*
97 *reimburse, without interest, the one or more landowners for those funds which they previously advanced*
98 *to the count to bring the street up to the necessary minimum standards for acceptance.*

99 6. *The local governing body of the county may utilize the allocations made to the county in*
100 *accordance with § 33.1-75.1.*

101 E. G. In instances where it is determined that speculative interest, *as defined in subsection C, exists*
102 *is retained by the original developer, developers, or successor developers and the governing body of the*
103 *county deems that extenuating circumstances exist, the governing body of the county shall require a pro*
104 *rata participation by such original developer, developers or successor developers as a condition of the*
105 *county's recommendation pursuant to this section. The* the basis for the pro rata percentage required of
106 such developer, developers, or successor developers shall be the proportion that the value of the abutting
107 parcels owned or partly owned by the developer, developers, or successor developers bears to the total
108 value of all abutting property as determined by the current evaluation of the property for real estate
109 purposes. The pro rata percentage shall be applied to the Department of Transportation's total estimated
110 cost to construct such street to the necessary minimum standards for acceptance to determine the amount
111 of costs to be borne by the developer, developers, or successor developers. Property so evaluated shall
112 not be assessed in the special assessment for the determination of the individual pro rata share
113 attributable to other properties. Further, when such pro rata participation is accepted by the governing
114 body of the county from such original developer, developers, or successor developers, such amount shall
115 be deducted from the Department of Transportation's total estimated cost and the remainder of such
116 estimated cost, *the qualifying rural addition cost*, shall then be the basis of determining the assessment
117 under the special assessment provision or determining the amount to be provided by the county when
118 funded from general county revenue under subsection C of this section or determining the amount to be
119 funded as a rural addition under subsection D of this section.

120 F. H. Acceptance of any street into the secondary system of state highways for maintenance,
121 improvement, construction, and reconstruction shall not impose any obligation on the Board to acquire

122 any additional right-of-way or easements should they be necessary by virtue of faulty construction or
123 design.

124 G. The local governing body of the county may expend general county revenue for the purposes of
125 this section.

126 H. The local governing body of the county may permit one or more of the landowners on the street
127 in question to pay to the county a sum equal to one-half of the cost to bring the street up to the
128 necessary minimum standards for acceptance into the secondary system of state highways, which funds
129 the county shall then utilize for such purpose. Thereafter, upon collection of the special assessment of
130 landowners on such street, the county shall use such special assessment funds to reimburse, without
131 interest, the one or more landowners for those funds which they previously advanced to the county to
132 bring the street up to the necessary minimum standards for acceptance.

133 I. Any funds allocated for use within any county for the purpose of adding to the secondary system
134 of highways, if *"Rural addition funds"* means those funds reserved from the county's annual allocation
135 of secondary system highway construction funds, as defined in § 33.1-67, for the purpose of this section.
136 If such funds are not used by such county for such purpose during the fiscal year they are so allocated,
137 the funds may be held for such purpose for the ~~three~~ four succeeding fiscal years. A maximum of five
138 percent of the annual secondary system highway construction allocation may be reserved by the
139 governing body for rural additions.