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SENATE BILL NO. 371

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend the Code of Virginia by adding a section numbered 15.2-851.1, relating to optional provisions of a subdivision ordinance.

Patron—Saslaw

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.2-851.1 as follows:

§ 15.2-851.1. Optional provisions of a subdivision ordinance.

A. As an alternative to the requirements of the first paragraph of subdivision 5 of § 15.2-2241, a subdivision ordinance may include reasonable regulations and provisions that apply to or provide 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, including traffic signalization and control, 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 (i) certifies to the governing body that the construction costs have been paid to the person constructing such facilities; (ii) furnishes to the governing body a certified check or cash escrow in the amount of the estimated costs of construction; (iii) furnishes a personal, corporate, or property bond, with surety satisfactory to the governing body or its designated administrative agency, 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 (iv) furnishes to the governing body a bank or savings institution's letter of credit on certain designated funds satisfactory to the governing body or its designated administrative agency as to the bank or savings institution, the amount, and the form. If the owner or developer has not met all previous land development obligations in accordance with all development agreements with the locality as determined by the governing body or its designated administrative agency for the previous seven years, then a personal, corporate, or property bond may be disallowed by the governing body as security for such facilities, and in such event, security for such facilities shall be restricted to a certified check, cash escrow, or a letter of credit that meets the requirements of clause (iv) herein. 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 current 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, which shall not exceed 25% of the estimated construction costs. However, if for the previous seven years the owner or developer has not met all previous land development obligations in accordance with all development agreements with the locality as determined by the governing body or its designated administrative agency, the governing body may require that the allowance for estimated administrative costs, inflation, and potential damage to existing roads or utilities be greater than 25% of the estimated construction costs, but not to exceed 50% of the estimated construction costs. "Developer," as used in this section, means any owner, builder, subdivider or other person or entity engaged in the land development process and shall include their principals, officers, members, managers, partners, alter egos, and members of the immediate family related to any of the foregoing. "Such facilities," as used in this section, means those facilities specifically provided for in this section.

B. As an alternative to the requirements of subsection E of § 15.2-2245, a subdivision ordinance may provide that 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 90% of the original amount for which the bond, escrow, letter of credit, or other performance guarantee was taken, and may make partial releases to such lower amounts as may be authorized by the governing body or its designated administrative agency based upon the percentage of public facilities completed and approved by the governing body, local administrative agency, or state agency having jurisdiction. If the

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59 subdivider or developer has not met all previous land development obligations in accordance with all
60 development agreements with the locality as determined by the governing body or its designated
61 administrative agency for the previous seven years prior to the written request for partial release, the
62 cumulative amount released may be equal to no less than 80% of the original amount for which the
63 bond, escrow, letter of credit, or other performance guarantee was taken. "Subdivider" and "developer,"
64 as used in this section, mean any owner, builder, subdivider, or other person or entity engaged in the
65 land development process and shall include their principals, officers, members, managers, partners, alter
66 egos, and members of the immediate family related to any of the foregoing. Periodic partial releases
67 may not occur before the completion of at least 30% of the public facilities covered by any bond,
68 escrow, letter of credit, or other performance guarantee. The governing body or administrative agency
69 shall not be required to execute more than three periodic partial releases in any 12-month period. Upon
70 final completion and acceptance of the public facilities, the governing body or administrative agency
71 shall release any remaining bond, escrow, letter of credit, or other performance guarantee to the
72 subdivider or developer. For the purpose of final release, the term "acceptance" means when the public
73 facility is accepted by and taken over for operation and maintenance by the state agency, local
74 government department or agency, or other public authority which is responsible for maintaining and
75 operating such public facility upon acceptance.