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SENATE BILL NO. 1252

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact § 15.2-2242 of the Code of Virginia, relating to subdivision ordinance.

Patrons—Herring, Howell, Puller and Ticer; Delegates: Callahan, Marsden, Plum, Rust and Sickles

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-2242 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-2242. Optional provisions of a subdivision ordinance.

A subdivision ordinance may include:

1. 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.

2. A requirement (i) for 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 and (ii) that all buildings constructed on lots resulting from subdivision of a larger tract that abuts or adjoins a public water or sewer system or main shall be connected to that public water or sewer system or main subject to the provisions of § 15.2-2121.

3. A requirement 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 localities enacting the ordinances. Grantors of any subdivision lots to which such statement applies must include the statement on each deed of conveyance thereof. However, localities in their ordinances 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 provision 5 of § 15.2-2241. 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 provision 11 of § 15.2-2241.

4. 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 to 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 development 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.

5. In a county having the urban county executive form of government, in any city located within or

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59 adjacent thereto, or any county adjacent thereto or a town located within such county, in any county
60 with a population between 57,000 and 57,450, or in any county with a population between 60,000 and
61 63,000, and in any city with a population between 140,000 and 160,000, provisions for payment by a
62 subdivider or developer of land of a pro rata share of the cost of reasonable and necessary road
63 improvements, located outside the property limits of the land owned or controlled by him but serving an
64 area having related traffic needs to which his subdivision or development will contribute, to reimburse
65 an initial subdivider or developer who has advanced such costs or constructed such road improvements.
66 Such ordinance may apply to road improvements constructed after July 1, 1988, in a county having the
67 urban county executive form of government; in a city located within or adjacent to a county having the
68 urban county executive form of government, or in a county adjacent to a county having the urban
69 county executive form of government or town located within such county and in any county with a
70 population between 57,000 and 57,450, or in any county with a population between 60,000 and 63,000,
71 such ordinance may only apply to road improvements constructed after the effective date of such
72 ordinance.

73 Such provisions shall provide for the adoption of a pro rata reimbursement plan which shall include
74 reasonable standards to identify the area having related traffic needs, to determine the total estimated or
75 actual cost of road improvements required to adequately serve the area when fully developed in
76 accordance with the comprehensive plan or as required by proffered conditions, and to determine the
77 proportionate share of such costs to be reimbursed by each subsequent subdivider or developer within
78 the area, with interest (i) at the legal rate or (ii) at an inflation rate prescribed by a generally accepted
79 index of road construction costs, whichever is less.

80 For any subdivision ordinance adopted pursuant to provision 5 of this section after February 1, 1993,
81 no such payment shall be assessed or imposed upon a subsequent developer or subdivider if (i) prior to
82 the adoption of a pro rata reimbursement plan the subsequent subdivider or developer has proffered
83 conditions pursuant to § 15.2-2303 for offsite road improvements and such proffered conditions have
84 been accepted by the locality, (ii) the locality has assessed or imposed an impact fee on the subsequent
85 development or subdivision pursuant to Article 8 (§ 15.2-2317 et seq.) of Chapter 22, or (iii) the
86 subsequent subdivider or developer has received final site plan, subdivision plan, or plan of development
87 approval from the locality prior to the adoption of a pro rata reimbursement plan for the area having
88 related traffic needs.

89 The amount of the costs to be reimbursed by a subsequent developer or subdivider shall be
90 determined before or at the time the site plan or subdivision is approved. The ordinance shall specify
91 that such costs are to be collected at the time of the issuance of a temporary or final certificate of
92 occupancy or functional use and occupancy within the development, whichever shall come first. The
93 ordinance also may provide that the required reimbursement may be paid (i) in lump sum, (ii) by
94 agreement of the parties on installment at a reasonable rate of interest or rate of inflation, whichever is
95 less, for a fixed number of years, or (iii) on such terms as otherwise agreed to by the initial and
96 subsequent subdividers and developers.

97 Such ordinance provisions may provide that no certificate of occupancy shall be issued to a
98 subsequent developer or subdivider until (i) the initial developer certifies to the locality that the
99 subsequent developer has made the required reimbursement directly to him as provided above or (ii) the
100 subsequent developer has deposited the reimbursement amount with the locality for transfer forthwith to
101 the initial developer.

102 6. Provisions for establishing and maintaining access to solar energy to encourage the use of solar
103 heating and cooling devices in new subdivisions. The provisions shall be applicable to a new subdivision
104 only when so requested by the subdivider.

105 7. Provisions, in any town with a population between 14,500 and 15,000, granting authority to the
106 governing body, in its discretion, to use funds escrowed pursuant to provision 5 of § 15.2-2241 for
107 improvements similar to but other than those for which the funds were escrowed, if the governing body
108 (i) obtains the written consent of the owner or developer who submitted the escrowed funds; (ii) finds
109 that the facilities for which funds are escrowed are not immediately required; (iii) releases the owner or
110 developer from liability for the construction or for the future cost of constructing those improvements
111 for which the funds were escrowed; and (iv) accepts liability for future construction of these
112 improvements. If such town fails to locate such owner or developer after making a reasonable attempt to
113 do so, the town may proceed as if such consent had been granted. In addition, the escrowed funds to be
114 used for such other improvement may only come from an escrow that does not exceed a principal
115 amount of \$30,000 plus any accrued interest and shall have been escrowed for at least five years.

116 8. (Effective until July 1, 2007) Provisions for clustering of single-family dwellings and preservation
117 of open space developments, which provisions shall comply with the requirements and procedures set
118 forth in subdivision A 12 of § 15.2-2286.

119 8. (Effective July 1, 2007) Provisions for clustering of single-family dwellings and preservation of
120 open space developments, which provisions shall comply with the requirements and procedures set forth

121 in § 15.2-2286.1.

122 9. Provisions requiring that where a lot being subdivided or developed fronts on an existing street,
123 and adjacent property on either side has an existing sidewalk, a locality may require the dedication of
124 land for, and construction of, a sidewalk on the property being subdivided or developed, to connect to
125 the existing sidewalk. Nothing in this paragraph shall alter in any way any authority of localities or the
126 Department of Transportation to require sidewalks on any newly constructed street or highway.

127 10. Provisions for requiring and considering Phase I environmental site assessments based on the
128 anticipated use of the property proposed for the subdivision or development that meet generally accepted
129 national standards for such assessments, such as those developed by the American Society for Testing
130 and Materials, and Phase II environmental site assessments, that also meet accepted national standards,
131 such as, but not limited to, those developed by the American Society for Testing and Materials, if the
132 locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in
133 accordance with regulations of the United States Environmental Protection Agency and the American
134 Society for Testing and Materials. A reasonable fee may be charged for the review of such
135 environmental assessments. Such fees shall not exceed an amount commensurate with the services
136 rendered, taking into consideration the time, skill, and administrative expense involved in such review.

137 11. Provisions for requiring disclosure and remediation of contamination and other adverse
138 environmental conditions of the property prior to approval of subdivision and development plans.

139 12. *Provisions for the alternative use of cash escrows previously furnished to the governing body by*
140 *the owner or developer in conjunction with the approval of a subdivision plat or site plan where such*
141 *escrows were to be used for the construction of identified public improvements by someone other than*
142 *the owner or developer.*

143 *Regardless of the date when any such cash escrow was furnished to the governing body, unless*
144 *prohibited by any written agreement between the owner or developer and the governing body*
145 *accompanying such cash escrow, a locality may use such cash escrow for the construction of alternative*
146 *public improvements that will benefit the development for which the cash escrow was originally*
147 *furnished. Prior to the use of such cash escrows for alternative public improvements, the governing body*
148 *of the locality shall give at least 30 days' written notice of the proposed alternative improvements to the*
149 *entity who furnished such cash escrow, mailed to the last known address of such entity, and shall*
150 *conduct a public hearing on such proposal advertised as provided in subsection F of § 15.2-1427. The*
151 *governing body of the locality, prior to the use of such cash escrows for alternative public*
152 *improvements, shall, following such public hearing, find that: (i) the purpose of the public improvements*
153 *for which the cash escrow was originally furnished will be better served by the proposed alternative*
154 *public improvements; (ii) the development for which the cash escrow was furnished will benefit from the*
155 *alternative public improvement to be constructed; and (iii) the alternative public improvements are in*
156 *the public interest. The alternative use of a cash escrow pursuant to this subdivision shall release the*
157 *owner or developer from any requirement to construct the public improvements for which the owner or*
158 *developer furnished the cash escrow.*