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## HOUSE BILL NO. 2418

Offered January 14, 2009

Prefiled January 14, 2009

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

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Patron—Bouchard

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Referred to Committee on Counties, Cities and Towns

**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.

INTRODUCED

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59 5. In Arlington County, Fairfax County, Loudoun County, and Prince William County, in any town  
60 located within such counties, in Bedford County, Pittsylvania County, Spotsylvania County, and Stafford  
61 County, or in the Cities of Alexandria, Fairfax, Falls Church, Hampton, Manassas, and Manassas Park,  
62 provisions for payment by a subdivider or developer of land of a pro rata share of the cost of reasonable  
63 and necessary road improvements, located outside the property limits of the land owned or controlled by  
64 him but serving an area having related traffic needs to which his subdivision or development will  
65 contribute, to reimburse an initial subdivider or developer who has advanced such costs or constructed  
66 such road improvements. Such ordinance may apply to road improvements constructed after July 1,  
67 1988, in Fairfax County; in Arlington County, Loudoun County, and Prince William County, in any  
68 town located within such counties, in Bedford County, Pittsylvania County, Spotsylvania County, and  
69 Stafford County, or in the Cities of Alexandria, Fairfax, Falls Church, Hampton, Manassas, and  
70 Manassas Park, such ordinance may only apply to road improvements constructed after the effective date  
71 of such ordinance.

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

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

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

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

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

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

115 8. Provisions for clustering of single-family dwellings and preservation of open space developments,  
116 which provisions shall comply with the requirements and procedures set forth in § 15.2-2286.1.

117 9. Provisions requiring that where a lot being subdivided or developed fronts on an existing street,  
118 and adjacent property on either side has an existing sidewalk, a locality may require the dedication of  
119 land for, and construction of, a sidewalk on the property being subdivided or developed, to connect to  
120 the existing sidewalk. Nothing in this paragraph shall alter in any way any authority of localities or the

121 Department of Transportation to require sidewalks on any newly constructed street or highway.

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

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