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SENATE BILL NO. 383

Senate Amendments in [] — February 12, 2010

A BILL to amend and reenact §§ 15.2-1245, 15.2-1246, and 15.2-1247 of the Code of Virginia, relating to claims against counties; timing of decision; appeals.

Patron Prior to Engrossment—Senator Obenshain

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1245, 15.2-1246, and 15.2-1247 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-1245. Procedure for allowance of claims.

A. No account shall be allowed by the governing body of the county unless made out in separate items with the nature of each item specifically stated. When no specific fees are allowed by law, the time actually and necessarily devoted to the performance of any service charged in such account shall be verified by affidavit, which shall be filed with the account. The attorney for the Commonwealth, or the county attorney if there is one, shall represent the county before the board and advise the board of any claim which in his opinion is illegal or not before the board in proper form or upon proper proof, or which for any other reason ought not to be allowed. *[The clerk of the governing body shall serve No such claim shall be denied unless the attorney representing the county has, by certified mail, served]* written notice on the claimant or his agent of the date that the governing body will consider the claim.

B. If any claim has been allowed by the governing body against the county which in the opinion of such attorney is improper as to form or proof or illegal, the attorney shall seek the advice of the Attorney General as to legality or the State Auditor of Public Accounts as to matters of accounting. If any claim has been allowed by the governing body against the county which, in the opinion of any six owners of land within the county is improper as to form or proof or illegal, such landowners may appeal the decision of the governing body to the circuit court for the county. If either the Attorney General or the State Auditor of Public Accounts is of the opinion the claim is illegal or in improper form, the attorney for the Commonwealth shall appeal from the decision of the governing body to the circuit court for the county. In the event of any such appeal, the moving party shall serve a written notice of the appeal on the clerk of the governing body and the party in whose favor the claim is allowed within ~~thirty~~ 30 days after the making of such decision. If the court finds and states in its order that the claim was improperly allowed but that the consideration received or to be received by the county for payments made or to be made was or will be for value, it shall dismiss the appeal. If the court finds otherwise, it shall remand the claim to the governing body for appropriate action.

C. Whenever any claim allowed by a county governing body is declared illegal by a court of competent jurisdiction, the attorney for the Commonwealth, or the county attorney if there is one, in the name of the county, shall institute proper proceedings in the circuit court of his county within two years from the entry of the order declaring the claim illegal, if such amount has already been paid. Such attorney shall be available to the governing body and give his legal opinion when requested.

D. Nothing in this section shall prevent any county governing body from disallowing any account, in whole or in part, when rendered and verified consistent with subsection A, or requiring any other evidence of the truth and propriety of any account as it thinks proper.

§ 15.2-1246. Appeal from disallowance of claim.

When a claim of any person against a county is disallowed in whole or in part by the governing body, if such person is present, he may appeal from the decision of the governing body within ~~thirty~~ 30 days from the date of the decision. If the claimant is not present, the clerk of the governing body shall serve a written notice of the disallowance on him or his agent, and he may appeal from the decision within ~~thirty~~ 30 days after service of such notice. In no case shall the appeal be taken after the lapse of six months from the date of the decision. The appeal shall be filed with the circuit court for the county. No appeal shall be allowed unless the amount disallowed exceeds ~~ten dollars~~ \$10. The disallowance may be appealed by serving written notice on the clerk of the governing body and executing a *cash or surety bond or irrevocable letter of credit* to the county, ~~with sufficient surety to be approved by the clerk of the governing body in the amount of [\$25 \$250]~~, with condition for the faithful prosecution of such appeal, and the payment of all costs imposed on the appellant by the court.

§ 15.2-1247. When disallowance of claim final; exception; when no execution to be issued.

The determination of the governing body of any county disallowing a claim, in whole or in part, shall be a bar to any action in any court founded on such claim, unless (i) the decision of the governing

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60 body disallowing the claim is appealed; (ii) the governing body consents to the institution of an action
61 by the claimant against the county; or (iii) the governing body ~~refuses or neglects~~ *fails* to act upon any
62 claim ~~duly presented to it~~ *within 90 days of the date the claim is received by the governing body or its*
63 *clerk [, provided that such time may be extended by mutual agreement of the claimant and the county] .*
64 No execution shall be issued upon any judgment recovered against a county, board of supervisors, or
65 against any officer of the county, when the judgment should be paid by the county. Any judgment
66 against the county shall be provided for by the governing body in the next county levy and paid by the
67 treasurer as other county charges.