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SENATE BILL NO. 997

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Local Government
on January 25, 2011)

(Patron Prior to Substitute—Senator Stuart)

A BILL to amend and reenact §§ 15.2-2242 and 15.2-2245 of the Code of Virginia, relating to subdivision ordinances and provisions for periodic and final release of certain performance guarantees.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2242 and 15.2-2245 of the Code of Virginia are 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 subdivision 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 Arlington County, Fairfax County, Loudoun County, and Prince William County, in any town located within such counties, in Bedford County, Pittsylvania County, Spotsylvania County, and Stafford

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

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

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

The amount of the costs to be reimbursed by a subsequent developer or subdivider shall be determined before or at the time the site plan or subdivision is approved. The ordinance shall specify that such costs are to be collected at the time of the issuance of a temporary or final certificate of occupancy or functional use and occupancy within the development, whichever shall come first. The ordinance also may provide that the required reimbursement may be paid ~~(i)~~ (1) in lump sum, ~~(ii)~~ (2) by agreement of the parties on installment at a reasonable rate of interest or rate of inflation, whichever is less, for a fixed number of years, or ~~(iii)~~ (3) on such terms as otherwise agreed to by the initial and subsequent subdividers and developers.

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

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

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

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

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

10. Provisions for requiring and considering Phase I environmental site assessments based on the

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

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

§ 15.2-2245. Provisions for periodic partial and final release of certain performance guarantees.

A. A subdivision ordinance shall provide for the periodic partial and final complete release of any bond, escrow, letter of credit, or other performance guarantee required by the governing body under this article within ~~thirty~~ 30 days after receipt of written notice by the subdivider or developer of completion of part or all of any public facilities, *other than streets*, required to be constructed hereunder unless the governing body or its designated administrative agency notifies the subdivider or developer in writing of nonreceipt of approval by an applicable state agency, or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the thirty day period. Any inspection of such public facilities, *other than streets*, shall be based solely upon conformance with the terms and conditions of the performance agreement and the approved design plan and specifications for the facilities for which the performance guarantee is applicable, and shall not include the approval of any person other than an employee of the governing body, its administrative agency, the Virginia Department of Transportation or other political subdivision or a person who has contracted with the governing body, its administrative agency, the Virginia Department of Transportation or other political subdivision. *No bond, escrow, letter of credit, or other performance guarantee covering a street may be released, either partially or fully, until said street has been accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility.*

B. If no such action is taken by the governing body or administrative agency within the time specified above *and the completed section of any street being constructed has been accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility*, the request shall be deemed approved, and a partial release granted to the subdivider or developer. No final release shall be granted until after expiration of such ~~thirty~~ 30-day period and there is an additional request in writing sent by certified mail return receipt to the chief administrative officer of such governing body. The governing body or its designated administrative agency shall act within ten working days of receipt of the request; then if no action is taken the request shall be deemed approved and final release granted to the subdivider or developer.

C. After receipt of the written notices required above, if the governing body or administrative agency takes no action within the times specified above and the subdivider or developer files suit in the local circuit court to obtain partial or final release of a bond, escrow, letter of credit, or other performance guarantee, as the case may be, the circuit court, upon finding the governing body or its administrative agency was without good cause in failing to act, shall award such subdivider or developer his reasonable costs and ~~attorneys'~~ attorney fees. *The court shall not order the release of a bond, escrow, letter of credit, or other performance guarantee until all completed or partially completed streets have been accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility.*

D. No governing body or administrative agency shall refuse to make a periodic partial or final release of a bond, escrow, letter of credit, or other performance guarantee for any reason not directly related to the specified defects or deficiencies in construction of the public facilities covered by said bond, escrow, letter of credit or other performance guarantee *unless the said street has not been taken over for operation and maintenance by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility.*

E. 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 ~~ninety~~ 90 percent 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

183 and approved by the governing body, local administrative agency, or state agency having jurisdiction.
184 Periodic partial releases may not occur before the completion *and acceptance* of at least ~~thirty~~ 30
185 percent of the public facilities covered by any bond, escrow, letter of credit, or other performance
186 guarantee. The governing body or administrative agency shall not be required to execute more than three
187 periodic partial releases in any ~~twelve~~ 12-month period. Upon final completion and acceptance of the
188 public facilities, the governing body or administrative agency shall release any remaining bond, escrow,
189 letter of credit, or other performance guarantee to the subdivider or developer. ~~For the purpose of final~~
190 ~~release~~ *As used in this section*, the term "acceptance" means: when the public facility is accepted by and
191 taken over for operation and maintenance by the state agency, local government department or agency,
192 or other public authority which is responsible for maintaining and operating such public facility upon
193 acceptance.

194 F. For the purposes of this section, a certificate of partial or final completion of such public facilities
195 from either a duly licensed professional engineer or land surveyor, as defined in and limited to
196 § 54.1-400, or from a department or agency designated by the locality may be accepted without
197 requiring further inspection of such public facilities.