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SENATE BILL NO. 215

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact § 15.2-2241 of the Code of Virginia, relating to bond administration; reimbursement of administrative costs.

Patron—Barker

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2241 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2241. Mandatory provisions of a subdivision ordinance.

A. A subdivision ordinance shall include reasonable regulations and provisions that apply to or provide:

1. For plat details which shall meet the standard for plats as adopted under § 42.1-82 of the Virginia Public Records Act (§ 42.1-76 et seq.);

2. For the coordination of streets within and contiguous to the subdivision with other existing or planned streets within the general area as to location, widths, grades and drainage, including, for ordinances and amendments thereto adopted on or after January 1, 1990, for the coordination of such streets with existing or planned streets in existing or future adjacent or contiguous to adjacent subdivisions;

3. For adequate provisions for drainage and flood control, for adequate provisions related to the failure of impounding structures and impacts within dam break inundation zones, and other public purposes, and for light and air, and for identifying soil characteristics;

4. For the extent to which and the manner in which streets shall be graded, graveled or otherwise improved and water and storm and sanitary sewer and other public utilities or other community facilities are to be installed;

5. (Effective until July 1, 2014) 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 or, at the option of the local governing body, presents evidence satisfactory to the governing body that the time for recordation of any mechanics lien has expired or evidence that any debt for said construction that may be due and owing is contested and further provides indemnity with adequate surety in an amount deemed sufficient by the governing body or its designated administrative agency; (ii) furnishes to the governing body a certified check or cash escrow in the amount of the estimated costs of construction or 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 (iii) 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. 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 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 10 percent of the estimated construction costs. If the owner or developer defaults on construction of such facilities, the locality shall be entitled to retain the allowance for administrative costs regardless of who ultimately completes the facilities. "Such facilities," as used in this section, means those facilities specifically provided for in this section.

If a developer records a final plat which may be a section of a subdivision as shown on an approved preliminary subdivision plat and furnishes to the governing body a certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of the facilities to be dedicated within

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59 said section for public use and maintained by the locality, the Commonwealth, or other public agency,  
60 the developer shall have the right to record the remaining sections shown on the preliminary subdivision  
61 plat for a period of five years from the recordation date of any section, or for such longer period as the  
62 local commission or other agent may, at the approval, determine to be reasonable, taking into  
63 consideration the size and phasing of the proposed development, subject to the terms and conditions of  
64 this subsection and subject to engineering and construction standards and zoning requirements in effect  
65 at the time that each remaining section is recorded. In the event a governing body of a county, wherein  
66 the highway system is maintained by the Department of Transportation, has accepted the dedication of a  
67 road for public use and such road due to factors other than its quality of construction is not acceptable  
68 into the secondary system of state highways, then such governing body may, if so provided by its  
69 subdivision ordinance, require the subdivider or developer to furnish the county with a maintenance and  
70 indemnifying bond, with surety satisfactory to the governing body or its designated administrative  
71 agency, in an amount sufficient for and conditioned upon the maintenance of such road until such time  
72 as it is accepted into the secondary system of state highways. In lieu of such bond, the governing body  
73 or its designated administrative agency may accept a bank or savings institution's letter of credit on  
74 certain designated funds satisfactory to the governing body or its designated administrative agency as to  
75 the bank or savings institution, the amount and the form, or accept payment of a negotiated sum of  
76 money sufficient for and conditioned upon the maintenance of such road until such time as it is  
77 accepted into the secondary system of state highways and assume the subdivider's or developer's liability  
78 for maintenance of such road. "Maintenance of such road" as used in this section, means maintenance of  
79 the streets, curb, gutter, drainage facilities, utilities or other street improvements, including the correction  
80 of defects or damages and the removal of snow, water or debris, so as to keep such road reasonably  
81 open for public usage.

82 As used in this section, "designated administrative agency" means the planning commission of the  
83 locality or an agent designated by the governing body of the locality for such purpose as set forth in  
84 §§ 15.2-2258 through 15.2-2261;

85 5. (Effective July 1, 2014) For the acceptance of dedication for public use of any right-of-way  
86 located within any subdivision or section thereof, which has constructed or proposed to be constructed  
87 within the subdivision or section thereof, any street, curb, gutter, sidewalk, bicycle trail, drainage or  
88 sewerage system, waterline as part of a public system or other improvement dedicated for public use,  
89 and maintained by the locality, the Commonwealth, or other public agency, and for the provision of  
90 other site-related improvements required by local ordinances for vehicular ingress and egress, including  
91 traffic signalization and control, for public access streets, for structures necessary to ensure stability of  
92 critical slopes, and for storm water management facilities, financed or to be financed in whole or in part  
93 by private funds only if the owner or developer (i) certifies to the governing body that the construction  
94 costs have been paid to the person constructing such facilities or, at the option of the local governing  
95 body, presents evidence satisfactory to the governing body that the time for recordation of any  
96 mechanics lien has expired or evidence that any debt for said construction that may be due and owing is  
97 contested and further provides indemnity with adequate surety in an amount deemed sufficient by the  
98 governing body or its designated administrative agency; (ii) furnishes to the governing body a certified  
99 check or cash escrow in the amount of the estimated costs of construction or a personal, corporate or  
100 property bond, with surety satisfactory to the governing body or its designated administrative agency, in  
101 an amount sufficient for and conditioned upon the construction of such facilities, or a contract for the  
102 construction of such facilities and the contractor's bond, with like surety, in like amount and so  
103 conditioned; or (iii) furnishes to the governing body a bank or savings institution's letter of credit on  
104 certain designated funds satisfactory to the governing body or its designated administrative agency as to  
105 the bank or savings institution, the amount and the form. The amount of such certified check, cash  
106 escrow, bond, or letter of credit shall not exceed the total of the estimated cost of construction based on  
107 unit prices for new public or private sector construction in the locality and a reasonable allowance for  
108 estimated administrative costs, inflation, and potential damage to existing roads or utilities, which shall  
109 not exceed 25 percent of the estimated construction costs. *If the owner or developer defaults on*  
110 *construction of such facilities, the locality shall be entitled to retain the allowance for administrative*  
111 *costs regardless of who ultimately completes the facilities.* "Such facilities," as used in this section,  
112 means those facilities specifically provided for in this section.

113 If a developer records a final plat which may be a section of a subdivision as shown on an approved  
114 preliminary subdivision plat and furnishes to the governing body a certified check, cash escrow, bond, or  
115 letter of credit in the amount of the estimated cost of construction of the facilities to be dedicated within  
116 said section for public use and maintained by the locality, the Commonwealth, or other public agency,  
117 the developer shall have the right to record the remaining sections shown on the preliminary subdivision  
118 plat for a period of five years from the recordation date of any section, or for such longer period as the  
119 local commission or other agent may, at the approval, determine to be reasonable, taking into  
120 consideration the size and phasing of the proposed development, subject to the terms and conditions of

121 this subsection and subject to engineering and construction standards and zoning requirements in effect  
 122 at the time that each remaining section is recorded. In the event a governing body of a county, wherein  
 123 the highway system is maintained by the Department of Transportation, has accepted the dedication of a  
 124 road for public use and such road due to factors other than its quality of construction is not acceptable  
 125 into the secondary system of state highways, then such governing body may, if so provided by its  
 126 subdivision ordinance, require the subdivider or developer to furnish the county with a maintenance and  
 127 indemnifying bond, with surety satisfactory to the governing body or its designated administrative  
 128 agency, in an amount sufficient for and conditioned upon the maintenance of such road until such time  
 129 as it is accepted into the secondary system of state highways. In lieu of such bond, the governing body  
 130 or its designated administrative agency may accept a bank or savings institution's letter of credit on  
 131 certain designated funds satisfactory to the governing body or its designated administrative agency as to  
 132 the bank or savings institution, the amount and the form, or accept payment of a negotiated sum of  
 133 money sufficient for and conditioned upon the maintenance of such road until such time as it is  
 134 accepted into the secondary system of state highways and assume the subdivider's or developer's liability  
 135 for maintenance of such road. "Maintenance of such road" as used in this section, means maintenance of  
 136 the streets, curb, gutter, drainage facilities, utilities or other street improvements, including the correction  
 137 of defects or damages and the removal of snow, water or debris, so as to keep such road reasonably  
 138 open for public usage.

139 As used in this section, "designated administrative agency" means the planning commission of the  
 140 locality or an agent designated by the governing body of the locality for such purpose as set forth in  
 141 §§ 15.2-2258 through 15.2-2261;

142 6. For conveyance of common or shared easements to franchised cable television operators furnishing  
 143 cable television and public service corporations furnishing cable television, gas, telephone and electric  
 144 service to the proposed subdivision. Once a developer conveys an easement that will permit electric,  
 145 cable or telephone service to be furnished to a subdivision, the developer shall, within 30 days after  
 146 written request by a cable television operator or telephone service provider, grant an easement to that  
 147 cable television operator or telephone service provider for the purpose of providing cable television and  
 148 communications services to that subdivision, which easement shall be geographically coextensive with  
 149 the electric service easement, or if only a telephone or cable service easement has been granted, then  
 150 geographically coextensive with that telephone or cable service easement; however, the developer and  
 151 franchised cable television operator or telephone service provider may mutually agree on an alternate  
 152 location for an easement. If the final subdivision plat is recorded and does not include conveyance of a  
 153 common or shared easement as provided herein, the local planning commission or agent designated by  
 154 the governing body to review and act on submitted subdivision plats shall not be responsible to enforce  
 155 the requirements of this subdivision;

156 7. For monuments of specific types to be installed establishing street and property lines;

157 8. That unless a plat is filed for recordation within six months after final approval thereof or such  
 158 longer period as may be approved by the governing body, such approval shall be withdrawn and the plat  
 159 marked void and returned to the approving official; however, in any case where construction of facilities  
 160 to be dedicated for public use has commenced pursuant to an approved plan or permit with surety  
 161 approved by the governing body or its designated administrative agency, or where the developer has  
 162 furnished surety to the governing body or its designated administrative agency by certified check, cash  
 163 escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the  
 164 time for plat recordation shall be extended to one year after final approval or to the time limit specified  
 165 in the surety agreement approved by the governing body or its designated administrative agency,  
 166 whichever is greater;

167 9. For the administration and enforcement of such ordinance, not inconsistent with provisions  
 168 contained in this chapter, and specifically for the imposition of reasonable fees and charges for the  
 169 review of plats and plans, and for the inspection of facilities required by any such ordinance to be  
 170 installed; such fees and charges shall in no instance exceed an amount commensurate with the services  
 171 rendered taking into consideration the time, skill and administrator's expense involved. All such charges  
 172 heretofore made are hereby validated;

173 10. For reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or  
 174 gift to a member of the immediate family of the property owner in accordance with the provisions of  
 175 § 15.2-2244; and

176 11. For the periodic partial and final complete release of any bond, escrow, letter of credit, or other  
 177 performance guarantee required by the governing body under this section in accordance with the  
 178 provisions of § 15.2-2245.

179 B. No locality shall require that any certified check, cash escrow, bond, letter of credit or other  
 180 performance guarantee furnished pursuant to this chapter apply to, or include the cost of, any facility or  
 181 improvement unless such facility or improvement is shown or described on the approved plat or plan of

**182** the project for which such guarantee is being furnished. Furthermore, the terms, conditions, and  
**183** specifications contained in any agreement, contract, performance agreement, or similar document,  
**184** however described or delineated, between a locality or its governing body and an owner or developer of  
**185** property entered into pursuant to this chapter in conjunction with any performance guarantee, as  
**186** described in this subsection, shall be limited to those items depicted or provided for in the approved  
**187** plan, plat, permit application, or similar document for which such performance guarantee is applicable.