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SENATE BILL NO. 360

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Local Government on January 20, 2020)

(Patron Prior to Substitute—Senator Cosgrove)

A BILL to amend and reenact § 15.2-2243 of the Code of Virginia, relating to installation of certain facilities by developer; reimbursement.

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2243 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2243. Payment by subdivider of the pro rata share of the cost of certain facilities.

A. A locality may provide in its subdivision ordinance for payment by a subdivider or developer of land of the pro rata share of the cost of providing reasonable and necessary sewerage, water, and drainage facilities, located outside the property limits of the land owned or controlled by the subdivider or developer but necessitated or required, at least in part, by the construction or improvement of the subdivision or development; however, no such payment shall be required until such time as the governing body or a designated department or agency thereof has established a general sewer, water, and drainage improvement program for an area having related and common sewer, water, and drainage conditions and within which the land owned or controlled by the subdivider or developer is located or the governing body has committed itself by ordinance to the establishment of such a program. Such regulations or ordinance shall set forth and establish reasonable standards to determine the proportionate share of total estimated cost of ultimate sewerage, water, and drainage facilities required to adequately serve a related and common area, when and if fully developed in accord with the adopted comprehensive plan, that shall be borne by each subdivider or developer within the area. Such share shall be limited to the amount necessary to protect water quality based upon the pollutant loading caused by the subdivision or development or to the proportion of such total estimated cost which the increased sewage flow, water flow, and/or increased volume and velocity of storm water runoff to be actually caused by the subdivision or development bears to total estimated volume and velocity of such sewage, water, and/or runoff from such area in its fully developed state. In calculating the pollutant loading caused by the subdivision or development or the volume and velocity of storm water runoff, the governing body shall take into account the effect of all on-site storm water facilities or best management practices constructed or required to be constructed by the subdivider or developer and give appropriate credit therefor.

B. *A locality may also provide in its subdivision ordinance that a subdivider or developer shall install reasonable and necessary sewerage and water facilities, located on or outside the property limits of the land owned or controlled by the subdivider or developer, but necessitated or required, at least in part, by the utility needs of the development or subdivision, including reasonably anticipated capacity, extensions, or maintenance considerations of a utility service plan for the service area. Such subdivider or developer, hereinafter the installing developer, shall be entitled to reimbursement of its costs by any subsequent subdivider or developer that utilizes the installed sewerage or water facility, except for those costs associated with the installing developer's pro rata share. An installing developer's pro rata share shall be determined by calculating the cost to install the sewerage and water facilities as reasonable and necessary to serve the volume and rate of flow of sewerage and water in its development or subdivision. A subsequent subdivider or developer that utilizes the installed facility shall be required to reimburse the installing developer based upon the subsequent developer's pro rata share, which shall be determined by the impact the subsequent developer's subdivision or development has upon the volume and rate of flow of sewerage and water through the installed facility. An installing developer may transfer to the locality by written agreement its right to the maximum reimbursable amount for the water or sewer facility in exchange for entitlement to the respective water or sewer connection or capacity fees due to the locality that are imposed upon the installing developer's lots within its subdivision or development. An installing developer's right to reimbursement shall expire 15 years after the date the installed facility is placed into service by the locality if the installing developer fails to submit to the locality evidence of its actual cost for the installed facility. The maximum reimbursable amount shall be equal to the actual cost for the installed facility, less the installing developer's pro rata share. The locality is authorized to administer by ordinance and by adopted reasonable policies and procedures standards for installation of such water and sewerage facilities and parameters for pro rata reimbursement or connection or capacity fee reimbursement.*

C. Each such payment received shall be expended only for necessary engineering and related studies and the construction of those facilities identified in the established sewer, water, and drainage program; however, in lieu of such payment the governing body may provide for the posting of a personal,

corporate or property bond, cash escrow or other method of performance guarantee satisfactory to it conditioned on payment at commencement of such studies or construction. The payments received shall be kept in a separate account for each of the individual improvement programs until such time as they are expended for the improvement program. All bonds, payments, cash escrows or other performance guarantees hereunder shall be released and used, with any interest earned, as a tax credit on the real estate taxes on the property if construction of the facilities identified in the established water, sewer and drainage programs is not commenced within ~~twelve~~ *12* years from the date of the posting of the bond, payment, cash escrow or other performance guarantee.

~~C.~~ *D.* Any funds collected for pro rata programs under this section prior to July 1, 1990, shall continue to be held in separate, interest bearing accounts for the project or projects for which the funds were collected and any interest from such accounts shall continue to accrue to the benefit of the subdivider or developer until such time as the project or projects are completed or until such time as a general sewer and drainage improvement program is established to replace a prior sewer and drainage improvement program. If such a general improvement program is established, the governing body of any locality may abolish any remaining separate accounts and require the transfer of the assets therein into a separate fund for the support of each of the established sewer, water, and drainage programs. Upon the transfer of such assets, subdividers and developers who had met the terms of any existing agreements made under a previous pro rata program shall receive any outstanding interest which has accrued up to the date of transfer, and such subdividers and developers shall be released from any further obligation under those existing agreements. All bonds, payments, cash escrows or other performance guarantees hereunder shall be released and used, with any interest earned, as a tax credit on the real estate taxes on the property if construction of the facilities identified in the established water, sewer and drainage programs is not commenced within ~~twelve~~ *12* years from the date of the posting of the bond, payment, cash escrow or other performance guarantee.