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SENATE BILL NO. 52

Offered January 12, 2022

Prefiled December 30, 2021

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

Patrons—Cosgrove and DeSteph

Referred to Committee on Local Government**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 that has adopted an ordinance pursuant to subsection A may also provide in its subdivision ordinance that, when adequate water, sewerage, or drainage facilities are not available to serve a proposed subdivision or development, the subdivider or developer of the property may be permitted to install reasonable and necessary water, sewerage, and drainage 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. The ordinance ~~may~~ *shall* provide that such subdivider or developer ~~may~~ *shall* be entitled to reimbursement of a portion of its costs by any subsequent subdivider or developer that utilizes the installed water, sewerage or drainage facilities or from connection fees paid for lots within its development, and the ordinance may limit the duration of the reimbursements. The locality is authorized to administer by ordinance and by adopted reasonable policies and procedures standards for installation of such water, sewerage, and drainage facilities and parameters for pro rata reimbursement or connection or capacity fee reimbursement. The provisions of this subsection shall not be deemed to limit the authority of (i) localities that have not adopted an ordinance pursuant to subsection A or (ii) authorities established pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.) to establish policies for reimbursement or credits from connection fees or to other utility fund sources to subdividers and developers constructing water, sewerage, or drainage facilities.

C. Each payment pursuant to subsection A 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

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59 until such time as they are expended for the improvement program. All bonds, payments, cash escrows,
60 or other performance guarantees hereunder shall be released and used, with any interest earned, as a tax
61 credit on the real estate taxes on the property if construction of the facilities identified in the established
62 water, sewer, and drainage programs is not commenced within 12 years from the date of the posting of
63 the bond, payment, cash escrow, or other performance guarantee.

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