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SENATE BILL NO. 580

Offered January 16, 2004

A BILL to amend the Code of Virginia by adding a section numbered 15.2-2286.1, relating to permitted provisions in certain zoning ordinances.

Patrons—Ticer, Edwards, Lucas, Puller and Whipple; Delegates: Ebbin and Van Landingham

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.2-2286.1 as follows:

§ 15.2-2286.1. Permitted provisions in certain zoning ordinances.

A. In addition to the provisions of § 15.2-2286, and notwithstanding other provisions of law, a zoning ordinance adopted by a locality whose entire geographic area is wholly or partially within an area designated as nonattainment for ozone pursuant to the federal Clean Air Act Amendments of 1990, 42 U.S.C. section 7407(d), may include reasonable regulations and provisions as to any or all of the following matters:

1. For the reduction of approved uses, density, floor area ratio, or intensity applicable to specific property for which there has been no substantial construction activity performed in good faith pursuant to an approved permit with the preceding three years and, in the case of specific property to which subsection B or C of § 15.2-2298 or subsection B or C of § 15.2-2303 applies, where there has been no dedication of real property of substantial value or no substantial cash payment for or no construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, and, in the foregoing instances, where the governing body has determined that existing transportation facilities and services, and those facilities for which construction contracts have been executed, are inadequate to meet the level of service specified for transportation in the adopted comprehensive plan and are projected to be inadequate should the property fully develop with the next three years in accordance with existing zoning regulations applicable to it. Any rezoning action undertaken pursuant to this subsection may be initiated only upon the motion of the governing body or resolution of the local planning commission which resolution or motion complies with subdivision A 7 of § 15.2-2286. Notwithstanding any other provision of law, in the review of any rezoning approved pursuant to this subsection, the law otherwise applicable to piecemeal downzoning actions shall not apply and the presumptions of validity and burdens of proof and persuasion applicable to non-piecemeal zoning decisions shall apply.

2. For the adoption of transportation infrastructure overlay districts to allow, either as a matter of right under applicable zoning regulations or with the approval of a special exception, special use permit, or rezoning application, the transfer of some or all specified development rights from property located outside the boundaries of a transportation infrastructure overlay district to property located within such overlay district. Where adopted, transportation infrastructure overlay districts shall be established to encourage development in areas of the locality where mass transit and other existing or planned transportation facilities or services are projected to best meet the levels of service specified for transportation in the comprehensive plan. The locality's comprehensive plan shall identify those areas of the locality eligible for the establishment of transportation infrastructure overlay districts.

The transfer of development rights from property located outside the boundaries of a transportation infrastructure overlay district shall be subject to such terms as may be provided by zoning regulations, the conditions of a special use permit or special exception, or the proffered conditions of a rezoning application, including that the terms are binding on the owners of such property and on their successors and assigns.

B. The authority granted by this section shall continue to apply in its entirety to any locality that has exercised some or all of the authority granted hereunder whether such locality may thereafter no longer be located in whole or in part within an area designated as nonattainment for ozone pursuant to the federal Clean Air Act Amendments of 1990.

INTRODUCED

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