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SENATE BILL NO. 373

Offered January 11, 2006

Prefiled January 11, 2006

A *BILL to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 7.1, consisting of sections numbered 15.2-2316.1 and 15.2-2316.2, relating to transfer of development rights.*

Patrons—Watkins and Houck

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 in Chapter 22 of Title 15.2 an article numbered 7.1, consisting of sections numbered 15.2-2316.1 and 15.2-2316.2 as follows:

*Article 7.1.**Transfer of Development Rights.**§ 15.2-2316.1. Definitions.*

As used in this article, the term:

"Development rights" means the maximum development that would be allowed on the sending property under any local zoning ordinance of a locality in effect on the date the locality adopts an ordinance pursuant to this article.

"Receiving area" means an area identified by an ordinance and designated by the comprehensive plan as an area authorized to receive development rights transferred from a sending area.

"Receiving property" means a lot or parcel within which development rights are increased pursuant to a transfer of development rights. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property without substantial adverse environmental, economic, or social impact to the receiving property or to neighboring property.

"Sending area" means an area identified by an ordinance and designated by the comprehensive plan as an area from which development rights are authorized to be transferred to a receiving area.

"Sending property" means a lot or parcel with special characteristics, including farm land, woodland, mountain land, a flood plain, natural habitats, or land that has unique aesthetic, architectural, or historic value that a locality desires to protect from future development.

"Transfer of development rights" means the process by which development rights from a sending property are affixed to one or more receiving properties.

§ 15.2-2316.2. Localities may provide for transfer of development rights.

A. Pursuant to the provisions of this article, the governing body of any locality by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer of development rights within its jurisdiction. Any locality adopting or amending any such transfer of development rights ordinance shall give notice and hold a public hearing in accordance with § 15.2-2204 prior to approval by the governing body.

B. Any proposed transfer of development rights shall be subject to the approval and consent of the property owners of both the sending and receiving property; however, a separate vote of approval or disapproval by the local governing authority shall not be required for each individual transfer of development rights if all requirements of the local ordinance have been satisfied.

C. Prior to any transfer of development rights, a locality shall adopt an ordinance providing for:

1. The issuance and recordation of the instruments necessary to sever development rights from the sending property and to affix development rights to the receiving property. These instruments shall be executed by the affected property owners and lienholders;

2. The preservation of the character of the sending property and assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner;

3. The severance of transferable development rights from the sending property and the delayed transfer of development rights to a receiving property;

4. The purchase, sale, exchange, or other conveyance of transferable development rights prior to the rights being affixed to a receiving property;

5. A system for monitoring the severance, ownership, assignment, and transfer of transferable development rights;

6. A map or other description of areas designated as sending and receiving areas for the transfer of

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59 *development rights between properties with such map or description to be incorporated into the*
60 *locality's comprehensive plan;*

61 *7. A capital improvement program for the receiving zone, which includes the location and cost of all*
62 *infrastructure and that specifically addresses providing necessary utility services within any designated*
63 *receiving zone within a specified time period so that no development seeking to utilize development*
64 *potential transfer is unreasonably delayed because utility services are not available; and*

65 *8. Such other provisions as the locality deems necessary to aid in the implementation of the*
66 *provisions of this article.*

67 *D. Development rights made transferable pursuant to this article shall be interests in real property*
68 *and shall be considered as such for purposes of conveyance and taxation. Once a deed of transferable*
69 *development rights created pursuant to this article has been sold, conveyed, or otherwise transferred by*
70 *the owner of the parcel from which the development rights were derived, the transfer of development*
71 *rights shall vest in the grantee and become freely alienable. For the purposes of ad valorem real*
72 *property taxation, the value of a transferable development right shall be deemed appurtenant to the*
73 *sending property until the transferable development right is registered as a distinct interest in real*
74 *property with the appropriate tax assessor or the transferable development right is used at a receiving*
75 *property and becomes appurtenant thereto.*

76 *E. Proposed transfers of development rights shall become effective upon the recording of the*
77 *conveyance and the filing of a certified copy of such recording with the local governing body of the*
78 *locality.*