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SENATE BILL NO. 373

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Local Government  
on January 24, 2006)

(Patrons Prior to Substitute—Senators Watkins and Houck)

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.

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 permitted uses and density of development that would be allowed on the sending property under any local zoning ordinance of a locality in effect on the date an application is submitted 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.

"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 that a locality deems necessary to limit future development in accordance with the ordinance adopted in subsection C of § 15.2-2316.2.

"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 only be initiated upon application by the property owners of both the sending and receiving properties. A locality may not require property owners to transfer development rights as a condition of the development of any property.

C. Prior to any transfer of development rights, a locality shall adopt an ordinance based on findings of public benefit. Such ordinance shall provide 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. The instrument shall identify the development rights being transferred, identification of the sending property and the receiving property;

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 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 development rights between properties;

7. The identification of parcels, if any, within a receiving area that are inappropriate as receiving properties;

8. The ordinance shall include permitted uses and the maximum increases in density in the receiving

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60 area;

61 9. The minimum acreage of a sending property and the minimum reduction in density of the sending  
62 property that may be conveyed in a transfer of development rights;

63 10. A capital improvement program for the receiving area, which includes the location and cost of  
64 all infrastructure and that specifically addresses plans for providing necessary utility services within any  
65 designated receiving area;

66 11. The review of an application by the planning commission or its agent to determine whether the  
67 application complies with the provisions of the ordinance. The application shall be deemed approved  
68 upon the determination of compliance with the ordinance and upon recordation of the instrument  
69 transferring the development rights in the land records of the office of the circuit court clerk for the  
70 locality; and

71 12. Such other provisions as the locality deems necessary to aid in the implementation of the  
72 provisions of this article.

73 D. The ordinance may provide for the allowance for residential density to be converted to an  
74 increase in the square feet of a commercial, industrial or other use on the receiving property.

75 E. Development rights made transferable pursuant to this article shall be interests in real property  
76 and shall be considered as such for purposes of conveyance and taxation. Once an application has been  
77 approved and a deed of transferable development rights created pursuant to this article has been sold,  
78 conveyed, or otherwise transferred by the owner of the sending property, the transfer of development  
79 rights shall vest in the grantee and may be transferred to a successor in interest. Any transfer of the  
80 development rights to a different property in a receiving area shall be subject to review pursuant to the  
81 provisions of the ordinance adopted pursuant to provision 11 of subsection C.

82 F. For the purposes of ad valorem real property taxation, the value of a transferable development  
83 right shall be deemed appurtenant to the sending property until the transferable development right is  
84 recorded as a distinct interest in real property with the appropriate tax assessor or the transferable  
85 development right is used at a receiving property and becomes appurtenant thereto.

86 G. Approved transfers of development rights shall become effective upon the recording of the  
87 conveyance and the filing of a certified copy of such recording with the local governing body of the  
88 locality.

89 H. Localities shall incorporate the map identified in provision 6 of subsection C into the  
90 comprehensive plan.

91 I. No amendment to the zoning map, nor any amendments to the text of the zoning ordinance with  
92 respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or  
93 materially restrict, reduce, or modify the uses, or the density of use permitted in the zoning district  
94 applicable to any property to which development rights have been transferred, shall be effective with  
95 respect to such property unless there has been mistake, fraud, or a change in circumstances  
96 substantially affecting the public health, safety, or welfare.