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SENATE BILL NO. 1329

Offered January 12, 2007

A BILL to amend and reenact §§ 15.2-2242 and 15.2-2286 of the Code of Virginia, relating to design and construction of public facilities.

Patron—Williams

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2242 and 15.2-2286 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2242. Optional provisions of a subdivision ordinance.

A subdivision ordinance may include:

1. Provisions for variations in or exceptions to the general regulations of the subdivision ordinance in cases of unusual situations or when strict adherence to the general regulations would result in substantial injustice or hardship.

2. A requirement (i) for the furnishing of a preliminary opinion from the applicable health official regarding the suitability of a subdivision for installation of subsurface sewage disposal systems where such method of sewage disposal is to be utilized in the development of a subdivision and (ii) that all buildings constructed on lots resulting from subdivision of a larger tract that abuts or adjoins a public water or sewer system or main shall be connected to that public water or sewer system or main subject to the provisions of § 15.2-2121.

3. A requirement that, in the event streets in a subdivision will not be constructed to meet the standards necessary for inclusion in the secondary system of state highways or for state street maintenance moneys paid to municipalities, the subdivision plat and all approved deeds of subdivision, or similar instruments, must contain a statement advising that the streets in the subdivision do not meet state standards and will not be maintained by the Department of Transportation or the localities enacting the ordinances. Grantors of any subdivision lots to which such statement applies must include the statement on each deed of conveyance thereof. However, localities in their ordinances may establish minimum standards for construction of streets that will not be built to state standards.

For streets constructed or to be constructed, as provided for in this subsection, a subdivision ordinance may require that the same procedure be followed as that set forth in provision 5 of § 15.2-2241. Further, the subdivision ordinance may provide that the developer's financial commitment shall continue until such time as the local government releases such financial commitment in accordance with provision 11 of § 15.2-2241.

4. Reasonable provision for the voluntary funding of off-site road improvements and reimbursements of advances by the governing body. If a subdivider or developer makes an advance of payments for or construction of reasonable and necessary road improvements located outside the property limits of the land owned or controlled by him, the need for which is substantially generated and reasonably required by the construction or improvement of his subdivision or development, and such advance is accepted, the governing body may agree to reimburse the subdivider or developer from such funds as the governing body may make available for such purpose from time to time for the cost of such advance together with interest, which shall be excludable from gross income for federal income tax purposes, at a rate equal to the rate of interest on bonds most recently issued by the governing body on the following terms and conditions:

a. The governing body shall determine or confirm that the road improvements were substantially generated and reasonably required by the construction or improvement of the subdivision or development and shall determine or confirm the cost thereof, on the basis of a study or studies conducted by qualified traffic engineers and approved and accepted by the subdivider or developer.

b. The governing body shall prepare, or cause to be prepared, a report accepted and approved by the subdivider or developer, indicating the governmental services required to be furnished to the subdivision or development and an estimate of the annual cost thereof for the period during which the reimbursement is to be made to the subdivider or developer.

c. The governing body may make annual reimbursements to the subdivider or developer from funds made available for such purpose from time to time, including but not limited to real estate taxes assessed and collected against the land and improvements on the property included in the subdivision or development in amounts equal to the amount by which such real estate taxes exceed the annual cost of providing reasonable and necessary governmental services to such subdivision or development.

5. In a county having the urban county executive form of government, in any city located within or

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59 adjacent thereto, or any county adjacent thereto or a town located within such county, in any county
60 with a population between 57,000 and 57,450, or in any county with a population between 60,000 and
61 63,000, and in any city with a population between 140,000 and 160,000, provisions for payment by a
62 subdivider or developer of land of a pro rata share of the cost of reasonable and necessary road
63 improvements, located outside the property limits of the land owned or controlled by him but serving an
64 area having related traffic needs to which his subdivision or development will contribute, to reimburse
65 an initial subdivider or developer who has advanced such costs or constructed such road improvements.
66 Such ordinance may apply to road improvements constructed after July 1, 1988, in a county having the
67 urban county executive form of government; in a city located within or adjacent to a county having the
68 urban county executive form of government, or in a county adjacent to a county having the urban
69 county executive form of government or town located within such county and in any county with a
70 population between 57,000 and 57,450, or in any county with a population between 60,000 and 63,000,
71 such ordinance may only apply to road improvements constructed after the effective date of such
72 ordinance.

73 Such provisions shall provide for the adoption of a pro rata reimbursement plan which shall include
74 reasonable standards to identify the area having related traffic needs, to determine the total estimated or
75 actual cost of road improvements required to adequately serve the area when fully developed in
76 accordance with the comprehensive plan or as required by proffered conditions, and to determine the
77 proportionate share of such costs to be reimbursed by each subsequent subdivider or developer within
78 the area, with interest (i) at the legal rate or (ii) at an inflation rate prescribed by a generally accepted
79 index of road construction costs, whichever is less.

80 For any subdivision ordinance adopted pursuant to provision 5 of this section after February 1, 1993,
81 no such payment shall be assessed or imposed upon a subsequent developer or subdivider if (i) prior to
82 the adoption of a pro rata reimbursement plan the subsequent subdivider or developer has proffered
83 conditions pursuant to § 15.2-2303 for offsite road improvements and such proffered conditions have
84 been accepted by the locality, (ii) the locality has assessed or imposed an impact fee on the subsequent
85 development or subdivision pursuant to Article 8 (§ 15.2-2317 et seq.) of Chapter 22, or (iii) the
86 subsequent subdivider or developer has received final site plan, subdivision plan, or plan of development
87 approval from the locality prior to the adoption of a pro rata reimbursement plan for the area having
88 related traffic needs.

89 The amount of the costs to be reimbursed by a subsequent developer or subdivider shall be
90 determined before or at the time the site plan or subdivision is approved. The ordinance shall specify
91 that such costs are to be collected at the time of the issuance of a temporary or final certificate of
92 occupancy or functional use and occupancy within the development, whichever shall come first. The
93 ordinance also may provide that the required reimbursement may be paid (i) in lump sum, (ii) by
94 agreement of the parties on installment at a reasonable rate of interest or rate of inflation, whichever is
95 less, for a fixed number of years, or (iii) on such terms as otherwise agreed to by the initial and
96 subsequent subdividers and developers.

97 Such ordinance provisions may provide that no certificate of occupancy shall be issued to a
98 subsequent developer or subdivider until (i) the initial developer certifies to the locality that the
99 subsequent developer has made the required reimbursement directly to him as provided above or (ii) the
100 subsequent developer has deposited the reimbursement amount with the locality for transfer forthwith to
101 the initial developer.

102 6. Provisions for establishing and maintaining access to solar energy to encourage the use of solar
103 heating and cooling devices in new subdivisions. The provisions shall be applicable to a new subdivision
104 only when so requested by the subdivider.

105 7. Provisions, in any town with a population between 14,500 and 15,000, granting authority to the
106 governing body, in its discretion, to use funds escrowed pursuant to provision 5 of § 15.2-2241 for
107 improvements similar to but other than those for which the funds were escrowed, if the governing body
108 (i) obtains the written consent of the owner or developer who submitted the escrowed funds; (ii) finds
109 that the facilities for which funds are escrowed are not immediately required; (iii) releases the owner or
110 developer from liability for the construction or for the future cost of constructing those improvements
111 for which the funds were escrowed; and (iv) accepts liability for future construction of these
112 improvements. If such town fails to locate such owner or developer after making a reasonable attempt to
113 do so, the town may proceed as if such consent had been granted. In addition, the escrowed funds to be
114 used for such other improvement may only come from an escrow that does not exceed a principal
115 amount of \$30,000 plus any accrued interest and shall have been escrowed for at least five years.

116 8. (Effective until July 1, 2007) Provisions for clustering of single-family dwellings and preservation
117 of open space developments, which provisions shall comply with the requirements and procedures set
118 forth in subdivision A 12 of § 15.2-2286.

119 8. (Effective July 1, 2007) Provisions for clustering of single-family dwellings and preservation of
120 open space developments, which provisions shall comply with the requirements and procedures set forth

121 in § 15.2-2286.1.

122 9. Provisions requiring that where a lot being subdivided or developed fronts on an existing street,
123 and adjacent property on either side has an existing sidewalk, a locality may require the dedication of
124 land for, and construction of, a sidewalk on the property being subdivided or developed, to connect to
125 the existing sidewalk. Nothing in this paragraph shall alter in any way any authority of localities or the
126 Department of Transportation to require sidewalks on any newly constructed street or highway.

127 10. Provisions for requiring and considering Phase I environmental site assessments based on the
128 anticipated use of the property proposed for the subdivision or development that meet generally accepted
129 national standards for such assessments, such as those developed by the American Society for Testing
130 and Materials, and Phase II environmental site assessments, that also meet accepted national standards,
131 such as, but not limited to, those developed by the American Society for Testing and Materials, if the
132 locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in
133 accordance with regulations of the United States Environmental Protection Agency and the American
134 Society for Testing and Materials. A reasonable fee may be charged for the review of such
135 environmental assessments. Such fees shall not exceed an amount commensurate with the services
136 rendered, taking into consideration the time, skill, and administrative expense involved in such review.

137 11. Provisions for requiring disclosure and remediation of contamination and other adverse
138 environmental conditions of the property prior to approval of subdivision and development plans.

139 12. *Provisions for adoption of guidelines for the design and construction of public facilities, public*
140 *infrastructure, and other structures within the subdivision or development.*

141 § 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent
142 taxes.

143 A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to
144 any or all of the following matters:

145 1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any
146 district.

147 2. For the temporary application of the ordinance to any property coming into the territorial
148 jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning
149 ordinance, and pending the orderly amendment of the ordinance.

150 3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding
151 any other provisions of this article, the governing body of any locality may reserve unto itself the right
152 to issue such special exceptions. Conditions imposed in connection with residential special use permits,
153 wherein the applicant proposes affordable housing, shall be consistent with the objective of providing
154 affordable housing. When imposing conditions on residential projects specifying materials and methods
155 of construction or specific design features, the approving body shall consider the impact of the
156 conditions upon the affordability of housing.

157 The governing body or the board of zoning appeals of the City of Norfolk may impose a condition
158 upon any special exception relating to retail alcoholic beverage control licensees which provides that
159 such special exception will automatically expire upon a change of ownership of the property, a change
160 in possession, a change in the operation or management of a facility or upon the passage of a specific
161 period of time.

162 The governing body of the City of Richmond may impose a condition upon any special use permit
163 issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special
164 use permit shall be subject to an automatic review by the governing body upon a change in possession,
165 a change in the owner of the business, or a transfer of majority control of the business entity. Upon
166 review by the governing body, it may either amend or revoke the special use permit after notice and a
167 public hearing as required by § 15.2-2206.

168 4. For the administration and enforcement of the ordinance including the appointment or designation
169 of a zoning administrator who may also hold another office in the locality. The zoning administrator
170 shall have all necessary authority on behalf of the governing body to administer and enforce the zoning
171 ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in
172 violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including
173 injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to
174 § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for
175 the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307.
176 Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of
177 less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal
178 commercial uses, parking of commercial trucks in residential zoning districts, or similar short-term,
179 recurring violations.

180 Where provided by ordinance, the zoning administrator may be authorized to grant a modification
181 from any provision contained in the zoning ordinance with respect to physical requirements on a lot or

182 parcel of land, including but not limited to size, height, location or features of or related to any building,
183 structure, or improvements, if the administrator finds in writing that: (i) the strict application of the
184 ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties
185 in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not
186 be of substantial detriment to adjacent property and the character of the zoning district will not be
187 changed by the granting of the modification. Prior to the granting of a modification, the zoning
188 administrator shall give, or require the applicant to give, all adjoining property owners written notice of
189 the request for modification, and an opportunity to respond to the request within 21 days of the date of
190 the notice. The zoning administrator shall make a decision on the application for modification and issue
191 a written decision with a copy provided to the applicant and any adjoining landowner who responded in
192 writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall
193 constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning
194 appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the
195 circuit court as provided by § 15.2-2314.

196 The zoning administrator shall respond within 90 days of a request for a decision or determination
197 on zoning matters within the scope of his authority unless the requester has agreed to a longer period.

198 5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any
199 such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000.
200 If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or
201 remedy the violation in compliance with the zoning ordinance, within a time period established by the
202 court. Failure to remove or abate a zoning violation within the specified time period shall constitute a
203 separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, and any
204 such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for
205 each 10-day period punishable by a fine of not less than \$100 nor more than \$1,500.

206 6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of
207 notices and other expenses incident to the administration of a zoning ordinance or to the filing or
208 processing of any appeal or amendment thereto.

209 7. For the amendment of the regulations or district maps from time to time, or for their repeal.
210 Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the
211 governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or
212 classifications of property. Any such amendment may be initiated (i) by resolution of the governing
213 body; (ii) by motion of the local planning commission; or (iii) by petition of the owner, contract
214 purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the
215 subject of the proposed zoning map amendment, addressed to the governing body or the local planning
216 commission, who shall forward such petition to the governing body; however, the ordinance may
217 provide for the consideration of proposed amendments only at specified intervals of time, and may
218 further provide that substantially the same petition will not be reconsidered within a specific period, not
219 exceeding one year. Any such resolution or motion by such governing body or commission proposing
220 the rezoning shall state the above public purposes therefor.

221 In any county having adopted such zoning ordinance, all motions, resolutions or petitions for
222 amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such
223 reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or
224 consents to action beyond such period or unless the applicant withdraws his motion, resolution or
225 petition for amendment to the zoning ordinance or map, or both. In the event of and upon such
226 withdrawal, processing of the motion, resolution or petition shall cease without further action as
227 otherwise would be required by this subdivision.

228 8. For the submission and approval of a plan of development prior to the issuance of building
229 permits to assure compliance with regulations contained in such zoning ordinance.

230 9. For areas and districts designated for mixed use developments or planned unit developments as
231 defined in § 15.2-2201.

232 10. For the administration of incentive zoning as defined in § 15.2-2201.

233 11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that
234 would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange
235 for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the
236 higher zoning classification. The locality may establish reasonable guidelines for determining the amount
237 of excess real estate tax collected and the method and duration for applying the tax credit. For purposes
238 of this section, "downzoning" means a zoning action by a locality that results in a reduction in a
239 formerly permitted land use intensity or density.

240 12. (Repealed effective July 1, 2007) Provisions for the clustering of single-family dwellings so as to
241 preserve open space.

242 a. A locality may, at its option, provide in its zoning or subdivision ordinance standards, conditions
243 and criteria for clustering of single-family dwellings and the preservation of open space developments.

244 In establishing such standards, conditions and criteria, the governing body may, in its discretion, include
 245 any provisions it determines appropriate to ensure quality development, preservation of open space and
 246 compliance with its comprehensive plan and land use ordinances. The density calculation of the cluster
 247 development shall be based upon the same criteria for the property as would otherwise be permitted by
 248 applicable land use ordinances. As a locality determines, at its option, to provide for clustering of
 249 single-family dwellings and the preservation of open space developments, it may vary provisions for
 250 such developments for each different zoning area within the locality.

251 If proposals for clustering of single-family dwellings and the preservation of open space
 252 developments comply with the locality's adopted standards, conditions and criteria, the development and
 253 open space preservation shall be permitted by right under the local subdivision ordinance. The
 254 implementation and approval of the cluster development and open space preservation shall be done
 255 administratively by the locality's staff and without a public hearing. No local ordinance shall require that
 256 a special exception, special use, or conditional use permit be obtained for such developments. However,
 257 any such ordinance may exempt (i) developments of two acres or less and (ii) property located in an Air
 258 Installation Compatible Use Zone from the provisions of this subdivision.

259 b. Additionally, in any zoning or subdivision ordinance adopted pursuant to subdivision A 12, a
 260 locality may, at its option, provide for the clustering of single-family dwellings and the preservation of
 261 open space at a density calculation greater than the density permitted in the applicable land use
 262 ordinance. To implement and approve such increased density development, the locality may, at its
 263 option, (i) establish and provide in its zoning or subdivision ordinance standards, conditions, and criteria
 264 for such development, and if the proposed development complies with those standards, conditions and
 265 criteria, it shall be permitted by right and approved administratively by the locality staff in the same
 266 manner provided in subdivision A 12 a, or (ii) approve the increased density development upon approval
 267 of a special exception, special use permit, conditional use permit or rezoning.

268 c. Any locality that provides for clustering of single-family dwellings and preservation of open space
 269 upon approval of a special exception, special use permit, conditional use permit or rezoning shall no
 270 later than July 1, 2004, amend its applicable land use ordinance to comply with the provisions of
 271 subdivision A 12. Any land use provisions for clustering of single-family dwellings and preservation of
 272 open space adopted after the effective date of this act shall comply with subdivision A 12.
 273 Notwithstanding any of the requirements of subdivision A 12 to the contrary, any local government land
 274 use ordinance in affect as of January 1, 2002, that provides for the clustering of single-family dwellings
 275 and preservation of open space development by right without requiring either a special exception, special
 276 use permit, conditional use permit or other discretionary approval may remain in effect at the option of
 277 the locality.

278 13. Provisions for requiring and considering Phase I environmental site assessments based on the
 279 anticipated use of the property proposed for the subdivision or development that meet generally accepted
 280 national standards for such assessments, such as those developed by the American Society for Testing
 281 and Materials, and Phase II environmental site assessments, that also meet accepted national standards,
 282 such as, but not limited to, those developed by the American Society for Testing and Materials, if the
 283 locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in
 284 accordance with regulations of the United States Environmental Protection Agency and the American
 285 Society for Testing and Materials. A reasonable fee may be charged for the review of such
 286 environmental assessments. Such fees shall not exceed an amount commensurate with the services
 287 rendered, taking into consideration the time, skill, and administrative expense involved in such review.

288 14. Provisions for requiring disclosure and remediation of contamination and other adverse
 289 environmental conditions of the property prior to approval of subdivision and development plans.

290 15. *Provisions for adoption of guidelines for the design and construction of public facilities, public*
 291 *infrastructure, and other structures within the area to be rezoned, or subject to a special exception,*
 292 *special use permit, or variance.*

293 B. Prior to the initiation of an application for a special exception, special use permit, variance,
 294 rezoning or other land disturbing permit, including building permits and erosion and sediment control
 295 permits, or prior to the issuance of final approval, the authorizing body may require the applicant to
 296 produce satisfactory evidence that any delinquent real estate taxes owed to the locality which have been
 297 properly assessed against the subject property have been paid.