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SENATE BILL NO. 713

Offered January 20, 2006

A BILL to amend and reenact § 15.2-2305 of the Code of Virginia, relating to affordable housing.

Patron—Marsh

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-2305 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-2305. Affordable dwelling unit ordinances.

A. In furtherance of the purpose of providing affordable shelter for all residents of the Commonwealth, the governing body of any county, other than counties to which § 15.2-2304 applies, city or town may by amendment to the zoning ordinances of such locality provide for an affordable housing dwelling unit program. Such program shall address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of moderately priced housing by providing for optional increases in density in order to reduce land costs for such moderately priced housing. Any local ordinance of any locality providing optional increases in density for provision of low and moderate income housing adopted before December 31, 1988, shall continue in full force and effect. Any local ordinance may authorize the governing body to (i) establish qualifying jurisdiction-wide affordable dwelling unit sales prices based on local market conditions, (ii) establish jurisdiction-wide affordable dwelling unit qualifying income guidelines, and (iii) offer incentives other than density increases, such as reductions or waiver of permit, development, and infrastructure fees, as the governing body deems appropriate to encourage the provision of affordable housing. Counties to which § 15.2-2304 applies shall be governed by the provisions of § 15.2-2304 for purposes of the adoption of an affordable dwelling unit ordinance.

B. A zoning ordinance establishing an affordable housing dwelling unit program may include, among other things, reasonable regulations and provisions as to any or all of the following:

1. For a definition of affordable housing and affordable dwelling units.

2. For application of the requirements of an affordable housing dwelling unit program to any site, as defined by the locality, or a portion thereof at one location which is the subject of an application for rezoning or special exception or, at the discretion of the local governing body, site plan or subdivision plat which yields, as submitted by the applicant, fifty or more dwelling units at an equivalent density greater than one unit per acre and which is located within an approved sewer area.

3. For an increase of up to twenty percent in the developable density of each site subject to the ordinance and for a provision requiring up to twelve and one-half percent of the total units approved, including the optional density increase, to be affordable dwelling units, as defined in the ordinance. In the event a twenty percent increase is not achieved, the percentage of affordable dwelling units required shall maintain the same ratio of twenty percent to twelve and one-half percent.

4. For increases by up to twenty percent of the density or of the lower and upper end of the density range set forth in the comprehensive plan of such locality applicable to rezoning and special exception applications that request approval of single family detached dwelling units or single family attached dwelling units, when such applications are approved after the effective date of a local affordable housing zoning ordinance amendment.

5. For a requirement that not less than twelve and one-half percent of the total number of dwelling units approved pursuant to a zoning ordinance amendment enacted pursuant to subdivision B 4 of this section shall be affordable dwelling units, as defined by the local zoning ordinance unless reduced by the twenty to twelve and one-half percent ratio pursuant to subdivision B 3 of this section.

6. For increases by up to ten percent of the density or of the lower and upper end of the density range, whichever is appropriate, set forth in the comprehensive plan of such locality applicable to rezoning and special exception or, at the discretion of the local governing body, site plan and subdivision plat applications that request approval of nonelevator multiple family dwelling unit structures four stories or less in height when such applications are approved after the effective date of a local affordable housing zoning ordinance. However, at the option of the applicant, the provision pursuant to subdivision B 4 shall apply.

7. For a requirement that not less than six and one-quarter percent of the total number of dwelling units approved pursuant to a zoning ordinance amendment enacted pursuant to subdivision B 6 of this section shall be affordable dwelling units, as defined in the local zoning ordinance. In the event a ten percent increase is not achieved, the percentage of affordable dwelling units required shall maintain the

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59 same ratio of ten percent to six and one-quarter percent.

60 8. For reasonable regulations requiring the affordable dwelling units to be built and offered for sale
61 or rental concurrently with the construction and certificate of occupancy of a reasonable proportion of
62 the market rate units.

63 9. For standards of compliance with the provisions of an affordable housing dwelling unit program
64 and for the authority of the local governing body or its designee to enforce compliance with such
65 standards and impose reasonable penalties for noncompliance, provided that a local zoning ordinance
66 provide for an appeal process for any party aggrieved by a decision of the local governing body.

67 10. *For the allowance of nonprofit organizations exempt from taxation under § 501(c)(3) of the*
68 *Internal Revenue Code that have as a principal purpose the development of housing for low- or*
69 *moderate-income persons to subdivide any tract of land that will be used for the development of housing*
70 *for low- and moderate-income persons without regard to any limitation contained in any provision of*
71 *Article 6 (§ 15.2-2240 et seq.) of this chapter or any provision in a subdivision ordinance adopted in*
72 *accordance with Article 6 of this chapter that substantially impairs the ability of such organizations to*
73 *subdivide.*

74 C. Nothing contained in this section shall apply to any elevator structure four stories or above.

75 D. Any ordinance adopted hereunder shall provide that the local governing body shall have no more
76 than 280 days in which to process site or subdivision plans proposing the development or construction
77 of affordable housing or affordable dwelling units under such ordinance. The calculation of such period
78 of review shall include only the time that plans are in review by the local governing body and shall not
79 include such time as may be required for revision or modification in order to comply with lawful
80 requirements set forth in applicable ordinances and regulations.

81 E. A locality establishing an affordable housing dwelling unit program in its zoning ordinance shall
82 establish in its general ordinances, adopted in accordance with the requirements of § 15.2-1427 B,
83 reasonable regulations and provisions as to any or all of the following:

84 1. For administration and regulation by a local housing authority or by the local governing body or
85 its designee of the sale and rental of affordable units.

86 2. For a local housing authority or local governing body or its designee to have an exclusive right to
87 purchase up to one-third of the for-sale affordable housing dwelling units within a development within
88 ninety days of a dwelling unit being completed and ready for purchase, provided that the remaining
89 two-thirds of such units be offered for sale exclusively for a ninety-day period to persons who meet the
90 income criteria established by the local housing authority or local governing body or the latter's
91 designee.

92 3. For a local housing authority or local governing body or its designee to have an exclusive right to
93 lease up to a specified percentage of the rental affordable dwelling units within a development within a
94 controlled period determined by the housing authority or local governing body or its designee, provided
95 that the remaining for-rental affordable dwelling units within a development be offered to persons who
96 meet the income criteria established by the local housing authority or local governing body or its
97 designee.

98 4. For the establishment of jurisdiction-wide affordable dwelling unit sales prices by the local
99 housing authority or local governing body or the latter's designee, initially and adjusted semiannually,
100 based on a determination of all ordinary, necessary and reasonable costs required to construct the
101 affordable dwelling unit prototype dwellings by private industry after considering written comment by
102 the public, local housing authority or advisory body to the local governing body, and other information
103 such as the area's current general market and economic conditions, provided that sales prices not include
104 the cost of land, on-site sales commissions and marketing expenses, but may include, among other costs,
105 builder-paid permanent mortgage placement costs and buy-down fees and closing costs except prepaid
106 expenses required at settlement.

107 5. For the establishment of jurisdiction-wide affordable dwelling unit rental prices by a local housing
108 authority or local governing body or its designee, initially and adjusted semiannually, based on a
109 determination of all ordinary, necessary and reasonable costs required to construct and market the
110 required number of affordable dwelling rental units by private industry in the area, after considering
111 written comment by the public, local housing authority, or advisory body to the local governing body,
112 and other information such as the area's current general market and economic conditions.

113 6. For a requirement that the prices for resales and rerentals be controlled by the local housing
114 authority or local governing body or designee for a period of fifty years after the initial sale or rental
115 transaction for each affordable dwelling unit, provided that the ordinance further provide for reasonable
116 rules and regulations to implement a price control provision.

117 7. For establishment of an affordable dwelling unit advisory board which shall, among other things,
118 advise the jurisdiction on sales and rental prices of affordable dwelling units; advise the housing
119 authority or local governing body or its designees on requests for modifications of the requirements of
120 an affordable dwelling unit program; adopt regulations concerning its recommendations of sales and

rental prices of affordable dwelling units; and adopt procedures concerning requests for modifications of an affordable housing dwelling unit program. Members of the board, to be ten in number and to be appointed by the governing body, shall be qualified as follows: two members shall be either civil engineers or architects, each of whom shall be registered or certified with the relevant agency of the Commonwealth, or planners, all of whom shall have extensive experience in practice in the locality; one member shall be a real estate salesperson or broker, licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1; one member shall be a representative of a lending institution which finances residential development in the locality; four members shall consist of a representative from a local housing authority or local governing body or its designee, a residential builder with extensive experience in producing single-family detached and attached dwelling units, a residential builder with extensive experience in producing multiple-family dwelling units, and a representative from either the public works or planning department of the locality; one member may be a representative of a nonprofit housing organization which provides services in the locality; and one citizen of the locality. At least four members of the advisory board shall be employed in the locality.

8. The sales and rental price for affordable dwelling units within a development shall be established such that the owner/applicant shall not suffer economic loss as a result of providing the required affordable dwelling units. "Economic loss" for sales units means that result when the owner or applicant of a development fails to recoup the cost of construction and certain allowances as may be determined by the designee of the governing body for the affordable dwelling units, exclusive of the cost of land acquisition and cost voluntarily incurred but not authorized by the ordinance, upon the sale of an affordable dwelling unit.

9. *For a requirement that the owner of a multifamily dwelling unit shall notify in writing the housing authority having an area of operation in which the property is situated of its intent to sell or transfer ownership of such property. Such notification shall be provided at least 90 days prior to the public offering for sale of such property, or if no public offering is made, at least 90 days prior to the acceptance of a purchase offer for such property. The notification required pursuant to this subdivision shall be waived when the property is being transferred to any nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that has as a principal purpose the provision or development of housing for low- or moderate-income persons. Failure to provide the notification shall not be the basis for invalidation of any sale, but may subject the terms of the sale to special review by the locality or the attorney for the locality to ensure that such sale has not resulted in a violation of any law by the transferring owner.*