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SENATE BILL NO. 955

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns
on February 16, 2007)

(Patrons Prior to Substitute—Senators Quayle, Rerras [SB 1064] and Deeds [SB 1131])

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

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~~ *locality*, other than ~~counties~~ *localities* 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 affordable to low and moderate income citizens, determined in accordance with the locality's definition of affordable housing*, by providing for ~~optional~~ *increases in density to the applicant in order to reduce land costs for such moderately priced* ~~exchange for the applicant providing such affordable 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. ~~Any~~ 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~~ 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~~ *twenty thirty* percent in the developable density of each site subject to the ordinance and for a provision requiring up to ~~twelve and one-half~~ *seventeen* 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~~ *twenty thirty* percent increase is not achieved, the percentage of affordable dwelling units required shall maintain the same ratio of ~~twenty thirty~~ percent to ~~twelve and one-half~~ *seventeen* percent.

4. For increases by up to ~~twenty~~ *twenty thirty* 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~~ *seventeen* 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 thirty~~ to ~~twelve and one-half~~ *seventeen* 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

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60 units approved pursuant to a zoning ordinance amendment enacted pursuant to subdivision B 6 of this
61 section shall be affordable dwelling units, as defined in the local zoning ordinance. In the event a ten
62 percent increase is not achieved, the percentage of affordable dwelling units required shall maintain the
63 same ratio of ten percent to six and one-quarter percent.

64 6. For establishment of a local housing fund as part of its affordable housing dwelling unit program
65 to assist in achieving the affordable housing goals of the locality pursuant to this section. The local
66 housing fund may be a dedicated fund within the other funds of the locality, but any funds received
67 pursuant to this section shall be used for achieving the affordable housing goals of the locality.

68 87. For reasonable regulations requiring the affordable dwelling units to be built and offered for sale
69 or rental concurrently with the construction and certificate of occupancy of a reasonable proportion of
70 the market rate units.

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

75 C. ~~Nothing contained in this section shall apply to~~ For any building which is elevator structure four
76 stories or above and has an elevator, the applicant may request, and the locality shall consider, the
77 unique ancillary costs associated with living in such a building in determining whether such housing
78 will be affordable under the definition established by the locality in its ordinance adopted pursuant to
79 this section. However, for localities under this section in Planning District Eight, nothing in this section
80 shall apply to any elevator structure four stories or above. -

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

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

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

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

98 3. For a local housing authority or local governing body or its designee to have an exclusive right to
99 lease up to a specified percentage of the rental affordable dwelling units within a development within a
100 controlled period determined by the housing authority or local governing body or its designee, provided
101 that the remaining for-rental affordable dwelling units within a development be offered to persons who
102 meet the income criteria established by the local housing authority or local governing body or its
103 designee.

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

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

119 6. For a requirement that the prices for resales and rentals be controlled by the local housing
120 authority or local governing body or designee for a period of fifty years after the initial sale or rental
121 transaction for each affordable dwelling unit, provided that the ordinance further provide for reasonable

122 rules and regulations to implement a price control provision.

123 7. For establishment of an affordable dwelling unit advisory board which shall, among other things,
124 advise the jurisdiction on sales and rental prices of affordable dwelling units; advise the housing
125 authority or local governing body or its designees on requests for modifications of the requirements of
126 an affordable dwelling unit program; adopt regulations concerning its recommendations of sales and
127 rental prices of affordable dwelling units; and adopt procedures concerning requests for modifications of
128 an affordable housing dwelling unit program. Members of the board, to be ten in number and to be
129 appointed by the governing body, shall be qualified as follows: two members shall be either civil
130 engineers or architects, each of whom shall be registered or certified with the relevant agency of the
131 Commonwealth, or planners, all of whom shall have extensive experience in practice in the locality; one
132 member shall be a real estate salesperson or broker, licensed in accordance with Chapter 21
133 (§ 54.1-2100 et seq.) of Title 54.1; one member shall be a representative of a lending institution which
134 finances residential development in the locality; four members shall consist of a representative from a
135 local housing authority or local governing body or its designee, a residential builder with extensive
136 experience in producing single-family detached and attached dwelling units, a residential builder with
137 extensive experience in producing multiple-family dwelling units, and a representative from either the
138 public works or planning department of the locality; one member may be a representative of a nonprofit
139 housing organization which provides services in the locality; and one citizen of the locality. At least four
140 members of the advisory board shall be employed in the locality.

141 *F. A locality establishing an affordable housing dwelling unit program in any ordinance shall*
142 *establish in its general ordinances, adopted in accordance with the requirements of subsection B of*
143 *§ 15.2-1427, reasonable regulations and provisions as to the following:*

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