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SENATE BILL NO. 994

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Local Government
on February 3, 2015)

(Patron Prior to Substitute—Senator Stuart)

A *BILL to amend and reenact § 15.2-2286.1 of the Code of Virginia, relating to cluster development; open space; access.*

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2286.1 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2286.1. Provisions for clustering of single-family dwellings so as to preserve open space.

A. The provisions of this section shall apply to any county or city that had a population growth rate of 10% or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census. However, the requirements of this section shall not apply to any such county or city that has a population density of more than 2,000 people per square mile, according to the most recent report of the United States Bureau of the Census.

B. Any such locality shall provide in its zoning or subdivision ordinances, applicable to a minimum of 40% of the unimproved land contained in residential and agricultural zoning district classifications, standards, conditions, and criteria for the clustering of single-family dwellings and the preservation of open space developments. In establishing such standards, conditions, and criteria, the governing body may, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space, and compliance with its comprehensive plan and land use ordinances. A cluster development is otherwise subject to applicable land use ordinances of the locality; however, the locality shall not impose more stringent land use requirements for such cluster development.

The locality shall not prohibit extension of water or sewer from an adjacent property to a cluster development provided the cluster development is located within an area designated for water and sewer service by a county, city, or town or public service authority.

For purposes of this section, "open space" or "conservation areas" shall mean the same as "open-space land" in § 10.1-1700.

For any ~~"open space" or "conservation areas"~~ *open space or conservation areas* established in a cluster development, the locality shall not (i) require in such areas identification of slopes, species of woodlands or vegetation and whether any of such species are diseased, the locations of species listed as endangered, threatened, or of special concern, or riparian zones or require the applicant to provide a property resource map showing such matters in any conservation areas, other than that which may be required to comply with an ordinance adopted pursuant to § 15.2-961 or 15.2-961.1 or applicable state law; (ii) require such areas be excluded from the calculation of density in a cluster development or exclude land in such areas because of prior land-disturbing activities; (iii) prohibit roads from being located in such areas for purposes of access to the cluster development, but the locality may require such roads be designed to mitigate the impact on such areas; (iv) prohibit stormwater management areas from being located in such areas; or (v) require that lots in the cluster development directly abut such areas or a developed pathway providing direct access to such areas.

~~For purposes of this section, "open space" or "conservation areas" shall mean the same as "open-space land" in § 10.1-1700.~~ *For any open space or conservation areas established in a cluster development, the locality may (a) prohibit the distribution of open space throughout the development, such that the configuration of the open space appears to be only an extension of the cluster lots and prevents a meaningful assemblage of acreage into one or more larger open space or conservation areas; and (b) require that such areas not being used for agricultural or forestal production or stormwater management, and not hindered by slopes, natural features, or other barriers that would make use of the open space unsafe, be reasonably accessible.*

The density calculation of the cluster development shall be based upon the same criteria for the property as would otherwise be permitted by applicable land use ordinances. As a locality provides for the clustering of single-family dwellings and the preservation of open space developments, it may vary provisions for such developments for each different residential zoning classification within the locality. For purposes of this section, "unimproved land" shall not include land owned or controlled by the locality, the Commonwealth or the federal government, or any instrumentality thereof or land subject to a conservation easement.

If proposals for the clustering of single-family dwellings and the preservation of open space developments comply with the locality's adopted standards, conditions, and criteria, the development and open space preservation shall be permitted by right under the local subdivision ordinance. The implementation and approval of the cluster development and open space preservation shall be done

60 administratively by the locality's staff and without a public hearing. No local ordinance shall require that
61 a special exception, special use, or conditional use permit be obtained for such developments. However,
62 any such ordinance may exempt ~~(a)~~ (1) developments of two acres or less and ~~(b)~~ (2) property located
63 in an Air Installation Compatible Use Zone from the provisions of this ~~subdivision~~ subsection.

64 C. Additionally, a locality may, at its option, provide for the clustering of single-family dwellings
65 and the preservation of open space at a density calculation greater than the density permitted in the
66 applicable land use ordinance. To implement and approve such increased density development, the
67 locality may, at its option, (i) establish and provide, in its zoning or subdivision ordinances, standards,
68 conditions, and criteria for such development, and if the proposed development complies with those
69 standards, conditions, and criteria, it shall be permitted by right and approved administratively by the
70 locality's staff in the same manner provided in subsection A, or (ii) approve the increased density
71 development upon approval of a special exception, special use permit, conditional use permit, or
72 rezoning.

73 D. Notwithstanding any of the requirements of this section to the contrary, any local government
74 land use ordinance in effect as of June 1, 2004, that provides for the clustering of single-family
75 dwellings and preservation of open space development by right in at least one residential zoning
76 classification without requiring either a special exception, special use permit, conditional use permit, or
77 other discretionary approval may remain in effect at the option of the locality and will be deemed to be
78 in compliance with this section. Any other locality may adopt provisions for the clustering of
79 single-family dwellings, following the procedures set out in this section, in its discretion.