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## SENATE BILL NO. 1400

Offered January 19, 2007

A BILL to amend and reenact §§ 2.2-3112, 15.2-1415, and 15.2-2286 of the Code of Virginia, relating to conduct of governmental bodies.

Patron—Colgan (By Request)

Referred to Committee on General Laws and Technology

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-3112, 15.2-1415, and 15.2-2286 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-3112. Prohibited conduct concerning personal interest in a transaction; exceptions.

A. Each officer and employee of any state or local governmental or advisory agency who has a personal interest in a transaction:

1. Shall disqualify himself from participating in the transaction if (i) the transaction has application solely to property or a business or governmental agency in which he has a personal interest or a business that has a parent-subsidiary or affiliated business entity relationship with the business in which he has a personal interest or (ii) he is unable to participate pursuant to subdivision 2, 3 or 4. Any disqualification under the provisions of this subdivision shall be recorded in the public records of the officer's or employee's governmental or advisory agency. The officer or employee shall disclose his personal interest as required by § 2.2-3114 E or § 2.2-3115 E and shall not vote or in any manner act on behalf of his agency in the transaction. The officer or employee shall be prohibited from (i) attending any portion of a closed meeting authorized by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) when the matter in which he has a personal interest is discussed and (ii) discussing the matter in which he has a personal interest with other governmental officers or employees at any time;

2. May participate in the transaction if he is a member of a business, profession, occupation, or group of three or more persons the members of which are affected by the transaction, and he complies with the declaration requirements of § 2.2-3114 F or § 2.2-3115 G;

3. May participate in the transaction when a party to the transaction is a client of his firm if he does not personally represent or provide services to such client and he complies with the declaration requirements of § 2.2-3114 G or § 2.2-3115 H; or

4. May participate in the transaction if it affects the public generally, even though his personal interest, as a member of the public, may also be affected by that transaction.

B. Disqualification under the provisions of this section shall not prevent any employee having a personal interest in a transaction in which his agency is involved from representing himself or a member of his immediate family in such transaction provided he does not receive compensation for such representation and provided he complies with the disqualification and relevant disclosure requirements of this chapter.

C. If *Notwithstanding any other provision of law, if* disqualifications of officers or employees in accordance with this section leave less than the number required by law to act, the remaining member or members shall *constitute a quorum for the conduct of business and* have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members. Notwithstanding any provisions of this chapter to the contrary, members of a local governing body whose sole interest in any proposed sale, contract of sale, exchange, lease or conveyance is by virtue of their employment by a business involved in a proposed sale, contract of sale, exchange, lease or conveyance, and where such member's or members' vote is essential to a constitutional majority required pursuant to Article VII, Section 9 of the Constitution of Virginia and § 15.2-2100, such member or members of the local governing body may vote and participate in the deliberations of the governing body concerning whether to approve, enter into or execute such sale, contract of sale, exchange, lease or conveyance. Official action taken under circumstances that violate this section may be rescinded by the agency on such terms as the interests of the agency and innocent third parties require.

D. The provisions of subsection A shall not prevent an officer or employee from participating in a transaction merely because such officer or employee is a party in a legal proceeding of a civil nature concerning such transaction.

E. The provisions of subsection A shall not prevent an employee from participating in a transaction regarding textbooks or other educational material for students at state institutions of higher education, when those textbooks or materials have been authored or otherwise created by the employee.

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§ 15.2-1415. At what meetings governing body may act.

Unless otherwise specially provided, a governing body may exercise any of the powers conferred upon it at any meeting of the governing body, regular, special or adjourned at which a quorum is present. A majority of the governing body shall constitute a quorum *except as may be otherwise provided in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.)*. Meetings of governing bodies shall be subject to the applicable provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. A locality may, at its option, provide in its zoning or subdivision ordinance standards, conditions and criteria for 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. 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 determines, at its option, to provide for clustering of single-family dwellings and the preservation of open space developments, it may vary provisions for such developments for each different zoning area within the locality.

If proposals for 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 administratively by the locality's staff and without a public hearing. No local ordinance shall require that a special exception, special use, or conditional use permit be obtained for such developments. However,

182 any such ordinance may exempt (i) developments of two acres or less and (ii) property located in an Air  
183 Installation Compatible Use Zone from the provisions of this subdivision.

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

193 c. Any locality that provides for clustering of single-family dwellings and preservation of open space  
194 upon approval of a special exception, special use permit, conditional use permit or rezoning shall no  
195 later than July 1, 2004, amend its applicable land use ordinance to comply with the provisions of  
196 subdivision A 12. Any land use provisions for clustering of single-family dwellings and preservation of  
197 open space adopted after the effective date of this act shall comply with subdivision A 12.  
198 Notwithstanding any of the requirements of subdivision A 12 to the contrary, any local government land  
199 use ordinance in affect as of January 1, 2002, that provides for the clustering of single-family dwellings  
200 and preservation of open space development by right without requiring either a special exception, special  
201 use permit, conditional use permit or other discretionary approval may remain in effect at the option of  
202 the locality.

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

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

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