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HOUSE BILL NO. 991

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Counties, Cities and Towns
on February 8, 2008)

(Patron Prior to Substitute—Delegate Bell)

A BILL to allow Albemarle County to enact an ordinance for the transfer and severance of development rights.

Be it enacted by the General Assembly of Virginia:

1. § 1. Notwithstanding the provisions of Article 7.1 (§ 15.2-2316.1 et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia, the provisions of this act shall apply to Albemarle County.

§ 2. Definitions.

As used in this act, the term:

"Development rights" means the permitted uses and density of development that are allowed on the sending property under any zoning ordinance of a locality on a date prescribed by the ordinance.

"Receiving area" means an area identified by an ordinance and designated by the comprehensive plan as an area authorized to receive development rights transferred from a sending area.

"Receiving property" means a lot or parcel within which development rights are increased pursuant to a transfer of development rights. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property.

"Sending area" means an area identified by an ordinance and designated by the comprehensive plan as an area from which development rights are authorized to be transferred to a receiving area.

"Sending property" means a lot or parcel that a locality deems necessary to limit future development in accordance with the ordinance adopted in subsection C of § 3 of this act or a receiving property that has received development rights from a sending property.

"Severance of development rights" means the process by which development rights from a sending property are severed and made eligible to transfer to one or more receiving properties.

"Transfer of development rights" means the process by which development rights are affixed to one or more receiving properties.

§ 3. Albemarle County may provide for transfer of development rights.

A. Pursuant to the provisions of this act, the governing body of Albemarle County by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer and severance of development rights within its jurisdiction. The county shall give notice and hold a public hearing in accordance with § 15.2-2204 of the Code of Virginia prior to approval by the governing body.

B. Albemarle County may not require property owners to transfer development rights as a condition of the development of any property. A locality may not require property owners to transfer development rights as a condition of the development of any property.

C. Prior to any transfer of development rights, Albemarle County shall adopt an ordinance based on findings of public benefit. Such ordinance shall provide for:

1. The issuance and recordation of the instruments necessary to sever development rights from the sending property and to affix development rights to the receiving property. These instruments shall be executed by the affected property owners and lienholders. The instruments shall identify the development rights being transferred and the property from which they are being severed or to which they are being affixed;

2. The preservation of the character of the sending property and assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner;

3. The severance of transferable development rights from the sending property or the transfer of development rights to a receiving property;

4. The purchase, sale, exchange, or other conveyance of transferable development rights, after severance and prior to the rights being affixed to a receiving property;

5. A system for monitoring the severance, ownership, assignment, and transfer of transferable development rights;

6. A map or other description of areas designated as sending and receiving areas for the transfer of development rights between properties;

7. The identification of parcels, if any, within a receiving area that are inappropriate as receiving properties;

8. Permitted uses and the maximum increases in density in the receiving area;

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60 9. The minimum acreage of a sending property and the minimum reduction in density of the sending
61 property that may be conveyed in a transfer of development rights;

62 10. An assessment of the infrastructure in the receiving area that identifies the ability of the area to
63 accept increases in density and its plans to provide necessary utility services within any designated
64 receiving area;

65 11. The review of an application to either sever development rights or transfer development rights by
66 the planning commission or its agent to determine whether the application complies with the provisions
67 of the ordinance. The application shall be deemed approved upon the determination of compliance with
68 the ordinance and upon recordation of the instrument transferring or severing the development rights in
69 the land records of the office of the circuit court clerk for the locality; and

70 12. Such other provisions as the locality deems necessary to aid in the implementation of the
71 provisions of this act.

72 D. The ordinance may provide for the allowance for residential density to be converted to an
73 increase in the square feet of a commercial, industrial, or other use on the receiving property.

74 E. Development rights severed pursuant to this act shall be interests in real property and shall be
75 considered as such for purposes of conveyance and taxation. Once an application has been approved
76 and a deed of transferable development rights created pursuant to this act has been sold, conveyed, or
77 otherwise transferred by the owner of the sending property, the transfer of development rights shall vest
78 in the grantee and may be transferred to a successor in interest. Nothing herein shall be construed to
79 prevent the owner of the sending property from recording a deed covenant against the sending property
80 severing the development rights on said property, with the owner of the sending property retaining
81 ownership of the severed development rights. Any transfer of the development rights to a different
82 property in a receiving area shall be subject to review pursuant to the provisions of the ordinance
83 adopted pursuant to provision 11 of subsection C.

84 F. For the purposes of ad valorem real property taxation, the value of a transferable development
85 right shall be deemed appurtenant to the sending property until the transferable development right is
86 affixed to a receiving property.

87 G. Approved transfers of development rights shall become effective upon the recording of the
88 conveyance and the filing of a certified copy of such recording with the local governing body of the
89 locality.

90 H. Albemarle County shall incorporate the map identified in provision 6 of subsection C into the
91 comprehensive plan.

92 I. No amendment to the zoning map, nor any amendments to the text of the zoning ordinance with
93 respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or
94 materially restrict, reduce, or modify the uses, or the density of use permitted in the zoning district
95 applicable to any property to which development rights have been transferred, shall be effective with
96 respect to such property unless there has been mistake, fraud, or a change in circumstances
97 substantially affecting the public health, safety, or welfare.

98 J. In adopting an ordinance pursuant to this act, Albemarle County may designate eligible receiving
99 areas in any incorporated town within such county, if the governing body of the town has also amended
100 its zoning ordinance to designate the same areas as eligible to receive density being transferred from
101 sending areas in the county.

102 K. Albemarle County and an adjacent city may enter voluntarily into an agreement to permit the
103 county to designate eligible receiving areas in the city if the governing body of the city has also
104 amended its zoning ordinance to designate the same areas as eligible to receive density being
105 transferred from sending areas in the county. The city council shall designate areas it deems suitable as
106 receiving areas and shall designate the maximum increases in density in each such receiving area.
107 However, if any such agreement contains any provision addressing any issue provided for in Chapter 32
108 (§ 15.2-3200 et seq.), 33 (§ 15.2-3300 et seq.), 36 (§ 15.2-3600 et seq.), 38 (§ 15.2-3800 et seq.), 39
109 (§ 15.2-3900 et seq.), or 41 (§ 15.2-4100 et seq.) of Title 15.2 of the Code of Virginia, the agreement
110 shall be subject to the review and implementation process established by Chapter 34 (§ 15.2-3400 et
111 seq.) of Title 15.2 of the Code of Virginia.

112 1. The terms and conditions of the density transfer agreement as provided in this subsection shall be
113 determined by the affected localities and shall be approved by the governing body of each locality
114 participating in the agreement, provided the governing body of each such locality first holds a public
115 hearing, which shall be advertised once a week for two successive weeks in a newspaper of general
116 circulation in the locality.

117 2. The governing bodies shall petition a circuit court having jurisdiction in one or more of the
118 localities for an order affirming the proposed agreement. The circuit court shall be limited in its
119 decision to either affirm or deny the agreement and shall have no authority, without the express
120 approval of each local governing body, to amend or change the terms or conditions of the agreement,
121 but shall have the authority to validate the agreement and give it full force and effect. The circuit court

shall affirm the agreement unless the court finds either that the agreement is contrary to the best interests of the Commonwealth or that it is not in the best interests of each of the parties thereto.

3. The agreement shall not become binding on the localities until affirmed by the court under this subsection. Once approved by the circuit court, the agreement shall also bind future local governing bodies of the localities.

2. That the provisions of this act shall expire on July 1, 2012, if Albemarle County has not enacted an ordinance for the transfer of development rights as described in this act prior to that time.