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SENATE BILL NO. 241

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Local Government
on January 21, 2014)

(Patron Prior to Substitute—Senator Stuart)

A BILL to amend and reenact § 15.2-2316.2 of the Code of Virginia, relating to transfer of development rights.

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2316.2 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2316.2. Localities may provide for transfer of development rights.

A. Pursuant to the provisions of this article, the governing body of any locality by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer of development rights within its jurisdiction. Any locality adopting or amending any such transfer of development rights ordinance shall give notice and hold a public hearing in accordance with § 15.2-2204 prior to approval by the governing body.

B. In order to implement the provisions of this act, a locality shall adopt an ordinance that shall provide for:

1. The issuance and recordation of the instruments necessary to sever development rights from the sending property, to convey development rights to one or more parties, or to affix development rights to one or more receiving properties. These instruments shall be executed by the property owners of the development rights being transferred, and any lien holders of such property owners. The instruments shall identify the development rights being severed, and the sending properties or the receiving properties, as applicable;

2. 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;

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. The permitted uses and the maximum increases in density in the receiving area;

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

10. The development rights permitted to be attached in the receiving areas shall be equal to or greater than the development rights permitted to be severed from the sending areas;

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

12. The application to be deemed approved upon the determination of compliance with the ordinance by the agent of the planning commission, or other agent designated by the locality.

C. In order to implement the provisions of this act, a locality may provide in its ordinance for:

1. The purchase of all or part of such development rights, which shall retire the development rights so purchased;

2. The severance of development rights from existing zoned or subdivided properties as otherwise provided in subsection E;

3. The owner of such development rights to make application to the locality for a real estate tax abatement for a period up to 25 years, to compensate the owner of such development rights for the fair market value of all or part of the development rights, which shall retire the number of development rights equal to the amount of the tax abatement, and such abatement is transferable with the property;

4. The owner of a property to request designation by the locality of the owner's property as a "sending property" or a "receiving property";

5. The allowance for residential density to be converted to bonus density on the receiving property by (i) an increase in the residential density on the receiving property or (ii) an increase in the square feet of commercial, industrial, or other uses on the receiving property, which upon conversion shall retire the development rights so converted;

60 6. The receiving areas to include such urban development areas in the locality established pursuant to
61 § 15.2-2223.1;

62 7. The sending properties, subsequent to severance of development rights, to generate one or more
63 forms of renewable energy, as defined in § 56-576, subject to the provisions of the local zoning
64 ordinance;

65 8. The sending properties, subsequent to severance of development rights, to produce agricultural
66 products or forestal products, as defined in § 15.2-4302, and to include parks, campgrounds and related
67 camping facilities; however, for purposes of this subdivision, "campgrounds" does not include use by
68 travel trailers, motor homes, and similar vehicular type structures;

69 9. The review of an application by the planning commission to determine whether the application
70 complies with the provisions of the ordinance;

71 10. Such other provisions as the locality deems necessary to aid in the implementation of the
72 provisions of this act; ~~and~~

73 11. Approval of an application upon the determination of compliance with the ordinance by the agent
74 of the planning commission; *and*

75 12. *A requirement that development comply with any locality-adopted neighborhood design standards*
76 *identified in the comprehensive plan for the receiving area in which the development shall occur,*
77 *provided such design standard was adopted in the comprehensive plan and applied to the receiving area*
78 *prior to the transfer of the development right.*

79 D. The locality may, by ordinance, designate receiving areas or receiving properties, or add to,
80 supplement, or amend its designations of receiving areas or receiving properties, so long as the
81 development rights permitted to be attached in the receiving areas are equal to or greater than the
82 development rights permitted to be severed in the sending areas.

83 E. Any proposed severance or transfer of development rights shall only be initiated upon application
84 by the property owners of the sending properties, development rights, or receiving properties as
85 otherwise provided herein.

86 F. A locality may not require property owners to sever or transfer development rights as a condition
87 of the development of any property.

88 G. The owner of a property may sever development rights from the sending property, pursuant to the
89 provisions of this act. An application to transfer development rights to one or more receiving properties,
90 for the purpose of affixing such rights thereto, shall only be initiated upon application by the owner of
91 such development rights and the owners of the receiving properties.

92 H. Development rights severed pursuant to this article shall be interests in real property and shall be
93 considered as such for purposes of conveyance and taxation. Once a deed for transferable development
94 rights, created pursuant to this act, has been recorded in the land records of the office of the circuit
95 court clerk for the locality to reflect the transferable development rights sold, conveyed, or otherwise
96 transferred by the owner of the sending property, the development rights shall vest in the grantee and
97 may be transferred by such grantee to a successor in interest. Nothing herein shall be construed to
98 prevent the owner of the sending property from recording a deed covenant against the sending property
99 severing the development rights on said property, with the owner of the sending property retaining
100 ownership of the severed development rights. Any transfer of the development rights to a property in a
101 receiving area shall be in accordance with the provisions of the ordinance adopted pursuant to this
102 article.

103 I. For the purposes of ad valorem real property taxation, the value of a transferable development
104 right shall be deemed appurtenant to the sending property until the transferable development right is
105 severed from and recorded as a distinct interest in real property, or the transferable development right is
106 used at a receiving property and becomes appurtenant thereto. Once a transferable development right is
107 severed from the sending property, the assessment of the fee interest in the sending property shall reflect
108 any change in the fair market value that results from the inability of the owner of the fee interest to use
109 such property for such uses terminated by the severance of the transferable development right. Upon
110 severance from the sending property and recordation as a distinct interest in real property, the
111 transferable development right shall be assessed at its fair market value on a separate real estate tax bill
112 sent to the owner of said development right as taxable real estate in accordance with Article 1
113 (§ 58.1-3200 et seq.) of Chapter 32 of Title 58.1. The development right shall be taxed as taxable real
114 estate by the local jurisdiction where the sending property is located, until such time as the development
115 right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by
116 the local jurisdiction where the receiving property is located.

117 J. The owner of a sending property from which development rights are severed shall provide a copy
118 of the instrument, showing the deed book and page number, or instrument or GPIN, to the real estate
119 tax assessor for the locality.

120 K. Localities, from time to time as the locality designates sending and receiving areas, shall
121 incorporate the map identified in subdivision B 6 into the comprehensive plan.

122 L. No amendment to the zoning map, nor any amendments to the text of the zoning ordinance with
123 respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or
124 materially restrict, reduce, or downzone the uses, or the density of uses permitted in the zoning district
125 applicable to any property to which development rights have been transferred, shall be effective with
126 respect to such property unless there has been mistake, fraud, or a material change in circumstances
127 substantially affecting the public health, safety, or welfare.

128 M. A county adopting an ordinance pursuant to this article may designate eligible receiving areas in
129 any incorporated town within such county, if the governing body of the town has also amended its
130 zoning ordinance to designate the same areas as eligible to receive density being transferred from
131 sending areas in the county. The development right shall be taxed as taxable real estate by the local
132 jurisdiction where the sending property is located, until such time as the development right becomes
133 attached to a receiving property, at which time it shall be taxed as taxable real estate by the local
134 jurisdiction where the receiving property is located.

135 N. Any county and an adjacent city may enter voluntarily into an agreement to permit the county to
136 designate eligible receiving areas in the city if the governing body of the city has also amended its
137 zoning ordinance to designate the same areas as eligible to receive density being transferred from
138 sending areas in the county. The city council shall designate areas it deems suitable as receiving areas
139 and shall designate the maximum increases in density in each such receiving area. However, if any such
140 agreement contains any provision addressing any issue provided for in Chapter 32 (§ 15.2-3200 et seq.),
141 33 (§ 15.2-3300 et seq.), 36 (§ 15.2-3600 et seq.), 38 (§ 15.2-3800 et seq.), 39 (§ 15.2-3900 et seq.), or
142 41 (§ 15.2-4100 et seq.), the agreement shall be subject to the review and implementation process
143 established by Chapter 34 (§ 15.2-3400 et seq.). The development right shall be taxed as taxable real
144 estate by the local jurisdiction where the sending property is located, until such time as the development
145 right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by
146 the local jurisdiction where the receiving property is located.

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

152 2. The governing bodies shall petition a circuit court having jurisdiction in one or more of the
153 localities for an order affirming the proposed agreement. The circuit court shall be limited in its decision
154 to either affirming or denying the agreement and shall have no authority, without the express approval
155 of each local governing body, to amend or change the terms or conditions of the agreement, but shall
156 have the authority to validate the agreement and give it full force and effect. The circuit court shall
157 affirm the agreement unless the court finds either that the agreement is contrary to the best interests of
158 the Commonwealth or that it is not in the best interests of each of the parties thereto.

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