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SENATE BILL NO. 899

Offered January 8, 2025

Prefiled January 5, 2025

A BILL to amend and reenact § 15.2-2286 of the Code of Virginia, relating to zoning; data centers; water use.

Patrons—Stuart and Roem

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2286 of the Code of Virginia is amended and reenacted as follows:

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

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. Conditions may include the period of validity for a special exception or special use permit; however, in the case of a special exception or special use permit for residential projects, the period of validity shall be no less than three years.

The governing body or the board of zoning appeals of the Cities of Hampton and Norfolk may impose a condition upon any special exception or use permit relating to retail alcoholic beverage control licensees which provides that such special exception or use permit 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 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 or subsection C of § 15.2-2311.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of a zoning ordinance that limits occupancy in a residential dwelling unit, which is subject to a civil penalty that may be imposed in accordance with the provisions of § 15.2-2209, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the attorney for the locality petition the judge of the general district court for his jurisdiction for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of less

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SB899

59 than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal commercial
60 uses, parking of commercial trucks in residential zoning districts, maximum occupancy limitations of a
61 residential dwelling unit, or similar short-term, recurring violations.

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

77 The zoning administrator shall respond within 90 days of a request for a decision or determination on
78 zoning matters within the scope of his authority unless the requester has agreed to a longer period. If the
79 decision or determination by the zoning administrator could impair the ability of an adjacent property owner
80 to satisfy the minimum storage capacity and yield requirements for a residential drinking well pursuant to §
81 32.1-176.4 or any regulation adopted thereunder, the zoning administrator shall provide a copy of such
82 decision or determination to such adjacent property owner so affected.

83 5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such
84 violation shall be a misdemeanor punishable by a fine of not more than \$1,000. If the violation is uncorrected
85 at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance
86 with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning
87 violation within the specified time period shall constitute a separate misdemeanor offense punishable by a
88 fine of not more than \$1,000; any such failure during a succeeding 10-day period shall constitute a separate
89 misdemeanor offense punishable by a fine of not more than \$1,500; and any such failure during any
90 succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable
91 by a fine of not more than \$2,000.

92 However, any conviction resulting from a violation of provisions regulating the number of unrelated
93 persons in single-family residential dwellings shall be punishable by a fine of up to \$2,000. Failure to abate
94 the violation within the specified time period shall be punishable by a fine of up to \$5,000, and any such
95 failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day
96 period punishable by a fine of up to \$7,500. However, no such fine shall accrue against an owner or
97 managing agent of a single-family residential dwelling unit during the pendency of any legal action
98 commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an
99 overcrowding condition in accordance with the Virginia Residential Landlord and Tenant Act (§ 55.1-1200 et
100 seq.). A conviction resulting from a violation of provisions regulating the number of unrelated persons in
101 single-family residential dwellings shall not be punishable by a jail term.

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

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

116 In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment
117 to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as
118 may be necessary which shall not exceed 12 months unless the applicant requests or consents to action
119 beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the

120 zoning ordinance or map, or both. In the event of and upon such withdrawal, processing of the motion,
121 resolution or petition shall cease without further action as otherwise would be required by this subdivision.

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

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

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

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

134 12. Provisions for requiring and considering Phase I environmental site assessments based on the
135 anticipated use of the property proposed for the subdivision or development that meet generally accepted
136 national standards for such assessments, such as those developed by the American Society for Testing and
137 Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as,
138 but not limited to, those developed by the American Society for Testing and Materials, if the locality deems
139 such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with
140 regulations of the United States Environmental Protection Agency and the American Society for Testing and
141 Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees
142 shall not exceed an amount commensurate with the services rendered, taking into consideration the time,
143 skill, and administrative expense involved in such review.

144 13. Provisions to incorporate generally accepted national environmental protection and product safety
145 standards for the use of solar panels and battery technologies for solar photovoltaic (electric energy) projects,
146 such as those developed for existing product certifications and standards including the National Sanitation
147 Foundation/American National Standards Institute No. 457, International Electrotechnical Commission No.
148 61215-2, Institute of Electrical and Electronics Engineers Standard 1547, and Underwriters Laboratories No.
149 61730-2.

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

152 15. For the enforcement of provisions of the zoning ordinance that regulate the number of persons
153 permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance
154 with applicable local, state and federal fair housing laws.

155 16. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The zoning
156 administrator or his agent may make an affidavit under oath before a magistrate or court of competent
157 jurisdiction and, if such affidavit establishes probable cause that a zoning ordinance violation has occurred,
158 request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable
159 the zoning administrator or his agent to enter the subject dwelling for the purpose of determining whether
160 violations of the zoning ordinance exist. After issuing a warrant under this section, the magistrate or judge
161 shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the zoning
162 administrator or his agents shall return the warrant to the clerk of the circuit court of the city or county
163 wherein the inspection was made. The zoning administrator or his agent shall make a reasonable effort to
164 obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection
165 warrant under this section.

166 17. Provisions for (i) requiring proposed data center developments to submit water use estimates and (ii)
167 considering water use when making rezoning and special use permit decisions related to data center
168 development. For purposes of this section, "data center" means the same as defined in subdivision A 43 of §
169 58.1-3506.

170 B. Prior to the initiation of an application by the owner of the subject property, the owner's agent, or any
171 entity in which the owner holds an ownership interest greater than 50 percent, for a special exception, special
172 use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and
173 sediment control permits, or prior to the issuance of final approval, the authorizing body may require the
174 applicant to produce satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater
175 management utility fees, and any other charges that constitute a lien on the subject property, that are owed to
176 the locality and have been properly assessed against the subject property, have been paid, unless otherwise
177 authorized by the treasurer.