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HOUSE BILL NO. 1758

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 12, 2025)

(Patron Prior to Substitute—Delegate Gardner)

A BILL to amend and reenact § 2.2-1156 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-1800.5, relating to surplus real property; prioritization of disposition for affordable and middle-income housing.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-1156 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-1800.5 as follows:

§ 2.2-1156. Sale or lease of surplus property and excess building space.

A. The Department shall identify real property assets that are surplus to the current and reasonably anticipated future needs of the Commonwealth and may dispose of surplus assets as provided in this section, except when a department, agency, or institution notifies the Department of a need for property that has been declared surplus, and the Department finds that stated need to be valid and best satisfied by the use of the property.

B. After it determines the property to be surplus to the needs of the Commonwealth and that such property should be sold, the Department shall request the written opinion of the Secretary of Natural and Historic Resources as to whether the property is a significant component of the Commonwealth's natural or historic resources, and if so how those resources should be protected in the sale of the property. The Secretary of Natural and Historic Resources shall provide this review within 15 business days of receipt of full information from the Department.

C. 1. Upon receipt of the Secretary's review under subsection B and prior to offering the surplus property for sale to the public, the Department shall notify the chief administrative officer of the locality within which the property is located ~~as well as~~, any economic development entity for such locality, *and the Virginia Housing Development Authority* of the pending disposition of such property.

2. The chief administrative officer or local economic development entity shall have up to 180 days from the date of such notification to submit a proposal to the Department for the use by the locality or the local economic development entity of such property in conjunction with a bona fide economic development activity. The Department shall review such proposal, and if the Department determines that such proposal is viable and could benefit the Commonwealth, the Department may negotiate with the chief administrative officer or the local economic development entity for the sale of such property to the locality or economic development entity. If no agreement is reached between the Department and the chief administrative officer or the local economic development entity for the sale of the property, or if no proposal for the use of the property is submitted to the Department by the chief administrative officer or the local economic development entity within 180 days of notification of the pending disposition of the property, the Department, with the prior, written approval of the Governor, may proceed to dispose of the property as provided in this section.

3. *The Virginia Housing Development Authority (the Authority) shall have up to 180 days from the date of such notification to (i) assess the feasibility of developing or redeveloping the property for affordable and middle-income housing and (ii) solicit statements of interest from eligible organizations pursuant to guidelines established by the Authority.*

If, within the 180-day period, the Authority determines that an affordable and middle-income housing project is feasible and that there is sufficient interest from one or more eligible organizations, the Authority shall notify the Department.

Upon receiving notice from the Authority, and provided that the property has not been disposed of pursuant to subdivision 2, the Department shall list such property exclusively for sale to eligible organizations for 90 days. The Department, in consultation with the Authority, shall evaluate all offers submitted by eligible organizations and select the offer that, in its determination, best aligns with local and regional housing needs. Upon such selection, the Department, with the prior, written approval of the Governor, may proceed to dispose of the property as provided in this section. Such property may be sold, leased, or transferred for less than fair market value with the prior, written approval of the Governor.

Any property sold, leased, or transferred to an eligible organization pursuant to this subdivision shall also require a recorded covenant to provide affordable and middle-income housing for at least 30 years. This requirement may be satisfied by restrictive covenants recorded in connection with federal low-income housing tax credits or Virginia Housing Opportunity tax credits. Such covenants may be enforced by the beneficial party to such recorded covenant by an action at law or suit in equity, including specific performance and injunctive relief or, in the event of noncompliance, a right to liquidated damages.

4. For purposes of this subsection:

"Affordable and middle-income housing" means housing made available to a household with a gross household income that is at or below 120 percent of the area's median income or 150 percent of the area's median income in rural areas, as determined in accordance with the guidelines established by the Authority.

"Eligible organization" means any individual, joint venture, partnership, limited liability partnership, limited liability company, local housing authority, nonprofit community or neighborhood-based organization, or regional or statewide nonprofit housing assistance organization, or other legal entity, or any combination thereof, certified by the Authority as qualified to either develop, construct, acquire, or rehabilitate an affordable and middle-income housing development, pursuant to guidelines established by the Authority. Eligible organizations shall also include the general manager or managing member of any for-profit or nonprofit entity that has previously been awarded federal Low-Income Housing Tax Credits or Virginia Housing Opportunity Tax Credits for projects located within the Commonwealth.

D. If the surplus property is not disposed of pursuant to subsection C, the sale shall be by public auction, or sealed bids, or by marketing through one or more real estate brokers licensed by the Commonwealth. Notice of the date, time and place of sale, if by public auction or sealed bids shall be given by advertisement in at least one newspaper published and having general circulation in the county or city in which the property to be sold is located and be posted on the Department's website. At least 30 days shall elapse between publication of the notice and the auction or the date on which sealed bids will be opened.

E. The Department may reject any and all bids or offers when, in the opinion of the Department, the price is inadequate in relation to the value of the property, the proposed terms are unacceptable, or if a need has been found for the property.

F. In lieu of the sale of any such property, or in the event the Department determines there is space within a building owned by the Commonwealth or any space leased by the Commonwealth in excess of current and reasonably anticipated needs, the Department may, with the approval of the Governor, lease or sublease such property or space to any responsible person, firm, or corporation on such terms as shall be approved by the Governor, provided, however, that the authority herein to sublease space leased by the Commonwealth shall be subject to the terms of the original lease. The Department may with the approval of the Governor permit charitable organizations exempt from taxation under § 501(c)(3) of the Internal Revenue Code that provide addiction recovery services to lease or sublease such property or space at cost and on such terms as shall be approved by the Governor, provided such use is deemed appropriate.

The Department shall post reports from the Commonwealth's statewide electronic procurement system, known as eVA, on the Department's website. The report shall include, at a minimum, current leasing opportunities and sales of surplus real property posted on the eVA's Virginia Business Opportunities website. Such reports shall also be made available by electronic subscription. The provisions of this section requiring disposition of property through the medium of sealed bids, public auction, or marketing through licensed real estate brokers shall not apply to any lease thereof, although such procedures may be followed in the discretion of the Department.

G. The deed, lease, or sublease conveying the property or excess space shall be executed in the name of the Commonwealth and shall be in a form approved by the Attorney General. Notwithstanding any law to the contrary and notwithstanding how title to the property was acquired, the deed or lease may be executed on behalf of the Commonwealth by the Director of the Department or his designee, and such action shall not create a cloud on the title to the property.

In the event that the Department determines that a boundary line of a surplus property requires adjustment, the Department may work with the adjacent landowner to adjust the boundary line and to transfer property to, or acquire property from, such adjacent landowner. In the event the Department determines that granting or accepting an easement over surplus property or the property of the adjacent landowner would facilitate the transfer of the surplus property, the Department may enter into any such easement on behalf of the department, agency, or institution in possession or control of the property, provided, however, that any such easement shall be in a form approved by the Attorney General and subject to the written approval of the Governor. The terms of the sale, lease, or sublease shall be subject to the written approval of the Governor.

H. An exception to sale by sealed bids, public auction, or listing the property with a licensed real estate broker may be granted by the Governor if the property is landlocked and inaccessible from a public road or highway. In such cases, the Department shall notify all adjacent landowners of the Commonwealth's desire to dispose of the property. After the notice has been given, the Department may begin negotiations for the sale of the property with each interested adjacent landowner. The Department, with the approval of the Governor, may accept any offer that it deems to be fair and adequate consideration for the property. In all cases, the offer shall be the best offer made by any adjacent landowner. The terms of all negotiations shall be public information.

I. Subject to any law to the contrary, 50 percent of the proceeds from all sales or leases, or from the conveyance of any interest in property under the provisions of this article, above the costs of the transaction, which costs shall include fees or commissions, if any, negotiated with and paid to auctioneers or real estate

brokers, shall be paid into the State Park Acquisition and Development Fund, so long as the sales or leases pertain to general fund agencies or the property involved was originally acquired through the general fund, except as provided in Chapter 180 of the Acts of Assembly of 1966. The remaining 50 percent of proceeds involving general fund sales or leases, less a pro rata share of any costs of the transactions, shall be deposited in the general fund of the state treasury. The Department of Planning and Budget shall develop guidelines that allow, with the approval of the Governor, any portion of the deposit in the general fund to be credited to the agency, department, or institution having control of the property at the time it was determined surplus to the Commonwealth's needs. Any amounts so credited to an agency, department, or institution may be used, upon appropriation, to supplement maintenance reserve funds or capital project appropriations, or for the acquisition, construction, or improvement of real property or facilities. Net proceeds from sales or leases of special fund agency properties or property acquired through a gift for a specific purpose shall be retained by the agency or used in accordance with the original terms of the gift. Notwithstanding the foregoing, income from leases or subleases above the cost of the transaction shall first be applied to rent under the original lease and to the cost of maintenance and operation of the property. The remaining funds shall be distributed as provided herein.

J. When the Department deems it to be in the best interests of the Commonwealth, it may, with the approval of the Governor, authorize the department, institution or agency in possession or control of the property to dispose of surplus property in accordance with the procedures set forth in this section.

§ 15.2-1800.5. Disposition of surplus property for affordable and middle-income housing.

A. For purposes of this section, "affordable and middle-income housing" means housing made available to a household with a gross household income that is at or below 120 percent of the area's median income or 150 percent of the area's median income in rural areas, as determined in accordance with the guidelines established by the Virginia Housing Development Authority pursuant to § 2.2-1156.

B. The chief administrative officer of every locality shall prepare and maintain an inventory of all real property within its jurisdiction to which the locality holds fee simple and has determined to be feasible for the development of affordable and middle-income housing. The inventory shall include the property address, legal description, parcel identification number, zoning classification, and physical description of each such real property, and shall be made publicly available on its website to encourage potential development.

C. If the governing body elects to dispose of any real property listed in the inventory, the locality shall offer such real property exclusively to public or private entities, or any combination thereof, for the purpose of developing affordable and middle-income housing, for a period of no less than 90 days. A public or private entity may acquire such property through purchase, lease, exchange, or donation. The locality shall include, as part of any such conveyance, any covenants or conditions to ensure the property is developed by the entity for sale or lease to extremely low-income, very low-income, or low-income households, or a combination thereof, for no less than 30 years. This requirement may be satisfied by restrictive covenants recorded in connection with federal low-income housing tax credits or Virginia Housing Opportunity tax credits.