

BY: Environmental Matters Committee

AMENDMENTS TO HOUSE BILL NO. 1009

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 12, after “provisions;” insert “authorizing a local jurisdiction to consider certain factors in determining the amount of a certain penalty;”; and in line 16, strike “providing for the application of this Act;”.

AMENDMENT NO. 2

On page 2, after line 19, insert:

“WHEREAS, From the beginning of the critical area program in the mid-1980s through 1999, courts consistently interpreted the variance standard of unwarranted hardship in accordance with the intent of the General Assembly, that is, as a deprivation of the reasonable use of the entire property which is equivalent to an unnecessary or unreasonable hardship; and”;

in line 25, strike “Also in” and substitute “During that same legislative session, in Chapter 431 of the Acts of”; in line 26, after “that” insert “, by undermining the variance standard of unwarranted hardship,”; in the same line, after “had” insert “, in effect,”; in the same line, strike “weakened” and substitute “undermined”; in line 27, strike “in the denial of” and substitute “to deny”; after line 27, insert:

“WHEREAS, Despite the authority of Chapter 431 and its clear direction that local jurisdictions are to consider the entire parcel or lot in determining if a variance applicant would be subject to unwarranted hardship, some courts and administrative decisionmakers continue to focus on only part of the property, the 100-foot buffer; and

WHEREAS, In its recent decision of Lewis v. Department of Natural Resources, the Court of Appeals suggested that a prohibition on new development in the buffer, even when viable alternatives exist elsewhere on the parcel, may constitute a taking of property without just

(Over)

compensation, and the General Assembly profoundly disagrees with this suggestion; and”; in line 28, strike “A recent decision by” and substitute “Moreover, in its Lewis ruling,”; in lines 28 and 29, strike “, Lewis v. Department of Natural Resources,”; in line 36, strike “The” and substitute “Although the”; in the same line, strike “ruling is” and substitute “holding and its associated dicta are”; and in line 38, after “Act” insert “, these erroneous understandings have already been cited by lower courts and administrative decisionmakers as binding precedent or at least as persuasive authority, and it is the goal of the General Assembly to put an end to this developing trend as soon as possible”.

On page 3, in line 11, after “decision” insert “and re-establish critical area variance standards, particularly the historic understanding of unwarranted hardship, that existed until weakened by the Court of Appeals”.

### AMENDMENT NO. 3

On page 3, in line 27, strike “ESPECIALLY”; and in line 30, strike “EACH ACTIVITY CAUSES” and substitute “THESE ACTIVITIES MAY CAUSE”.

On page 7, in line 13, after “(c)” insert “(1)”; and in lines 15, 16, 17, 18, 19, 20, 21, 22, 24, 26, 29, and 33, strike “(1)”, “(2)”, “(3)”, “(i)”, “(ii)”, “(iii)”, “(iv)”, “(v)”, “(4)”, “(5)”, “(6)”, and “(7)”, respectively, and substitute “(I)”, “(II)”, “(III)”, “1.”, “2.”, “3.”, “4.”, “5.”, “(IV)”, “(V)”, “(VI)”, and “(VII)”, respectively.

On page 8, in lines 3, 6, 9, 12, 15, 21, and 25, strike “(8)”, “(9)”, “(10)”, “(11)”, “(12)”, “(13)”, and “(14)”, respectively, and substitute “(VIII)”, “(IX)”, “(X)”, “(XI)”, “(XII)”, “(XIII)”, and “(XIV)”, respectively; after line 28, insert:

“(2) IN DETERMINING THE AMOUNT OF THE PENALTY TO BE ASSESSED UNDER PARAGRAPH (1)(XIV) OF THIS SUBSECTION, A LOCAL JURISDICTION MAY CONSIDER:

(I) THE GRAVITY OF THE VIOLATION;

(II) ANY WILLFULNESS OR NEGLIGENCE INVOLVED IN THE VIOLATION; AND

(III) THE ENVIRONMENTAL IMPACT OF THE VIOLATION.”;

in line 34, strike “ANY NEW” and substitute “THE SPECIFIC”; in line 35, after “AREA” insert

“THAT IS SUBJECT TO THE APPLICATION AND”; and in line 36, strike “LOCAL PROGRAM” and substitute “GENERAL PURPOSE AND INTENT OF THIS SUBTITLE, REGULATIONS ADOPTED UNDER THIS SUBTITLE, AND THE REQUIREMENTS OF THE LOCAL JURISDICTION’S PROGRAM”.

On page 9, in line 6, after “1.” insert “BASED ON COMPETENT AND SUBSTANTIAL EVIDENCE.”.

On page 12, strike in their entirety lines 31 through 34, inclusive; and in line 35, strike “3.” and substitute “2.”.