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SENATE BILL NO. 704

Offered January 12, 2005

Prefiled December 10, 2004

A BILL to amend and reenact § 43-3 of the Code of Virginia, relating to mechanics' lien on easement of public service company, etc.

Patrons—Reynolds; Delegate: Armstrong

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 43-3 of the Code of Virginia is amended and reenacted as follows:**

§ 43-3. Lien for work done and materials furnished; waiver of right to file or enforce lien.

A. All persons performing labor or furnishing materials of the value of \$50 or more, including the reasonable rental or use value of equipment, for the construction, removal, repair or improvement of any building or structure permanently annexed to the freehold, and all persons performing any labor or furnishing materials of like value for the construction of any railroad, shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment thereof, and upon such railroad and franchises for the work done and materials furnished, subject to the provisions of § 43-20. But when the claim is for repairs or improvements to existing structures only, no lien shall attach to the property repaired or improved unless such repairs or improvements were ordered or authorized by the owner, or his agent.

When the claim is for repair, improvement, labor, or materials furnished for improvement upon an easement of right-of-way owned by or authorized by a public service corporation or public service company as defined in § 56-1, no lien shall attach to the dominant estate or estates and no notice of such lien shall be served upon the owner or owners of the dominant estate or estates by the lien claimant.

If the building or structure being constructed, removed or repaired is part of a condominium as defined in § 55-79.41 or under the Horizontal Property Act (§§ 55-79.1 through 55-79.38), any person providing labor or furnishing material to one or more units or limited common elements within the condominium pursuant to a single contract may perfect a single lien encumbering the one or more units which are the subject of the contract or to which those limited common elements pertain, and for which payment has not been made. All persons providing labor or furnishing materials for the common elements pertaining to all the units may perfect a single lien encumbering all such condominium units. Whenever a lien has been or may be perfected encumbering two or more units, the proportionate amount of the indebtedness attributable to each unit shall be the ratio that the percentage liability for common expenses appertaining to that unit computed pursuant to subsection D of § 55-79.83 bears to the total percentage liabilities for all units which are encumbered by the lien. The lien claimant shall release from a perfected lien an encumbered unit upon request of the unit owner as provided in subsection B of § 55-79.46 upon receipt of payment equal to that portion of the indebtedness evidenced by the lien attributable to such unit determined as herein provided. In the event the lien is not perfected, the lien claimant shall upon request of any interested party execute lien releases for one or more units upon receipt of payment equal to that portion of the indebtedness attributable to such unit or units determined as herein provided but no such release shall preclude the lien claimant from perfecting a single lien against the unreleased unit or units for the remaining portion of the indebtedness.

B. Any person providing labor or materials for site development improvements or for streets, stormwater facilities, sanitary sewers or water lines for the purpose of providing access or service to the individual lots in a development or condominium units as defined in § 55-79.41 or under the Horizontal Property Act (§§ 55-79.1 through 55-79.38) shall have a lien on each individual lot in the development for that fractional part of the total cost of such labor or materials as is obtained by using "one" as the numerator and the number of lots as the denominator and in the case of a condominium on each individual unit in an amount computed by reference to the liability of that unit for common expenses appertaining to that condominium pursuant to subsection D of § 55-79.83; provided, however, no such lien shall be valid as to any lot or condominium unit unless the person providing such labor or materials shall, prior to the sale of such lot or condominium unit, file with the clerk of the circuit court of the jurisdiction in which such land lies a document setting forth a full disclosure of the nature of the lien to be claimed, the amount claimed against each lot or condominium unit and a description of the development or condominium, and shall, thereafter, comply with all other applicable provisions of this chapter. "Site development improvements" means improvements which are provided for the

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59 development, such as project site grading, rather than for an individual lot.

60 Nothing contained herein shall be construed to prevent the filing of a mechanic's lien under the
61 provisions of subsection A.

62 C. Any right to file or enforce any mechanic's lien granted hereunder may be waived in whole or in
63 part at any time by any person entitled to such lien.