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SENATE BILL NO. 163

Offered January 9, 2008

Prefiled January 7, 2008

A BILL to amend and reenact § 36-49.1:1 of the Code of Virginia, relating to derelict structures.

Patron—Lucas

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:**1. That § 36-49.1:1 of the Code of Virginia is amended and reenacted as follows:**

§ 36-49.1:1. Spot blight and derelict structure abatement authorized; procedures.

A. Notwithstanding any other provision of this chapter, an authority, or any locality, shall have the power to acquire or repair any blighted property, as defined in § 36-3, whether inside or outside of a conservation or redevelopment area, by purchase or through the exercise of the power of eminent domain provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, and, further, shall have the power to hold, clear, repair, manage or dispose of such property for purposes consistent with this chapter. In addition, the authority and locality shall have the power to recover the costs of any repair or disposal of such property from the owner or owners of record, determined in accordance with subsection B of § 36-27. This power shall be exercised only in accordance with the procedures set forth in this section.

B. The chief executive or designee of the locality or authority shall make a preliminary determination that a property is blighted in accordance with this chapter. It shall send notice to the owner or owners of record determined in accordance with subsection B of § 36-27, specifying the reasons why the property is blighted. The owner or owners of record shall have 30 days from the date the notice is sent in which to respond in writing with a spot blight abatement plan to address the blight within a reasonable time.

C. If the owner or owners of record fail to respond within the 30-day period with a written spot blight abatement plan that is acceptable to the chief executive of the agency, authority or locality, the agency, authority or locality (i) may request the local planning commission to conduct a public hearing and make findings and recommendations that shall be reported to the governing body of the locality concerning the repair or other disposition of the property in question and (ii) in the event a public hearing is scheduled, shall prepare a written spot blight abatement plan for the repair or other disposition of the property.

D. No spot blight abatement plan shall be effective until notice has been sent to the property owner or owners of record in accordance with subsection B of § 36-27 and an ordinance has been adopted by the local governing body. Not less than three weeks prior to the date of the public hearing before the planning commission, the commission shall provide by regular and certified mail, notice of such hearing to (i) the owner of the blighted property or the agent designated by him for receipt of service of notices concerning the payment of real estate taxes within the locality; (ii) the abutting property owners in each direction, including those property owners immediately across the street or road from the property; and (iii) the representative neighborhood association, if any, for the immediate area. The notice shall include the plan for the intended repair or other disposition of the property. The notice of the public hearing shall be published at least twice, with not less than six days elapsing between the first and second publication in a newspaper published or having general circulation in the locality in which the property is located. The notice also shall be posted on the property. The notice shall specify the time and place of the hearing at which persons affected may appear and present their views, not less than six days nor more than 21 days after the second publication.

E. The planning commission shall determine whether:

1. The property is blighted;
2. The owner has failed to cure the blight or present a reasonable plan to do so;
3. The plan for the repair or other disposition of the property is in accordance with the locally adopted comprehensive plan, zoning ordinances, and other applicable land use regulations; and
4. The property is located within an area listed on the National Register of Historic Places. In such instances, the planning commission shall consult with the locally established architectural review board, if any, regarding the proposed repair or other disposition of the property by the authority or governing body.

F. The planning commission shall report its findings and recommendations concerning the property to the governing body. The governing body, upon receipt of such findings and recommendations, may, after an advertised public hearing, affirm, modify, or reject the planning commission's findings and recommendations. If the repair or other disposition of the property is approved, the authority, agency or

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59 locality may carry out the approved plan to repair or acquire and dispose of the property in accordance
60 with the approved plan, the provisions of this section, and applicable law.

61 G. If the ordinance is adopted by the governing body of the locality, the locality shall have a lien on
62 all property so repaired or acquired under an approved spot blight abatement plan to recover the cost of
63 (i) improvements made by such locality to bring the blighted property into compliance with applicable
64 building codes and (ii) disposal, if any. The lien on such property shall bear interest at the legal rate of
65 interest established in § 6.1-330.53, beginning on the date the repairs are completed through the date on
66 which the lien is paid. The lien authorized by this subsection shall be filed in the circuit court where the
67 property is located and shall be subordinate to any prior liens of record. The governing body may
68 recover its costs of repair from the owner or owners of record of the property when the repairs were
69 made at such time as the property is sold or disposed of by such owner or owners. If the property is
70 acquired by the governing body through eminent domain, the cost of repair may be recovered when the
71 governing body sells or disposes of the property. In either case, the costs of repair shall be recovered
72 from the proceeds of any such sale.

73 H. Notwithstanding the other provisions of this section, unless otherwise provided for in Title 36, if
74 the blighted property is occupied for personal residential purposes, the governing body, in approving the
75 spot blight abatement plan, shall not acquire by eminent domain such property if it would result in a
76 displacement of the person or persons living in the premises. The provisions of this subsection shall not
77 apply to acquisitions, under an approved spot blight abatement plan, by any locality of property which
78 has been condemned for human habitation for more than one year. In addition, such locality exercising
79 the powers of eminent domain in accordance with Title 25.1, may provide for temporary relocation of
80 any person living in the blighted property provided the relocation is within the financial means of such
81 person.

82 I. In lieu of the acquisition of blighted property by the exercise of eminent domain, and in lieu of the
83 exercise of other powers granted in subsections A through H, any locality may, by ordinance, declare
84 any blighted property as defined in § 36-3 to constitute a nuisance, and thereupon abate the nuisance
85 pursuant to § 15.2-900 or § 15.2-1115. Such ordinance shall be adopted only after written notice by
86 certified mail to the owner or owners at the last known address of such owner as shown on the current
87 real estate tax assessment books or current real estate tax assessment records. If the owner does not
88 abate or remove the nuisance and the locality abates or removes the nuisance at its expense, the costs of
89 the removal or abatement of the nuisance shall be a lien on the property and such lien shall bear interest
90 at the legal rate of interest established in § 6.1-330.53, beginning on the date the removal or abatement
91 is completed through the date on which the lien is paid.

92 J. *In addition to the exercise of other powers granted in subsections A through H, a locality may, by*
93 *ordinance, make a determination that a property is a derelict structure as defined in § 36-152. The*
94 *locality shall send notice of its determination by certified mail to the owner or owners at the last known*
95 *address of such owner or owners as shown on the current real estate tax assessment books or current*
96 *real estate tax assessment records. Such notice shall specify the reasons why the property is a derelict*
97 *structure as defined in § 36-152; such notice shall also request the owner or owners submit for*
98 *approval by the locality, within 30 days from the date the notice is sent, a written abatement or removal*
99 *plan to be completed within a reasonable time.*

100 *Such locality may then, by ordinance, impose on the owner or owners of such property a fee not to*
101 *exceed the lesser of \$2,500 or 15 percent of the most recently assessed value of the derelict structure*
102 *and the land upon which the structure is situated if such owner or owners fail to (i) submit for approval*
103 *by the locality, within 30 days from the date the notice is sent, a written abatement or removal plan to*
104 *be completed within a reasonable time or (ii) abate or remove the derelict structure within the time*
105 *prescribed in a plan for abatement or removal which has been approved by the locality. The ordinance*
106 *described in the foregoing sentence shall be adopted only after written notice declaring the locality's*
107 *reason for imposing such annual fee is sent by certified mail to the owner or owners at the last known*
108 *address of such owner or owners as shown on the current real estate tax assessment books or current*
109 *real estate tax assessment records. If the owner or owners do not abate or remove the derelict structure*
110 *within a reasonable time, the locality may (a) abate or remove the derelict structure at its expense or*
111 *(b) continue to impose the fee described in this paragraph, annually, until such time as the locality*
112 *elects to abate or remove, or the owner or owners actually abate or remove, the derelict structure. The*
113 *costs of the removal or abatement of the derelict structure that were incurred by the locality shall be a*
114 *lien on the property and such lien shall bear interest at the legal rate of interest established in*
115 *§ 6.1-330.53, beginning on the date the removal or abatement is completed through the date on which*
116 *the lien is paid. Such liens shall have the same priority as real estate taxes and may be collected in the*
117 *same manner as real estate taxes.*

118 K. *In addition to the exercise of other powers granted in subsections A through H and subsection J*
119 *and in the case of a derelict structure as defined in § 36-152, any locality may, by ordinance, provide*
120 *that any owner or owners of a derelict structure as defined in § 36-152 who fail to (i) respond to a*

121 *notice in writing with an abatement or removal plan as described in subsection J or (ii) abate or*
122 *remove the derelict structure as prescribed in an approved plan described in subsection J, shall be*
123 *guilty of a misdemeanor punishable by a fine of not more than \$2,500. Each day during which the*
124 *violation continues after the date of conviction shall constitute a separate offense.*
125 *L. The provisions of this section shall be cumulative and shall be in addition to any remedies for*
126 *spot blight abatement that may be authorized by law.*

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