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SENATE BILL NO. 766

Offered January 18, 2008

A BILL to amend and reenact §§ 15.2-819 and 15.2-2306 of the Code of Virginia, relating to demolition of historic structures; cemeteries and graves; civil penalty.

Patron—Colgan

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:**1. That §§ 15.2-819 and 15.2-2306 of the Code of Virginia are amended and reenacted as follows:**

§ 15.2-819. Demolition of historic structures; civil penalty.

A county may adopt an ordinance which establishes a civil penalty for the demolition, razing or moving of a building or structure *or area* which is located in an historic district or which has been designated by the governing body as (i) an historic structure or landmark, (ii) a Virginia landmark, (iii) an historic area as defined in § 15.2-2201, or (iv) a cemetery or grave as defined in § 54.1-2310 without the prior approval from either the architectural review board or the governing body as provided by subdivision A 2 of § 15.2-2306.

The civil penalty imposed for a violation of such an ordinance shall not exceed the market value of the property as determined by the assessed value of the property at the time of the destruction or removal of the building or structure, *plus the value of a plan for data recovery that has been approved by the Department of Historic Resources*. Such value shall include the value of any structures and the value of the real property upon which any such structure or structures were located. Such ordinances may be enforced by the county attorney by bringing an action in the name of the county in the circuit court. Such actions shall be brought against the party or parties deemed responsible for the violation. It shall be the burden of the county to show the liability of the violator by a preponderance of the evidence.

Nothing in this section shall preclude action by the zoning administrator under subdivision 5 of § 15.2-2286 or action by the board under § 15.2-2208.

As used in this section, "plan for data recovery" means the process of retrieving and documenting historical information from an archaeological or architectural resource or resources, a landscape, or a cemetery. Such plan may include archaeological excavation, detailed photography, preparation of measured drawings, documentary research, special analyses, public interpretation, artifact and document curation, and report preparation.

§ 15.2-2306. Preservation of historical sites and architectural areas.

A. 1. Any locality may adopt an ordinance setting forth the historic landmarks within the locality as established by the Virginia Board of Historic Resources, and any other buildings or structures within the locality having an important historic, architectural, archaeological or cultural interest, any historic areas within the locality as defined by § 15.2-2201, and areas of unique architectural value located within designated conservation, rehabilitation or redevelopment districts, amending the existing zoning ordinance and delineating one or more historic districts, adjacent to such landmarks, buildings and structures, or encompassing such areas, or encompassing parcels of land contiguous to arterial streets or highways (as designated pursuant to Title 33.1, including § 33.1-41.1 of that title) found by the governing body to be significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures or districts therein or in a contiguous locality *or listed on the Virginia Landmarks Registry, or cemeteries and graves as defined by § 54.1-2310*. An amendment of the zoning ordinance and the establishment of a district or districts shall be in accordance with the provisions of Article 7 (§ 15.2-2280 et seq.) of this chapter. The governing body may provide for a review board to administer the ordinance and may provide compensation to the board. The ordinance may include a provision that no building or structure, including signs, shall be erected, reconstructed, altered or restored within any such district unless approved by the review board or, on appeal, by the governing body of the locality as being architecturally compatible with the historic landmarks, buildings or structures therein.

2. Subject to the provisions of subdivision 3 of this subsection the governing body may provide in the ordinance that no historic landmark, building or structure within any district shall be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board.

3. The governing body shall provide by ordinance for appeals to the circuit court for such locality from any final decision of the governing body pursuant to subdivisions 1 and 2 of this subsection and

59 shall specify therein the parties entitled to appeal the decisions, which parties shall have the right to
60 appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the
61 action of the governing body, provided the petition is filed within thirty days after the final decision is
62 rendered by the governing body. The filing of the petition shall stay the decision of the governing body
63 pending the outcome of the appeal to the court, except that the filing of the petition shall not stay the
64 decision of the governing body if the decision denies the right to raze or demolish a historic landmark,
65 building or structure. The court may reverse or modify the decision of the governing body, in whole or
66 in part, if it finds upon review that the decision of the governing body is contrary to law or that its
67 decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the
68 governing body.

69 In addition to the right of appeal hereinabove set forth, the owner of a historic landmark, building or
70 structure, the razing or demolition of which is subject to the provisions of subdivision 2 of this
71 subsection, shall, as a matter of right, be entitled to raze or demolish such landmark, building or
72 structure provided that: (i) he has applied to the governing body for such right, (ii) the owner has for
73 the period of time set forth in the same schedule hereinafter contained and at a price reasonably related
74 to its fair market value, made a bona fide offer to sell the landmark, building or structure, and the land
75 pertaining thereto, to the locality or to any person, firm, corporation, government or agency thereof, or
76 political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve
77 and restore the landmark, building or structure and the land pertaining thereto, and (iii) no bona fide
78 contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark,
79 building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period
80 set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from
81 the decision of the governing body, whether instituted by the owner or by any other proper party,
82 notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from shall not
83 affect the right of the owner to make the bona fide offer to sell referred to above. No offer to sell shall
84 be made more than one year after a final decision by the governing body, but thereafter the owner may
85 renew his request to the governing body to approve the razing or demolition of the historic landmark,
86 building or structure. The time schedule for offers to sell shall be as follows: three months when the
87 offering price is less than \$25,000; four months when the offering price is \$25,000 or more but less than
88 \$40,000; five months when the offering price is \$40,000 or more but less than \$55,000; six months
89 when the offering price is \$55,000 or more but less than \$75,000; seven months when the offering price
90 is \$75,000 or more but less than \$90,000; and twelve months when the offering price is \$90,000 or
91 more.

92 4. The governing body is authorized to acquire in any legal manner any historic area, landmark,
93 building or structure, land pertaining thereto, or any estate or interest therein which, in the opinion of
94 the governing body should be acquired, preserved and maintained for the use, observation, education,
95 pleasure and welfare of the people; provide for their renovation, preservation, maintenance, management
96 and control as places of historic interest by a department of the locality or by a board, commission or
97 agency specially established by ordinance for the purpose; charge or authorize the charging of
98 compensation for the use thereof or admission thereto; lease, subject to such regulations as may be
99 established by ordinance, any such area, property, lands or estate or interest therein so acquired upon the
100 condition that the historic character of the area, landmark, building, structure or land shall be preserved
101 and maintained; or to enter into contracts with any person, firm or corporation for the management,
102 preservation, maintenance or operation of any such area, landmark, building, structure, land pertaining
103 thereto or interest therein so acquired as a place of historic interest; however, the locality shall not use
104 the right of condemnation under this subsection unless the historic value of such area, landmark,
105 building, structure, land pertaining thereto, or estate or interest therein is about to be destroyed.

106 B. Notwithstanding any contrary provision of law, general or special, in the City of Portsmouth no
107 approval of any governmental agency or review board shall be required for the construction of a ramp
108 to serve the handicapped at any structure designated pursuant to the provisions of this section.