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HOUSE BILL NO. 2208

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact § 15.2-901 of the Code of Virginia, relating to cutting of grass and weeds by volunteers; immunity.

Patron—Frederick

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-901 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-901. Locality may provide for removal or disposal of trash, cutting of grass and weeds; penalty in certain counties.

A. Any locality may, by ordinance, provide that:

1. The owners of property therein shall, at such time or times as the governing body may prescribe, remove therefrom any and all trash, garbage, refuse, litter and other substances which might endanger the health or safety of other residents of such locality; or may, whenever the governing body deems it necessary, after reasonable notice, have such trash, garbage, refuse, litter and other like substances which might endanger the health of other residents of the locality, removed by its own agents or employees, in which event the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the locality as taxes are collected;

2. Trash, garbage, refuse, litter and other debris shall be disposed of in personally owned or privately owned receptacles that are provided for such use and for the use of the persons disposing of such matter or in authorized facilities provided for such purpose and in no other manner not authorized by law;

3. The owners of vacant developed or undeveloped property therein, including such property upon which buildings or other improvements are located, shall cut the grass, weeds and other foreign growth on such property or any part thereof at such time or times as the governing body shall prescribe; or may, whenever the governing body deems it necessary, after reasonable notice as determined by the locality, have such grass, weeds or other foreign growth cut by its agents or employees, in which event the cost and expenses thereof shall be chargeable to and paid by the owner of such property and may be collected by the locality as taxes are collected, *or by volunteers who (i) received, after requesting, authorization from the locality to cut such grass, weeds or other foreign growth and (ii) would not be in violation of Article 5 (§ 18.2-119 et seq.) of Chapter 5 of Title 18.2 during such cutting; provided that, such volunteers shall (a) have any and all immunity normally provided to the employees of the locality and (b) not be considered regular agents or employees of the locality because they cut grass, weeds or other foreign growth pursuant to the authorization described in clause (i). Notwithstanding any other provision of law, general or special, the locality and each agent and employee thereof shall be immune from civil liability for any (1) decision on whether to authorize a volunteer to cut grass, weeds or other foreign growth, unless the making of such decision constitutes gross negligence or intentional misconduct, and (2) act or omission made by the volunteer relating to the cutting of grass, weeds or other foreign growth.* In the City of Williamsburg and in a locality within Planning District 8, an ordinance adopted pursuant to this subdivision may also apply to owners of occupied property therein. No such ordinance adopted by any county shall have any force and effect within the corporate limits of any town. No such ordinance adopted by any county having a density of population of less than 500 per square mile shall have any force or effect except within the boundaries of platted subdivisions or any other areas zoned for residential, business, commercial or industrial use.

B. Every charge authorized by this section with which the owner of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1. A locality may waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

C. The governing body of any locality may by ordinance provide that violations of this section shall be subject to a civil penalty, not to exceed \$50 for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall not exceed \$200. Each business day during

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59 which the same violation is found to have existed shall constitute a separate offense. In no event shall a
60 series of specified violations arising from the same set of operative facts result in civil penalties that
61 exceed a total of \$3,000 in a 12-month period.

62 D. Except as provided in this subsection, adoption of an ordinance pursuant to subsection C shall be
63 in lieu of criminal penalties and shall preclude prosecution of such violation as a misdemeanor. The
64 governing body of any locality may, however, by ordinance provide that such violations shall be a Class
65 3 misdemeanor in the event three civil penalties have previously been imposed on the same defendant
66 for the same or similar violation, not arising from the same set of operative facts, within a 24-month
67 period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil
68 penalties for the same violation.