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HOUSE BILL NO. 1219

Offered January 17, 2014

A *BILL to amend the Code of Virginia by adding a section numbered 15.2-2208.1, relating to unconstitutional acts and ultra vires enforcement by localities.*

Patrons—Marshall, R.G. and LaRock

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.2-2208.1 as follows:

§ 15.2-2208.1. Unconstitutional acts and ultra vires enforcement by localities; remedies.

A. Any zoning ordinance of a locality, or any other ordinance related to land use or development, that violates or unreasonably restricts the free exercise of rights guaranteed under the United States Constitution or the Constitution of Virginia shall be null and void and shall constitute a violation of this section. Any enforcement by a locality of such ordinance shall be deemed a violation of this section.

B. In any litigation in which the constitutionality of a zoning ordinance, or any other ordinance related to land use or development, or its enforcement is at issue, the ordinance shall not be given a presumption of constitutionality or presumption of validity.

C. A locality's enforcement of any zoning ordinance, or any other ordinance related to land use or development, that is ultra vires shall constitute a violation of this section.

D. In any litigation involving a challenge under this section, the burden of establishing compliance with this section shall be on the locality.

E. Any locality that violates this section shall be liable to aggrieved persons in amounts equal to the fines and penalties that the locality seeks to impose on such aggrieved persons, plus actual damages including reasonable attorney fees.

F. Any locality that willfully violates this section, or whose interpretation or enforcement of ordinances willfully operates in violation of this section, shall be liable to the aggrieved person for treble damages, plus reasonable attorney fees. Any official or employee of a locality that willfully violates this section, or whose interpretation or enforcement of duties willfully operates in violation of this section, may be personally liable to aggrieved persons in the amount equal to the fines and penalties that such official or employee seeks or sought to impose on such aggrieved persons plus actual damages and attorney fees.

G. The Attorney General of Virginia shall establish a procedure whereby persons, including officials and employees of localities, may report violations of this section. No locality may take disciplinary action against any official or employee for reporting violations of this section. Any locality that violates this subsection shall pay the aggrieved person's damages, including attorney fees. The Attorney General (i) shall have authority to institute legal proceedings in the courts of the respective locality and (ii) may intervene in any proceeding to enforce this section against any locality.

INTRODUCED

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