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SENATE BILL NO. 920

Offered January 11, 2017

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A BILL to amend and reenact §§ 15.2-901, 15.2-906, 15.2-907, 15.2-908, 15.2-908.1, and 15.2-1115 of the Code of Virginia, relating to lien priority.

Patrons—Edwards; Delegate: Rasoul

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-901, 15.2-906, 15.2-907, 15.2-908, 15.2-908.1, and 15.2-1115 of the Code of Virginia are 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; penalty.

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 occupied or 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. For purposes of this provision, one written notice per growing season to the owner of record of the subject property shall be considered reasonable notice. 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. No such ordinance shall be applicable to land zoned for or in active farming operation.

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

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

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59 period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil
60 penalties for the same violation.

61 **§ 15.2-906. Authority to require removal, repair, etc., of buildings and other structures.**

62 Any locality may, by ordinance, provide that:

63 1. The owners of property therein, shall at such time or times as the governing body may prescribe,
64 remove, repair or secure any building, wall or any other structure that might endanger the public health
65 or safety of other residents of such locality;

66 2. The locality through its own agents or employees may remove, repair or secure any building, wall
67 or any other structure that might endanger the public health or safety of other residents of such locality,
68 if the owner and lienholder of such property, after reasonable notice and a reasonable time to do so, has
69 failed to remove, repair, or secure the building, wall or other structure. For purposes of this section,
70 repair may include maintenance work to the exterior of a building to prevent deterioration of the
71 building or adjacent buildings. For purposes of this section, reasonable notice includes a written notice
72 (i) mailed by certified or registered mail, return receipt requested, sent to the last known address of the
73 property owner and (ii) published once a week for two successive weeks in a newspaper having general
74 circulation in the locality. No action shall be taken by the locality to remove, repair, or secure any
75 building, wall, or other structure for at least 30 days following the later of the return of the receipt or
76 newspaper publication, except that the locality may take action to prevent unauthorized access to the
77 building within seven days of such notice if the structure is deemed to pose a significant threat to public
78 safety and such fact is stated in the notice;

79 3. In the event the locality, through its own agents or employees, removes, repairs, or secures any
80 building, wall, or any other structure after complying with the notice provisions of this section, the cost
81 or expenses thereof shall be chargeable to and paid by the owners of such property and may be
82 collected by the locality as taxes are collected;

83 4. Every charge authorized by this section or § 15.2-900 with which the owner of any such property
84 has been assessed and that remains unpaid shall constitute a lien against such property ranking on a
85 parity with liens for unpaid local *real estate* taxes and enforceable in the same manner as provided in
86 Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1. A locality may
87 waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a
88 purchaser who is unrelated by blood or marriage to the owner and who has no business association with
89 the owner. All such liens shall remain a personal obligation of the owner of the property at the time the
90 liens were imposed;

91 5. Notwithstanding the foregoing, with the written consent of the property owner, a locality may,
92 through its agents or employees, demolish or remove a derelict nonresidential building or structure
93 provided that such building or structure is neither located within or determined to be a contributing
94 property within a state or local historic district nor individually designated in the Virginia Landmarks
95 Register. The property owner's written consent shall identify whether the property is subject to a first
96 lien evidenced by a recorded deed of trust or mortgage and, if so, shall document the property owner's
97 best reasonable efforts to obtain the consent of the first lienholder or the first lienholder's authorized
98 agent. The costs of such demolition or removal shall constitute a lien against such property. In the event
99 the consent of the first lienholder or the first lienholder's authorized agent is obtained, such lien shall
100 rank on a parity with liens for unpaid local taxes and be enforceable in the same manner as provided in
101 subdivision 4. In the event the consent of the first lienholder or the first lienholder's authorized agent is
102 not obtained, such lien shall be subordinate to that first lien but shall otherwise be subject to subdivision
103 4; and

104 6. A locality may prescribe civil penalties, not to exceed a total of \$1,000, for violations of any
105 ordinance adopted pursuant to this section.

106 **§ 15.2-907. Authority to require removal, repair, etc., of buildings and other structures**
107 **harboring illegal drug use.**

108 A. As used in this section:

109 "Affidavit" means the affidavit prepared by a locality in accordance with subdivision B 1 a hereof.

110 "Controlled substance" means illegally obtained controlled substances or marijuana, as defined in
111 § 54.1-3401.

112 "Corrective action" means the taking of steps which are reasonably expected to be effective to abate
113 drug blight on real property, such as removal, repair or securing of any building, wall or other structure.

114 "Drug blight" means a condition existing on real property which tends to endanger the public health
115 or safety of residents of a locality and is caused by the regular presence on the property of persons
116 under the influence of controlled substances or the regular use of the property for the purpose of
117 illegally possessing, manufacturing or distributing controlled substances.

118 "Owner" means the record owner of real property.

119 "Property" means real property.

120 B. Any locality may, by ordinance, provide that:

1. The locality may undertake corrective action with respect to property in accordance with the procedures described herein:

a. The locality shall execute an affidavit, citing this section, to the effect that (i) drug blight exists on the property and in the manner described therein; (ii) the locality has used diligence without effect to abate the drug blight; and (iii) the drug blight constitutes a present threat to the public's health, safety or welfare.

b. The locality shall then send a notice to the owner of the property, to be sent by regular mail to the last address listed for the owner on the locality's assessment records for the property, together with a copy of such affidavit, advising that (i) the owner has up to 30 days from the date thereof to undertake corrective action to abate the drug blight described in such affidavit and (ii) the locality will, if requested to do so, assist the owner in determining and coordinating the appropriate corrective action to abate the drug blight described in such affidavit.

c. If no corrective action is undertaken during such 30-day period, the locality shall send by regular mail an additional notice to the owner of the property, at the address stated in the preceding subdivision, stating the date on which the locality may commence corrective action to abate the drug blight on the property, which date shall be no earlier than 15 days after the date of mailing of the notice. Such additional notice shall also reasonably describe the corrective action contemplated to be taken by the locality. Upon receipt of such notice, the owner shall have a right, upon reasonable notice to the locality, to seek equitable relief, and the locality shall initiate no corrective action while a proper petition for relief is pending before a court of competent jurisdiction.

2. If the locality undertakes corrective action with respect to the property after complying with the provisions of subdivision B 1, the costs 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.

3. Every charge authorized by this section with which the owner of any such property has been assessed and which remains unpaid shall constitute a lien against such property with the same priority as liens for unpaid local *real estate* 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.

C. If the owner of such property takes timely corrective action pursuant to such ordinance, the locality shall deem the drug blight abated, shall close the proceeding without any charge or cost to the owner and shall promptly provide written notice to the owner that the proceeding has been terminated satisfactorily. The closing of a proceeding shall not bar the locality from initiating a subsequent proceeding if the drug blight recurs.

D. Nothing in this section shall be construed to abridge or waive any rights or remedies of an owner of property at law or in equity.

§ 15.2-908. Authority of localities to remove or repair the defacement of buildings, walls, fences and other structures.

A. Any locality may by ordinance undertake or contract for the removal or repair of the defacement of any public building, wall, fence or other structure or any private building, wall, fence or other structure where such defacement is visible from any public right-of-way. The ordinance may provide that whenever the property owner, after reasonable notice, fails to remove or repair the defacement, the locality may have such defacement removed or repaired by its agents or employees. Such agents or employees shall have any and all immunity normally provided to an employee of the locality. For purposes of this section, the term "defacement" means the unauthorized application by any means of any writing, painting, drawing, etching, scratching, or marking of an inscription, word, mark, figure, or design of any type.

If the defacement occurs on a public or private building, wall, fence, or other structure located on an unoccupied property, and the locality, through its own agents or employees, removes or repairs the defacement after complying with the notice provisions of this section, the actual 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. No lien shall be chargeable to the owners of such property unless the locality shall have given a minimum of 15 days notice to the property owner prior to the removal of the defacement.

Every charge authorized by this section with which the owner of any such property shall have been assessed and that remains unpaid shall constitute a lien against such property, ranking on a parity with liens for unpaid local *real estate* 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 and release 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.

B. The court may order any person convicted of unlawfully defacing property described in subsection A to pay full or partial restitution to the locality for costs incurred by the locality in removing or

182 repairing the defacement if the locality has adopted an ordinance pursuant to this section.

183 C. An order of restitution pursuant to this section shall be docketed as provided in § 8.01-446 when
184 so ordered by the court or upon written request of the locality and may be enforced by the locality in
185 the same manner as a judgment in a civil action.

186 **§ 15.2-908.1. Authority to require removal, repair, etc., of buildings and other structures**
187 **harboring a bawdy place.**

188 A. As used in this section:

189 "Affidavit" means the affidavit prepared by a locality in accordance with subdivision B 1 a hereof.

190 "Bawdy place" means the same as that term is defined in § 18.2-347.

191 "Corrective action" means the taking of steps which are reasonably expected to be effective to abate
192 a bawdy place on real property, such as removal, repair or securing of any building, wall or other
193 structure.

194 "Owner" means the record owner of real property.

195 "Property" means real property.

196 B. The governing body of any locality may, by ordinance, provide that:

197 1. The locality may undertake corrective action with respect to property in accordance with the
198 procedures described herein:

199 a. The locality shall execute an affidavit, citing this section, to the effect that (i) a bawdy place exists
200 on the property and in the manner described therein; (ii) the locality has used diligence without effect to
201 abate the bawdy place; and (iii) the bawdy place constitutes a present threat to the public's health, safety
202 or welfare.

203 b. The locality shall then send a notice to the owner of the property, to be sent by regular mail to
204 the last address listed for the owner on the locality's assessment records for the property, together with a
205 copy of such affidavit, advising that (i) the owner has up to thirty days from the date thereof to
206 undertake corrective action to abate the bawdy place described in such affidavit and (ii) the locality will,
207 if requested to do so, assist the owner in determining and coordinating the appropriate corrective action
208 to abate the bawdy place described in such affidavit.

209 c. If no corrective action is undertaken during such thirty-day period, the locality shall send by
210 regular mail an additional notice to the owner of the property, at the address stated in the preceding
211 subdivision, stating the date on which the locality may commence corrective action to abate the bawdy
212 place on the property, which date shall be no earlier than fifteen days after the date of mailing of the
213 notice. Such additional notice shall also reasonably describe the corrective action contemplated to be
214 taken by the locality. Upon receipt of such notice, the owner shall have a right, upon reasonable notice
215 to the locality, to seek equitable relief, and the locality shall initiate no corrective action while a proper
216 petition for relief is pending before a court of competent jurisdiction.

217 2. If the locality undertakes corrective action with respect to the property after complying with the
218 provisions of subdivision B 1, the costs and expenses thereof shall be chargeable to and paid by the
219 owner of such property and may be collected by the locality as taxes and levies are collected.

220 3. Every charge authorized by this section with which the owner of any such property has been
221 assessed and which remains unpaid shall constitute a lien against such property with the same priority as
222 liens for unpaid local *real estate* taxes and enforceable in the same manner as provided in Articles 3
223 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1.

224 C. If the owner of such property takes timely corrective action pursuant to such ordinance, the
225 locality shall deem the bawdy place abated, shall close the proceeding without any charge or cost to the
226 owner and shall promptly provide written notice to the owner that the proceeding has been terminated
227 satisfactorily. The closing of a proceeding shall not bar the locality from initiating a subsequent
228 proceeding if the bawdy place recurs.

229 D. Nothing in this section shall be construed to abridge or waive any rights or remedies of an owner
230 of property at law or in equity.

231 **§ 15.2-1115. Abatement or removal of nuisances.**

232 A. A municipal corporation may compel the abatement or removal of all nuisances, including but not
233 limited to the removal of weeds from private and public property and snow from sidewalks; the
234 covering or removal of offensive, unwholesome, unsanitary or unhealthy substances allowed to
235 accumulate in or on any place or premises; the filling in to the street level, fencing or protection by
236 other means, of the portion of any lot adjacent to a street where the difference in level between the lot
237 and the street constitutes a danger to life and limb; the raising or draining of grounds subject to be
238 covered by stagnant water; and the razing or repair of all unsafe, dangerous or unsanitary public or
239 private buildings, walls or structures which constitute a menace to the health and safety of the occupants
240 thereof or the public. If after such reasonable notice as the municipal corporation may prescribe the
241 owner or owners, occupant or occupants of the property or premises affected by the provisions of this
242 section shall fail to abate or obviate the condition or nuisance, the municipal corporation may do so and
243 charge and collect the cost thereof from the owner or owners, occupant or occupants of the property

244 affected in any manner provided by law for the collection of state or local taxes.

245 B. Every charge authorized by this section in excess of \$200 which has been assessed against the
246 owner of any such property and which remains unpaid shall constitute a lien against such property. Such
247 liens shall have the same priority as *liens for* other unpaid local *real estate* taxes and shall be
248 enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et
249 seq.) of Chapter 39 of Title 58.1. A locality may waive such liens in order to facilitate the sale of the
250 property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the
251 owner and who has no business association with the owner. All such liens shall remain a personal
252 obligation of the owner of the property at the time the liens were imposed.