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## HOUSE BILL NO. 2803

Offered January 20, 1997

A BILL to amend and reenact §§ 58.1-3340, 58.1-3916, 58.1-3921, 58.1-3924, 58.1-3958 and 58.1-3965 of the Code of Virginia, relating to the collection of real estate taxes not paid when due, and to amend the Code of Virginia by adding in Chapter 39 of Article 58.1 an article numbered 6, consisting of sections numbered 58.1-3994 through 58.1-3997, relating to the sale of tax liens upon real estate either individually or by bulk sale.

Patron—Rhodes

Referred to Committee on Finance

## Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3340, 58.1-3916, 58.1-3921, 58.1-3924, 58.1-3958 and 58.1-3965 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 39 of Article 58.1 an article numbered 6, consisting of sections numbered 58.1-3994 through 58.1-3997, as follows:

§ 58.1-3340 Lien on real estate for taxes and levies assessed thereon; responsibility of purchaser at sale; lien on rents.

There shall be a lien on real estate for the payment of taxes and levies assessed thereon prior to any other lien or encumbrance. *The lien may be assigned or sold and transferred to the purchaser of a tax lien sold in accordance with the provisions of Article 6 (§ 58.1-3994, et seq.) of Chapter 39.* The lien shall continue to be such prior lien until actual payment ~~shall have~~ has been made to the proper officer of the taxing authority *or to the holder of a tax-lien certificate in accordance with the provisions of Article 6 (§ 58.1-3994, et seq.) of Chapter 39.* The purchaser at a sale shall cause the proceeds to be applied to the payment of all taxes and levies assessed on real estate, the provisions of § 55-59.4 notwithstanding. In the case of the purchase of a portion of a tract of land, the purchaser shall cause the proceeds to be applied to the payment of taxes and levies assessed on the entire tract, prorated in accordance with the relationship that the purchase price bears to the most ~~recent~~recently assessed value of the entire tract. If the cost per acre of the purchased parcel is less than the assessed value per acre of the entire tract, or if, in the reasonable opinion of the local commissioner of the revenue or other assessing officer, the purchase price is less than the fair market value of the purchased parcel, the local commissioner of the revenue or other assessing officer may require that an appraisal, prepared by a state-certified or state-licensed appraiser, of the purchased parcel be provided, and in such event the proration shall be made in accordance with the relationship that the greater of (i) the appraised value of the purchased parcel or (ii) the purchase price bears to the most ~~recent~~recently assessed value of the entire tract. ~~In the event~~ If a proration is necessary, the purchaser's portion of such tract of land shall be relieved of such lien to the extent the proceeds exceed the purchaser's pro rata share of taxes. It shall be the responsibility of the treasurer or other proper officer of the taxing authority to cause the release of the lien. The seller's liability for taxes and levies shall be effectively prorated contractually. The words "taxes" and "levies" as used in this section include the penalties and interest accruing on such taxes and levies in pursuance of law. The lien imposed hereby shall, in addition to existing remedies for the collection of taxes and levies, be enforceable by suit in equity under the provisions of Article 4 (§ 58.1-3965 et seq.) of Chapter 39.

There shall be a further *prior* lien upon the rents of such real estate whether the ~~same rent be~~ is in money or in kind, for taxes of the current year.

§ 58.1-3916. Counties, cities and towns may provide dates for filing returns, set penalties, interest, etc.

Notwithstanding provisions contained in §§ 58.1-3518, 58.1-3900, 58.1-3913, 58.1-3915 and 58.1-3918, the governing body of any county, city or town may provide by ordinance the time for filing local license applications and annual returns of taxable tangible personal property, machinery and tools and merchants' capital. The governing body may also by ordinance establish due dates for the payment of local taxes; may provide that payment be made in a single installment or in two equal installments; may provide by ordinance penalties for failure to file such applications and returns and for nonpayment in time; may provide for payment of interest on delinquent taxes; and may provide for the recovery of reasonable attorney's or collection agency's fees which shall not exceed twenty percent of the delinquent tax bill upon nonpayment. Attorney's fees shall be added only if such delinquency is collected by action at law or suit in equity.

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures

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HB2803

60 prescribed herein during the pendency of any administrative appeal under § 58.1-3980, so long as the  
61 appeal is filed within ninety days of the date of the assessment, and for thirty days after the date of the  
62 final determination of the appeal; ~~provided that~~; *however*, nothing in this paragraph shall be construed to  
63 preclude the assessment or refund, following the final determination of such appeal, of such interest as  
64 otherwise may be provided by general law as to that portion of a tax bill which has remained unpaid or  
65 was overpaid during the pendency of such appeal and is determined in such appeal to be properly due  
66 and owing.

67 Interest may commence ~~not~~ *no* earlier than the first day following the day such taxes are due by  
68 ordinance to be filed; *and at a an annual* rate not to exceed ~~ten~~ *eighteen* percent ~~per year in the first~~  
69 *year of delinquency*. The governing body may impose interest at a rate not to exceed the rate of interest  
70 established pursuant to § 6621 of the Internal Revenue Code of 1954, as amended, or ~~ten~~ *eighteen*  
71 percent annually, whichever is greater, for the second and subsequent years of delinquency. No penalty  
72 for failure to pay a tax or installment shall exceed ten percent of the tax past due on such property or  
73 the sum of ten dollars, whichever is the greater; ~~provided~~; *however*, ~~that~~ the penalty shall in no case  
74 exceed the amount of tax due. No penalty for failure to file a return shall be greater than ten percent of  
75 the tax assessable on such return or ten dollars, whichever is greater; ~~provided~~; *however*, ~~that~~ the penalty  
76 shall in no case exceed the amount of the tax assessable. The assessment of such penalty shall not be  
77 deemed a defense to any criminal prosecution for failing to make *a* return of taxable property as may be  
78 required by law or ordinance. Penalty for failure to file an application or return may be assessed on the  
79 day after such return or application is due; penalty for failure to pay any tax may be assessed on the  
80 day after the first installment is due. Any such penalty when so assessed shall become a part of the tax.

81 No penalty for failure to pay any tax shall be imposed for any assessment made later than two weeks  
82 prior to the day on which the taxes are due, if such assessment is made thereafter through the fault of a  
83 local official; and if such assessment is paid within two weeks after the notice thereof is mailed.

84 ~~In the event~~ *If* a transfer of real property ownership occurs after January 1 of a tax year and a real  
85 estate tax bill has been mailed pursuant to §§ 58.1-3281 and 58.1-3912, the treasurer or other  
86 appropriate local official designated by ordinance of the local governing body in jurisdictions not having  
87 a treasurer, upon ascertaining that a property transfer has occurred, may invalidate a bill sent to the prior  
88 owner and reissue the bill to the new owner as permitted by § 58.1-3912, and no penalty for failure to  
89 pay any tax for any such assessment shall be imposed if the tax is paid within two weeks after the  
90 notice thereof is mailed; *however, such invalidation must occur prior to the assignment or sale and*  
91 *transfer of a tax lien pursuant to § 58.1-3994.*

92 Penalty and interest for failure to file a return or to pay a tax shall not be imposed if such failure  
93 was not the fault of the taxpayer, or was the fault of the commissioner of revenue or the treasurer, as  
94 the case may be. The failure to file a return or to pay a tax due to a medically determinable physical or  
95 mental impairment on the date the return or tax is due shall be presumptive proof of lack of fault on the  
96 taxpayer's part, ~~provided~~ *if* the return is filed or the taxes are paid within thirty days of the due date;  
97 *however*, this provision shall not apply if there is a committee, legal guardian or other fiduciary  
98 handling the individual's affairs. The treasurer shall make determinations of fault relating exclusively to  
99 failure to pay a tax, and the commissioner of the revenue shall make determinations of fault relating  
100 exclusively to failure to file a return. In jurisdictions not having a treasurer or commissioner of the  
101 revenue, the governing body may delegate to the appropriate local tax officials the responsibility to  
102 make the determination of fault.

103 The governing body may further provide for reasonable extensions of time, not to exceed ninety  
104 days, for the payment of real estate taxes and for filing returns on tangible personal property, machinery  
105 and tools and merchants' capital, and the business, professional, and occupational license tax, whenever  
106 good cause exists. The official granting such extension shall keep a record of every such extension. If  
107 any taxpayer who has been granted an extension of time for filing his return fails to file his return  
108 within the extended time, his case shall be treated the same as if no extension had been granted.

109 *If there is an assignment or sale and transfer of tax liens pursuant to § 58.1-3994, the tax-lien*  
110 *certificate holder shall be entitled, as a minimum upon redemption, to a mandatory five percent of the*  
111 *total amount due or the interest that has accrued on the total due since the transfer occurred, whichever*  
112 *is greater.*

113 This section shall be the sole authority for local ordinances setting due dates of local taxes and  
114 penalty and interest thereon, and shall supersede the provisions of any charter or special act.

115 § 58.1-3921. Treasurer to make out lists of uncollectable taxes and delinquents.

116 The treasurer, after ascertaining which of the taxes and levies assessed in his county or city cannot  
117 be collected, shall, not later than August 1 in each year, make out lists as follows:

118 1. A list of real estate on the commissioner's land book improperly placed thereon or not  
119 ascertainable, with the amount of taxes charged thereon.

120 2. A list of other real estate which is delinquent for the nonpayment of the taxes thereon.

121 3. A list of such of the taxes assessed on tangible personal property, machinery and tools and

merchants' capital, and other subjects of local taxation, other than real estate, as he is unable to collect.

4. A list of the uncollected taxes amounting to less than five dollars each for which no bills were sent under § 58.1-3912.

5. A list of uncollected balances of previously billed taxes amounting to less than five dollars each as to which the treasurer has determined that the costs of collecting such balances would exceed the amount recoverable; ~~provided that~~; however, the treasurer shall not include on such list any balance with respect to which he has reason to believe that the taxpayer has purposely paid less than the amount due and owing.

6. A list of all the certificates sold for taxes in accordance with the provisions of Article 6 (§ 58.1-3994, et seq.) of this chapter. This list shall be known as the "list of tax-lien certificates sold." The treasurer shall append to the list a certificate setting forth the fact that each sale was made in accordance with the requirements of this chapter.

Notwithstanding any other provision of this title, no tax or levy which has been discharged or otherwise rendered legally uncollectable as to a taxpayer liable upon it in a proceeding under the United States Bankruptcy Code (Title 11 of the United States Code) shall be considered delinquent with respect to that taxpayer on and after the date such obligation is discharged or otherwise rendered legally uncollectable, and the treasurer shall not include any such discharged or uncollectable obligation in any list required to be prepared pursuant to this section. Any such discharged or uncollectable obligation shall be stricken from the books of the treasurer as of the date the obligation is discharged or otherwise rendered uncollectable, and the treasurer thereafter shall have no further duty to collect such tax or levy.

The governing body of any town may, by ordinance, adopt the procedures set forth in this section and § 58.1-3924. If such ordinance is adopted, the town treasurer shall submit such lists to the governing body as provided in § 58.1-3924.

§ 58.1-3924. Delinquent lists involving local taxes submitted to local governing bodies; publication of lists.

A copy of each of the ~~five~~ six lists mentioned in § 58.1-3921 shall be submitted by the treasurer to the governing body of his county, city or town. Such lists shall be submitted at the first meeting of the governing body held after the treasurer has completed the lists.

The treasurer may, or shall at the direction of the governing body, certify to the commissioner of the revenue a copy of the list of real estate on the commissioner's land book improperly placed thereon or not ascertainable. The commissioner of the revenue shall correct his land book accordingly. The treasurer shall be given credit for the entire amount of the taxes included in the list and may destroy the tax tickets made out by him for such taxes. The treasurer shall be given credit for all taxes shown on the list mentioned in subdivisions 4 ~~and~~, 5 ~~and~~ 6 of § 58.1-3921 and for obligations discharged in bankruptcy as described in § 58.1-3921.

The governing body shall ~~cause~~ publish the lists mentioned in subdivisions 2 and 3 of § 58.1-3921, or such parts thereof as deemed advisable, ~~to be published~~ once in a newspaper in the county, city or town, but if there ~~be~~ is no newspaper published in the county, city or town then in some newspaper having general circulation therein or in handbills to be posted generally throughout the county, city or town, and at the front door of the courthouse thereof for a period of thirty days.

The publication costs shall be charged to the delinquent taxpayers listed. The sum payable by each delinquent taxpayer shall be determined by dividing the total publication costs incurred per thirty-day period, by the number of delinquent taxpayers listed per thirty-day period. *In those instances in which tax-lien certificates have been issued, the delinquent taxpayer's share of publication costs shall be added to the cost of redemption of the tax-lien certificate.*

§ 58.1-3958. Payment of administrative costs, etc.

The governing body of any county, city or town may impose on delinquent taxpayers a fee to cover the administrative costs and reasonable attorney's or collection agency's fees which shall not exceed twenty percent of the delinquent tax bill associated with the collection of delinquent taxes *including the issuance of and foreclosure on tax-lien certificates*. Such administrative costs shall be in addition to all penalties and interest, and shall not exceed twenty dollars for taxes collected subsequent to the filing of a warrant or other appropriate legal document but prior to judgment, and twenty-five dollars for taxes collected subsequent to judgment. Attorney's fees shall be added only if such delinquency is collected by action at law or suit in equity.

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein *and no tax-lien certificate shall be issued* during the pendency of any administrative appeal under § 58.1-3980, so long as the appeal is filed within ninety days of the date of the assessment, and for thirty days after the date of the final determination of the appeal; ~~provided that~~; however, nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill which has remained unpaid or was overpaid during the pendency of such appeal

183 and is determined in such appeal to be properly due and owing.

184 § 58.1-3965. When land may be sold for delinquent taxes; notice of sale; owner's right of  
185 redemption.

186 A. When any taxes on any real estate in a county, city or town are delinquent on December 31  
187 following the ~~third~~ *second* anniversary of the date on which such taxes have become due, or, in the case  
188 of real property upon which is situated any structure that has been condemned by the local building  
189 official pursuant to applicable law or ordinance, the first anniversary of the date on which such taxes  
190 have become due, such real estate may be sold for the purpose of collecting all delinquent taxes on such  
191 property. The officer charged with the duty of collecting taxes for the locality wherein the real property  
192 lies shall, at least thirty days prior to instituting any judicial proceeding pursuant to this section, send a  
193 notice *by registered or certified mail* to the last known address of the property owner (and to the  
194 property address if the property address is different from the owner's address and if the real estate is  
195 listed with the post office by a numbered and named street address) and to the last known address of  
196 any trustee under any deed of trust, mortgagee under any mortgage and any other lien creditor, if such  
197 trustee, mortgagee or lien creditor is not otherwise made a party defendant under § 58.1-3967, advising  
198 such property owner, trustee, mortgagee or other lien creditor of the delinquency and the officer's  
199 intention to take action. Such officer shall also ~~cause to be published~~ *publish* at least once a list of real  
200 estate which will be offered for sale under the provisions of this article in a newspaper of general  
201 circulation in the locality, at least thirty days prior to the date on which judicial proceedings under the  
202 provisions of this article are to be commenced. *The newspaper notice shall contain language in bold*  
203 *print that any trustee, mortgagee or other lien creditor shall notify the treasurer or other officer*  
204 *responsible for collecting taxes if he wishes to receive any further notices regarding the sale of a*  
205 *particular piece of real estate for delinquent taxes, and shall provide his current address for mailing*  
206 *and redemption purposes.*

207 The pro rata cost of such publication shall become a part of the tax and together with all other costs,  
208 including reasonable attorneys' fees set by the court and the costs of any title examination conducted in  
209 order to comply with the notice requirements imposed by this section, shall be collected if payment is  
210 made by the owner in redemption of the real property described therein whether or not court  
211 proceedings have been initiated. A notice substantially in the following form shall be sufficient:

212 Notice

213 Judicial Sale of Real Property

214 On..... (date)..... proceedings will be commenced under the authority of § 58.1-3965 et seq. of  
215 the Code of Virginia to sell the following parcels for payment of delinquent taxes:

216 (description of properties)

217 B. The owner of any property listed may redeem it at any time before the date of the sale by paying  
218 all accumulated taxes, penalties, reasonable attorneys' fees, interest and costs thereon, including the pro  
219 rata cost of publication hereunder. Partial payment of delinquent taxes, penalties, reasonable attorneys'  
220 fees, interest or costs shall not be sufficient to redeem the property, and shall not operate to suspend,  
221 invalidate or make moot any action for judicial sale brought pursuant to this article.

222 C. Notwithstanding the provisions of subsection B and of § 58.1-3954, the treasurer or other officer  
223 responsible for collecting taxes may suspend any action for sale of the property commenced pursuant to  
224 this article, *so long as it does not involve tax liens assigned or sold and transferred pursuant to Article*  
225 *6 (§ 58.1-3994 et seq.) of this chapter*, upon entering into an agreement with the owner of the real  
226 property for the payment of all delinquent amounts in installments over a period which is reasonable  
227 under the circumstances, but in no event shall exceed twenty-four months. Any such agreement shall be  
228 recorded by the officer among the land records of the locality in which the property lies, and shall be  
229 secured by the lien of the locality pursuant to § 58.1-3340.

230 D. During the pendency of any installment agreement permitted under subsection C, any proceeding  
231 for a sale previously commenced shall not abate, but shall be continued on the docket of the court in  
232 which such action is pending. It shall be the duty of the treasurer or other officer responsible for  
233 collecting taxes to promptly notify the clerk of such court when obligations arising under such an  
234 installment agreement have been fully satisfied. Upon the receipt of such notice, the clerk shall cause  
235 the action to be stricken from the docket.

236 E. ~~In the event~~ *If* the owner of the property or other responsible person defaults upon obligations  
237 arising under an installment agreement permitted by subsection C, or during the term of any installment  
238 agreement, defaults on any current obligation as it becomes due, such agreement shall be voidable by  
239 the treasurer or other officer responsible for collecting taxes upon fifteen days' written notice to the  
240 signatories of such agreement irrespective of the amount remaining due. Any action for the sale  
241 previously commenced pursuant to this article may proceed without any requirement that the notice or  
242 advertisement required by subsection A, which had previously been made with respect to such property,  
243 be repeated. No owner of property which has been the subject of a defaulted installment agreement shall  
244 be eligible to enter into a second installment agreement with respect to the same property within three

years of such default.

F. Suits to contest the validity of any deed conveyed pursuant to this section shall not be instituted and are forever barred if not filed within ninety days of the conclusion of the judicial sale. Both the public notice of a tax sale pursuant to this section and the notice of expiration of the redemption period shall include a statement that suits to contest the validity of the judicial sale shall be filed within ninety days of the conclusion of that sale. Upon the expiration of such ninety-day period from the date of the judicial sale, the validity of the sale and all proceedings in connection therewith shall be conclusively presumed to have been legally taken, and no court shall have the authority to inquire into such matters.

#### Article 6.

##### Assignment or Sale and Transfer of Tax Liens.

§ 58.1-3994. Assignment or sale and transfer of tax liens on real estate.

A. The treasurer or other official responsible for collecting taxes of any county, city or town is hereby authorized to and may assign or sell and transfer, for consideration, to a third party, tax liens that remain unsatisfied for twelve months or more. The tax liens may be assigned or sold and transferred in any manner the treasurer or official responsible for collecting taxes deems appropriate, excluding the acceptance of a promissory note for payment. The treasurer or official responsible for collecting taxes may make the assignment or conduct a sale and transfer of its tax liens by public auction, sealed bid, or pursuant to a negotiated contract.

B. Notwithstanding any other provision of law, whenever the governing body determines that it is in the county, city or town's best interest, the county, city or town may assign or sell and transfer tax liens to any person, except the delinquent owner of the property subject to the tax lien, in an amount less than the total amount of unpaid taxes, penalties and accrued interest. The execution of a purchase agreement or other agreement by the treasurer or official responsible for collecting taxes shall be conclusive evidence of the adequacy of consideration for the assignment or sale and transfer; however, payment shall be by cash or cash equivalent.

C. Notice of the assignment or sale and transfer of the county, city or town's tax liens shall be provided by the treasurer or official responsible for collecting taxes within thirty days of such assignment or sale and transfer. Notice shall be published in a newspaper of general circulation in the county, city or town where the real estate being assigned, sold or transferred is located. The costs of such notice shall be borne by the tax-lien assignee, purchaser or transferee and shall become part of the total cost of redemption.

D. Any assignment or sale and transfer of any tax liens and the right to receive amounts in respect thereof as provided by law shall be evidenced by a notarized tax-lien certificate of the treasurer or official responsible for collecting taxes. The tax-lien certificate shall state the full amount of such lien, including penalties, interest and costs accrued as of the date of the assignment or sale and transfer of such tax lien; the name of the assignee or purchaser of the lien; and the tax assessment description and street address of the real estate. The tax-lien certificate shall also indicate that the penalty, if any, and interest continue to accrue until the lien is redeemed. The tax-lien certificate shall be recorded in the circuit court clerk's office in the county, city, or town in which the real estate is located. When the treasurer or official responsible for collecting taxes receives an application for a tax-lien certificate, the certificate shall show all security interests and liens thereon disclosed by the application. Notwithstanding any provision of law to the contrary, including without limitation section (1) of § 8.9-302, all security interests and liens on any tax-lien certificate may be perfected and made effective for all purposes of priority by the recordation of the tax-lien certificate, with the name and address of the secured party thereon, in the circuit court clerk's office of the county, city, or town in which the real estate is located. No further act of recording, filing or other action shall be needed to make the security interest and liens on any tax-lien certificate effective as against all third parties, including, without limitation creditors and purchasers. Delinquent real estate taxes of all government units due on a parcel of land in any one year may be combined into one tax-lien certificate.

E. The transferee of a tax lien and any assignee or successor in interest of such transferee shall have and possess the same rights, powers, lien status and priority of payment at law or in equity as the county, city or town would have possessed if the tax lien had not been assigned or sold and transferred, including the right to sell real estate for unpaid taxes pursuant to § 58.1-3965, and absolute title to sell the real estate free from all mortgages, liens or other encumbrances when not redeemed according to law by the owner.

F. 1. The transferee of a tax lien and any assignee or successor in interest may assign or sell and transfer the tax lien to any person, except to the delinquent owner of the property subject to the lien.

2. Any transfer or assignment made pursuant to subdivision 1 shall be evidenced by a notarized document executed by the transferor. Such document shall cross-reference the original notarized tax-lien certificate of assignment or sale and transfer issued by the treasurer or official responsible for collecting taxes, shall recite the information appearing on such original certificate, and shall be

306 recorded in the circuit court clerk's office of the county or city in which the real estate is located.

307 § 58.1-3995. Government property leased to nongovernment party.

308 No tax-lien certificate may be issued for a delinquency on property owned by any governmental unit  
309 if the property has become subject to taxation due to its lease to a nongovernmental lessee.

310 § 58.1-3996. Substitution of tax liens.

311 For a period of no more than six months following the completion of a transaction contemplated by  
312 this article, the county, city or town shall have the right to substitute any tax liens assigned or sold and  
313 transferred for a tax lien of equal value for similar property, where the county, city or town treasurer  
314 or official responsible for collecting taxes has determined that a particular property should be excluded  
315 from the tax-lien portfolio, if the tax-lien certificate holder agrees to permit the substitution.

316 § 58.1-3997. Rule-making authority.

317 The treasurer or official responsible for collecting taxes shall issue rules to implement the provisions  
318 of this article.