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SENATE BILL NO. 578**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee for Courts of Justice
on January 27, 2014)

(Patron Prior to Substitute—Senator Obenshain)

A *BILL to amend the Code of Virginia by adding a section numbered 15.2-2208.1, relating to unconstitutional grant or denial by localities of certain permits and approvals; damages, attorney fees and costs.*

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. Damages for unconstitutional grant or denial by locality of certain permits and approvals.

A. Notwithstanding any other provision of law, general or special, any applicant aggrieved by the grant or denial by a locality of any approval or permit, however described or delineated, including a special exception, special use permit, conditional use permit, rezoning, site plan, plan of development, and subdivision plan, where such grant included, or denial was based upon, an unconstitutional condition pursuant to the United States Constitution or the Constitution of Virginia, shall be entitled to an award of compensatory damages and to an order remanding the matter to the locality with a direction to grant or issue such permits or approvals without the unconstitutional condition and may be entitled to reasonable attorney fees and court costs.

B. In any proceeding, once an unconstitutional condition has been proven by the aggrieved applicant to have been a factor in the grant or denial of the approval or permit, the court shall presume, absent clear and convincing evidence to the contrary, that such applicant's acceptance of or refusal to accept the unconstitutional condition was the controlling basis for such impermissible grant or denial provided only that the applicant objected to the condition in writing prior to such grant or denial.

C. Any action brought pursuant to this section shall be filed with the circuit court having jurisdiction of the land affected or the greater part thereof, and the court shall hear and determine the case as soon as practical, provided that such action is filed within 60 days of the grant or denial of any application as set forth herein.

2. That the provisions of this act shall apply only to approvals or permits that are granted or denied on or after July 1, 2014.