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**SENATE BILL NO. 1373**

Offered January 11, 2017

Prefiled January 11, 2017

*A BILL to amend and reenact §§ 15.2-2204, 15.2-2207, and 36-96.6 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 37.2-406.1, relating to group homes.*

Patron—Norment

Referred to Committee on Local Government

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

**1. That §§ 15.2-2204, 15.2-2207, and 36-96.6 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 37.2-406.1 as follows:**

**§ 15.2-2204. Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments.**

A. Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than five days nor more than 21 days after the second advertisement appears in such newspaper. The local planning commission and governing body may hold a joint public hearing after public notice as set forth hereinabove. If a joint hearing is held, then public notice as set forth above need be given only by the governing body. The term "two successive weeks" as used in this paragraph shall mean that such notice shall be published at least twice in such newspaper with not less than six days elapsing between the first and second publication. After enactment of any plan, ordinance or amendment, further publication thereof shall not be required.

B. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of 25 or fewer parcels of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's owners' associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent. However, when a proposed amendment to the zoning ordinance involves a tract of land not less than 500 acres owned by the Commonwealth or by the federal government, and when the proposed change affects only a portion of the larger tract, notice need be given only to the owners of those properties that are adjacent to the affected area of the larger tract. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be remailed. Costs of any notice required under this chapter shall be taxed to the applicant.

When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of more than 25 parcels of land, or a change to the applicable zoning ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved, provided, however, that written notice of such changes to zoning ordinance text regulations shall not have to be mailed to the owner, owners, or their agent of lots shown on a subdivision plat approved and recorded pursuant to the provisions of Article 6 (§ 15.2-2240 et seq.) where such lots are less than 11,500 square feet. One notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax

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59 assessment records shall be deemed adequate compliance with this requirement, provided that a  
60 representative of the local commission shall make affidavit that such mailings have been made and file  
61 such affidavit with the papers in the case. Nothing in this subsection shall be construed as to invalidate  
62 any subsequently adopted amendment or ordinance because of the inadvertent failure by the  
63 representative of the local commission to give written notice to the owner, owners or their agent of any  
64 parcel involved.

65 The governing body may provide that, in the case of a condominium or a cooperative, the written  
66 notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in  
67 lieu of each individual unit owner.

68 Whenever the notices required hereby are sent by an agency, department or division of the local  
69 governing body, or their representative, such notices may be sent by first class mail; however, a  
70 representative of such agency, department or division shall make affidavit that such mailings have been  
71 made and file such affidavit with the papers in the case.

72 A party's actual notice of, or active participation in, the proceedings for which the written notice  
73 provided by this section is required shall waive the right of that party to challenge the validity of the  
74 proceeding due to failure of the party to receive the written notice required by this section.

75 C. When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map  
76 classification; or an application for special exception for a change in use or to increase by greater than  
77 50 percent of the bulk or height of an existing or proposed building, but not including renewals of  
78 previously approved special exceptions, involves any parcel of land located within one-half mile of a  
79 boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written  
80 notification as required by this section, written notice shall also be given by the local commission, or its  
81 representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of  
82 such adjoining locality.

83 D. When (i) a proposed comprehensive plan or amendment thereto, (ii) a proposed change in zoning  
84 map classification, or (iii) an application for special exception for a change in use involves any parcel of  
85 land located within 3,000 feet of a boundary of a military base, military installation, military airport,  
86 excluding armories operated by the Virginia National Guard, or licensed public-use airport then, in  
87 addition to the advertising and written notification as required by this section, written notice shall also  
88 be given by the local commission, or its representative, at least 30 days before the hearing to the  
89 commander of the military base, military installation, military airport, or owner of such public-use  
90 airport, and the notice shall advise the military commander or owner of such public-use airport of the  
91 opportunity to submit comments or recommendations.

92 E. The adoption or amendment prior to July 1, 1996, of any plan or ordinance under the authority of  
93 prior acts shall not be declared invalid by reason of a failure to advertise or give notice as may be  
94 required by such act or by this chapter, provided a public hearing was conducted by the governing body  
95 prior to such adoption or amendment. Every action contesting a decision of a locality based on a failure  
96 to advertise or give notice as may be required by this chapter shall be filed within 30 days of such  
97 decision with the circuit court having jurisdiction of the land affected by the decision. However, any  
98 litigation pending prior to July 1, 1996, shall not be affected by the 1996 amendment to this section.

99 F. Notwithstanding any contrary provision of law, general or special, the City of Richmond may  
100 cause such notice to be published in any newspaper of general circulation in the city.

101 G. When a proposed comprehensive plan or amendment of an existing plan designates or alters  
102 previously designated corridors or routes for electric transmission lines of 150 kilovolts or more, written  
103 notice shall also be given by the local planning commission, or its representative, at least 10 days before  
104 the hearing to each electric utility with a certificated service territory that includes all or any part of  
105 such designated electric transmission corridors or routes.

106 H. When any applicant requesting a written order, requirement, decision, or determination from the  
107 zoning administrator, other administrative officer, or a board of zoning appeals that is subject to the  
108 appeal provisions contained in § 15.2-2311 or 15.2-2314, is not the owner or the agent of the owner of  
109 the real property subject to the written order, requirement, decision or determination, written notice shall  
110 be given to the owner of the property within 10 days of the receipt of such request. Such written notice  
111 shall be given by the zoning administrator or other administrative officer or, at the direction of the  
112 administrator or officer, the requesting applicant shall be required to give the owner such notice and to  
113 provide satisfactory evidence to the zoning administrator or other administrative officer that the notice  
114 has been given. Written notice mailed to the owner at the last known address of the owner as shown on  
115 the current real estate tax assessment books or current real estate tax assessment records shall satisfy the  
116 notice requirements of this subsection.

117 This subsection shall not apply to inquiries from the governing body, planning commission, or  
118 employees of the locality made in the normal course of business.

119 I. Any entity intending to locate a public or private detention home, group home, or other residential  
120 care facility in a locality shall give the chief administrative officer of that locality and the president of

any home owners' association for the neighborhood in which such public or private detention home, group home, or other residential care facility is to be located at least 90 days written notice prior to the issuance of the license. The notice required by this subsection shall include contact information for the community liaison for the public or private detention home, group home, or other residential care facility; a description of the services proposed to be provided; and a description of the population to be served, to include whether such population may include persons who, on the basis of a prior record of criminal convictions involving harm to persons or property or a finding of not guilty by reason of insanity involving harm to persons or property, may constitute a clear and present threat to the health or safety of other individuals in the locality and neighborhood.

**§ 15.2-2207. Public notice of juvenile residential care facilities.**

In any locality without an applicable zoning ordinance, the local governing body may provide by ordinance that any party desiring to establish a public or private detention home, group home, or other residential care facility for children in need of services or for delinquent or alleged delinquent youth must first provide public notice and participate in a public hearing in accordance with subsection I of § 15.2-2204.

**§ 36-96.6. Certain restrictive covenants void; instruments containing such covenants.**

A. Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or ownership of property on the basis of race, color, religion, national origin, sex, elderliness, familial status, or handicap, whether heretofore or hereafter included in an instrument affecting the title to real or leasehold property, are declared to be void and contrary to the public policy of the Commonwealth.

B. Any person who is asked to accept a document affecting title to real or leasehold property may decline to accept the same if it includes such a covenant or reversionary interest until the covenant or reversionary interest has been removed from the document. Refusal to accept delivery of an instrument for this reason shall not be deemed a breach of a contract to purchase, lease, mortgage, or otherwise deal with such property.

C. No person shall solicit or accept compensation of any kind for the release or removal of any covenant or reversionary interest described in subsection A. Any person violating this subsection shall be liable to any person injured thereby in an amount equal to the greater of three times the compensation solicited or received, or \$500, plus reasonable attorneys' attorney fees and costs incurred.

D. A family care home, foster home, or group home in which individuals with physical handicaps, mental illness, intellectual disability, or developmental disability reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single family when construing any restrictive covenant which purports to restrict occupancy or ownership of real or leasehold property to members of a single family or to residential use or structure.

E. Consistent with 42 U.S.C. § 3604(f)(9), nothing in this section shall prohibit a restrictive covenant from prohibiting owners from using, or renting a dwelling for another entity to use, their premises to house a person or persons who, on the basis of a prior record of criminal convictions involving harm to persons or property or a finding of not guilty by reason of insanity involving harm to persons or property, may constitute a clear and present threat to the health or safety of other individuals in the neighborhood.

**§ 37.2-406.1. Conditions for initial licensure of certain group home providers.**

A. Consistent with 42 U.S.C. § 3604(f)(9) and notwithstanding the Commissioner's discretion to grant licenses pursuant to this article or any Board regulation regarding licensing, no initial license to operate a public or private detention home, group home, or other residential care facility shall be granted by the Commissioner if (i) the facility is to be located within one-half mile of a public or private licensed day care center or a public or private K-12 school and (ii) the residents of such facility may include persons who, on the basis of a prior record of criminal charges involving harm to persons or property or a finding of not guilty by reason of insanity for crimes involving harm to persons or property, may constitute a clear and present threat to the health or safety of other individuals, except when such service is provided by a hospital licensed by the Board of Health or the Commissioner or is owned or operated by an agency of the Commonwealth.

B. Upon receiving notice of a proposal for or an application to obtain an initial license to operate a public or private detention home, group home, or other residential care facility, the Commissioner shall, within 15 days of the receipt, notify the local governing body and the community services board serving the jurisdiction in which the facility is to be located of the proposal or application and the facility's proposed location. Within 15 days of the date of the notice, the local governing body shall provide notice to the home owners' association, if any, serving the neighborhood in which the facility is to be located. Within 30 days of the date of the notice, the local governing body and community services board shall submit to the Commissioner comments on the proposal or application. Such comments shall include any comments received from the home owners' association serving the affected neighborhood. The local governing body shall notify the Commissioner within 30 days of the date of the notice

182 *concerning the compliance of the applicant with this section and any applicable local ordinances.*

183 *C. No license shall be issued by the Commissioner to the provider until the conditions of this section*  
184 *have been met, the local governing body and community services board comments have been received,*  
185 *and the local governing body has determined compliance with the provisions of this section and any*  
186 *relevant local ordinances.*

187 *D. The Commissioner shall not issue an initial license to operate a public or private detention home,*  
188 *group home, or other residential care facility if the facility may house residents who have any prior*  
189 *record of civil or criminal mental health commitment on the basis of being a danger to themselves,*  
190 *unless the provider demonstrates that such group home will have no greater than a 2:1 ratio of*  
191 *residents to staff at all times.*