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SENATE BILL NO. 964

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Local Government
on January 17, 2017)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact § 15.2-901 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-901.1, relating to running bamboo; local ordinance; civil penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-901 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-901.1 as follows:

§ 15.2-901. Locality may provide for removal or disposal of trash, cutting of grass, weeds, and running bamboo; 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, *including running bamboo as defined in § 15.2-901.1*, 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 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 period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.

60 **§ 15.2-901.1. Locality may provide for control of running bamboo; civil penalty.**

61 A. For purposes of this section, "running bamboo" means any bamboo that is characterized by
62 aggressive spreading behavior, including species in the genus *Phyllostachys*.

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

64 1. No landowner shall allow running bamboo to grow without proper upkeep and appropriate
65 containment measures, including barriers or trenching; and

66 2. No landowner shall allow running bamboo to spread from his property to any public right-of-way
67 or adjoining property not owned by the landowner.

68 C. A violation of a running bamboo ordinance authorized by this section shall be subject to a civil
69 penalty, not to exceed \$50 for the first violation or violations arising from the same set of operative
70 facts. The civil penalty for subsequent violations not arising from the same set of operative facts within
71 12 months of the first violation shall not exceed \$200. Each business day during which the same
72 violation is found to have existed shall constitute a separate offense. In no event shall a series of
73 specified violations arising from the same set of operative facts result in civil penalties that exceed a
74 total of \$3,000 in a 12-month period.

75 D. No violation of a running bamboo ordinance arising from the same set of operative facts shall be
76 subject to a civil penalty under both (i) an ordinance adopted pursuant to this section and (ii) an
77 ordinance adopted pursuant to § 15.2-901.

78 2. That the Department of Agriculture and Consumer Services and the Department of
79 Conservation and Recreation shall, by July 1, 2018, together develop a model running bamboo
80 ordinance for use by localities based on § 15.2-901.1 of the Code of Virginia, as created by this act.

81 3. That the Department of Agriculture and Consumer Services (VDACS), the Department of
82 Conservation and Recreation, and the Department of Forestry shall enter into a Memorandum of
83 Understanding that clarifies the roles of the VDACS noxious weeds regulations and the work of
84 the Virginia Invasive Species Working Group.

85 4. That the Department of Agriculture and Consumer Services and the Department of
86 Conservation and Recreation shall examine the eligibility of the plants listed in § 15.2-902 of the
87 Code of Virginia for designation as noxious weeds and shall so designate any such plant
88 determined to be eligible.