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SENATE BILL NO. 445

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 22, 2020)

(Patron Prior to Substitute—Senator Edwards)

A BILL to amend and reenact §§ 57-39.2 through 57-39.7 of the Code of Virginia, relating to cemeteries; acquisition of abandoned lots in cities and certain towns.

Be it enacted by the General Assembly of Virginia:

1. That §§ 57-39.2 through 57-39.7 of the Code of Virginia are amended and reenacted as follows:

Article 5.

Acquisition of Abandoned Lots in ~~Certain~~ Cities and Certain Towns.

§ 57-39.2. Reversion of unoccupied cemetery lots in cities and certain towns; rebuttable presumption.

The ownership of or right or interest in any unoccupied cemetery lot in any cemetery located in any city or in any town in any county, which county has a population of not less than 24,500 nor more than 25,600 the Counties of Scott and Wythe, or in any town in any county having the urban county executive form of government, which cemetery is under the ownership and charge of such city or town, or any corporation, association, or trustees, shall, upon abandonment, revert to such city, town, corporation, association, or trustees having ownership and charge of the cemetery containing any such lot. The continued failure to maintain or care for an unoccupied cemetery lot in any cemetery for a period of at least thirty 30 years; whether such period shall have elapsed prior to the effective date hereof or subsequent thereto, shall create and establish a rebuttable presumption that the same such lot has been abandoned.

§ 57-39.3. Proceedings; determination of abandonment.

Any city, town, corporation, association, or trustees having ownership and charge of a cemetery which that is located in a city, or town in a county, as provided in the preceding section (§ 57-39.2), may file a verified bill in equity petition in the circuit court having equity jurisdiction within whose jurisdiction the cemetery is situated, setting forth its or their ownership of the cemetery and facts relating to the continued failure by the owner of an unoccupied cemetery lot in such cemetery to maintain and care for the same such lot for at least thirty 30 consecutive years immediately preceding thereto, and pray for requesting an order adjudging any such lot to be abandoned. Upon the filing of such bill petition, the court upon proper motion shall set a date for a hearing thereon.

§ 57-39.4. Notice to owner of record; publication.

Not less than twenty At least 20 days before the date fixed for the hearing, a notice declaring that the unoccupied cemetery lot has been presumed to be abandoned; and setting forth the date fixed for the hearing; shall be (i) (a) served personally upon the recorded owner thereof, or his heirs, if the recorded owner is known by the cemetery to be dead and upon such heirs whose names and addresses have been filed with the cemetery, or shall be (b) served by mailing the notice by registered mail to the last known address of the recorded owner thereof, or his heirs, if the recorded owner is known by the cemetery to be dead and to such heirs whose names and addresses have been filed with the cemetery, and by publishing the notice (ii) published once a week for four consecutive weeks in a newspaper having general circulation in the city or town in which the cemetery is located. Thereupon, it It shall be the duty of such recorded owner or his heirs, as the case may be, to appear and make answer to the allegations of said bill and any a petition filed pursuant to § 57-39.3. Any such appearance and answer shall rebut the presumption of abandonment.

§ 57-39.5. Judicial determination; conveyance of title.

At the hearing authorized by the preceding section § 57-39.4, the proofs of the parties or the petition in the event of the failure of the recorded owner or his heirs to appear and answer shall be presented, and if the court shall determine therefrom, or upon the verified bill in event of the failure of the recorded owner or his heirs, as the case may be, to appear and answer, that if the unoccupied cemetery lot set forth in the bill petition has been abandoned, If the court shall enter enters a decree adjudging the same such lot to be abandoned, and it shall further provide that the city, town, corporation, association, or trustees having ownership and charge of the cemetery containing any such lot shall have the right to sell the same, conveying good title thereto, such lot and to use the proceeds derived therefrom in the manner and for the purposes hereinafter provided by this article.

§ 57-39.6. Sale of abandoned cemetery lot.

At any time after entry of the decree adjudicating any unoccupied cemetery lot to be abandoned pursuant to § 57-39.5, the city, town, corporation, association, or trustees having ownership and charge of the cemetery containing any such lot may sell the same such lot in accordance with the rules and

60 regulations of the cemetery then in force governing generally the sale of cemetery lots. Any proceeds
61 derived ~~therefrom~~ *from this sale* shall first be used to defray the costs and expenses incurred in any
62 abandonment proceedings; ~~and the balance thereof.~~ *Unless otherwise directed by the court, the*
63 *remaining balance* shall, ~~unless otherwise directed by the court,~~ be placed in a special fund, known as
64 the "Perpetual Care Fund" of the cemetery, to be used by the cemetery solely for the future
65 maintenance, care, and upkeep of the cemetery.

66 **§ 57-39.7. Applicability; abandonment determination limited in certain circumstances.**

67 Sections 57-39.2 through 57.39.6 shall be construed to apply to and authorize a determination of
68 abandonment of any unoccupied part of a cemetery lot. In any proceeding to determine the abandonment
69 of an unoccupied part of a cemetery lot, the court shall ~~in the exercise of its equity jurisdiction,~~ also
70 determine what part, if any, shall be considered as having been abandoned. Such sections shall not be
71 construed to apply to and authorize a determination of abandonment of ~~the following:~~ (1) (i) that part of
72 a cemetery lot wherein there has been an interment; ~~or (2),~~ (ii) any cemetery lot or part thereof to which
73 unrestricted fee simple title has been conveyed by a cemetery; ~~or (3), or~~ (iii) any cemetery lot or part
74 thereof for which perpetual care has been provided by contract with the city, town, corporation,
75 association, or trustees having ownership and charge of the cemetery containing any such lot or part
76 thereof.