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SENATE BILL NO. 766
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by Senator Colgan
 on February 8, 2008)

(Patron Prior to Substitute—Senator Colgan)

A BILL to amend and reenact §§ 15.2-819 and 15.2-2306 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 5 of Title 15.2 a section numbered 15.2-517.1, relating to demolition of historic structures; cemeteries and graves; civil penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-819 and 15.2-2306 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 5 of Title 15.2 a section numbered 15.2-517.1 as follows:

§ 15.2-517.1. Demolition of historic structures; civil penalty.

A county may adopt an ordinance that establishes a civil penalty for the demolition, razing or moving of a building or structure or area that is located in an historic district or that has been designated by the governing body as (i) an historic structure or landmark, (ii) an historic area as defined in § 15.2-2201, or (iii) a cemetery or grave as defined in § 54.1-2310 without the prior approval from either the architectural review board or the governing body as provided by subdivision A 2 of § 15.2-2306.

The civil penalty imposed for a violation of such an ordinance shall not exceed the market value of the property as determined by the assessed value of the property at the time of the destruction or removal of the building or structure, plus the value of developing and implementing a plan for data recovery that has been approved by the Department of Historic Resources in consultation with the county. Such value shall include the value of any structures and the value of the real property upon which any such structure or structures were located. Such ordinances may be enforced by the county attorney by bringing an action in the name of the county in the circuit court. Such actions shall be brought against the party or parties deemed responsible for the violation. It shall be the burden of the county to show the liability of the violator by a preponderance of the evidence.

Nothing in this section shall preclude action by the zoning administrator under subdivision A 5 of § 15.2-2286 or action by the board under § 15.2-2208.

As used in this section, "plan for data recovery" means a strategy for retrieving and documenting historical information from an archaeological or architectural resource or resources, a landscape, or a cemetery. Such plan may include archaeological excavation, detailed photography, preparation of measured drawings, documentary research, special analyses, public interpretation, artifact and document curation, and report preparation.

§ 15.2-819. Demolition of historic structures; civil penalty.

A county may adopt an ordinance that establishes a civil penalty for the demolition, razing or moving of a building or structure or area that is located in an historic district or that has been designated by the governing body as (i) an historic structure or landmark, (ii) an historic area as defined in § 15.2-2201, or (iii) a cemetery or grave as defined in § 54.1-2310 without the prior approval from either the architectural review board or the governing body as provided by subdivision A 2 of § 15.2-2306.

The civil penalty imposed for a violation of such an ordinance shall not exceed the market value of the property as determined by the assessed value of the property at the time of the destruction or removal of the building or structure, plus the value of developing and implementing a plan for data recovery that has been approved by the Department of Historic Resources in consultation with the county. Such value shall include the value of any structures and the value of the real property upon which any such structure or structures were located. Such ordinances may be enforced by the county attorney by bringing an action in the name of the county in the circuit court. Such actions shall be brought against the party or parties deemed responsible for the violation. It shall be the burden of the county to show the liability of the violator by a preponderance of the evidence.

Nothing in this section shall preclude action by the zoning administrator under subdivision A 5 of § 15.2-2286 or action by the board under § 15.2-2208.

As used in this section, "plan for data recovery" means a strategy for retrieving and documenting historical information from an archaeological or architectural resource or resources, a landscape, or a cemetery. Such plan may include archaeological excavation, detailed photography, preparation of measured drawings, documentary research, special analyses, public interpretation, artifact and document curation, and report preparation.

§ 15.2-2306. Preservation of historical sites and architectural areas.

60 A. 1. Any locality may adopt an ordinance setting forth the historic landmarks within the locality as
61 established by the Virginia Board of Historic Resources, and any other *sites*, buildings, or structures
62 within the locality having an important historic, architectural, archaeological or cultural interest, any
63 historic areas within the locality as defined by § 15.2-2201, and areas of unique architectural value
64 located within designated conservation, rehabilitation or redevelopment districts, amending the existing
65 zoning ordinance and delineating one or more historic districts, adjacent to such landmarks, buildings
66 and structures, or encompassing such areas, or encompassing parcels of land contiguous to arterial
67 streets or highways (as designated pursuant to Title 33.1, including § 33.1-41.1 of that title) found by
68 the governing body to be significant routes of tourist access to the locality or to designated historic
69 landmarks, buildings, structures or districts therein or in a contiguous locality, *or cemeteries and graves*
70 *as defined by § 54.1-2310*. An amendment of the zoning ordinance and the establishment of a district or
71 districts shall be in accordance with the provisions of Article 7 (§ 15.2-2280 et seq.) of this chapter. The
72 governing body may provide for a review board to administer the ordinance and may provide
73 compensation to the board. The ordinance may include a provision that no building or structure,
74 including signs, shall be erected, reconstructed, altered or restored within any such district unless
75 approved by the review board or, on appeal, by the governing body of the locality as being
76 architecturally compatible with the historic landmarks, buildings or structures therein.

77 2. Subject to the provisions of subdivision 3 of this subsection the governing body may provide in
78 the ordinance that no historic landmark, building or structure within any district shall be razed,
79 demolished or moved until the razing, demolition or moving thereof is approved by the review board,
80 or, on appeal, by the governing body after consultation with the review board.

81 3. The governing body shall provide by ordinance for appeals to the circuit court for such locality
82 from any final decision of the governing body pursuant to subdivisions 1 and 2 of this subsection and
83 shall specify therein the parties entitled to appeal the decisions, which parties shall have the right to
84 appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the
85 action of the governing body, provided the petition is filed within thirty days after the final decision is
86 rendered by the governing body. The filing of the petition shall stay the decision of the governing body
87 pending the outcome of the appeal to the court, except that the filing of the petition shall not stay the
88 decision of the governing body if the decision denies the right to raze or demolish a historic landmark,
89 building or structure. The court may reverse or modify the decision of the governing body, in whole or
90 in part, if it finds upon review that the decision of the governing body is contrary to law or that its
91 decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the
92 governing body.

93 In addition to the right of appeal hereinabove set forth, the owner of a historic landmark, building or
94 structure, the razing or demolition of which is subject to the provisions of subdivision 2 of this
95 subsection, shall, as a matter of right, be entitled to raze or demolish such landmark, building or
96 structure provided that: (i) he has applied to the governing body for such right, (ii) the owner has for
97 the period of time set forth in the same schedule hereinafter contained and at a price reasonably related
98 to its fair market value, made a bona fide offer to sell the landmark, building or structure, and the land
99 pertaining thereto, to the locality or to any person, firm, corporation, government or agency thereof, or
100 political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve
101 and restore the landmark, building or structure and the land pertaining thereto, and (iii) no bona fide
102 contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark,
103 building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period
104 set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from
105 the decision of the governing body, whether instituted by the owner or by any other proper party,
106 notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from shall not
107 affect the right of the owner to make the bona fide offer to sell referred to above. No offer to sell shall
108 be made more than one year after a final decision by the governing body, but thereafter the owner may
109 renew his request to the governing body to approve the razing or demolition of the historic landmark,
110 building or structure. The time schedule for offers to sell shall be as follows: three months when the
111 offering price is less than \$25,000; four months when the offering price is \$25,000 or more but less than
112 \$40,000; five months when the offering price is \$40,000 or more but less than \$55,000; six months
113 when the offering price is \$55,000 or more but less than \$75,000; seven months when the offering price
114 is \$75,000 or more but less than \$90,000; and twelve months when the offering price is \$90,000 or
115 more.

116 4. The governing body is authorized to acquire in any legal manner any historic area, landmark,
117 building or structure, land pertaining thereto, or any estate or interest therein which, in the opinion of
118 the governing body should be acquired, preserved and maintained for the use, observation, education,
119 pleasure and welfare of the people; provide for their renovation, preservation, maintenance, management
120 and control as places of historic interest by a department of the locality or by a board, commission or
121 agency specially established by ordinance for the purpose; charge or authorize the charging of

122 compensation for the use thereof or admission thereto; lease, subject to such regulations as may be
123 established by ordinance, any such area, property, lands or estate or interest therein so acquired upon the
124 condition that the historic character of the area, landmark, building, structure or land shall be preserved
125 and maintained; or to enter into contracts with any person, firm or corporation for the management,
126 preservation, maintenance or operation of any such area, landmark, building, structure, land pertaining
127 thereto or interest therein so acquired as a place of historic interest; however, the locality shall not use
128 the right of condemnation under this subsection unless the historic value of such area, landmark,
129 building, structure, land pertaining thereto, or estate or interest therein is about to be destroyed.

130 B. Notwithstanding any contrary provision of law, general or special, in the City of Portsmouth no
131 approval of any governmental agency or review board shall be required for the construction of a ramp
132 to serve the handicapped at any structure designated pursuant to the provisions of this section.