

Policy Brief: Adjoining Landowner Rights Relating to Repairs and Maintenance – Exploration of State Laws and Overview of 2024 Proposed Senate Bill 123

Contents

Background.....	1
Key Considerations and Definitions:	2
Adjoining Properties vs. Zero Lot Line Properties.....	2
Lack of Easements	2
Overview of Senate Bill 123	2
Potential Areas of Concern	3
Insurance	3
Local Ordinances	3
Laws in Other States	3
Where SB 123 Mirrors Language from Existing Law in Other States	3
Key Differences for Consideration in Virginia’s SB 123 From Other States	4
Requiring Owners Requesting Entry to Restore Adjacent Land to Original Condition	4
Requiring Bonds for Entry	4
Prohibiting Entry Into Buildings on Adjoining Property	5
Allowing Property Repairs and Maintenance while Excluding Improvements	5
Requiring a Good Faith Effort Prior to Filing a Court Order	5
Provisions of Existing State Laws	5
Illinois	5
Massachusetts	5
Michigan.....	6
New York	6
South Carolina	6

Background

Adjoining landowners own land that share common boundaries. This can lead to conflict when one landowner wishes to take action that may impact the adjoining landowner’s property. When properties are close together, it can be difficult to repair or make improvements without accessing a neighbor’s property. In many cases, the owner of the adjoining property may refuse to grant access to a neighbor seeking to maintain, repair, or make improvements to their property when entry to the

adjoining property is necessary to undertake that work. The balancing of the reasonable use of property with the right of adjoining owners to reasonably use their own property is considered the basis of the underlying tension in this legal area.

Key Considerations and Definitions:

Adjoining Properties vs. Zero Lot Line Properties

Adjoining properties may share a border or may be directly touching, but there is usually a setback while zero lot line properties are those where the building is constructed right up to the property line with no setback. Some zero lot line homes may share walls with adjacent homes, such as rowhouses or townhouses. Both property designs may be attached or detached. These property designs may require careful management when it comes to maintenance and repair activities to avoid trespassing or damaging neighboring properties.

Lack of Easements

Properties close together often include easements allowing one property owner to enter the adjacent property to perform necessary maintenance or repairs. These easements should be explicitly stated in property deeds or agreements unless the properties were constructed before 1900. Without an easement, a property owner has the option to give permission to an adjoining neighbor to enter their property or not.

Virginia's 2024 [Senate Bill 123](#) seeks to solve issues that arise between property owners concerning older homes that may lack easements, such as when one property owner requires access to an adjoining property to perform improvements, repairs, or maintenance. In Virginia, this primarily affects older homes lacking easements in localities such as Richmond, Norfolk, and Alexandria.

Overview of Senate Bill 123

Virginia's 2024 Senate Bill 123 seeks to provide a method for an owner to access adjoining property where an easement is not provided and consent to enter the property has not been granted.

Senate Bill 123 would allow an owner or lessee of real property who seeks to improve, repair, or maintain their property to petition the circuit court for a license to enter the adjoining property for the purpose of performing improvements, repairs, or maintenance when doing so is impossible without entering adjoining property and where permission to enter adjoining property has been denied or granted with unreasonable conditions. The bill specifies a license would be granted by the court in an appropriate case with terms as required and decided upon by the court, meaning "as justice requires." The bill also specifies that the licensee, meaning the owner seeking to enter the adjoining property, would be deemed liable for actual damages occurring from entering the adjoining property.

The accepted substitute of Senate Bill 123 added language that requires the service provider to be licensed and insured.

Potential Areas of Concern

Insurance

There are many insurance implications in these types of legislative changes to property codes. Liability for damages and compensation to the adjoining owner is a common area of concern. Owners may only be compensated if a hired contractor performing the work is deemed legally negligent, while changes that could be considered damage to the owner may not be considered negligent. It is also important to note that these damages are not covered by traditional contractor's insurance. Additionally, a few states who have modified their codes to address this area that involves adjoining properties have provisions that may require the owner requesting entry to provide a bond to ensure payment if damages occur.

Local Ordinances

Local ordinances may need to be considered when discussing these types of legislative changes to facilitate entry into another property. Municipalities may have specific regulations governing maintenance and repairs for adjoining or zero lot line properties, including notice requirements and permissible hours for such activities.

Laws in Other States

A few states provide statutory rights for property owners to access adjoining properties for necessary repairs and maintenance, often with requirements for prior notice and compensation for any damages. In most of the states that have laws to address this issue, the laws establish a process similar to what is outlined in Virginia's 2024 Senate Bill 123. Like Virginia's proposed bill, New York, Illinois, Michigan, and South Carolina allow property owners who have been denied entry to an adjoining property to seek a court order to grant entry.

Massachusetts is the only state studied that does not outline a process for an owner to seek a court order to grant access to another owner's property. Instead steps to permit entry are outlined within Massachusetts state law and do not involve a court process or determination.

Where SB 123 Mirrors Language from Existing Law in Other States

Virginia's proposed bill uses existing language from South Carolina's law:

“When an owner or lessee of real property seeks to improve, repair, or maintain his property, and the property is so situated that it is impossible to perform the improvements, repairs, or maintenance without entering adjoining property and permission to enter the adjoining property has been denied, or unreasonable conditions have been placed upon the entry, the owner or lessee seeking to make the improvements, repairs, or maintenance may petition the circuit court for a license to enter the adjoining property for the purpose of performing the improvements, repairs, or maintenance.”

Some of the language proposed in the Virginia legislation is also taken from New York's existing law:

“such license shall be granted by the court in an appropriate case upon which terms as justice requires,”

Key Differences for Consideration in Virginia’s SB 123 From Other States

There are several provisions from existing laws in other states that are worth consideration for potential inclusion in Virginia legislation. Limiting the scope of work eligible for access to adjacent property granted by the court to necessary maintenance and repairs, not including improvements, would address a common area of concern. If the intent of the bill is to facilitate maintenance and repairs to meet safety concerns or address required regulations, not expressly allowing entry for improvements would not lessen the desired impact of the proposed policy. Improvements are not considered necessary and may not provide a limited enough scope to ease the concerns of adjacent property owners. If the intent of Virginia’s bill is related to work that does not require entry into the *interior* of a building, a provision specifying that the law does not authorize entry into any buildings on the adjoining property may be worth consideration.

While Virginia’s proposed 2024 Senate Bill 123 contains many similar provisions to existing laws in other states, there are some key differences that may ease common concerns in this policy area and facilitate discussion while this topic is being considered in Virginia:

- 1) Requiring owners requesting entry to adjoining property to restore the adjacent land to its condition prior to entry;
- 2) Requiring the owner requesting access to adjacent property to file a bond to ensure payment to the adjacent landowner if damages occur;
- 3) Expressly prohibiting entry into buildings that may be on adjoining property, meaning access is limited to exterior adjacent land;
- 4) Limiting approved work requiring entry to adjacent land to necessary repairs and maintenance while excluding improvements to property; and
- 5) Requiring owners requesting entry to adjacent land to make a good faith effort to obtain permission prior to filing a court order

Requiring Owners Requesting Entry to Restore Adjacent Land to Original Condition

Massachusetts and South Carolina require the owner entering the adjoining property to restore the adjoining land to the condition in which it was prior to said entry. In these laws the potential obligations of the entering owner are not limited to actual damages occurring because of entry. That may help to address common concerns in this policy area surrounding some material consequences not being deemed as damages to the adjoining property even though the adjoining property may have been altered due to entry.

Requiring Bonds for Entry

Virginia’s proposed law is similar to the court process outlined in Michigan’s law. However, Michigan requires the licensee to file a bond or liability insurance, or both, as required by the court. In Illinois, the court may require a bond when granting a license to enter adjoining property.

Massachusetts law expressly requires the owner requesting permission to enter adjoining land post a \$1,000 bond.

Prohibiting Entry Into Buildings on Adjoining Property

South Carolina's law applies to adjoining property but **does not authorize entry into any buildings on the adjoining property**. If the intent of Virginia's bill is related to improvements, repairs, and maintenance work that does not require entry into the interior of a residence, just the land, a provision expressly limiting the proposed legislation to exterior work may be worth consideration. It can often be unclear in these types of laws whether entry into any buildings on the adjoining property or land is prohibited. Explicitly addressing this intent within the laws would provide added clarity.

Allowing Property Repairs and Maintenance while Excluding Improvements

Illinois limits licenses to enter adjoining properties to work related to repairs and maintenance. Improvements are not considered in the license to enter an adjoining property. Massachusetts law also does not contain any provisions or permissions related to improvements to property.

Requiring a Good Faith Effort Prior to Filing a Court Order

South Carolina law requires owners requesting entry to adjoining property to make a good faith effort to obtain permission from the adjacent landowner prior to filing a petition with the court. To be considered a good faith effort, a request from an owner seeking entry must be made. The request must describe the nature and manner of work and provide specific dates for entry. Additionally, an owner requesting entry must present evidence to the court of a request and an adjoining owner's subsequent denial or lack of response.

Provisions of Existing State Laws

Illinois

Illinois Entry on Adjoining Land to Accomplish Repairs Act (enacted 1998)

Illinois Law allows owners of single-family residences, explicitly including those within condominium properties, to seek a court order for entry onto adjoining land to perform necessary repairs and maintenance if the neighbor denies access. The court will set conditions for entry and determine the amount of damages to be paid to the owner of the adjoining property. It may also require the homeowner to provide a bond to ensure compliance and payment. While this law specifically states that it includes condominium associations, it does not include common interest community associations.

Massachusetts

Entry on land by abutting property owners not constituting trespass: Section 120B

Massachusetts law states that when a building is so close to the land owned by another person that it requires entry onto abutting land for the purpose of maintaining or repairing said property, it will not be considered trespassing if certain steps are taken and entry is made expeditiously and with

due care to cause no damage caused by entry into the adjoining land. Owners must notify local police that they have requested permission to enter adjoining land, post a \$1000 bond with the chief of police, and limit the duration of access to no more than 30 days per calendar year. An additional provision sets a limitation on how long tools or materials can be left on the property at no more than 8 hours per day.

Michigan

Access to adjoining property for repairs or improvements MCL 600.2944 (enacted 1969)

Michigan Law allows property owners or lessees to seek a civil court order for entry onto adjoining property to make necessary improvements or repairs when permission is denied. The process is similar to what is proposed in Virginia's 2024 SB 123. The complaint must detail the necessity of entry, the proposed dates, duration, and methods to protect the adjoining property. The court may grant a limited license for entry under fair terms, requiring the petitioner to be liable for damages and provide a bond or liability insurance as determined by the court.

New York

Access to adjoining property to make improvements or repairs § 881 of Real Property Actions and Proceedings Law (enacted 1968)

New York law allows a property owner who has previously been denied entry to an adjoining property, to seek a court order to enter adjoining property for necessary repairs or improvements, requiring the property owner to provide notice and compensation for actual damages occurring as a result of the entry. The language in New York law, "such license shall be granted by the court in an appropriate case upon which terms as justice requires," is the same language proposed in Virginia's 2024 SB 123.

Most property owners who have opposed access altogether have been unsuccessful.

South Carolina

Petition for license to enter adjoining property to make improvements, repairs, or maintenance; good faith effort to obtain permission; evidentiary hearing; requirements and restrictions. Section 15-67-270. (enacted 1998)

Like Virginia's proposed SB 123, South Carolina Law allows property owners to petition the circuit court for a license to enter adjoining property for necessary improvements, repairs, or maintenance when permission is denied, or unreasonable conditions have been placed upon the entry by the owner of the adjoining property. Unlike Virginia's bill, South Carolina's law specifies that the right of entry granted under this law applies only to portions of the adjoining property including, but not limited to, driveways, patios, sidewalks, and other unimproved land. **It does not authorize entry into any buildings on the adjoining property.**

Prior to filing a petition, the statute also requires the owner requesting entry to adjoining property to make a good faith effort to obtain permission, detailing the nature, manner, and dates of the work. Additional provisions required to prove a good faith effort has been made are outlined in the law.

The court may grant the license if: 1) the entry does not irreparably or unreasonably damage the adjoining property; 2) the grant of license is not an unreasonable encroachment or burden upon the adjoining property; and 3) the license is reasonably necessary for the improvement or preservation of the petitioner's property.

If the court grants a license, the license will specify an amount of compensation to be paid to the property owner over whose property the license is granted. **This is separate from any compensation required by damages caused.** The licensee is also liable for actual damages occurring because of the entry to the property and **must restore the adjoining property to its condition prior to entry.** However, the licensee is immune from all suits, claims, and causes of actions arising from entry and work authorized by license except in the case of willful, wanton, or reckless misconduct.