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SENATE BILL NO. 751

Offered January 18, 2008

A BILL to amend and reenact § 15.2-2903 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.2-2119.2, 15.2-2142.1, and 15.2-2906.1, relating to rates for water and sewer services provided by a town in an adjacent county; Commission on Local Government investigations; ratemaking by special court.

 Patron—Herring

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2903 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 15.2-2119.2, 15.2-2142.1, and 15.2-2906.1 as follows:

§ 15.2-2119.2. Fees and charges by towns providing water and sewer services in adjacent counties.

A. This section and § 15.2-2142.1 shall apply only with respect to water and sewer or sewage disposal services that are provided by a town to customers located in an adjacent county if (i) the rates for such services are not subject to review by the State Corporation Commission, and (ii) the town has designed or constructed a water supply or sewage disposal system that exceeds 1,000 customer connections outside the town's boundaries. This section does not apply to agreements pursuant to which the town provides bulk water supply or sewage disposal service, or the management of such service, to a business, authority, or another locality.

B. Notwithstanding any provision of § 15.2-2119 or 15.2-2143 to the contrary, the rates, fees and charges, including water and sewer connection fees, assessed by a town for water and sewer or sewage disposal services shall not unreasonably discriminate between customers on the basis of whether services are provided to customers located within or outside the limits of the town. Rates for service shall be presumed to be nondiscriminatory if:

1. The rates for all customers are based upon:

a. The quantity of water used;
b. The number and size of sewer connections;
c. The number and kind of plumbing fixtures in use in the premises connected with the systems;
d. The number or average number of persons residing or working in or otherwise connected with such premises or the type or character of such premises;
e. Any other factors that are directly related to the type, class and amount of use or service of the system; or

f. Any combination of the foregoing factors;

2. The town sets service rates, fees, and charges for customers outside of its boundaries through a process that:

a. Is based upon a cost-of-service rate study that (i) assigns specific costs to customers outside its boundaries for operation and maintenance expenses, depreciation expenses, and a return on the value of property used to serve those customers that will not exceed 10 percent on an annual basis, and (ii) treats any amount of connection fees paid by a customer that exceeds current-year costs for that connection as capital contributed to the funding of the property used to serve customers outside the town boundaries;

b. Includes a public hearing; and

c. Provides that the copies of the cost-of-service rate study report are available for public inspection at least 30 days prior to the public hearing; or

3. The service rates, fees, and charges for customers outside of the town's boundaries do not exceed the corresponding rates, fees, and charges for customers within the town by more than 50 percent.

C. Nothing herein shall affect existing contracts with bondholders that are in conflict with any of the foregoing provisions.

§ 15.2-2142.1. Disputes regarding water and sewer rates of certain towns.

A. In any case in which the Commission on Local Government has determined in an investigation conducted pursuant to subdivision 8 of § 15.2-2903 that the rates, fees and charges, or the connection charges, assessed by a town on customers who receive water and sewer or sewage disposal services, that are subject to the provisions of § 15.2-2119.2, in an adjacent county do not comply with the requirements of subsection B of § 15.2-2119.2, the county in which such customers receive service, upon receipt of the Commission's report provided pursuant to § 15.2-2906.1, may petition for the convening of

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59 a special court to set rates for such services that comply with the provisions of subdivision 8 of
60 § 15.2-2903.

61 B. The special court to hear the case shall be composed of three judges of circuit courts remote from
62 the jurisdictions of the parties involved. The judges shall be designated by the Chief Justice of the
63 Supreme Court of Virginia. The special court shall sit without a jury. If a vacancy occurs on the special
64 court at any time prior to the final disposition of the case, the vacancy shall be filled by designation of
65 another judge and the proceeding shall continue.

66 C. The special court, in making its decision, shall balance the equities in the case, enter an order
67 setting forth what it deems to be rates, fees and charges, or connection charges, that comply with the
68 requirements of subsection B of § 15.2-2119.2. The special court shall have power to limit the number
69 of expert witnesses, as well as require each expert witness who will testify to file a statement of his
70 qualifications, and to take other action as may aid in the disposition of the case. The special court shall
71 make an appropriate order that will control the subsequent conduct of the case unless modified before
72 or at the trial or hearing to prevent manifest injustice.

73 D. The special court shall hear the case upon the evidence introduced as evidence is introduced in
74 civil cases. The report of the Commission on Local Government regarding its investigation conducted
75 pursuant to subdivision 8 of § 15.2-2903 shall be admissible in the proceeding, but shall not be binding
76 upon the special court.

77 E. In all contested cases, the special court shall render a written opinion.

78 F. The costs in the proceedings before the special court shall be paid by the locality instituting the
79 proceedings and shall be the same as in other civil cases; the costs shall also include the per diem and
80 expenses of the court reporter, if any, and, in the discretion of the court, a reasonable allowance to the
81 court for secretarial services in connection with the preparation of the written opinion. In the event of
82 an appeal, the Supreme Court of Virginia shall determine by whom the appellate costs shall be paid.

83 G. An appeal may be granted by the Supreme Court of Virginia, or any judge thereof, to any party
84 from the judgment of the special court, and the appeal shall be heard and determined without reference
85 to the principles of demurrer to evidence. The special court shall certify the facts in the case to the
86 Supreme Court, and the evidence shall be considered as on appeal in proceedings under Chapter 2
87 (§ 25.1-200 et seq.) of Title 25.1. In any case, by consent of all parties of record, a motion to dismiss
88 may be made at any time before final judgment on appeal.

89 H. If the judgment of the special court is reversed on appeal, or if the judgment is modified, the
90 Supreme Court shall enter such order as the special court should have entered, and the order shall be
91 final.

92 § 15.2-2903. General powers and duties of Commission.

93 The Commission shall have the following general powers and duties:

94 1. To make regulations, including rules of procedure for the conducting of hearings;

95 2. To keep a record of its proceedings and to be responsible for the custody and preservation of its
96 papers and documents;

97 3. To serve as a mediator between localities;

98 4. To investigate, analyze, and make findings of fact, as directed by law, as to the probable effect on
99 the people residing in any area of the Commonwealth of any proposed action in that area:

100 a. To annex territory,

101 b. To have an area declared immune from annexation,

102 c. To establish a town or independent city,

103 d. To settle or adjust boundaries between localities,

104 e. To make a transition from city status to town status,

105 f. To make a transition from a county to a city,

106 g. To consolidate two or more localities, at least one of which is a county, into a city, or

107 h. To enter into economic growth-sharing agreements among localities;

108 5. To conduct investigations, analyses and determinations, in the sole discretion of the Commission,
109 for the guidance of localities in the conduct of their affairs upon the request of such localities;

110 6. To receive from all agencies, as defined in § 2.2-128, assessments of all mandates imposed on
111 localities administered by such agencies. The assessments shall be conducted on a schedule to be set by
112 the Commission, with the approval of the Governor and the Secretary of Commerce and Trade, provided
113 that the assessments shall not be required to be performed more than once every four years. The purpose
114 of the assessments shall be to determine which mandates, if any, may be altered or eliminated. If an
115 assessment reveals that such mandates may be altered or eliminated without interruption of local service
116 delivery and without undue threat to the health, safety and welfare of the residents of the
117 Commonwealth, the Commission shall so advise the Governor and the General Assembly;

118 7. To prepare and annually update a catalog of state and federal mandates imposed on localities
119 including, where available, a summary of the fiscal impact on localities of all new mandates. All
120 departments, agencies of government, and localities are directed to make available such information and

121 assistance as the Commission may request in maintaining the catalog;

122 8. To conduct investigations and analyses of the rates, fees and charges for the water and sewer or
123 sewage disposal services charged by any town described in subsection A of § 15.2-2119.2, upon the
124 receipt of a petition signed by not less than five percent of the customers of such town who receive
125 service in a county adjacent to the town, in which petition the customers request the Commission to
126 determine whether the rates, fees and charges, and the connection charges, assessed by the town on
127 customers receiving service in the county comply with the requirements of subsection B of
128 § 15.2-2119.2; and

129 8 9. To perform such other duties as may be imposed upon it, from time to time, by law.

130 § 15.2-2906.1. Effect of Commission determinations regarding water and sewer rates of certain
131 towns.

132 If the Commission determines in an investigation conducted pursuant to subdivision 8 of § 15.2-2903
133 that the rates, fees and charges, or the connection charges, assessed by a town on customers who
134 receive water and sewer or sewage disposal services in an adjacent county do not comply with the
135 requirements of subsection B of § 15.2-2119.2, the Commission shall notify the governing bodies of the
136 town and county and provide copies of a report of the Commission's analysis.