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HOUSE BILL NO. 1788

Offered January 14, 2009

Prefiled January 9, 2009

A BILL to amend and reenact § 15.2-2157, as it shall become effective, of the Code of Virginia, relating to regulation of septic systems.

Patrons—Hull and Knight

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2157 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2157. (Effective July 1, 2009) Onsite sewage systems when sewers not available; civil penalties.

A. Any locality may require the installation, maintenance and operation of, regulate and inspect onsite sewage systems or other means of disposing of sewage when sewers or sewerage disposal facilities are not available; without liability to the owner thereof, may prevent the maintenance and operation of onsite sewage systems or such other means of disposing of sewage when they contribute or are likely to contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious and dangerous diseases; and may regulate and inspect the disposal of human excreta. *No locality shall prohibit the use of alternative on-site sewage systems, as defined by § 32.1-163, that have been approved for use by the Virginia Department of Health, nor shall a locality require maintenance of such systems beyond the manufacturer's recommendations or regulation of the Department of Health.*

B. Any locality that (i) has a record of the location of alternative onsite sewage systems; (ii) has notified owners of their maintenance responsibility for such systems; and (iii) has a method to identify property transfer may adopt an ordinance establishing a uniform schedule of civil penalties for violations of specified provisions for the operation and maintenance of alternative onsite sewage systems, as defined in § 32.1-163, that are not abated or remedied within 30 days after receipt of notice of violation from the local health director or his designee. No civil action authorized under this section shall proceed while a criminal action is pending.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than $100 for the initial summons and not more than $150 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties exceeding a total of $3,000. If the violation is not abated after the imposition of the maximum fine, the locality may pursue other remedies as provided by law. Designation of a particular ordinance violation for a civil penalty pursuant to this section shall be in lieu of criminal penalties, except for any violation that contributes to or is likely to contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious, and dangerous diseases.

The local health director or his designee may issue a civil summons ticket as provided by law for a scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation, the locality shall have the burden of proving by a preponderance of the evidence the liability of the alleged violator. An admission of liability or finding of liability under this section shall not be deemed an admission at a criminal proceeding.

This section shall be not interpreted to allow the imposition of civil penalties for activities related to land development.

INTRODUCED