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HOUSE BILL NO. 1788

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Martin
on February 25, 2009)

(Patrons Prior to Substitute—Delegates Hull and Merricks [HB 2294])

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

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2157 of the Code of Virginia, as it shall become effective, is amended and reenacted as follows:

§ 15.2-2157. 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.

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.

C. When sewers or sewerage disposal facilities are not available, a locality shall not prohibit the use of alternative onsite sewage systems that have been approved by the Virginia Department of Health for use in the particular circumstances and conditions in which the proposed system is to be operating.

D. A locality shall not require maintenance standards and requirements for alternative onsite sewage systems that exceed those allowed under or established by the State Board of Health pursuant to § 32.1-164.

E. The State Health Commissioner shall require, as a precondition to the issuance of an alternative onsite sewage system permit pursuant to § 32.1-164 to serve a residential structure, that the property owner record an instrument identifying by reference the applicable maintenance regulations for each component of the system in the land records of the clerk of the circuit court in the jurisdiction where all

60 *or part of the site or proposed site of the onsite sewage system is to be located, which shall be*
61 *transferred with the title to the property upon the sale or transfer of the land that is the subject of the*
62 *permit.*

63 2. That the provisions contained in subsection C of § 15.2-2157 of the Code of Virginia shall
64 become effective 30 days following final promulgation by the Board of Waterworks and
65 Wastewater Works Operators and Onsite Sewage System Professionals of regulations for the
66 licensure of (i) onsite soil evaluators, (ii) installers of alternative onsite sewage systems, and (iii)
67 operators of alternative onsite sewage systems pursuant to Chapter 924 of the Acts of Assembly of
68 2007.

69 3. That the provisions contained in subsection D of § 15.2-2157 of the Code of Virginia shall
70 become effective 30 days following final promulgation by the Board of Health of regulations
71 governing the operation and maintenance of alternative onsite sewage systems pursuant to
72 Chapters 892 and 924 of the Acts of Assembly of 2007.

73 4. That the Board of Health shall require the manufacturer of any alternative onsite sewage
74 system approved for use in the Commonwealth to provide operation and maintenance instructions
75 for such system for the Board's approval. Until the promulgation of final regulations governing
76 the operation and maintenance of alternative onsite sewage systems pursuant to Chapters 892 and
77 924 of the Acts of Assembly of 2007, alternative onsite sewage systems shall be operated and
78 maintained pursuant to such approved instructions, any applicable regulations or Guidance
79 Memoranda and Policies adopted by the Board, or any local operation and maintenance
80 standards, whichever are more stringent; and operation permits for such systems shall be
81 conditioned upon the owners' compliance with such standards.