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HOUSE BILL NO. 1828

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Counties, Cities and Towns
on January 30, 2009)

(Patron Prior to Substitute—Delegate Fralin)

A BILL to amend and reenact §§ 15.2-5101 and 15.2-5114 of the Code of Virginia and to amend the Code of Virginia by adding in Article 5 of Chapter 9 of Title 15.2 a section numbered 15.2-977, relating to incentives for green roof construction.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-5101 and 15.2-5114 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 5 of Chapter 9 of Title 15.2 a section numbered 15.2-977 as follows:

§ 15.2-977. Green Roof Incentive Programs.

A. For purposes of this section, "green roof" means a roof or partially covered roof consisting of plants, soil, or another lightweight growing medium that is installed on top of a waterproof membrane and designed in accordance with the Virginia Stormwater Management Program's standards and specifications for green roofs, as set forth in the Virginia BMP Clearinghouse.

B. Any locality may establish a rate incentive program designed to encourage the use of green roofs in the construction and remodeling of residential and commercial buildings. If established, the incentives shall be based on the percentage of stormwater runoff reduction the green roof provides.

§ 15.2-5101. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authority" means an authority created under the provisions of § 15.2-5102 or Article 6 (§ 15.2-5152 et seq.) of this chapter or, if any such authority has been abolished, the entity succeeding to the principal functions thereof.

"Bonds" and "revenue bonds" include notes, bonds, bond anticipation notes, and other obligations of an authority for the payment of money.

"Cost," as applied to a stormwater control system or a water or waste system, includes the purchase price of the system or the cost of acquiring all of the capital stock of the corporation owning such system and the amount to be paid to discharge all of its obligations in order to vest title to the system or any part thereof in the authority; the cost of improvements; the cost of all land, properties, rights, easements, franchises and permits acquired; the cost of all labor, machinery and equipment; financing and credit enhancement charges; interest prior to and during construction and for one year after completion of construction; any deposit to any bond interest and principal reserve account, start-up costs and reserves and expenditures for operating capital; cost of engineering and legal services, plans, specifications, surveys, estimates of costs and revenues; other expenses necessary or incident to the determining of the feasibility or practicability of any such acquisition, improvement, or construction; administrative expenses and such other expenses as may be necessary or incident to the financing authorized in this chapter and to the acquisition, improvement, or construction of any such system and the placing of the system in operation by the authority. Any obligation or expense incurred by an authority in connection with any of the foregoing items of cost and any obligation or expense incurred by the authority prior to the issuance of revenue bonds under the provisions of this chapter for engineering studies, for estimates of cost and revenues, and for other technical or professional services which may be utilized in the acquisition, improvement or construction of such system is a part of the cost of such system.

"Cost of improvements" means the cost of constructing improvements and includes the cost of all labor and material; the cost of all land, property, rights, easements, franchises, and permits acquired which are deemed necessary for such construction; interest during any period of disuse during such construction; the cost of all machinery and equipment; financing charges; cost of engineering and legal expenses, plans, specifications; and such other expenses as may be necessary or incident to such construction.

"Federal agency" means the United States of America or any department, agency, instrumentality, or bureau thereof.

"Green roof" means a roof or partially covered roof consisting of plants, soil, or another lightweight growing medium that is installed on top of a waterproof membrane and designed in accordance with the Virginia Stormwater Management Program's standards and specifications for green roofs, as set forth in the Virginia BMP Clearinghouse.

"Improvements" means such repairs, replacements, additions, extensions and betterments of and to a stormwater control system or a water or waste system as an authority deems necessary to place or

60 maintain the system in proper condition for the safe, efficient and economical operation thereof or to
61 provide service in areas not currently receiving such service.

62 "Owner" includes persons, federal agencies, and units of the Commonwealth having any title or
63 interest in any stormwater control system or a water or waste system, or the services or facilities to be
64 rendered thereby.

65 "Political subdivision" means a locality or any institution or commission of the Commonwealth of
66 Virginia.

67 "Refuse" means solid waste, including sludge and other discarded material, such as solid, liquid,
68 semi-solid or contained gaseous material resulting from industrial, commercial, mining, and agricultural
69 operations or from community activities or residences. "Refuse" does not include (i) solid and dissolved
70 materials in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial
71 discharges which are sources subject to a permit from the State Water Control Board, or (iii) source,
72 special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954 (42 U.S.C.
73 § 2011, et seq.), as amended.

74 "Refuse collection and disposal system" means a system, plant or facility designed to collect,
75 manage, dispose of, or recover and use energy from refuse and the land, structures, vehicles and
76 equipment for use in connection therewith.

77 "Sewage" means the water-carried wastes created in and carried, or to be carried, away from
78 residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other
79 private or public buildings, together with such surface or ground water and household and industrial
80 wastes as may be present.

81 "Sewage disposal system" means any system, plant, disposal field, lagoon, pumping station,
82 constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary
83 landfills, or other works, installed for the purpose of treating, neutralizing, stabilizing or disposing of
84 sewage, industrial waste or other wastes.

85 "Sewer system" or "sewage system" means pipelines or conduits, pumping stations, and force mains,
86 and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage,
87 industrial wastes or other wastes to a plant of ultimate disposal.

88 "Stormwater control system" means a structural system of any type that is designed to manage the
89 runoff from land development projects or natural systems designated for such purposes, including,
90 without limitation, retention basins, ponds, wetlands, sewers, conduits, pipelines, pumping and ventilating
91 stations, and other plants, structures, and real and personal property used for support of the system.

92 "Unit" means any department, institution or commission of the Commonwealth; any public corporate
93 instrumentality thereof; any district; or any locality.

94 "Water or waste system" means any water system, sewer system, sewage disposal system, or refuse
95 collection and disposal system, or any combination of such systems. "Water system" means all plants,
96 systems, facilities or properties used or useful or having the present capacity for future use in connection
97 with the supply or distribution of water, or facilities incident thereto, and any integral part thereof,
98 including water supply systems, water distribution systems, dams and facilities for the generation or
99 transmission of hydroelectric power, reservoirs, wells, intakes, mains, laterals, pumping stations,
100 standpipes, filtration plants, purification plants, hydrants, meters, valves and equipment, appurtenances,
101 and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient
102 by the authority for the operation thereof but not including dams or facilities for the generation or
103 transmission of hydroelectric power that are not incident to plants, systems, facilities or properties used
104 or useful or having the present capacity for future use in connection with the supply or distribution of
105 water.

106 § 15.2-5114. Powers of authority.

107 Each authority is an instrumentality exercising public and essential governmental functions to provide
108 for the public health and welfare, and each authority may:

109 1. Exist for a term of 50 years as a corporation, and for such further period or periods as may from
110 time to time be provided by appropriate resolutions of the political subdivisions which are members of
111 the authority; however, the term of an authority shall not be extended beyond a date 50 years from the
112 date of the adoption of such resolutions;

113 2. Adopt, amend or repeal bylaws, rules and regulations, not inconsistent with this chapter or the
114 general laws of the Commonwealth, for the regulation of its affairs and the conduct of its business and
115 to carry into effect its powers and purposes;

116 3. Adopt an official seal and alter the same at pleasure;

117 4. Maintain an office at such place or places as it may designate;

118 5. Sue and be sued;

119 6. Acquire, purchase, lease as lessee, construct, reconstruct, improve, extend, operate and maintain
120 any stormwater control system or water or waste system or any combination of such systems within,
121 outside, or partly within and partly outside one or more of the localities which created the authority, or

which after February 27, 1962, joined such authority; acquire by gift, purchase or the exercise of the right of eminent domain lands or rights in land or water rights in connection therewith, within, outside, or partly within and partly outside one or more of the localities which created the authority, or which after February 27, 1962, joined such authority; and sell, lease as lessor, transfer or dispose of all or any part of any property, real, personal or mixed, or interest therein, acquired by it; however, in the exercise of the right of eminent domain the provisions of § 25.1-102 shall apply. In addition, the authority in any county or city to which §§ 15.2-1906 and 15.2-2146 are applicable shall have the same power of eminent domain and shall follow the same procedure provided in §§ 15.2-1906 and 15.2-2146. No property or any interest or estate owned by any political subdivision shall be acquired by an authority by the exercise of the power of eminent domain without the consent of the governing body of such political subdivision. Except as otherwise provided in this section, each authority is hereby vested with the same authority to exercise the power of eminent domain as is vested in the Commonwealth Transportation Commissioner. In acquiring personal property or any interest, right, or estate therein by purchase, lease as lessee, or installment purchase contract, an authority may grant security interests in such personal property or any interest, right, or estate therein;

7. Issue revenue bonds of the authority, such bonds to be payable solely from revenues to pay all or a part of the cost of a stormwater control system or water or waste system;

8. Combine any stormwater control system or water or waste system as a single system for the purpose of operation and financing;

9. Borrow at such rates of interest as authorized by the general law for authorities and as the authority may determine and issue its notes, bonds or other obligations therefor. Any political subdivision that is a member of an authority may lend, advance or give money to such authority;

10. Fix, charge and collect rates, fees and charges for the use of or for the services furnished by or for the benefit from any system operated by the authority. Such rates, fees, rents and charges shall be charged to and collected from any person contracting for the services or the lessee or tenant who uses or occupies any real estate which is served by or benefits from any such system. Water and sewer connection fees established by any authority shall be fair and reasonable, *and each authority may establish and offer rate incentives designed to encourage the use of green roofs. If established, the incentives shall be based on the percentage of stormwater runoff reduction the green roof provides.* Such fees *and incentives* shall be reviewed by the authority periodically and shall be adjusted, if necessary, to assure that they continue to be fair and reasonable. Nothing herein shall affect existing contracts with bondholders that are in conflict with any of the foregoing provisions;

11. Enter into contracts with the federal government, the Commonwealth, the District of Columbia or any adjoining state or any agency or instrumentality thereof, any unit or any person. Such contracts may provide for or relate to the furnishing of services and facilities of any stormwater control system or water or waste system of the authority or in connection with the services and facilities rendered by any like system owned or controlled by the federal government, the Commonwealth, the District of Columbia or any adjoining state or any agency or instrumentality thereof, any unit or any person, and may include contracts providing for or relating to the right of an authority, created for such purpose, to receive and use and dispose of all or any portion of the refuse generated or collected by or within the jurisdiction or under the control of any one or more of them. In the implementation of any such contract, an authority may exercise the powers set forth in §§ 15.2-927 and 15.2-928. The power granted authorities under this chapter to enter into contracts with private entities includes the authority to enter into public-private partnerships for the establishment and operation of water and sewage systems, including the authority to contract for, and contract to provide, meter reading, billing and collections, leak detection, meter replacement and any related customer service functions;

12. Contract with the federal government, the Commonwealth, the District of Columbia, any adjoining state, any person, any locality or any public authority or unit thereof, on such terms as the authority deems proper, for the construction, operation or use of any project which is located partly or wholly outside the Commonwealth;

13. Enter upon, use, occupy, and dig up any street, road, highway or private or public lands in connection with the acquisition, construction or improvement, maintenance or operation of a stormwater control system or water or waste system, or streetlight system in King George County, subject, however, to such reasonable local police regulation as may be established by the governing body of any unit having jurisdiction;

14. Contract with any person, political subdivision, federal agency, or any public authority or unit, on such terms as the authority deems proper, for the purpose of acting as a billing and collecting agent for sewer service or sewage disposal service fees, rents or charges imposed by any such body;

15. Install, own and lease pipe or conduit for the purpose of carrying fiber optic cable, provided that such pipe or conduit and the rights-of-way in which they are contained are made available on a nondiscriminatory, first-come, first-served basis to retail providers of broadband and other

telecommunications services unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities; and

16. Create, acquire, purchase, own, maintain, use, license, and sell intellectual property rights, including any patent, trademark, or copyright, relating to the business of the authority.

2. Until such time as standards and specifications for vegetative roofing systems are set forth in the Virginia Stormwater BMP Clearinghouse, this legislation shall not preclude the use of containerized vegetative roofing systems designed in accordance with other standards and specifications from qualifying for the local incentives for green roofing pursuant to § 15.2-977.