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## HOUSE BILL NO. 2455

Offered January 20, 2011

A *BILL to amend and reenact § 15.2-2109 of the Code of Virginia, relating to municipal utility services; notice of adverse judgment.*

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Patron—Comstock

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Referred to Committee on Counties, Cities and Towns

**Be it enacted by the General Assembly of Virginia:****1. That § 15.2-2109 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-2109. Powers of localities as to public utilities and computer services; prevention of pollution of certain water.

A. Any locality may (i) acquire or otherwise obtain control of or (ii) establish, maintain, operate, extend and enlarge: waterworks, sewerage, gas works (natural or manufactured), electric plants, public mass transportation systems, stormwater management systems and other public utilities within or outside the limits of the locality and may acquire within or outside its limits in accordance with § 15.2-1800 whatever land may be necessary for acquiring, locating, establishing, maintaining, operating, extending or enlarging waterworks, sewerage, gas works (natural or manufactured), electric plants, public mass transportation systems, stormwater management systems and other public utilities, and the rights-of-way, rails, pipes, poles, conduits or wires connected therewith, or any of the fixtures or appurtenances thereof. As required by subsection C of § 15.2-1800, this section expressly authorizes a county to acquire real property for a public use outside its boundaries.

The locality may also prevent the pollution of water and injury to waterworks for which purpose its jurisdiction shall extend to five miles beyond the locality. It may make, erect and construct, within or near its boundaries, drains, sewers and public ducts and acquire within or outside the locality in accordance with § 15.2-1800 so much land as may be necessary to make, erect, construct, operate and maintain any of the works or plants mentioned in this section.

In the exercise of the powers granted by this section, localities shall be subject to the provisions of § 25.1-102 to the same extent as are corporations. The provisions of this section shall not be construed to confer upon any locality the power of eminent domain with respect to any public utility owned or operated by any other political subdivision of this Commonwealth. The provisions of this section shall not be construed to exempt localities from the provisions of Chapters 20 (§ 46.2-2000 et seq.), 22 (§ 46.2-2200 et seq.) and 23 (§ 46.2-2300 et seq.) of Title 46.2.

B. A locality may not (i) acquire all of a public utility's facilities, equipment or appurtenances for the production, transmission or distribution of natural or manufactured gas, or of electric power, within the limits of such locality or (ii) take over or displace, in whole or in part, the utility services provided by such gas or electric public utility to customers within the limits of such locality until after the acquisition is authorized by a majority of the voters voting in a referendum held in accordance with the provisions of Article 5 (§ 24.2-681 et seq.) of Chapter 6 of Title 24.2 in such locality on the question of whether or not such facilities, equipment or appurtenances should be acquired or such services should be taken over or displaced; however, the provisions of this subsection shall not apply to the use of energy generated from landfill gas in the City of Lynchburg or Fairfax County. In no event, however, shall a locality be required to hold a referendum in order to provide gas or electric service to its own facilities. Notwithstanding any provision of this subsection, a locality may acquire public utility facilities or provide services to customers of a public utility with the consent of the public utility. No city or town which provided electric service as of January 1, 1994, shall be required to hold such a referendum prior to the acquisition of a public utility's facilities, equipment or appurtenances used for the production, transmission or distribution of electric power or to the provision of services to customers of a public utility. Nothing in this subsection shall be deemed to (a) create a property right or property interest or (b) affect or impair any existing property right or property interest of a public utility.

C. The City of Bristol is authorized to provide computer services as defined in § 18.2-152.2. "Computer services" as used in this section shall specifically not include the communications link between the host computer and any person or entity other than (i) such locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities or (ii) an adjoining locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities.

D. In the event that a court of competent jurisdiction has entered a final adverse decision against a locality in connection with such locality's provision of utility services authorized by this section holding that the locality imposed upon any user of such utility services fees, rates or charges in excess of

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59 *amounts allowable by law, the locality shall give notice via first-class mail to all users potentially*  
60 *affected by the decision within 30 days of its entry. It shall be sufficient for the locality to comply with*  
61 *the notice required by this subsection if the notice is included in a regularly scheduled bill for utility*  
62 *services sent to the user, provided that such notice is set off from the rest of the bill in a conspicuous*  
63 *manner.*

64 **2. That the provisions of this act shall apply to any final adverse decision entered prior to its**  
65 **effective date where the claims of users who were overcharged for utility services are not barred**  
66 **by any applicable limitations period, and any locality subject to this act shall send the required**  
67 **notice within 30 days from the effective date of this act.**