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SENATE BILL NO. 542

Offered January 13, 2016

Prefiled January 13, 2016

A BILL to amend and reenact § 15.2-2119 of the Code of Virginia, relating to sewer authorities; liens for delinquent charges.

Patron—Obenshain

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2119 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2119. Fees and charges for water and sewer services.

A. For water and sewer services provided by localities, fees and charges may be charged to and collected from (i) any person contracting for the same; (ii) the owner who is the occupant of the property or where a single meter serves multiple units; (iii) a lessee or tenant, provided that the lessee or tenant has written authorization from the owner of the property to obtain water and sewer services in the name of such lessee or tenant with such fees and charges applicable for water and sewer services (a) which directly or indirectly is or has been connected with the sewage disposal system and (b) from or on which sewage or industrial wastes originate or have originated and have directly or indirectly entered or will enter the sewage disposal system; or (iv) any user of a municipality's water or sewer system with respect to combined sanitary and storm water sewer systems where the user is a resident of the municipality and the purpose of any such fee or charge is related to the control of combined sewer overflow discharges from such systems. Such fees and charges shall be practicable and equitable and payable as directed by the respective locality operating or providing for the operation of the water or sewer system. A locality providing water and sewer services may establish, by adoption of a resolution, that water and sewer services may be provided to a lessee or tenant pursuant to provision (iii) without obtaining an authorization form from the property owner. For purposes of this section, a written or electronic authorization from the owner of the property to obtain water and sewer services in the name of such lessee or tenant substantially in the form as follows shall be sufficient compliance with this section:

DATE

[INSERT NAME OF WATER AND SEWER SERVICES PROVIDER AND ADDRESS]

RE: [INSERT FULL TENANT NAME AND ADDRESS]

To Whom It May Concern:

[INSERT TENANT NAME] has entered into a lease for the property located at [INSERT ADDRESS] and is authorized to obtain services at this address as a tenant of [INSERT PROPERTY OWNER NAME].

Signed: _____

PROPERTY OWNER

B. Such fees and charges, being in the nature of use or service charges, shall, as nearly as the governing body deems practicable and equitable, be uniform for the same type, class and amount of use or service of the sewage disposal system, and may be based or computed either on the consumption of water on or in connection with the real estate, making due allowances for commercial use of water, or on the number and kind of water outlets on or in connection with the real estate or on the number and kind of plumbing or sewage fixtures or facilities on or in connection with the real estate or on the number or average number of persons residing or working on or otherwise connected or identified with the real estate or any other factors determining the type, class and amount of use or service of the sewage disposal system, or any combination of such factors, or on such other basis as the governing body may determine. Such fees and charges shall be due and payable at such time as the governing body may determine, and the governing body may require the same to be paid in advance for periods of not more than six months. The revenue derived from any or all of such fees and charges is hereby declared to be revenue of such sewage disposal system.

59 C. Water and sewer connection fees established by any locality shall be fair and reasonable. Such
60 fees shall be reviewed by the locality periodically and shall be adjusted, if necessary, to assure that they
61 continue to be fair and reasonable. Nothing herein shall affect existing contracts with bondholders which
62 are in conflict with any of the foregoing provisions.

63 D. If the fees and charges charged for water service or the use and services of the sewage disposal
64 system by or in connection with any real estate are not paid when due, a penalty and interest shall at
65 that time be owed as provided for by general law, and the owner, lessee or tenant, as the case may be,
66 of such real estate shall, until such fees and charges are paid with such penalty and interest to the date
67 of payment, cease to dispose of sewage or industrial waste originating from or on such real estate by
68 discharge thereof directly or indirectly into the sewage disposal system. If such owner, lessee or tenant
69 does not pay the full amount of charges, penalty and interest for water provided or cease such disposal
70 within two months thereafter, the locality or person supplying water or sewage disposal services for the
71 use of such real estate shall cease supplying water and sewage disposal services thereto unless the health
72 officers certify that shutting off the water will endanger the health of the occupants of the premises or
73 the health of others.

74 E. Such fees and charges, and any penalty and interest thereon, shall constitute a lien against the
75 property, ranking on a parity with liens for unpaid taxes.

76 A lien may be placed on the property in the amount of (i) up to three months of delinquent water
77 and sewer charges *or, in the case of an authority that provides only sewer service, any number of*
78 *months of delinquent sewer charges,* (ii) any applicable penalties and interest on such delinquent
79 charges, and (iii) reasonable attorney fees and other costs of collection not exceeding 20 percent of such
80 delinquent charges. In no case shall a lien for less than \$25 be placed against the property. In the case
81 of services to a lessee or tenant, if the locality does not cease supplying water to the lessee or tenant 60
82 days after the bill becomes delinquent, unless water is required to be provided pursuant to subsection D
83 or other applicable law, there shall be no lien placed on the property for charges and collection costs
84 beyond the 60-day period and no recourse against the property owner for service beyond the 60-day
85 period.

86 F. Unless the locality has adopted a resolution to not require authorization from land owners for
87 water and sewer service provided to lessees or tenants pursuant to subsection A, a lien may be placed
88 on the property for water and sewer services used by a lessee or tenant only if the locality has (i)
89 advised the owner of the property in writing that a lien may be placed on the property if the lessee or
90 tenant fails to pay any delinquent water and sewer charges; (ii) mailed by first-class mail to the owner
91 of the property, or sent electronically if requested by the owner, at the address listed in the written
92 authorization from the owner of the property (or such other address as the owner may provide), a
93 duplicate copy of the final bill sent to the lessee or tenant at the time of sending the final bill to such
94 lessee or tenant; (iii) collected a security deposit from the lessee or tenant as reasonably determined by
95 the locality to be sufficient to collateralize the locality for not less than three and no more than five
96 months of water and sewer charges; (iv) has applied the security deposit held by the locality to the
97 payment of the outstanding balance; (v) has employed reasonable collection efforts and practices to
98 collect amounts due from a lessee or a tenant including filing for the Set-Off Debt Collection Program if
99 the locality is a participant; and (vi) has provided the property owner with 30 days' written notice with a
100 copy of the final bill to allow the property owner a reasonable opportunity to pay the amount of any
101 outstanding balance and avoid the recordation of a lien against the property. If the property owner fails
102 to pay the amount of the outstanding balance within the 30-day period, the locality may record a lien in
103 the amount of the outstanding balance against the property owner. Upon payment of the outstanding
104 balance, or any portion thereof, or of any amounts of such fees and charges owed by the former tenant,
105 the property owner shall be entitled to receive any refunds and shall be subrogated against the former
106 tenant in place of the locality in the amount paid by the property owner. The locality shall execute all
107 documents necessary to perfect such subrogation in favor of the property owner.

108 G. When the owner has provided the lessee or tenant with written authorization from the owner of
109 the property to obtain water and sewer services in the name of such lessee or tenant, nothing herein
110 shall be construed to authorize the locality to require (i) the owner to put water and sewer services in
111 the name of the owner, except in the case where a single meter serves multiple tenant units, or (ii) a
112 security deposit or a guarantee of payment from an owner of property.

113 H. The locality shall not require a security deposit from the lessee or tenant to obtain water and
114 sewer services in the name of such lessee or tenant if such lessee or tenant presents to the locality a
115 landlord authorization letter which has attached documentation showing such lessee or tenant receives
116 need-based local, state, or federal rental assistance, and the absence of a security deposit shall not
117 prevent a locality from exercising its lien rights as authorized under subsection F.

118 I. Unless a lien has been recorded against the property owner, the locality shall not deny service to a
119 new tenant who is requesting service at a particular property address based upon the fact that a former
120 tenant has not paid any outstanding fees and charges charged for the use and services in the name of the

former previous tenant. In addition, the locality shall provide information relative to a former tenant or current tenant to the property owner upon request of the property owner. If the property owner provides the locality a request to be notified of a tenant's delinquent water bill and provides an email address, the locality shall send the property owner notice when a tenant's water bill has become 15 days delinquent.

J. Notwithstanding any provision of law to the contrary, any town with a population between 11,000 and 14,000, with the concurrence of the affected county, which provides and operates sewer services outside its boundaries may provide sewer services to industrial and commercial users outside its boundaries and collect such compensation therefor as may be contracted for between the town and such user. Such town shall not thereby be obligated to provide sewer services to any other users outside its boundaries.

K. The lien shall not bind or affect a subsequent bona fide purchaser of the real estate for valuable consideration without actual notice of the lien until the amount of such delinquent charges is entered in the official records of the office of the clerk of the circuit court in the jurisdiction in which the real estate is located. The clerk shall make and index the entries in the clerk's official records for a fee of \$5 per entry, to be paid by the locality and added to the amount of the lien.

L. The lien on any real estate may be discharged by the payment to the locality of the total lien amount and the interest which has accrued to the date of the payment. The locality shall deliver a fully executed lien release substantially in the form set forth in this subsection to the person making the payment. The locality shall provide the fully executed lien release to the person who made payment within 10 business days of such payment if the person who made such payment did not personally appear at the time of such payment. Upon presentation of such lien release, the clerk shall mark the lien satisfied. There shall be no separate clerk's fee for such lien release. For purposes of this section, a lien release of the water and sewer lien substantially in the form as follows shall be sufficient compliance with this section:

Prepared By and When

Recorded Return to:

Tax Parcel/GPIN Number: _____

CERTIFICATE OF RELEASE OF WATER AND SEWER SERVICE LIEN

Pursuant to Va. Code Annotated § 15.2-2119 (L), this release is exempt from recordation fees.

Date Lien Recorded: _____ Instrument Deed Book No.: _____

Grantee for Index Purposes: _____

Claim Asserted: Delinquent water and sewer service charges in the amount of \$_____.

Description of Property: [Insert name of property owner and tax map parcel/GPIN Number]

The above-mentioned lien is hereby released.

BY: _____

TITLE: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

Acknowledged, subscribed, and sworn to before me this _____ day of _____,
by _____ as _____ of the [Insert Water/Sewer Provider Name]
on behalf of [Insert Water/Sewer Provider Name].

Notary Public

My commission expires: _____

Notary Registration Number: _____