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HOUSE BILL NO. 82**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Counties, Cities and Towns
on January 29, 2010)

(Patron Prior to Substitute—Delegate Knight)

A BILL to amend and reenact § 15.2-2122 of the Code of Virginia, relating to civil penalties for violations of sewage disposal system ordinances.

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2122 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2122. Localities authorized to establish, etc., sewage disposal system; incidental powers.

For the purpose of providing relief from pollution, and for the improvement of conditions affecting the public health, and in addition to other powers conferred by law, any locality shall have power and authority to:

1. Establish, construct, improve, enlarge, operate and maintain a sewage disposal system with all the necessary sewers, conduits, pipelines, pumping and ventilating stations, treatment plants and works, and other plants, structures, boats, conveyances and other real and personal property necessary for the operation of such system, subject to the approvals required by § 62.1-44.19.

2. Acquire as permitted by § 15.2-1800, real estate, or rights or easements therein, necessary or convenient for the establishment, enlargement, maintenance or operation of such sewage disposal system and the property, in whole or in part, of any private or public service corporation operating a sewage disposal system or chartered for the purpose of acquiring or operating such a system, including its lands, plants, works, buildings, machinery, pipes, mains and all appurtenances thereto and its contracts, easements, rights and franchises, including its franchise to be a corporation, and have the right to dispose of property so acquired no longer necessary for the use of such system. However, any locality condemning property hereunder shall rest under obligation to furnish sewage service, at appropriate rates, to the customers of any corporation whose property is condemned.

3. Borrow money for the purpose of establishing, constructing, improving and enlarging the sewage disposal system and to issue bonds therefor in the name of the locality.

4. Accept gifts or grants of real or personal property, money, material, labor or supplies for the establishment and operation of such sewage disposal system and make and perform such agreements or contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants.

5. Enter on any lands, waters and premises for the purpose of making surveys, borings, soundings and examinations for constructing and operating the sewage disposal system, and for the prevention of pollution.

6. Enter into contracts with the United States of America, or any department or agency thereof, or any person, firm or corporation, or the governing body of any other locality, providing for or relating to the treatment and disposal of sewage and industrial wastes.

7. Fix, charge and collect fees or other charges for the use and services of the sewage disposal system; and, except in counties which are not otherwise authorized, require the connection of premises with facilities provided for sewage disposal services. Water and sewer connection fees established by any locality shall be fair and reasonable. Such fees shall be reviewed by the locality 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 which are in conflict with any of the foregoing provisions.

8. Finance in whole or in part the cost of establishing, constructing, improving or enlarging the sewage disposal systems authorized to be established, constructed, improved or enlarged by this section, in advance of putting such systems in operation.

9. Fix, charge and collect fees and other charges for the use and services of sanitary, combined and storm water sewers operated and maintained by any locality. Such fees and charges may be fixed and collected in accordance with and subject to the provisions of § 15.2-2119.

10. Establish standards for the use and services of sanitary, combined and stormwater sewer systems, treatment works and appurtenances operated and maintained by any locality, including but not limited to implementation of applicable pretreatment requirements pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and the federal Clean Water Act (33 U.S.C. § 1251 et seq.). Such sewer use standards may be implemented by ordinance, regulation, permit or contract of the locality or of the wastewater authority or sanitation district, where applicable, and violations thereof may be enforced by the same subject to the following conditions and limitations:

a. No order assessing a civil penalty for a violation shall be issued until after the user has been

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60 provided an opportunity for a hearing, except with the consent of the user. The notice of the hearing
61 shall be served personally or by registered or certified mail, return receipt requested, on any authorized
62 representative of the user at least 30 days prior to the hearing. The notice shall specify the time and
63 place for the hearing, facts and legal requirements related to the alleged violation, and the amount of
64 any proposed penalty. At the hearing the user may present evidence including witnesses regarding the
65 occurrence of the alleged violation and the amount of the penalty, and the user may examine any
66 witnesses for the locality. A verbatim record of the hearing shall be made. Within 30 days after the
67 conclusion of the hearing, the locality shall make findings of fact and conclusions of law and issue the
68 order.

69 b. No order issued by the locality shall assess civil penalties in excess of the maximum amounts
70 established in subdivision (8a) of § 62.1-44.15, except with the consent of the user. The actual amount
71 of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or
72 actual environmental harm or facility damage, the compliance history of the user, any economic benefit
73 realized from the noncompliance, and the ability of the user to pay the penalty, provided, however, that
74 in accordance with subdivision 10 d, a locality may establish a uniform schedule of civil penalties for
75 specified types of violations. In addition to civil penalties, the order may include a monetary assessment
76 for actual damages to sewers, treatment works and appurtenances and for costs, attorney fees and other
77 expenses resulting from the violation. Civil penalties in excess of the maximum amounts established in
78 subdivision (8a) of § 62.1-44.15 may be imposed only by a court in amounts determined in its discretion
79 but not to exceed the maximum amounts established in § 62.1-44.32.

80 c. Any order issued by the locality, whether or not such order assesses a civil penalty, shall inform
81 the user of his right to seek reconsideration or review within the locality, if authorized, and of his right
82 to judicial review of any final order by appeal to circuit court on the record of proceedings before the
83 locality. To commence an appeal, the user shall file a petition in circuit court within 30 days of the date
84 of the order, and failure to do so shall constitute a waiver of the right to appeal. With respect to
85 matters of law, the burden shall be on the party seeking review to designate and demonstrate an error
86 of law subject to review by the court. With respect to issues of fact, the duty of the court shall be
87 limited to ascertaining whether there was substantial evidence in the record to reasonably support such
88 findings.

89 d. In addition, a locality may, by ordinance, establish a uniform schedule of civil penalties for
90 violations of fats, oils and grease standards; infiltration and inflow standards; and other specified
91 provisions of any ordinance (other than industrial pretreatment requirements of the State Water Control
92 Law (§ 62.1-44.2 et seq.) or federal Clean Water Act (33 U.S.C. § 1251 et seq.)). The schedule of civil
93 penalties shall be uniform for each type of specified violation, and the penalty for any one violation
94 shall be a civil penalty of not more than \$100 for the initial summons, not more than \$150 for each
95 additional summons and not more than a total amount of \$3,000 for a series of specified violations
96 arising from the same operative set of facts. The locality may issue a civil summons ticket for a
97 scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an
98 appearance in person or in writing by mail to the treasurer of the locality prior to the date fixed for
99 trial in court. Any person so appearing may enter a waiver of trial, admit liability and pay the civil
100 penalty established for the offense charged. If a person charged with a scheduled violation does not
101 elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district
102 court in the same manner and with the same right of appeal as provided for by law. In any such trial,
103 the locality shall have the burden of proving by a preponderance of the evidence the liability of the
104 alleged violator. An admission of liability or finding of liability under this section shall not be deemed
105 an admission at a criminal proceeding, and no civil action authorized by this section shall proceed
106 while a criminal action is pending.

107 e. This subdivision shall neither preclude a locality from proceeding directly in circuit court to
108 compel compliance with its sewer use standards or seek civil penalties for violation of the same nor be
109 interpreted as limiting any otherwise applicable legal remedies or sanctions. Each day during which a
110 violation is found to have existed shall constitute a separate violation, and any civil penalties imposed
111 under this subdivision shall be applied to the purpose of abating, preventing or mitigating environmental
112 pollution.

113 f. For purposes of enforcement of standards established under this subdivision, "locality" shall mean
114 the locality's director of public utilities or other designee of the locality with responsibility for
115 administering and enforcing sewer use standards or, in the case of a wastewater authority or sanitation
116 district, its chief executive.