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## HOUSE BILL NO. 1737

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns  
on January 21, 2011)

(Patrons Prior to Substitute—Delegates Bulova and Wilt [HB 1760])

A BILL to amend and reenact § 15.2-2114 of the Code of Virginia, relating to local regulation of stormwater management programs.

**Be it enacted by the General Assembly of Virginia:**

**1. That § 15.2-2114 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-2114. Regulation of stormwater.

A. Any locality, by ordinance, may adopt a stormwater control program consistent with Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1, or any other state or federal regulation, by establishing a utility or enacting a system of service charges. Income derived from these charges shall be dedicated special revenue and may be used only to pay or recover costs for the following to support a local stormwater management program consistent with Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10 or any other state or federal regulation governing stormwater management. Income derived from a utility or system of charges shall be dedicated special revenue, may not exceed the actual costs incurred by a locality operating under the provisions of this section, and may be used only to pay or recover costs for the following:

1. The acquisition, as permitted by § 15.2-1800, of real and personal property, and interest therein, necessary to construct, operate and maintain stormwater control facilities;

2. The cost of administration of such programs;

3. ~~Engineering and design, debt retirement, construction costs~~ Planning, design, engineering, construction, and debt retirement for new facilities and enlargement or improvement of existing facilities, including the enlargement or improvement of dams, levees, floodwalls, and pump stations, whether publicly or privately owned, that serve to control stormwater; however, prior to adoption of any ordinance pursuant to this section related to the enlargement or improvement of privately owned dams, a locality shall comply with the notice provisions of § 15.2-1427 and hold a public hearing;

4. Facility operation and maintenance, including the maintenance of dams, levees, floodwalls, and pump stations, whether publicly or privately owned, that serve to control the stormwater; however, prior to adoption of any ordinance pursuant to this section related to the maintenance of privately owned dams, a locality shall comply with the notice provisions of § 15.2-1427 and hold a public hearing;

5. Monitoring of stormwater control devices and ambient water quality monitoring; and

6. Pollution control and abatement, consistent with state and federal regulations for water pollution control and abatement; and Other activities consistent with the state or federal regulations or permits governing stormwater management, including, but not limited to, public education, watershed planning, inspection and enforcement activities, and pollution prevention planning and implementation.

7. Planning, design, land acquisition, construction, operation and maintenance activities.

B. The charges may be assessed to property owners or occupants, including condominium unit owners or tenants (when the tenant is the party to whom the water and sewer service is billed), and shall be based upon their contributions to stormwater runoff; however, prior an analysis that demonstrates the rational relationship between the amount charged and the services provided. Prior to adopting such a system, a public hearing shall be held after giving notice as required by charter or by publishing a descriptive notice once a week for two successive weeks prior to adoption in a newspaper with a general circulation in the locality. The second publication shall not be sooner than one calendar week after the first publication. However, prior to adoption of any ordinance pursuant to this section related to the enlargement, improvement, or maintenance of privately owned dams, a locality shall comply with the notice provisions of § 15.2-1427 and hold a public hearing.

C. A locality adopting such a system shall provide for full waivers of charges to the following:

1. A federal, state, or local government, agencies when the agency owns and provides for maintenance of storm drainage and stormwater control facilities or is a unit of the locality administering the program. A locality shall also provide full waivers of charges for or public entity, that holds a permit to discharge stormwater from a municipal separate storm sewer system; except that the waiver of charges shall apply only to property covered by any such permit; and

2. Public roads and public street rights-of-way that are owned and maintained by state or local agencies including property rights-of-way acquired through the acquisitions process.

D. A locality adopting such a system shall also provide for full or partial waivers of charges to any person who develops, redevelops or retrofits outfalls, discharges or property so that there is a permanent reduction in post-development stormwater flow and pollutant loading installs, operates, and maintains a

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60 *stormwater management facility that achieves a permanent reduction in stormwater flow or pollutant*  
61 *loadings. The locality shall base the amount of the waiver in part on the percentage reduction in both*  
62 *stormwater flow and pollutant loading, from predevelopment to postdevelopment stormwater flow or*  
63 *pollutant loadings, or both, from pre-installation to post-installation of the facility. No locality shall*  
64 *provide a waiver to any person who does not obtain a stormwater permit from the Department of*  
65 *Conservation and Recreation or the Department of Environmental Quality when such permit is required*  
66 *by statute or regulation.*

67 *E. A locality adopting such a system may also provide for full waiver or partial waivers of charges*  
68 *to cemeteries. Income derived from service charges may not exceed the actual costs incurred by a*  
69 *locality operating under the provisions of this title, property owned or operated by the locality*  
70 *administering the program, and public or private entities that implement or participate in strategies,*  
71 *techniques, or programs that reduce stormwater flow or pollutant loadings, or decrease the cost of*  
72 *maintaining or operating the public stormwater management system.*

73 *CF. Any locality may issue general obligation bonds or revenue bonds in order to finance the cost of*  
74 *infrastructure and equipment for a stormwater control program. Infrastructure and equipment shall*  
75 *include structural and natural stormwater control systems of all types, including, without limitation,*  
76 *retention basins, sewers, conduits, pipelines, pumping and ventilating stations, and other plants,*  
77 *structures, and real and personal property used for support of the system. The procedure for the issuance*  
78 *of any such general obligation bonds or revenue bonds pursuant to this section shall be in conformity*  
79 *with the procedure for issuance of such bonds as set forth in the Public Finance Act (§ 15.2-2600 et*  
80 *seq.).*

81 *DG. In the event charges are not paid when due, interest thereon shall at that time accrue at the rate,*  
82 *not to exceed the maximum amount allowed by law, determined by the locality until such time as the*  
83 *overdue payment and interest are paid. Charges and interest may be recovered by the locality by action*  
84 *at law or suit in equity and shall constitute a lien against the property, ranking on a parity with liens for*  
85 *unpaid taxes. The locality may combine the billings for stormwater charges with billings for water or*  
86 *sewer charges, real property tax assessments, or other billings; in such cases, the locality may establish*  
87 *the order in which payments will be applied to the different charges. No locality shall combine its*  
88 *billings with those of another locality or political subdivision, including an authority operating pursuant*  
89 *to Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2, unless such locality or political subdivision has given*  
90 *its consent by duly adopted resolution or ordinance.*

91 *EH. Any two or more localities may enter into cooperative agreements concerning the management*  
92 *of stormwater.*

93 **2. The provisions of this act shall not be construed to invalidate the provisions of any local**  
94 **ordinance legally adopted prior to July 1, 2011.**