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SENATE BILL NO. 468

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Local Government)
(Patron Prior to Substitute—Senator Wagner)

Senate Amendments in [] — February 15, 2016

A BILL to amend and reenact § 15.2-2114 of the Code of Virginia, relating to local stormwater utility; waiver of charges where stormwater retained on site.

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 establish a utility or enact a system of service charges to support a local stormwater management program consistent with Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 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. 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;

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;

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

6. *Contracts related to stormwater management, including contracts for the financing, construction, operation, or maintenance of stormwater management facilities, regardless of whether such facilities are located on public or private property and, in the case of private property locations, whether the contract is entered into pursuant to a stormwater management private property program under subsection J or otherwise; and*

7. 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.

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 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, 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 street rights-of-way that are owned and maintained by state or local agencies, including property rights-of-way acquired through the acquisitions process; and

3. *Land [owned by a railroad and] located within [its a railroad] right-of-way [that is covered with ballast and rail] .*

D. A locality adopting such a system shall provide for full or partial waivers of charges to any person who installs, operates, and maintains a stormwater management facility that achieves a permanent reduction in stormwater flow or pollutant loadings. The locality shall base the amount of the waiver in part on the percentage reduction in stormwater flow or pollutant loadings, or both, from pre-installation to post-installation of the facility. No locality shall provide a waiver to any person who does not obtain a stormwater permit from the Department of Environmental Quality when such permit is required by statute or regulation.

E. A locality adopting such a system may provide for full or partial waivers of charges to cemeteries,

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60 property owned or operated by the locality administering the program, and public or private entities that
61 implement or participate in strategies, techniques, or programs that reduce stormwater flow or pollutant
62 loadings, or decrease the cost of maintaining or operating the public stormwater management system.

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

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

81 H. Any two or more localities may enter into cooperative agreements concerning the management of
82 stormwater.

83 I. For purposes of implementing waivers pursuant to ~~provision 4 of subsection C subdivision C 1~~, for
84 property where two adjoining localities subject to a revenue sharing agreement each hold municipal
85 separate storm sewer permits, the waiver shall also apply to the property of each locality and of its
86 school board that is accounted for in that locality's municipal separate storm sewer program plan,
87 regardless of whether such property is located within the adjoining locality.

88 J. Any locality that establishes a system of charges pursuant to this section may establish a
89 public-private partnership program, to be known as a stormwater management private property
90 program, in order to promote cost-effectiveness in reducing excessive stormwater flow or pollutant
91 loadings or in making other stormwater improvements authorized pursuant to this section. A locality
92 that opts to establish a stormwater management private property program pursuant to this subsection
93 shall:

94 1. Promote awareness of the location, quantity, and timing of reductions or other improvements that
95 it determines appropriate under this program;

96 2. Seek the voluntary participation of property owners;

97 3. Accept the participation of property owners on both an individual and a group basis by which
98 multiple owners may collaborate on improvements and allocate among the multiple owners any
99 payments made by the locality;

100 4. Enter into contracts at its discretion to secure improvements on terms and conditions that the
101 locality deems appropriate, including by making payments to property owners in excess of the value of
102 any applicable waivers pursuant to subsections D and E; and

103 5. Require appropriate operation and maintenance of the contracted improvements.

104 K. Any locality that establishes a stormwater management private property program pursuant to
105 subsection J may procure reductions and improvements in accordance with the Public-Private Education
106 Facilities and Infrastructure Act (§ 56-575.1 et seq.) or other means, as appropriate. Subsection J shall
107 not be interpreted to limit the authority of a locality to secure reductions of excessive stormwater flow
108 or pollutant loadings or other stormwater improvements by other means.