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HOUSE BILL NO. 2185

Offered January 12, 2005

Prefiled January 11, 2005

*A BILL for the relief of Sean and Jennie Barrett.*_____
Patron—Hargrove_____
Referred to Committee on Appropriations

Whereas, on January 15, 1998, Sean and Jennie Barrett (the Barretts) purchased a house and six-acre parcel at 17214 Courtney Road in Caroline County; and

Whereas, prior to the purchase, the Barretts provided a down payment of \$6098.00; and

Whereas, before the purchase was completed, two professional home inspectors examined the house and six-acre parcel and reported no evidence of any problems with the septic system; and

Whereas, the Barretts relied on the results of the two home inspections and representations made by the sellers and the sellers' agents in deciding to apply for the loan; and

Whereas, less than two weeks after moving into the house the Barretts noticed brown, smelly water flowing from their faucets; and

Whereas, soon thereafter a foul smell began to emanate throughout the house and the sewage system began to visibly malfunction; and

Whereas, at approximately the same time, the Barretts applied for a building permit to construct an addition to the house, but Caroline County denied the Barretts' building permit application for the addition because Caroline County had no record of a house or sewage system being constructed on the Barretts' six-acre parcel; and

Whereas, upon investigation, the Barretts learned that prior to their 1998 purchase of the six-acre parcel (i) the septic system located on the six-acre parcel was constructed pursuant to a sewage disposal construction permit issued by the Caroline County Health Department in 1988 for an adjoining 10-acre parcel of land, (ii) no sewage disposal construction permit for the six-acre parcel was ever issued, and (iii) in fact, the Caroline County Health Department denied a 1988 application for a sewage disposal construction permit for the six-acre parcel due to "insufficient depth of suitable soil to seasonal water table"; and

Whereas, it is unclear how the sewage disposal construction permit issued in 1988 for the 10-acre parcel became associated with the adjoining six-acre parcel; and

Whereas, nevertheless, the result was the construction of a septic system on the six-acre parcel, and the subsequent issuance of an operation permit by the Caroline County Department of Health; and

Whereas, the Caroline County Department of Health's inspection for this type of permit did not require the inspector to verify that the septic system in question was located on the 10-acre parcel, as was stated on previous permit applications; and

Whereas, it is unclear how this situation was not detected or revealed during the subsequent construction of the house located on the six-acre parcel, the sale of the house and property to the original owners, or the sale of the house and property from the original owners to the Barretts; and

Whereas, the Barretts' investigation of and attempt to resolve this situation in 1998 resulted in a determination by the Virginia Department of Health that (i) the permit pursuant to which the septic system was constructed on the six-acre parcel was actually issued for the adjoining 10-acre parcel, rendering the permit null and void, (ii) the septic system installed on the six-acre parcel was installed without a permit, and (iii) the septic system therefore was not an approved septic system; and

Whereas, in April 1999, the Virginia Department of Health notified the Barretts that due to the lack of a permit for the septic system on the six-acre parcel and the malfunctioning of that system resulting in the presence of raw or partially treated sewage on the property, the six-acre parcel was in violation of Board of Health regulations regarding the treatment and disposal of sewage; and

Whereas, the Caroline County Department of Health, seeking to assist the Barretts and "do everything within [the Department's] authority to try to identify a wastewater system for [their] home that is safe for [their] family" conducted a site and soil evaluation of the existing sewage disposal system and of the rest of the parcel for a new system; and

Whereas, the evaluation, conducted on April 13, 1999, led the Caroline County Department of Health to conclude that Virginia Sewage Handling and Disposal Regulations could not be met and that the six-acre parcel could not be served by either the existing septic system or a new one; and

Whereas, although the Barretts appealed the Caroline County Department of Health's decision, because the Barretts faced the possible condemnation of their house and six-acre parcel, and an ongoing

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HB2185

59 threat to their health and the health of their two young daughters, in 2000, the Barretts elected to move
60 out of the house and initiate foreclosure proceedings on the house and six-acre parcel; and

61 Whereas, the Barretts were able to obtain some relief from their situation through an out-of-court
62 settlement in the amount of \$3,800.00 with the real estate company that sold the house and six-acre
63 parcel to the Barretts; and

64 Whereas, the Barretts incurred expenses arising from this situation, including (i) additional home
65 inspection and related fees, (ii) the cost to purchase bottled water for two years, (iii) lost wages due to
66 time away from work, (iv) nonrefundable closing costs, (v) legal fees, and other costs; totaling
67 \$11,821.00; and

68 Whereas, Caroline County has asserted that, based upon the facts of the situation, it is immune from
69 liability; and

70 Whereas, the Virginia Department of Health has exclusive authority with respect to the issuance of
71 permits for the installation of sewage disposal systems, and the Caroline County Department of Health is
72 an agency of the Virginia Department of Health; and

73 Whereas, the Barretts have suffered physical, emotional, and financial hardship as a result of the
74 situation with the house and six-acre parcel and have no other means to obtain adequate relief except by
75 action of this body; now, therefore,

76 **Be it enacted by the General Assembly of Virginia: 1. § 1. That there is hereby appropriated from**
77 *the Onsite Sewage Indemnification Fund of the state treasury the sum of \$11,821.00 for the relief of*
78 *Sean and Jennie Barrett, to be paid by check issued by the State Treasurer on warrant of the*
79 *Comptroller upon execution of a release of all claims Sean and Jennie Barrett may have against the*
80 *Commonwealth or any agency, instrumentality, office, employee or political subdivision in connection*
81 *with the aforesaid occurrence.*