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## HOUSE BILL NO. 2451

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Suit  
on January 25, 2005)

(Patron Prior to Substitute—Delegate Suit)

A BILL to amend and reenact § 32.1-164.1:1 of the Code of Virginia, relating to the validity of certain septic tank permits; waivers.

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

**1. That § 32.1-164.1:1 of the Code of Virginia is amended and reenacted as follows:**

§ 32.1-164.1:1. Validity of certain septic tank permits.

A. Any septic tank permit issued shall be valid for a period of 18 months from the date of issuance unless there has been a substantial, intervening change in the soil or site conditions where the septic system is to be located. However, if a building permit has been obtained or building construction has commenced, the permit may be extended for an additional 18 months. Applicants shall be informed of the septic tank permit validity period and advised to apply only when ready to begin construction.

B. Further, whenever any onsite sewage system is failing on real property consisting of not less than one nor more than four dwelling units and the Board's regulations for repairing such failing system impose (i) a requirement for treatment beyond the level of treatment provided by the existing onsite sewage system when operating properly or (ii) a new requirement for pressure dosing, the owner may request a waiver from such requirements. The Commissioner shall grant any request for such waiver, unless he finds that the failing system was installed illegally without a permit. Any such waivers shall be recorded in the land records of the clerk of the circuit court in the jurisdiction in which the property on which the relevant onsite sewage system is located. Except ~~between a husband and a wife, as provided in subsection C,~~ waivers granted hereunder shall not be transferable and shall be null and void upon transfer or sale of the property on which the onsite sewage system is located. Additional treatment or pressure dosing requirements shall be imposed in such instances when the property is transferred or sold.

The owner of the relevant property shall disclose, in writing, to any and all potential purchasers or mortgage holders accordance with subsection D, that any operating permit for the onsite sewage system that has been granted a waiver authorized by this subsection shall be null and void at the time of transfer or sale of the property and that the Board's regulatory requirements for additional treatment or pressure dosing shall be required before an operating permit may be reinstated.

The provisions of this subsection shall apply only with respect to transfers by sale, exchange, installment land sales contract, or lease with option to buy residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesperson.

C. The following are specifically allowed under the provisions of subsection B:

1. Transfers pursuant to court order including, but not limited to, transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

2. Transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, transfers by a trustee under a deed of trust pursuant to a foreclosure, or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by deed in lieu of foreclosure.

3. Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

4. Transfers between spouses resulting from a decree of divorce or a property settlement stipulation pursuant to the provisions of Title 20.

5. Transfers to or from any governmental entity or public or quasi-public housing authority or agency.

6. Other transfers consistent with criteria established by the Board of Health and the Real Estate Board.

D. The owner of residential real property subject to subsection B shall deliver to the purchaser a written disclosure prior to the acceptance of a real estate purchase contract. The written disclosure statement shall be in a separate document, developed by the Real Estate Board on or before January 1, 2006. Prior to that time, it shall be the obligation of the owner of such residential real property to prepare the written disclosure statement and provide it to the purchaser as otherwise provided herein.

E. If the disclosure or disclaimer required by subsection B is delivered to the purchaser after the

60 acceptance of the real estate purchase contract, the purchaser's sole remedy shall be to terminate the  
61 real estate purchase contract at or prior to the earliest of the following: (i) three days after delivery of  
62 the disclosure or disclaimer in person; (ii) five days after the postmark if the disclosure or disclaimer is  
63 deposited in the United States mail, postage prepaid, and properly addressed to the purchaser; (iii)  
64 settlement upon purchase of the property; (iv) occupancy of the property by the purchaser; (v) the  
65 execution by the purchaser of a written waiver of the purchaser's right of termination under this chapter  
66 contained in a writing separate from the real estate purchase contract; or (vi) the purchaser making  
67 written application to a lender for a mortgage loan where such application contains a disclosure that  
68 the right of termination shall end upon the application for the mortgage loan.

69 In order to terminate a real estate purchase contract when permitted by this subsection, the  
70 purchaser shall, within the time required by this chapter, give written notice to the owner either by hand  
71 delivery or by United States mail, postage prepaid, and properly addressed to the owner. If the  
72 purchaser terminates a real estate purchase contract in compliance with this chapter, the termination  
73 shall be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser.  
74 Any rights of the purchaser to terminate the contract provided by this chapter shall end if not exercised  
75 prior to the earlier of (i) the making of a written application to a lender for a mortgage loan where the  
76 application contains a disclosure that the right of termination shall end upon the application for the  
77 mortgage loan or (ii) settlement or occupancy by the purchaser, in the event of a sale, or occupancy, or  
78 in the event of a lease with option to purchase.

79 F. A real estate licensee representing an owner of residential real property as the listing broker shall  
80 have a duty to inform each such owner represented by that licensee of the owner's rights and  
81 obligations under subsection B. A real estate licensee representing a purchaser of residential real  
82 property or, if the purchaser is not represented by a licensee, the real estate licensee representing an  
83 owner of residential real estate and dealing with the purchaser shall have a duty to inform each such  
84 purchaser of the purchaser's rights and obligations under subsection B. Provided a real estate licensee  
85 performs those duties, the licensee shall have no further duties to the parties to a residential real estate  
86 transaction under this subsection, and shall not be liable to any party to a residential real estate  
87 transaction for a violation of subsection B or for any failure to disclose any information regarding any  
88 real property subject to subsection B.

89 G. For the purposes of this section:

90 "Acceptance" means the full execution of a real estate purchase contract by all parties; and

91 "Real estate purchase contract" means a contract for the sale, exchange, or lease with option to buy  
92 of real estate subject to this section.