

2005 SESSION

SENATE SUBSTITUTE

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SENATE BILL NO. 1128

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 26, 2005)

(Patron Prior to Substitute—Senator Houck)

A BILL for the relief of Robert E. and Barbara Morrison.

Whereas, on August 29, 2000, Robert E. and Barbara Morrison (the Morrisons) purchased a lot in the Wyndemere subdivision of Spotsylvania County on which they intended to construct a home; and

Whereas, the Wyndemere subdivision plat, including identification of boundary lines and the location of drainfields for the individual lots, previously had been approved by the Spotsylvania County Health Department (SCHD) on February 16, 1996; and

Whereas, the approval of the subdivision plat was based on site and soil submittals from Thomas R. Burruss, CPSS, and additional soil evaluations provided through Soils and Environmental Services of Nokesville; and

Whereas, on May 29, 2001, the Morrisons submitted an application for a sewage disposal system construction permit for the lot to serve a three bedroom home; and

Whereas, in June of 2001, an environmental health specialist with the SCHD visited the property to perform an evaluation for the application; and

Whereas, on July 11, 2001, Sewage Disposal Construction Permit # SWP 01-452 was issued by the SCHD for a sewage system designed to serve a three bedroom house; and

Whereas, excavation of the lot for the construction of the house and the installation of the sewage system subsequently began; and

Whereas, an SCHD employee inspected the sewage system during its construction on December 1, 2001, and March 28, 2002, and noted that the system was being installed in accordance with the requirements of the permit; and

Whereas, on March 28, 2002, the SCHD approved the permit and issued a permit to operate the septic system on the same date; and

Whereas, on April 1, 2002, the Morrisons completed the purchase of the lot together with the completed dwelling and sewage system; and

Whereas, beginning in May 2002, the Morrisons complained of problems with the water drainage for the lot and bad odors; and

Whereas, on November 7, 2002, the Morrisons contacted the SCHD to report that they were having problems with the sewage system including water drainage and the presence of a bad odor; and

Whereas, on November 12, 2002, two SCHD environmental health specialists visited the site and observed raw sewage discharging through a four-inch subsurface drain tile located in the rear of the garage; and

Whereas, by letter dated November 21, 2002, the SCHD requested a number of corrective actions, which included investigating potential surface and subsurface water infiltration and the impact of a water softener on the system, and requiring the sewage from the residence to be pumped and hauled away for disposal until a repair permit could be issued and appropriate repairs installed and approved; and

Whereas, while some work was done toward correcting the situation, the failure of the system persisted; and

Whereas on February 12, 2003, Phillip Cobb (Cobb), a soil scientist from Virginia Polytechnic Institute and State University (Virginia Tech), on contract to the Virginia Department of Health (VDH), visited the Morrisons' property and performed an evaluation of soil profiles in the vicinity of the drainfield; and

Whereas, in a report dated March 27, 2003, Cobb concluded that the soils in the drainfield areas did not meet the minimum requirements of VDH regulations due to shallow depths to soil horizons or materials that have restrictive permeability; and

Whereas, by letter dated on April 8, 2003, the SCHD informed the Morrisons of its assessment of the reasons for the system's failure and requested the Morrisons to take several steps to resolve the problems, including securing the services of a licensed professional engineer to act as project manager and to design a repair solution for the system; and

Whereas, the Morrisons subsequently hired Peter Brooks, P.E. (Brooks) of P.M. Brooks & Associates to design a repair; and

Whereas, Brooks prepared a preliminary proposal, which was provided to VDH on May 26, 2003; and

Whereas, on July 2, 2003, Brooks and William Russell (Russell), Environmental Health Supervisor, performed an inspection of the sewer line at the Morrisons' property; and

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60 Whereas, the inspection uncovered several problems and concluded that the inflow and infiltration
61 through the sewer line was a primary cause of the system failure; and

62 Whereas, on August 20, 2003, the SCHD issued a repair permit based on the plans and specifications
63 prepared by Brooks; and

64 Whereas, it was not until Robert Morrison appealed to the Office of the Secretary of Health and
65 Human Resources that the VDH conducted an inspection of the site that had been approved under the
66 permit issued on August 20, 2003; and

67 Whereas, on August 27, 2003, the site was rejected by the VDH based on soil conditions; and

68 Whereas, the VDH identified a new site and ordered soil tests and analysis and system design
69 modifications; and

70 Whereas, on November 19, 2003, the SCHD issued a revised repair permit based on revised plans
71 and specifications prepared by Brooks; and

72 Whereas, disagreement arose over the proper repair and the responsibility for the problems with the
73 septic system that was previously inspected and approved by the SCHD; and

74 Whereas, the VDH determined that the onsite meetings, conferences, and communications between
75 the Morrisons and their representatives and employees of the SCHD and VDH constituted an informal
76 fact-finding proceeding that is required as a prerequisite to a final case decision under the Administrative
77 Process Act (§ 2.2-4000 et seq.) of the Code of Virginia; and

78 Whereas, in October 2003, the VDH issued a Notice of Case Decision declaring the operating permit
79 for the septic system for the Morrisons' home to be null and void; and

80 Whereas, the Notice of Case Decision included findings that (i) the site and soil evaluations included
81 in the 1996 report did not accurately describe the soil conditions and did not comply with the minimum
82 requirements of VDH regulations, (ii) the drainfield was not installed in the proper area as indicated on
83 the permit, and (iii) the numerous sewer line construction errors were the primary cause of the system
84 failure; and

85 Whereas, the Morrisons have incurred extensive costs to develop a repair for the septic system and
86 continue to incur such costs; and

87 Whereas, Robert E. and Barbara Morrison have no other means to obtain adequate relief except by
88 this body; now, therefore,

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

90 **1.** *§ 1. That there is hereby appropriated from the Onsite Sewage Indemnification Fund*
91 *(§ 32.1-164.1:01) the sum of \$90,000, including \$9,000 for "pump and haul" fees already incurred, for*
92 *the relief of Robert E. Morrison and Barbara Morrison, to be paid by check issued by the State*
93 *Treasurer on warrant of the Comptroller upon execution by Robert E. Morrison and Barbara Morrison*
94 *of a release and waiver forever releasing (i) the Commonwealth or any agency, instrumentality, officer,*
95 *employee, or political subdivision thereof; and (ii) all other parties of interest from any present or*
96 *future claims they may have against such enumerated parties in connection with the aforesaid*
97 *occurrence.*