

2006 SESSION

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SENATE BILL NO. 596

Offered January 11, 2006

A BILL for the relief of Rainbow Forest Recreational Association.

Patrons—Bell; Delegates: Fralin and Putney

Referred to Committee on Finance

Whereas, the Rainbow Forest Recreational Association (RFRA) operates the 10-acre Rainbow Forest Lake with a Class I dam built over 40 years ago in Botetourt County; and

Whereas, Botetourt County had issued permits for the construction of housing downstream from the dam; and

Whereas, the RFRA inquired with the Department of Dam Safety (DDS) about the legal owner of the dam in 1997 and submitted a report prepared by an engineer in 1998 to register the dam; the RFRA subsequently applied for recertification in 2000 and 2002; and

Whereas, the 2000 conditional permit issued indicated a need to "verify available spillway design flood," but the 2002 conditional use permit indicated a need to "increase spillway capacity to pass required spillway design"; and

Whereas, in 2002, an RFRA board member was appointed as Dam Safety Coordinator to help coordinate activities to comply with dam safety requirements; and

Whereas, in 2003, the RFRA met with a fundraiser to explore ways to develop a campaign to raise the needed funds to make required changes to the spillway; the RFRA hired an engineer to make the needed downstream inundation potential estimates for a more current Emergency Action Plan; and intense efforts were made to contact and maintain current data for residents living downstream of the dam; and

Whereas, in 2004, the RFRA contacted Aqua Virginia, a water utility company with a water line imbedded in the dam, the Virginia Department of Transportation (VDOT), and Botetourt County to request financial assistance in funding the spillway upgrades, but all three entities absolved responsibility and declined to contribute to the upgrade fund; however, Aqua Virginia indicated that any damage to the water line would result in additional costs to the RFRA for any repairs incurred; and

Whereas, the RFRA began aggressively pursuing hydrology engineer calculation and design proposals for the required spillway changes; and

Whereas, in the fall of 2004, the RFRA received a title indicating that the RFRA was the owner of the dam, and additional documentation implying that VDOT may be responsible for the culverts; and

Whereas, the RFRA requested assistance from Botetourt County, first in 2004, and again in 2005, but received none; and

Whereas, in March 2005, RFRA members voted to sell the lake property; however, because upgrading the spillway capacity could not await the property sale, a massive fundraising campaign began to supplant the \$10,000 raised locally in 2004 that was used to cover the cost of the contracted engineer; and

Whereas, on April 1, 2005, a new RFRA board was appointed to replace an exhausted and overly burdened group of volunteers, and the new RFRA board met with a privately contracted engineer and a representative from DDS later that month; and

Whereas, on April 24, 2005, DDS advised the RFRA of their intent to begin to drain the lake; the DDS representative also indicated that DDS wanted a denser growth of grass on the dam's down slope and recommended the use of a professional landscaper; and

Whereas, in July 2005, the RFRA again contacted VDOT indicating some liability in maintenance of the culverts; VDOT advised that they did not intend to contribute financial assistance and that any road modification would have to be handled directly by the RFRA through local contractors and not VDOT; and

Whereas, in August 2005, the RFRA's real estate agent indicated that a Botetourt County representative discouraged a potential buyer from purchasing the lake property and told the potential buyer that he would be personally liable for any incident affecting the downstream residents; and

Whereas, on September 7, 2005, the RFRA had not yet received the revised As-built survey from the engineer, despite numerous inquiries; and

Whereas, on September 11, 2005, DDS informed the RFRA that the lake must be lowered and maintained at such level until modifications to the spillway could be made and a letter was sent to property owners adjoining the lake advising them of this need; and

Whereas, on September 30, 2005, DDS received the revised As-built survey and requested until

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59 October 5 to review it; and

60 Whereas, in December 2005, the RFRA received a temporary operating permit that will expire in
61 March 2006; and

62 Whereas, without an operational lake, the RFRA will not likely attract new membership and therefore
63 will not receive any additional revenue, but making the necessary changes to secure the spillway are
64 estimated to cost approximately \$186,000, a prohibitive cost for a neighborhood association; now,
65 therefore,

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

67 *1. § 1. That there is hereby appropriated from the general fund of the state treasury the sum of*
68 *\$186,000 for the relief of Rainbow Forest Recreational Association, to be paid by check issued by the*
69 *State Treasurer on warrant of the Comptroller upon execution of a release of all claims the Rainbow*
70 *Forest Recreational Association may have against the Commonwealth or any agency, instrumentality,*
71 *office, employee, or political subdivision in connection with the aforesaid situation.*