

# VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

## CHAPTER 448

*An Act to amend and reenact § 32.1-164.1:01 of the Code of Virginia, relating to the Onsite Sewage Indemnification fund.*

[H 1949]

Approved March 19, 2007

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

**1. That § 32.1-164.1:01 of the Code of Virginia is amended and reenacted as follows:**

§ 32.1-164.1:01. Onsite Sewage Indemnification fund.

There is hereby created the Onsite Sewage Indemnification fund whose purpose is to receive moneys generated by a portion of the fees collected by the Department of Health pursuant to subsections C and E of § 32.1-164 and appropriated by the Commonwealth for the purpose of assisting any Virginia real property owner holding a valid septic tank or other onsite sewage system permit when such system fails within three years of construction and such failure results from the negligence of the Department of Health. The fund may also be used, in the discretion of the Board, to support the program for training and recognition of authorized onsite soil evaluators.

Ten dollars of each fee collected by the Department of Health pursuant to subsections C and E of § 32.1-164 shall be deposited by the Comptroller to this fund to be appropriated for the purposes of this section to the Department of Health by the General Assembly as it deems necessary.

The owner of a septic tank or other onsite sewage system permitted by the Department of Health may request the Commissioner to review the circumstances of the onsite sewage system failure and grant indemnification from the fund, if the septic tank or other onsite sewage system is permitted by the Department and has failed within three years of construction. Upon finding that the system was permitted by the Department and has failed within three years of construction and that the failure resulted from Department of Health negligence, the Commissioner shall grant the request for indemnification. If the Commissioner finds that the system was permitted by the Department and has failed within three years of construction and that the failure resulted from faulty construction, the Commissioner may assist the owner of the failed system in seeking redress from the system's builder.

If the Commissioner refuses the request for indemnification, the requesting individual may appeal the refusal to the State Health Department Sewage Handling and Disposal Appeal Review Board.

The Board may promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) for the administration of the fund consistent with this chapter.

In the event the fund is insufficient to meet requests for indemnification, this section and the creation of the fund shall not be construed to provide liability on the part of the Department or any of its personnel where no such liability existed prior to July 1, 1994.

**2. That the Commissioner shall, at the end of each fiscal year, certify that no expenses were paid from the fund to support the program for training and recognition of authorized onsite soil evaluators in lieu of payment to any owner or owners qualified to receive payment from the fund pursuant to this chapter.**