

# VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

## CHAPTER 515

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

[H 2692]

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.

A. 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 *permit to operate an onsite sewage system* ~~permit~~ when such system or components thereof 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.

B. 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.

C. The owner of a ~~an onsite sewage system~~ *an onsite sewage system that has been permitted by the Department of Health may cause, by filing a request for payment from the fund within one year from the date the system or components thereof failed, request the Commissioner to review the circumstances of the onsite sewage system failure and grant indemnification from the fund, if the onsite sewage system is permitted by the Department and has failed within three years of construction. Upon the Commissioner's finding that the onsite sewage system was permitted by the Department and (i) the system or components thereof has failed within three years of construction; (ii) and that specific actions of the Department were negligent and that those actions caused the failure; and resulted from Department of Health negligence; (iii) that the owner filed a request for payment from the fund within one year from the date the system or components thereof failed, the Commissioner shall, subject to the limitations stated herein, reimburse the owner for the reasonable cost of following the Board's regulations to repair or replace the failed onsite sewage system or components thereof grant the request for indemnification.*

D. Prior to receiving payment from the fund, the owner shall follow the requirements in the Board's regulations to repair or replace the failed onsite sewage system or components thereof.

E. The total amount an owner may receive in payment from the fund shall not exceed \$30,000. Only the costs of the system that failed or the costs of labor and equipment required to repair or replace the failed onsite sewage system or components thereof are reimbursable by the fund.

F. 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 or other private party error, the Commissioner may assist the owner of the failed system in seeking redress from the system's builder or other private party.

G. Every request for payment from the fund shall be forever barred unless the owner has filed a complete application as required by the Department. The request shall be filed with the Commissioner within one year from the date that the onsite sewage system or components thereof first failed. However, if the owner was under a disability at the time the cause of action accrued, the tolling provisions of § 8.01-229 shall apply. The owner shall mail the request for payment from the fund via the United States Postal Service by certified mail, return receipt requested, addressed to the Commissioner.

In any action contesting the filing of the request for payment from the fund, the burden of proof shall be on the owner to establish mailing and receipt of the notice in conformity with this section. The signed receipt indicating delivery to the Commissioner, when admitted into evidence, shall be prima facie evidence of filing of the request for payment from the fund under this section. The request for payment from the fund shall be deemed to be timely filed if it is sent by certified mail, return receipt requested, and if the official receipt shows that the mailing was within the prescribed time limits.

Notwithstanding any provision of this article, the liability for any payment from the fund shall be conditioned upon the execution by the owner of a release approved by the Attorney General of all claims against the Commonwealth, its political subdivisions, agencies, and instrumentalities and against any officer or employee of the Commonwealth in connection with or arising out of the occurrence complained of.

*H. The Commissioner and the Attorney General shall cooperatively develop an actuarially sound program and policy for identifying, evaluating, and processing requests for payment from the fund.*

*I. If the Commissioner refuses the request for ~~indemnification~~ payment from the fund, the requesting individual owner 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~~ payment from the fund, 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 provisions of this act shall apply to all requests for payment from the fund beginning with those before the Commissioner on July 1, 2007. Owners with requests for payment from the fund before the Commissioner on or after July 1, 2007, shall repair or replace the onsite sewage system or components thereof before receiving reimbursement from the fund.**