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HOUSE BILL NO. 2323

House Amendments in [] - February 1, 2007

A BILL for the relief of Anna Malenick Evans.

Patron Prior to Engrossment—Delegate Gilbert

Referred to Committee on Appropriations

Whereas, in 1981, Anna Malenick Evans (Ms. Evans) purchased a house located at 11609 Olympic Drive, Manassas, Virginia; and

Whereas, in 1999, the Virginia Department of Transportation (VDOT) began work on a project to widen State Route 234; and

Whereas, Ms. Evans' property was adjacent to the road-widening project; and

Whereas, on or about January 11, 2000, VDOT contractors drove across the property of Roy Follendore, III, Ms. Evans' next door neighbor, without his permission to gain access to Route 234; and

Whereas, Mr. Follendore confronted the VDOT contractors and called the Prince William County Police Department; and

Whereas, rather than waiting for the police to arrive, the VDOT contractors hastily left the property by driving across Ms. Evans' property causing extensive damage by going through an embankment and cutting deep grooves and ruts into the gravel driveway and across drain lines 3 and 4 of the drainfield for the septic system; and

Whereas, Mr. Follendore filed a police report and a complaint with VDOT citing the trespass on his property by the VDOT contractors; and

Whereas, after an inquiry, VDOT determined that its contractor improperly entered on to Mr. Follendore's property and offered to compensate him for damage to his property; and

Whereas, Ms. Evans was not at home at the time of the incident and, because of travel and inclement weather, did not become aware of the damage until May 15, 2000; and

Whereas, Ms. Evans immediately began to contact the Prince William County Health Department (PWHHD) and VDOT to get them to inspect the drainfield fearing that the damage done by the VDOT may have adversely affecting the operation of the septic system; and

Whereas, despite Ms. Evans' concern representatives of the PWHHD assured her that there were no problems with the system because VDOT was not working on the property and did not intend to purchase the property; and

Whereas, in October of 2001, after informing her local representative on the Board of Supervisors of the situation, Ms. Evans was contacted by a VDOT representatives to further discuss the issue; and

Whereas, subsequently Ms. Evans met with three VDOT representatives on the property and it was determined that heavy equipment had indeed damaged the embankment and the driveway and that VDOT would take corrective action by regrading the embankment and repairing the driveway as the widening project proceeded; and

Whereas, Ms. Evans placed her house on the market in July of 2004 and on August 2004 an offer was made to purchase the house; and

Whereas, prior to settlement, which was scheduled for September 13, 2004, an inspection of the septic system was conducted by the PWHHD; and

Whereas, the PWHHD subsequently informed Ms. Evans that the inspection failed citing system malfunction and evidence of effluent surfacing at the end of absorption laterals; and

Whereas, it was at this time that Ms. Evans was first informed that VDOT had contacted the PWHHD on May 9, 2001, regrading a possible utility construction encroachment on the sewage disposal system and that the PWHHD had conducted a site visit where possible surface discharge of partially treated effluent was noticed; and

Whereas, a letter dated May 10, 2001, which purported to notify Ms. Evans of the problem and directing her to take corrective action within 10 days, was never sent by the PWHHD and therefore Ms. Evans was not made aware of the problem until the rejected inspection of 2004; and

Whereas, despite the problems associated with the septic system, the prospective buyers wanted to proceed with the purchase contract and required Ms. Evans to correct the problems; and

Whereas, in December 2004, Ms. Evans met with representatives of VDOT and it was determined that the map of her property that was used by VDOT over the course of the State Route 234 widening project did not properly show the location of the drainfield; and

Whereas, VDOT took the position that it would not accept further liability until a map had been produced that properly indicated the location of the septic system; and

ENGROSSED

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59 Whereas, despite earnest attempts by Ms. Evans to secure a qualified surveyor, it was not until
60 October 2005 that a survey was completed; and

61 Whereas, upon review of the survey map properly showing the location of the system, VDOT
62 determined that it would take responsibility and submitted the claim to its insurance carrier; and

63 Whereas, Ms. Evans subsequently learned that the claim was denied by the insurance carrier because
64 it was not submitted within five years of the occurrence; and

65 Whereas, Ms. Evans filed a claim with the Onsite Sewage Indemnification Fund; and

66 Whereas, the claim was denied because it did not meet the requirement that the system must have
67 failed within three years of construction; and

68 Whereas, Ms. Evans had to pay the expense of installing a replacement septic system and
69 maintaining the house, which remained unoccupied until the transaction closed in April 2006; and

70 Whereas, the failure of the PWHd to provide her with timely notification of the septic system
71 problems it noted in 2001 and VDOT's failure to take responsibility for the actions of its contractors
72 caused Ms. Evans to have these expenses; and

73 Whereas, Anna Malenick Evans has no other means to obtain adequate relief except by action of this
74 body; now, therefore,

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

76 1. *§ 1. That there shall be paid for the relief of Anna Malenick Evans from the [~~general fund of the~~
77 ~~state treasury~~ Onsite Sewage Indemnification Fund] , upon execution of a release of all claims she may
78 have against the Commonwealth or any agency, instrumentality, officer, employee, or political
79 subdivision in connection with the aforesaid occurrence, the sum of [~~\$86,402.36~~ \$49,892.98] to be
80 paid to Anna Malenick Evans on or before August 1, 2007, by check issued by the State Treasurer on
81 warrant of the Comptroller.*