

VIRGINIA ACTS OF ASSEMBLY -- 2009 RECONVENED SESSION

CHAPTER 829

An Act to amend and reenact §§ 32.1-163 and 32.1-166.6 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-164.1:2, relating to the establishment of a betterment loan program.

[H 2646]

Approved April 8, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-163 and 32.1-166.6 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-164.1:2 as follows:

§ 32.1-163. (Effective July 1, 2009) Definitions.

As used in this article, unless the context clearly requires a different meaning:

"Alternative discharging sewage system" means any device or system which results in a point source discharge of treated sewage for which the Board may issue a permit authorizing construction and operation when such system is regulated by the State Water Control Board pursuant to a general Virginia Pollutant Discharge Elimination System permit issued for an individual single family dwelling with flows less than or equal to 1,000 gallons per day.

"Alternative onsite sewage system" or "alternative onsite system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

"Betterment loan" means a loan to be provided by private lenders either directly or through a state agency, authority or instrumentality or a locality or local or regional authority serving as a conduit lender, to repair, replace, or upgrade an onsite sewage system or an alternative discharging sewage system for the purpose of reducing threats to public health and ground and surface waters, which loan is secured by a lien with a priority equivalent to the priority of a lien securing an assessment for local improvements under § 15.2-2411.

"Conduit lender" means a state agency, authority or instrumentality or a locality, local or regional authority or an instrumentality thereof serving as a conduit lender of betterment loans.

"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

"Licensed onsite soil evaluator" means a person who is licensed under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as an onsite soil evaluator. A licensed onsite soil evaluator is authorized to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for onsite sewage systems.

"Maintenance" means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs, fuses, filters, pumps, motors, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis. Maintenance shall not include replacement of tanks, drainfield piping, distribution boxes, or work requiring a construction permit and installer.

"Operate" means the act of making a decision on one's own volition (i) to place into or take out of service a unit process or unit processes or (ii) to make or cause adjustments in the operation of a unit process at a treatment works.

"Operation" means the biological, chemical, and mechanical processes of transforming sewage or wastewater to compounds or elements and water that no longer possess an adverse environmental or health impact.

"Operator" means any individual employed or contracted by any owner, who is licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as being qualified to operate, monitor, and maintain an alternative onsite sewage system.

"Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association which owns or proposes to own a sewerage system or treatment works.

"Regulations" means the Sewage Handling and Disposal Regulations, heretofore or hereafter enacted or adopted by the State Board of Health.

"Review Board" means the State Sewage Handling and Disposal Appeals Review Board.

"Sewage" means water-carried and non-water-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes, separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewerage system" means pipelines or conduits, pumping stations and force mains and all other

construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Subsurface drainfield" means a system installed within the soil and designed to accommodate treated sewage from a treatment works.

"Transportation" means the vehicular conveyance of sewage.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment and appurtenances, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.

§ 32.1-164.1:2. Eligibility for betterment loans to repair or replace failing onsite sewage systems.

A. The Board shall establish a betterment loan eligibility program to assist owners with the repair, replacement, or upgrade of failing or noncompliant onsite sewage systems, and the Board may identify sources for betterment loans to be provided by private lenders, directly or through conduit lenders. In addition, owners may also apply to the Department for betterment loan eligibility to upgrade an onsite or alternative discharging sewage system that is not failing, provided such upgrade is for the purposes of reducing threats to public health, and ground and surface waters, including the reduction of nitrogen discharges.

B. Upon determination by the Department that the owner has one or more onsite sewage systems that are out of compliance with those regulations promulgated pursuant to this chapter, or in need of repair or replacement, the owner shall follow the requirements in the Board's regulations to initiate the repair or replacement of such systems. If the owner desires to be qualified by the Department to receive a betterment loan, at any time before the repair or replacement is completed, he shall provide the Department with an estimate of the approximate cost of such remedial work, which the Department shall accept. The issuance of a permit by the Department to repair or replace an onsite sewage system, combined with an estimate provided by the owner to the Department, shall demonstrate eligibility for a betterment loan. Upon a determination of eligibility, the Department shall notify the owner in writing. If the Department refuses the request for an eligibility letter, the owner may appeal the refusal to the State Health Department Sewage Handling and Disposal Appeal Review Board. It shall be the sole responsibility of the owner to secure the betterment loan from or through a private lender. Local health departments may provide a list of lenders available for this purpose. Nothing in this section shall be construed as allowing construction or modification of an onsite or alternative discharging sewage system without a permit issued by the Department.

C. Betterment loans made pursuant to this section shall be recorded in the deed book of the circuit court clerk's office for the locality in which the land is located and an abstract of the loan and betterment loan eligibility letter issued by the Department shall be indexed in the name of the owner. Betterment loans made pursuant to this section may be recorded in increments by the private lender as the repair or replacement of the onsite sewage system is completed, provided that in no event shall the total amount recorded exceed the estimate provided to the Department, without the Department approving an amendment to the repair permit, and issuing a revised betterment loan eligibility letter. The Department may, subject to appropriate waivers for economic hardship, charge the owner a fee not to exceed \$50 for each betterment loan eligibility letter request made by an owner. The Department may require that the owner or private lender provide the Department with proof that any betterment loan has been recorded in the deed book of the circuit court clerk's office for the locality in which the land is located.

The incurrence of a betterment loan pursuant to this section shall not be considered a breach of limitation or prohibition contained in a note, mortgage or contract on the transfer of an interest in the owner's property.

D. Where agreeable to the private lender and the conduit lender, if any, a locality may act as the collection agent for the payments made by the owner on a betterment loan. Any such payments collected by the locality shall be deemed to be held in trust by the locality for benefit of the private lender and conduit issuer, if any. The locality may receive a fee payable by the private lender or conduit loan provider, if any, for such service not to exceed one-eighth of one percent of the payments collected.

§ 32.1-166.6. Review Board to hear appeals.

The Review Board shall hear all administrative appeals of denials of onsite sewage disposal system permits and appeals of refusals of indemnification requests filed pursuant to § 32.1-164.1:01, and refusals of betterment loan eligibility letters pursuant to § 32.1-164.1:2, and render its decision on any such appeal, which decision shall be the final administrative decision. Proceedings of the Review Board and appeals of its decisions shall be governed by the provisions of Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2.

In addition to the authority to render a final administrative decision, the Review Board, in its discretion, may develop recommendations for alternative solutions to the conditions resulting in denial of the permit or refusal to indemnify and remand the case to the Department of Health for reconsideration.

For purposes of this section "betterment loan" is as defined in § 32.1-163.