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HOUSE BILL NO. 1100

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 10, 2010)

(Patron Prior to Substitute—Delegate Sickles)

A BILL to amend and reenact § 10.1-603.12:3 of the Code of Virginia, relating to stormwater management facilities; liability.

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-603.12:3 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-603.12:3. Private rights; liability.

~~The~~ A. Whenever a common interest community cedes responsibility for the maintenance, repair, and replacement of a stormwater management facility on its real property to the Commonwealth or political subdivision thereof, such common interest community shall be immune from civil liability in relation to such stormwater management facility. In order for the immunity established by this subsection to apply, (i) the common interest community must cede such responsibility by contract or other instrument executed by both parties and (ii) the Commonwealth or the governing body of the political subdivision shall have accepted the responsibility ceded by the common interest community in writing or by resolution. Acceptance or approval of an easement, subdivision plat, site plan, or other plan of development shall not constitute the acceptance by the Commonwealth or the governing body of the political subdivision required to satisfy subdivision (ii). The immunity granted by this section shall not apply to actions or omissions by the landowner constituting intentional or willful misconduct or gross negligence. For the purposes of this section, "common interest community" means the same as that term is defined in § 55-528.

B. Except as provided in subsection A, the fact that any permittee holds or has held a permit issued under this article shall not constitute a defense in any civil action involving private rights.