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HOUSE BILL NO. 1505

Offered January 9, 2013

Prefiled January 3, 2013

A BILL to amend and reenact §§ 32.1-163, 32.1-164.1:01, and 32.1-164.1:2 of the Code of Virginia, relating to sewage systems; betterment loans.

Patron—Lingamfelter

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-163, 32.1-164.1:01, and 32.1-164.1:2 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-163. Definitions.

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

"Alternative discharging sewage system" means any device or system ~~which~~ *that* 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 *a conventional onsite*, an *alternative 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~~ *lightbulbs*, 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~~ *that* 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

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59 and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial
60 establishments or other places.

61 "Sewerage system" means pipelines or conduits, pumping stations and force mains and all other
62 construction, devices and appliances appurtenant thereto, used for the collection and conveyance of
63 sewage to a treatment works or point of ultimate disposal.

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

66 "Transportation" means the vehicular conveyance of sewage.

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

72 **§ 32.1-164.1:01. Onsite Sewage Indemnification Fund.**

73 A. There is hereby created the Onsite Sewage Indemnification ~~fund~~ Fund (*the Fund*) whose purpose
74 is to receive moneys generated by a portion of the fees collected by the Department of Health pursuant
75 to subsections C and E of § 32.1-164 and appropriated by the Commonwealth for the purpose of
76 assisting any Virginia real property owner holding a valid permit to operate an onsite sewage system
77 when such system or components thereof fail within three years of construction and such failure results
78 from the negligence of the Department of Health. ~~The fund may also be used, in the discretion of the~~
79 ~~Board, to support the program for training and recognition of authorized onsite soil evaluators.~~

80 *The Board, in its sole discretion, may make up to 25 percent of the amount in the Fund on the first*
81 *day of the fiscal year available for that fiscal year to provide betterment loans or to guarantee*
82 *betterment loans authorized by § 32.1-164.1:2.*

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

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

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

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

103 F. If the Commissioner finds that the system was permitted by the Department and has failed within
104 three years of construction and that the failure resulted from faulty construction or other private party
105 error, the Commissioner may assist the owner of the failed system in seeking redress from the system's
106 builder or other private party.

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

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

Notwithstanding any provision of this article, the liability for any payment from the ~~fund~~ 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~~ Fund and for providing and guaranteeing betterment loans.

I. If the Commissioner refuses the request for payment from the ~~fund~~ Fund, the 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~~ Fund consistent with this chapter.

In the event the ~~fund~~ Fund is insufficient to meet requests for payment from the ~~fund~~ Fund, this section and the creation of the ~~fund~~ 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.

§ 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 *conventional onsite, alternative onsite, and alternative discharging* sewage systems; ~~and the~~. The Board may utilize the funds of the Onsite Sewage Indemnity Fund to provide or guarantee betterment loans to the extent authorized by § 32.1-164.1:01 and 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 a *conventional onsite*, an *alternative onsite*, or an *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 *conventional onsite, alternative onsite, or alternative discharging* 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 a *conventional onsite*, an *alternative onsite*, or an *alternative discharging* 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 a *conventional onsite*, an *alternative onsite*, or an *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 *conventional onsite, alternative onsite, or alternative discharging* 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

182 provider, if any, for such service not to exceed one-eighth of one percent of the payments collected.