

2003 SESSION

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SENATE BILL NO. 1242

Offered January 8, 2003

A BILL for the relief of Clinton and CoraLou Carter.

Patron—Watkins

Referred to Committee on Finance

Whereas, Clinton and CoraLou Carter (the Carters) own a 3-bedroom house located on a 0.9 acre lot in Middlesex County; and

Whereas, the house on the lot is served by a septic tank and drainfield system; and

Whereas, in 1994, the septic system failed and began backing up into the house; and

Whereas, on August 22, 1994, the Carters applied to the Department of Health (the Department) for a permit to repair the failed system; and

Whereas, the Department subsequently issued a repair permit for a new drainfield in the front of the property; and

Whereas, on August 30, 1994, the repair system was installed on the property according to the requirements of the permit; and

Whereas, on or about August 21, 1997, the repair system failed; and

Whereas, the Onsite Sewage Indemnification Fund (the Fund) established pursuant to § 32.1-164.01 of the Code of Virginia, provides for indemnification for a homeowner if (i) an onsite sewage system permitted by the Department has failed within 3 years of its installation, and (ii) the failure resulted from the Department's negligence; and

Whereas, the Carters believed that the failure of the system was caused by negligence on the part of the Department and applied for indemnification from the Fund to repair the system; and

Whereas, by letter dated February 9, 2000, the Department denied the Carters' request for indemnification finding that, while the failure of the system occurred within 3 years, it was not caused by the Department's negligence; and

Whereas, the Carters appealed the Department's decision to the Sewage Handling and Disposal Appeal Review Board (the Board), which heard the appeal on May 24, 2000; and

Whereas, in its decision dated June 5, 2000, the Board found that the Department had been negligent in issuing the repair permit and that the failure of the system resulted from the Department's negligence; and

Whereas, the Board further awarded the Carters \$2,163.87 for the cost of the repair system and remanded the issue to the Department to determine whether there were any further costs related to the failed system due to the Department's negligence; and

Whereas, after several months of reviewing options for repairing the failed system, the Carters submitted an application for indemnification from the Fund in the amount of \$76,740 to cover the cost of repairing the system; and

Whereas, the Department denied the Carter's application for indemnification and the Carters appealed the denial; and

Whereas, by an order dated May 23, 2001, the Board determined that the costs of the repair required because of the Department's negligence was \$24,800 and ordered the Department to reimburse that amount to the Carters from the Fund; and

Whereas, the amount determined by the Board does not adequately cover the full cost of the repairs that the Carters will have to make to their system that have been caused by the Department's negligence; and

Whereas, Clinton and CoraLou Carter have no other means to obtain relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. *That there is hereby allocated from the Onsite Sewage Indemnification Fund the sum of \$76,740 for the relief of Clinton and CoraLou Carter, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims they may have against the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision in connection with the aforesaid occurrence.*

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