

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act for the relief of Anna Malenick Evans.*

3 [H 2323]

4 Approved

5 Whereas, in 1981, Anna Malenick Evans (Ms. Evans) purchased a house located at 11609 Olympic
6 Drive, Manassas, Virginia; and7 Whereas, in 1999, the Virginia Department of Transportation (VDOT) began work on a project to
8 widen State Route 234; and

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

10 Whereas, on or about January 11, 2000, VDOT contractors drove across the property of Roy
11 Follendore, III, Ms. Evans' next door neighbor, without his permission to gain access to Route 234; and12 Whereas, Mr. Follendore confronted the VDOT contractors and called the Prince William County
13 Police Department; and14 Whereas, rather than waiting for the police to arrive, the VDOT contractors hastily left the property
15 by driving across Ms. Evans' property causing extensive damage by going through an embankment and
16 cutting deep grooves and ruts into the gravel driveway and across drain lines 3 and 4 of the drainfield
17 for the septic system; and18 Whereas, Mr. Follendore filed a police report and a complaint with VDOT citing the trespass on his
19 property by the VDOT contractors; and20 Whereas, after an inquiry, VDOT determined that its contractor improperly entered on to Mr.
21 Follendore's property and offered to compensate him for damage to his property; and22 Whereas, Ms. Evans was not at home at the time of the incident and, because of travel and
23 inclement weather, did not become aware of the damage until May 15, 2000; and24 Whereas, Ms. Evans immediately began to contact the Prince William County Health Department
25 (PWHd) and VDOT to get them to inspect the drainfield fearing that the damage done by the VDOT
26 may have adversely affecting the operation of the septic system; and27 Whereas, despite Ms. Evans' concern representatives of the PWHd assured her that there were no
28 problems with the system because VDOT was not working on the property and did not intend to
29 purchase the property; and30 Whereas, in October of 2001, after informing her local representative on the Board of Supervisors of
31 the situation, Ms. Evans was contacted by a VDOT representatives to further discuss the issue; and32 Whereas, subsequently Ms. Evans met with three VDOT representatives on the property and it was
33 determined that heavy equipment had indeed damaged the embankment and the driveway and that
34 VDOT would take corrective action by regrading the embankment and repairing the driveway as the
35 widening project proceeded; and36 Whereas, Ms. Evans placed her house on the market in July of 2004 and on August 2004 an offer
37 was made to purchase the house; and38 Whereas, prior to settlement, which was scheduled for September 13, 2004, an inspection of the
39 septic system was conducted by the PWHd; and40 Whereas, the PWHd subsequently informed Ms. Evans that the inspection failed citing system
41 malfunction and evidence of effluent surfacing at the end of absorption laterals; and42 Whereas, it was at this time that Ms. Evans was first informed that VDOT had contacted the PWHd
43 on May 9, 2001, regrading a possible utility construction encroachment on the sewage disposal system
44 and that the PWHd had conducted a site visit where possible surface discharge of partially treated
45 effluent was noticed; and46 Whereas, a letter dated May 10, 2001, which purported to notify Ms. Evans of the problem and
47 directing her to take corrective action within 10 days, was never sent by the PWHd and therefore Ms.
48 Evans was not made aware of the problem until the rejected inspection of 2004; and49 Whereas, despite the problems associated with the septic system, the prospective buyers wanted to
50 proceed with the purchase contract and required Ms. Evans to correct the problems; and51 Whereas, in December 2004, Ms. Evans met with representatives of VDOT and it was determined
52 that the map of her property that was used by VDOT over the course of the State Route 234 widening
53 project did not properly show the location of the drainfield; and54 Whereas, VDOT took the position that it would not accept further liability until a map had been
55 produced that properly indicated the location of the septic system; and

56 Whereas, despite earnest attempts by Ms. Evans to secure a qualified surveyor, it was not until

57 October 2005 that a survey was completed; and

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

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

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

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

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

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

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

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

73 **1. § 1.** *That there shall be paid for the relief of Anna Malenick Evans from the Onsite Sewage*
74 *Indemnification Fund, upon execution of a release of all claims she may have against the*
75 *Commonwealth or any agency, instrumentality, officer, employee, or political subdivision in connection*
76 *with the aforesaid occurrence, the sum of \$49,892.98 to be paid to Anna Malenick Evans on or before*
77 *August 1, 2007, by check issued by the State Treasurer on warrant of the Comptroller.*