

VIRGINIA ACTS OF ASSEMBLY -- 2010 RECONVENED SESSION

CHAPTER 853

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

[H 1100]

Approved April 21, 2010

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. As used in this section, maintenance, repair, and replacement shall include, without limitation, cleaning of the facility, maintenance of adjacent grounds which are part of the facility, maintenance and replacement of fencing where the facility is fenced, and posting of signage indicating the identity of the governmental entity which maintains the facility. 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 common interest community 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.