REPORT OF THE
JOINT SUBCOMMITTEE STUDYING

The Laws Of The Commonwealth Related To Sewage Handling As These Laws Interact With The Board of Health's Sewage Handling and Disposal Regulations

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

Senate Document No. 25

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Joint Subcommittee Studying the
Sewage Handling and Disposal Laws and Regulations
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
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To: The Honorable Gerald L. Baliles, Governor of Virginia,
and
The General Assembly of Virginia

I. ORIGIN OF THE STUDY

In recent years, the members of the General Assembly have been besieged by citizens, builders, developers, local government officials and sewage handling and disposal contractors with problems related to the laws and regulations controlling onsite sewage systems and the disposal of sewage. During the 1985 Session, Senator Madison E. Marye introduced Senate Joint Resolution No. 127, which was approved, establishing a joint subcommittee to study the laws of the Commonwealth related to sewage handling as these laws interact with the Board of Health's Sewage Handling and Disposal Regulations. Pursuant to this resolution, a seven-member committee consisting of two members of the Senate Committee on Education and Health and one member of the Senate at-large and four members of the House Committee on Health, Welfare and Institutions was formed.

Senate Joint Resolution No. 127 directed the joint subcommittee to consider the following issues:

1. What the policy of the Commonwealth should be in relation to handling and disposal of sewage including the disposal of septage and the issuance of septic tank permits;

2. How the public can be informed concerning the permitting of septic tanks and about the need for caution in purchasing real property in areas without central sewage disposal systems;

3. How communications between developers or builders and the local and central health department officials can be facilitated; and

4. Whether there is any substance to the complaints about the denials of septic tank permits or are these complaints merely the natural reaction on the part of citizens who have not received complete disclosure on purchasing property.

The Joint Subcommittee was directed to complete its work in time to report its findings to the 1986 Session of the General Assembly.

II. BACKGROUND OF THE CONTROVERSY

During the last five years, much controversy has revolved around the laws and regulations controlling sewage handling and disposal in Virginia. In 1980, the Board and Department of Health undertook the lengthy process of writing new regulations to replace the "Rules and Regulations of the Board of Health, Commonwealth of Virginia Governing the Disposal of Sewage." These "old" regulations were first approved in 1962; revised in 1963 and 1971 and were also amended in 1980.

Conditions in Virginia had changed substantially between 1962 and 1980, bringing the Board to the conclusion that new regulations were necessary to address issues related to an evolving economy, a growing population, and changing technology. The Board of Health gave preliminary approval to the new "Sewage Handling and Disposal Regulations" in November of 1980. Following this preliminary approval, two public hearings were held and final approval of the regulations was granted by the Board in July of 1981.

At this time, the relevant committees of the General Assembly had the authority under § 9-6.14:9 of the Code of Virginia to review regulations and to defer the effective date by majority vote of the committee or to modify or nullify such regulations through passage of a joint resolution. The effective date of the regulations was deferred by the House Committee on

Health, Welfare and Institutions of the General Assembly until March 13, 1982, which was the closing date of the 1982 General Assembly, in order to allow time for the members of the committee to review these rules.

During the review process, several public hearings were held by subcommittees of the Senate Education and Health Committee and the House Health, Welfare and Institutions Committee. During these hearings, opponents alleged that the regulations would cause the costs of installing and maintaining septic tanks to be substantially increased and that many more septic tank permits would be denied under the new regulations than under the old ones. They also stated their opinion that since the old system was working, the new regulations were not necessary. Following this review, several resolutions intended to annul the regulations in the form adopted by the Board of Health were introduced.

In February of 1982, the Attorney General was requested by Delegate J. Samuel Glasscock to issue an opinion on the constitutionality of § 9-6.14:9. This opinion stated:

> "In the event of...a legal challenge, the Court might well find that to allow the General Assembly to review valid regulations as contemplated in the statute would extend the power of the General Assembly to a degree which could well lead to an impermissible intrusion into the arena of authority exercised by the Executive branch of government."

After this opinion was rendered, Senator Adelard L. Brault, who was then Chairman of the Senate Committee on Education and Health, wrote a memo to the members of this Senate Committee requesting "that we adopt a policy that we will not consider requests to defer, modify, or annul regulations that have been promulgated by a state agency on the basis that the statute in question is unconstitutional." During the next meeting of the Senate Education and Health Committee, a motion was approved to this effect and several bills failed as a result of this decision.[1] The Board of Health subsequently deferred the effective date of these regulations until November 1, 1982, because of the many concerns and issues raised during the 1982 Session of the General Assembly.

During the period immediately following the adoption of the new regulations in 1982 and 1983, there were problems in many areas of the State with delays in receiving approval of septic tank permits. Some citizens felt that denials were occurring under conditions which would have resulted in approval under the old regulations.

The primary cause of the delays appears to have been a simple matter of the logistical and training difficulties normally experienced during the implementation of a new procedure with additional, somewhat more complicated, requirements. In any case, considerable pressure to alleviate these problems was applied to the Department of Health at both the local and state levels. As a result of this pressure, the program has been reorganized, the paper work requirements for applications for septic tank permits have been simplified and personnel have been shifted to areas with backlogs.

In 1984, the General Assembly approved House Bill No. 1003 (see Article 1.1 of Chapter 6 of Title 32.1, § 32.1-166.1 et seq.) establishing the State Sewage Handling and Disposal Appeals Review Board, a citizen panel composed primarily of experts. Many delays had allegedly been experienced by individuals seeking review of denials of permits through the Health Department's administrative process. Therefore, this Review Board was established for the purpose of providing an expeditious, objective process for hearing appeals of denials of septic tank permits and other onsite sewage disposal systems. The Review Board legislation became effective on January 31, 1985.

As stated in SJR No. 127, septage, "which contains a variety of potentially pathogenic agents, consists of the mat of grease and scum on the surface of septic tanks, the accumulated sludge at the bottom of the tanks and the sewage present at the time of pumping."

The spreading of unstabilized septage on land has been interpreted by many experts as a violation of the federal Resource Conservation and Recovery Act and the Clean Water Act since September, 1982, when regulations were promulgated which included septage under the Criteria for Classification of Solid Waste Facilities and Practices (see 40 CFR 257).

Several parts of the new regulations had generated particularly strong objections in 1982, such as the sections related to the requirements for approved disposal sites for the permitting of sewage handling contractors and certain well construction specifications. Most of the well construction specifications were removed from the regulations. The Board of Health deferred the effective date for the sections related to the approved disposal sites until January 1, 1984. Later, the approved disposal site requirements were again deferred until January 1, 1985.

The approved disposal site requirements mandate that in order to be permitted sewage handling contractors must have access to either an anaerobic lagoon or a sewage treatment plant for the disposal of unstabilized septage pumped from domestic or industrial septic tanks.

For years, in fact, for generations, unstabilized septage has been disposed of by application to land as fertilizer in most areas in Virginia. There are strong, conflicting emotional feelings about the appropriateness or inappropriateness of this practice. In many areas of the State, this practice is viewed as harmless; whereas, in other areas of the State, land application of sludge or septage is viewed with such alarm that governing bodies and citizens alike have become involved in this controversy. At least one county has an ordinance forbidding the land application of sludge or septage.

Even though the approved disposal site requirements were deferred for over two years beyond the effective date of the body of the regulations, as the January 1, 1985, date approached, some local officials, citizens and sewage handling contractors became agitated and approached members of the General Assembly and other state officials about this requirement. These concerns generated several pieces of legislation.

In 1984, the General Assembly approved Senate Bill 366, which became § 32.1-164.3 of the Code of Virginia. This section grants the Board of Health the authority "to issue permits which prescribe the terms and conditions upon which septage may be disposed of by land application." However, the Board did not choose to exercise this authority in 1984. Senate Joint Resolution 100 of 1985 expressed "the sense of the General Assembly of Virginia concerning the implementation of Senate Bill 366 of 1984." This resolution stated that "the Board of Health should exercise the authority provided to it by Senate Bill 366 of 1984."

House Bill 1385 of 1985 also addressed land disposal of septage. This House Bill stated that "The land disposal of septage shall be allowed in counties with a population of less than 100 people per square mile..., if prior approval is first obtained from the board of supervisors and then from the local health department pursuant to applicable regulations."

All permits for the handling and disposal of septage by contractors expired on January 1, 1985, when the requirements for approved disposal sites became effective. However, contractors were allowed to continue to use land disposal, if they had an agreement (a signed consent order) with Health Department officials and the State Water Control Board. The consent orders were issued on the basis that there was no apparent threat to the environment from this practice for a limited period of time and that the applicants for the permits had given good faith assurances that an approved disposal site would be established in the future. Under the regulations, every sewage handling contractor must have a valid permit; therefore, all must have applied to the Health Department for an agreement to continue past practices or have had access to an approved disposal site by January 1, 1985.

However, some pump and haul contractors and local governing bodies and contractors questioned the applicability of the regulations in view of the changes to the law provided by Senate Bill 366 and House Bill 1385. The Department of Health contracted with the Center for Environmental Negotiation at the University of Virginia to assist in trying to determine an appropriate course of action vis-a-vis these statutes. At this time, the Board is revising the regulations to allow land spreading of lime-stabilized septage and shallow injection of unstabilized septage.

III. A SHORT ANALYSIS OF THE APPLICABLE LAW

The law related to sewage handling and disposal is contained in Article 1, (§ 32.1-163 et seq., Sewage Disposal) and Article 1.1, (§ 32.1-166.1 et seq., State Health Department Sewage Handling and Disposal Appeal Review Board) of Chapter 6 of Title 32.1.

Section 32.1-163 sets out appropriate definitions including "regulations" and "Review Board."

Section 32.1-164 provides the Board of Health with the authority for "supervision and control over the safe and sanitary collection, conveyance, transportation, treatment and disposal of sewage, all sewage systems and treatment works as they affect the public health and welfare."

Although the Board of Health is granted "primary" responsibility for sewage disposal, the Board of Health and the State Water Control Board have joint responsibility in cases effected by the provisions of Title 62.1. Section 32.1-164 also grants broad powers of regulation to the Board of Health for the protection of the public health "without limitation." The Board's regulatory

powers include permitting for the construction, installation, etc., of sewage systems and treatment works, including standards for design, construction and installation; standards for disposal of sewage on or in land; distance specifications between water resources and sewage systems or human habitation; and standards for water adequacy and siting of wells.

Section 32.1-164.1 provides for appeals from denials of septic tank permits. An applicant must be advised in writing of his right to an administrative appeal when denied. Also, following exhaustion of the administrative appeals, the applicant must be advised of his right to appeal to the circuit court. It would appear from the statute that the applicant receives a de novo review on court appeal. Court decisions and conditional permits are recorded in the land records. The Board is required to consider relevant variable conditions in prescribing its regulations. Local governing bodies must be notified of septic tank permits.

Section 32.1-164.1:1 renders all septic tank permits valid for 30 months from issuance retroactive to November 1, 1982, "unless there has been a substantial, intervening change."

Section 32.1-164.2 requires local governing bodies to be notified of applications for land disposal of sewage, stabilized sewage sludges or stabilized septage. The Board must establish a date for a public meeting, and publish this date for seven to fourteen days.

Section 32.1-164.3, as already stated, authorizes the Board to issue permits for the land application of septage.

Section 32.1-165 requires authorization of the Commissioner prior to issuance of building permits.

Section 32.1-166 authorizes the Board to enter into agreements with federal agencies for the regulation of sewage disposal from common carriers or federal installations.

As previously described, Article 1.1, (§ 32.1-166.1 et seq.) establishes the Sewage Handling and Disposal Appeal Review Board. It should be noted that this Review Board is authorized to make recommendations to the Board of Health on the regulations which it interprets.

IV. THE WORK OF THE JOINT SUBCOMMITTEE

The Joint Subcommittee held seven meetings during the 1985 interim. At the first meeting, staff presented an initial staff briefing paper describing the problems, giving a brief history of the controversy and an overview of the relevant law. The Joint Subcommittee also heard from Department of Health officials, a representative of the Home Builders Association of Virginia, a septic tank and sewage disposal contractor, a representative of the Virginia Water Project, soil scientists and a local health director. The Joint Subcommittee requested data from the Department of Health related to unsewered communities, the rate of septic tank permit denials and soil composition. The Joint Subcommittee also decided to hold three public hearings in various parts of the State.

Public hearings were held in Blacksburg, Harrisonburg and Warsaw. Each of these meetings was held in the afternoon in order to allow time in the morning for receiving data from the Department of Health and to view demonstrations of soil evaluations, land spreading of stabilized and unstabilized septage and the operation of a sewage treatment plant. Members of local government, representatives of the Home Builders Association, the Virginia Association of Counties, other members of the General Assembly and the public were invited to participate in these morning activities.

Summary of the testimony received at the public hearings

Although the comments received at the public hearings varied, the following statements represent generally the opinions voiced.

1. Comments related to land spreading of septage and approved disposal sites

Speakers from the western areas of the state remarked that it is difficult to find a site for an anaerobic lagoon. In the western areas, it was noted that land spreading of septage had been practiced for years without apparent harm to the environment or to the health of people. Some speakers stated that disposal in an approved disposal site would cause the price of pumping septic tanks to increase.

Several speakers, who were pump and haul contractors, stated that they were traveling considerable distances to dispose of septage in treatment plants. They also said they were only allowed to use the plants for specified periods on particular days. Other contractors testified that they were not being allowed access to treatment plants. Several pump and haul contractors admitted to dumping unstabilized septage because there was no approved site available and they did not have an agreement for land spreading.

Many of the pump and haul contractors were of the opinion that local government officials are unconcerned with their disposal problems and do not feel obligated to assume any responsibility for disposal of septage.

Many speakers stated that septic tanks must be pumped to remain satisfactory. Some pointed out that many city people, inexperienced in using septic tank systems, were moving into rural, unsewered areas. These individuals, it was noted, must be informed about the care and maintenance of septic systems.

In the Tidewater area, several pump and haul contractors stated that they had constructed lagoons. Little or no opposition to the lagoons was apparent in the Tidewater area. Speakers also stated that disposal of septage is not taking place in a consistent manner because contractors in some areas are continuing land spreading, whereas in other areas, only approved disposal sites were being used.

2. Comments related to septic tank permitting

A number of speakers in the western part of the State noted long delays in processing applications for septic tank permits. Strong statements were made in these areas of the State about negative and uncooperative attitudes on the part of local health department personnel and the inefficient management of two health districts. However, in the Tidewater area, it was stated a number of times that Health Department personnel were cooperative, do an excellent job and that their assistance and cooperation are appreciated. The opinion was expressed many times that more difficulties had been encountered in obtaining permits since the new regulations were adopted. Some people stated that soil conditions which would have been acceptable to the Department of Health under the old regulations were, in their opinion, no longer acceptable.

It was also stated that frequently several Health Department personnel inspect the same site. A number of speakers felt that sanitarians were reluctant to issue permits for marginal conditions because of fear of personal liability in the event of failure of the systems.

Several speakers described the soil problems and physiographic regions in Virginia. The coastal plain has low lying areas which are close to the shellfish areas and many areas with high seasonal water tables. In the Ridge Valley area, the soil is slow to perk, shallow to bedrock and has low permeability. Certain soils, having gray mottles, contain stone fragments which reduce their filtering capacity.

Some speakers were of the opinion that regional standards would be more appropriate than the present statewide regulations. However, several speakers felt that in today's climate, it is necessary to have specific regulations to provide consistency, objectivity and sound judgments. It was noted that detailed rules and consistency were necessary in order to defend administrative decisions in court.

A number of speakers noted that alternative sewage disposal systems are available, but there is need for continuing and extensive research in these alternative systems. For example, low pressure distribution systems were described as having the potential to reduce drainfield areas by forty percent. Every speaker who described alternative systems or emphasized their importance pointed out the lack of experience with these less traditional systems on the part of sanitarians and builders. A number of these speakers were also concerned about the requirement for obtaining a NPDES permit (National Pollution Discharge Elimination Standards permit) from the Water Control Board for certain of the alternative systems. Processing of the NPDES takes long periods of time, it was noted. Further, many individuals were not aware of the need to get the NPDES permit for alternative systems which discharge waste into ground water or water ways.

Several speakers described unfortunate situations in which land had been purchased for building homes and had been found not to be suitable for septic tank and drainfield installation. The financial impact of not being able to obtain a permit was noted several times. Further, in at least one locality, land has been devalued as a result of owners being unable to obtain permits. Some of these speakers noted that permits had been obtained for septic tank systems on adjoining land. Most did not understand why their land was different than that of the neighbor.

A number of speakers were of the opinion that sanitarians need more training than is presently received. Some individuals had obtained conflicting opinions from private soil scientists and sanitarians. It was suggested that private soil scientists should be able to approve sites for septic tank permitting.

Many speakers were concerned about the proposed $800 fee for appeals of septic tank denials before the Review Board. This fee, which is set by the Board of Health, would, in the opinion of these speakers, effectively eliminate the ability of many people to obtain a review because many could not afford it. Several speakers recommended that local appeals boards be formed.

The qualifications of soil scientists were discussed by some individuals. Some of these individuals expressed the opinion that licensure of soil scientists would protect the public from unqualified practitioners. Presently, they noted that soil scientists may be professionals certified by the national organization, have educations ranging from high school diplomas to doctoral degrees and that the consumer may not be aware of these discrepancies.

Some speakers noted the need to protect the environment, particularly the shellfish areas, from pollution resulting from failing septic systems or the land spreading of unstabilized septage.

During the public hearings, the Joint Subcommittee was informed of the apparent reluctance of sanitarians to issue permits for marginal soils because of the fear of potential personal liability. Senator Marye requested, on behalf of the Joint Subcommittee, an Attorney General's Opinion on the liability of sanitarians for failing septic systems.

The question posed to the Attorney General was:

> "In view of the recent Supreme Court of Virginia decision in Messina v. Burden 1228 Va. 301 (1984) and the criteria established by the Court for determining the application of the doctrine of sovereign immunity to state employees in James v. Jane, 221 Va. 43, S.E 2d 109 (1980), what risk of personal liability is incurred by a public health sanitarian if a properly constructed septic system fails on a permitted site evaluated and approved by that sanitarian?"

The Attorney General's reply used the factors set out in Messina as included in the James test for sovereign immunity: "1. the nature of the function performed by the employee; 2. the extent of the state's interest and involvement in the function; 3. the degree of control and direction exercised by the state over the employee; and 4. whether the act complained of involved the use of judgment and discretion."

In his opinion, the Attorney General stated that "...a sanitarian conducts tests to determine if a particular site is capable of supporting a properly functioning septic system"; "[T]he goal of a sanitarian's work is to protect the public health and the environment, an area of strong State interest"; that there are "comprehensive regulations to govern sewage disposal"; and that within certain regulatory restrictions, "a sanitarian necessarily exercises discretion and professional judgment."

He concluded that sanitarians "are entitled to sovereign immunity for acts of simple negligence" and that "...so long as the sanitarian is acting within the scope of his employment and is not acting in a grossly negligent or intentionally tortious manner, ...[he] is protected from personal liability by the principle of sovereign immunity even in situations where he acted in a negligent manner."

After the public hearings were completed, the Joint Subcommittee conducted three work sessions. For the work sessions, staff prepared an Issues and Alternatives paper as a basis for decision-making. The Joint Subcommittee concluded its work on January 10, 1986.

V. THE FINDINGS OF THE JOINT SUBCOMMITTEE

The Joint Subcommittee has come to believe that local governments should evaluate their responsibilities for assuring the safety of their citizens in relationship to the disposal of sewage from unsewered communities. The fairness of requiring the pump and haul contractor, a small businessman, to shoulder the entire responsibility of construction of lagoons or obtaining access to treatment plants is dubious. Although the Joint Subcommittee did not believe that local governments should be mandated to assume this responsibility at this time, it was felt that local governments should be encouraged to study sewage disposal activities in their jurisdictions carefully and to plan ahead. When constructing new sewage treatment plants, local governments

should evaluate the present and future needs vis-a-vis unsewered communities and the disposal of the sewage pumped from subsurface systems.

Although the Joint Subcommittee understands that the efficacy of allowing land spreading of unstabilized septage is the subject of great controversy, it has come to believe that the Commonwealth will not be able to sustain this practice indefinitely. This is a large state with a growing population and a changing, viable economy. The Joint Subcommittee believes that it is in the best interest of Virginians to plan for the discontinuation of the practice of land spreading of unstabilized septage. Further, the Joint Subcommittee feels that approved disposal sites can be successful business enterprises and that the owners of such facilities will price the use of these facilities reasonably if there is a market demand. Therefore, the Joint Subcommittee supports incentives for local government and sewage handling contractors to cooperate in establishing adequate facilities for the safe disposal of unstabilized sewage.

The Joint Subcommittee also wishes to emphasize the many benefits which can be derived from a preliminary subdivision review process including soil analysis if carefully conducted prior to approval of recordation. Local government officials and builders should be aware of the difficulties arising when septic tank permits are not granted after the lots have already been drawn, streets constructed and building has begun. A preliminary subdivision review process can eliminate much inconvenience and financial stress.

The development and use of alternative sewage disposal systems, in the opinion of the Joint Subcommittee, is crucial to the economic well-being of the Commonwealth. It is possible that some of the problems stated at the public hearings result from the desire to use marginal soils in areas where soils appropriate for traditional systems have already been developed or are in short supply. In many of these situations, it appears an alternative system can be designed and installed which would operate satisfactorily. Therefore, the Joint Subcommittee believes that adequate funds should be ensured for continued research in the development of alternative systems. Presently, funds are granted by the Department of Health to Virginia Polytechnic Institute and State University for this research through the Preventive Health Block Grant. The Department of Health should evaluate the need for funds to enhance this research and keep the General Assembly informed of any decrease in federal funding which would affect these grants. Further, the Joint Subcommittee wishes to encourage the Department of Health to make information and instruction on the design and construction of alternative systems available to sanitarians, builders, local government officials and the public.

In addition, the Joint Subcommittee encourages localities with areas of high seasonal water tables and surface run-off problems to investigate the use of drainfield management contracts such as those that have worked well in Chesapeake and Virginia Beach. This methodology allows development while placing the responsibility for upkeep on the owner, but requires local government to share with the State in the liability and responsibility for the monitoring of the systems.

The Joint Subcommittee further encourages the Department of Health to inform the public, local government officials and developers about the permitting of septic tanks and alternative systems. Such education should include how sites are evaluated, what factors are most important in this evaluation, common reasons for site rejection and the alternatives available to individuals whose land is not suitable for traditional systems.

The Department of Health is also encouraged to notify all individuals with failing systems or denied applications of the possibility of installing an alternative system. Many of the problems evidenced at the public hearings appear to stem from a lack of public awareness and the alleged inadequacy of the Department's public relations efforts.

The Department is encouraged to develop materials on the maintenance and operation of septic tanks for home owners, particularly in view of the apparent increase in the numbers of inexperienced people purchasing property in unsewered areas. The Department should study how these materials can be distributed to such home owners most effectively and should consider cooperating with realty companies.

Although the knowledge and cooperativeness of the sanitarians were complimented by a number of speakers during the public hearings, other individuals with expertise in soils evaluation noted that the training of the sanitarians should be enhanced. The Joint Subcommittee commends the Department for its efforts to increase the qualifications of the sanitarians and encourages the Department to continue these efforts through intensive training sessions.

Cooperation between the agencies of the Commonwealth in meeting the needs of her citizens is, in the view of the Joint Subcommittee, essential. Therefore, the Joint Subcommittee strongly

encourages the Department of Health and the State Water Control Board to work together to facilitate the acquisition of NPDES permits for alternatives systems through the initiation of a "general" rule for approval.

The many statements relating to the sanitarians fear of personal liability were of great concern to the Joint Subcommittee. The Attorney General's opinion should alleviate these fears to some extent. However, several members of the Joint Subcommittee pointed out that an opinion is not a definitive remedy and that there appears to be a need to address this problem statutorily.

The Joint Subcommittee became familiar with the excellent work being done by the Virginia Water Project and realizes that this project may not receive any funds from the Department of Social Services if the federal government discontinues or decreases the support of the Community Action Programs. In the event of such discontinuation or decrease, the Joint Subcommittee believes that state general funding of this project should be provided.

The potential for public harm because of inappropriate opinions and designs being obtained from private soil scientists as well as the potential for public benefits from quality work were brought to the Joint Subcommittee's attention. Many individuals suggested that soil scientists should be regulated by the Commonwealth. At this time, the Joint Subcommittee does not feel that it has enough information to recommend regulation of soil scientists. However, since the rationale for state regulation of professionals is to protect the health and safety of the public and these individuals have a direct and substantial impact on this health and safety, the Joint Subcommittee believes that regulation of soil scientists should be carefully studied. In addition, the Joint Subcommittee understands that the qualifications and possible "certification" of sanitarians should be a part of any such study.

Many individuals at the public hearings were of the opinion that septic tank permits should be valid indefinitely or for longer periods of time than is presently statutorily allowed. The Joint Subcommittee does not feel that indefinite validity is appropriate because of the possibilities for changes in soil or site conditions over time. However, in the opinion of the Joint Subcommittee, a fifty-four month period of validity for septic tank permits would provide the builders, developers and public with more flexibility without creating a substantial potential for abuse.

Several members of the Sewage Handling and Disposal Appeal Review Board appeared before the Joint Subcommittee to explain statutory and financial problems which were felt to hamper the activities of the Board. Most of the members of the Review Board are small businessmen who are contributing their time and expertise to the Commonwealth. In view of this, the Joint Subcommittee believes that it would be only fair to place the Review Board under the compensation statute to allow these individuals to receive compensation for expenses and per diem. Further, when the Review Board was established, no additional funds were appropriated to the Department of Health for its operation. Although the Department of Health has been generous and cooperative with the members of the Board, the Joint Subcommittee believes the Review Board should receive direct appropriations under the Commissioner's office which are adequate to meet its needs.

Among the problems noted by the members of the Review Board were the statutory requirement that all decisions be rendered within thirty days and the lack of authority to remand the applications for consideration of alternative solutions. The thirty-day requirement has made it necessary for the Board to meet every month regardless of whether they have an appeal to hear.

The potential benefits to the State and its citizens of the activities of this Board appeared obvious to the Joint Subcommittee. The majority of the Review Board members have great expertise in soil conditions and subsurface sewage disposal systems. This expertise will be a resource to the Department and Board of Health, which will, in the opinion of the Joint Subcommittee, greatly enhance septic tank permitting activities in the future. The Joint Subcommittee believes that the Review Board should be allowed to hold eight meetings per year, that appeals should be filed thirty days prior to the meetings in order to be considered and that decisions should be rendered, in writing, within fifteen days after the hearing. The Review Board may go into executive session to make its decision pursuant to paragraphs (a) (6) and (b) of § 2.1-344 and should announce decisions immediately following such sessions. Further, the Review Board should be authorized to recommend that an application be returned to the local health department for consideration of an alternative solution.

The Joint Subcommittee agreed with the many citizens who expressed opposition to the proposed $800 fee for appeals to the Review Board. This substantial fee may have effectively limited access to due process for many individuals and, thereby, have defeated the purpose of

the Review Board. The Joint Subcommittee is gratified that the Board of Health has set the fee for appeals to the Review Board at $135.

VI. THE RECOMMENDATIONS OF THE JOINT SUBCOMMITTEE

Based on the reasons stated above, the Joint Subcommittee recommends:

1. That local governments and private businessmen be provided incentives for constructing approved disposal sites through access to the funding mechanism of the Virginia Resources Authority.

2. That land spreading of lime-stabilized septage and the shallow injection of unstabilized septage be authorized in law for a five-year period.

3. That the validity period for septic tank permits be extended to fifty-four months.

4. That adequate funds be assured for research in the development of alternative sewage disposal systems.

5. That sanitarians be provided statutory immunity from personal liability for actions except those resulting from gross negligence or intentionally tortious behavior.

6. That the Review Board be provided compensation for reasonable expenses and per diem.

7. That an appropriation in the amount of $25,000 be approved in order to adequately fund the activities of the Review Board.

8. That the Review Board's statute be amended to require eight meetings per year, that appeals be filed thirty days prior to a meeting in order to be included on the docket, that a written decision be rendered within fifteen days of the hearing and to authorize the Board to remand applications to local health departments with recommendations for reconsideration.

9. That this study be continued in order to consider the efficacy of regulating soil scientists, the credentialing of sanitarians, assessment of the operations of the Sewage Handling and Disposal Review Board in its first year and to evaluate the progress of research in alternative onsite sewage disposal systems and further issues related to sewage handling and disposal.

VII. CONCLUSION

The Joint Subcommittee found that in a few areas of the state the problems related to septic tank permitting were complicated by the actions of local health department personnel. The Department of Health has aggressively sought ways to correct these situations in the past six months. These efforts have included meetings with local government officials and local health department personnel and the authorization of overtime for sanitarians in order to process backlogs of applications. The Joint Subcommittee commends the Department for these activities and believes that the administration of the Department is sincere in its commitment to the elimination of personnel and delay problems. The Joint Subcommittee understands that regulation of septic tank permitting will always be subject to some controversy because of its potential financial impact. However, the Joint Subcommittee wishes to emphasize that uncooperative attitudes and poor management styles on the part of a few local personnel may cause or contribute to a poor public perception of the regulatory process and must, therefore, be remedied.

The Joint Subcommittee wishes to thank the personnel of the Department of Health, particularly Mr. Herbert Oglesby and Mr. Robert Hicks, for their patience and assistance in conducting this study. In addition, the Joint Subcommittee wishes to express its appreciation to the private citizens and representatives of organizations who contributed to its work or testified before it, most especially, Dr. Thomas Simpson, Chairman of the Review Board.

Respectfully submitted,

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FOOTNOTE

[1]Subsequently, the potentially offending provisions related to legislative oversight were removed from § 9-6.14:9. Presently, pursuant to § 9-6.14:24, any member of the General Assembly may receive copies of the Register upon request. Pursuant to § 9-6.14:9.2, "Legislative review of proposed regulation," the relevant committees may then meet and file objections with the Registrar of Regulations to be published in the Register. The agency promulgating the regulations must file a response with the Registrar, the objecting committee and the Governor within 21 days. The filing of an objection has, at minimum, the effect of delaying the effective date of the regulations for 21 additional days. Other actions may be taken by the Governor or the agency, such as withdrawal of the regulations or suspension of the process in order to solicit additional public comment (see § 9-6.14:9.3).

APPENDIX A

Senate Joint Resolution 127

Opinion of the Attorney General on Liability of Sanitarians

SENATE JOINT RESOLUTION NO. 127

Requesting the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions to study the laws of the Commonwealth related to sewage handling as these laws interact with the Board of Health's Sewage Handling and Disposal Regulations.

Agreed to by the Senate, January 30, 1985
Agreed to by the House of Delegates, February 20, 1985

WHEREAS, the Board of Health is charged with the "supervision and control over the safe and sanitary collection... and disposal of sewage, all sewage systems and treatment works as they affect the public health and welfare;" and

WHEREAS, in 1982, the Board of Health adopted new regulations related to the issuance of septic tank permits and the safe and sanitary disposal of sewage; and

WHEREAS, the standards in these regulations are alleged to be more difficult to meet than the standards in previous regulations; and

WHEREAS, considerable controversy has developed surrounding the denial of septic tank permits in Virginia and the requirement effective on January 1, 1985, that septage be deposited in an approved disposal facility such as sewage treatment plant or an anaerobic lagoon; and

WHEREAS, it is difficult to change the attitudes toward traditional methods of operating and the land application of septage has been a traditional practice in Virginia for years; and

WHEREAS, septage, which contains a variety of potentially pathogenic agents, consists of the mat of grease and scum on the surface of septic tanks, the accumulated sludge at the bottom of the tanks and the sewage present at the time of pumping; and

WHEREAS, since September, 1982, when the regulations promulgated pursuant to the federal Resource Conservation and Recovery Act and the Clean Water Act included septage under the Criteria for Classification of Solid Waste Facilities and Practices (40 C.F.R. 257), the spreading of unstabilized septage on land has been a federal violation; and

WHEREAS, although health and safety of its citizens are of prime importance to the Commonwealth, the continued improvement of its economy and growth are also important; and

WHEREAS, no legislative subcommittee has examined the issues related to sewage handling and disposal as these issues are concerned with the growth and development of communities; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions are hereby requested to study the laws of the Commonwealth related to sewage handling as these laws interact with the Board of Health's Sewage Handling and Disposal Regulations.

The joint subcommitte shall consist of seven members as follows: two members of the Senate Committee on Education and Health and one member of the Senate at-large to be appointed by the Senate Committee on Privileges and Elections and four members of the House Committee on Health, Welfare and Institutions to be appointed by the Speaker thereof. The joint subcommitee shall consider in its deliberations the following issues: (i) what the policy of the Commonwealth should be in relation to handling and disposal of sewage including the disposal of septage and the issuance of septic tank permits; (ii) how the public can be informed concerning the permitting of septic tanks and about the need for caution in purchasing real property in areas without central sewage disposal systems; (iii) how communications between developers or builders and the local and central health department officials can be facilitated; and (iv) whether there is any substance to the complaints about the denial of septic tank permits or are these complaints merely the natural reaction on the part of citizens who have not received complete disclosure on purchasing property.

The joint subcommittee shall complete its work in time to report its findings to the 1986 Session of the General Assembly.

All direct and indirect costs of this study are estimated to be $19,345.

COMMONWEALTH OF VIRGINIA

MADISON E. MARYE
[illegible]

SENATE

COMMITTEE ASSIGNMENTS
AGRICULTURE, CONSERVATION AND NATURAL RESOURCES
GENERAL LAWS
LOCAL GOVERNMENT
TRANSPORTATION
RULES

B L I N D C O P Y

July 17, 1985

The Honorable William G. Broaddus
Attorney General of Virginia
Supreme Court Building
Richmond, Virginia 23219

Dear Mr. Broaddus,

During the 1985 Session of the General Assembly, I introduced Senate Joint Resolution No. 127, which was approved, calling for a study of the sewage handling and disposal laws and regulations of Virginia. During the second meeting of the Joint Subcommittee, which was a public hearing, testimony was received indicating that the public health sanitarians are exercising undue caution in issuing permits for septic tanks because they believe personal liability may attach if an approved on-site sewage disposal system fails.

As chairman of the Joint Subcommittee Studying the Sewage Handling and Disposal Laws and Regulations, I would like your opinion on the potential personal liability of public health sanitarians under these circumstances. Specifically, the question is:

In view of the recent Supreme Court of Virginia decision in Messina v. Burden, 228 Va. 301 (1984) and the criteria established by the Court for determining the application of the doctrine of sovereign immunity to state employees in James v. Jane, 221 Va. 43, S.E. 2d 109 (1980), what risk of personal liability is incurred by a public health sanitarian if a properly constructed septic system fails on a permitted site evaluated and approved by that sanitarian?

Thank you in advance for your consideration of this issue. I remain, with warmest personal regards,

Yours truly,

Madison E. Marye

MEM/lbp

William G. Broaddus
Attorney General

Francis C. Lee
Chief Deputy Attorney General

COMMONWEALTH of VIRGINIA

Office of the Attorney General

July 31, 1985

Donald C. J. Gehring
Deputy Attorney General
Criminal Law Enforcement Division

Maston T. Jacks
Deputy Attorney General
Human & Natural Resources Division

Walter A. McFarlane
Deputy Attorney General
Finance & Transportation Division

James T. Moore, III
Deputy Attorney General
Judicial Affairs Division

Marian W. Schutrumpf
Director of Administration

The Honorable Madison E. Marye
Member, Senate of Virginia
P. O. Box 37
Shawsville, Virginia 24162

My dear Senator Marye:

You ask what risk of personal liability is incurred by a public health sanitarian if a properly constructed on-site sewage disposal system fails on a permitted site evaluated and approved by that sanitarian. There would be no risk for liability unless the sanitarian were negligent in the performance of his duties. Thus, this Opinion will consider whether the sanitarian is protected from liability for his negligence by the doctrine of sovereign immunity.

Public health sanitarians are employees of the State Department of Health, an agency of the Commonwealth. As directed by regulations of the State Board of Health, sanitarians evaluate site and soil conditions on a parcel of property to determine its suitability for a septic system. If the soil and site conditions conform to those regulations, the sanitarian issues a permit for the construction of the system and, following proper construction, he issues a permit for the operation of the system.

While enactment of the Virginia Tort Claims Act, §§ 8.01-195.1 through 8.01-195.8 of the Code of Virginia, abolished some sovereign immunity protections for the Commonwealth, it did not limit or abolish the doctrine's application to the personal liability of employees of the Commonwealth. See § 8.01-195.3.

Whether a sanitarian is entitled to sovereign immunity requires application of the holdings of several decisions of the Supreme Court of Virginia on this issue. In James v. Jane, 221 Va. 43, 267 S.E.2d 108 (1980), the Court set out the test to determine if State employees are entitled to immunity for acts of simple negligence.[1] In Messina v. Burden, 228 Va. 301, 313, 321 S.E.2d 657 (1984), the Court stated that the James test includes the following factors:

"1. the nature of the function performed by the employee;

2. the extent of the state's interest and involvement in the function;

3. the degree of control and direction exercised by the state over the employee; and

4. whether the act complained of involved the use of judgment and discretion."

Applying these factors, I note, first, that, as described previously, a sanitarian conducts tests to determine if a particular site is capable of supporting a properly functioning septic system. The goal of a sanitarian's work is to protect the public health and the environment, an area of strong State interest.

The General Assembly has enacted comprehensive statutes to govern all aspects of sewage disposal. See, e.g., §§ 32.1-163 through 32.1-166.10 and §§ 62.1-44.18 through 62.1-44.19. Furthermore, the State Board of Health and State Water Control Board have promulgated comprehensive regulations to govern sewage disposal. The breadth of the Commonwealth's regulation is evidence of pervasive State interest and involvement in a sanitarian's duties.

A sanitarian is a subordinate employee of a State agency and must conduct the tests prescribed by the State Board of Health and determine that the system is designed as specified in the regulations. Within these regulatory parameters, however, a sanitarian necessarily exercises discretion and professional judgment.

Taking all of the above into consideration, I conclude that sanitarians meet the test set out in the James and Messina decisions, and are entitled to sovereign immunity for acts of simple negligence. Thus, so long as the sanitarian is acting within the scope of his employment and is not acting in a grossly negligent or intentionally tortious manner, I believe that employee is

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[1]State employees are not entitled to sovereign immunity for intentional torts, Elder v. Holland, 208 Va. 15, 155 S.E.2d 369 (1967), or for acts of gross negligence. Sayers v. Bullar, 180 Va. 222, 22 S.E.2d 9 (1942). Mere conclusory allegations of gross negligence, however, are insufficient to strip an employee of protection. Sayers, 180 Va. at 228-29.

protected from personal liability by the principle of sovereign immunity, even in situations where he acted in a negligent manner.[2].

With kindest regards, I am

Sincerely,

William G. Broaddus
Attorney General

6:36/54-025

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[2]As suggested above, the Virginia Tort Claims Act has effected a limited repeal of the doctrine of sovereign immunity as a protection of the Commonwealth itself. Thus, if a landowner is injured as a result of the sanitarian's negligence, he may be able to recover from the Commonwealth in accordance with the Act.

APPENDIX B

Senate Bill 336 (Engrossed)

Senate Joint Resolution 82

LD1713124

SENATE BILL NO. 336

Offered January 21, 1986

A BILL to amend and reenact §§ 2.1-20.4, 32.1-164.1:1, 32.1-164.4, 32.1-166.4, 32.1-166.6, 62.1-199 and 62.1-218 of the Code of Virginia and amend the Code of Virginia by adding a section numbered 32.1-163.1, relating to sewage handling and disposal.

Patrons--Marye, Michie, and Saslaw; Delegates: Ackerman, Glasscock, and DeBoer

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Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-20.4, 32.1-164.1:1, 32.1-164.4, 32.1-166.4, 32.1-166.6, 62.1-199 and 62.1-218 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding a section numbered 32.1-163.1 as follows:

§ 2.1-20.4. Bodies receiving compensation.--A. Notwithstanding any other provision of law, the following commissions, boards, etc., shall be those which receive compensation from state funds pursuant to § 2.1-20.3:

Accountancy, State Board of

Agriculture and Consumer Services, Board of

Air Pollution Control Board, State

Airports Authority, Virginia

Apprenticeship Council

Architects, Professional Engineers, Land Surveyors and Certified Landscape Architects, State Board of

Athletic Board, Virginia

Auctioneers Board, Virginia

Audiology and Speech Pathology, Virginia Board of Examiners for

Aviation Board, Virginia

Barber Examiners, Board of

Building Code Technical Review Board, State

Certification of Librarians, Board for

Certification of Water and Wastewater Work Operations, Board of

College Building Authority

Commerce, Board of

Commercial Driver Training Schools, Board of

Conservation and Historic Resources, Board of

Contractors, State Board for

Correctional Education, Board of

Corrections, Board of

Cosmetology, Virginia Board of

Criminal Justice Services Board

Deaf and Hard-of-Hearing, Advisory Board for the

Deferred Compensation Board

Dentistry, Virginia Board of

Education, State Board of

Education Loan Authority, Virginia - Board of Directors

Elections, State Board of

Environment, Council on the

Funeral Directors and Embalmers, Virginia Board of

Game and Inland Fisheries, Commission of

Health, State Board of

Health Coordinating Council, Statewide

Health Regulatory Boards, Board on

Hearing Aid Dealers and Fitters, Virginia Board of

Higher Education, State Council of

Highway and Transportation Board, State

Housing and Community Development, Board of

Local Government, Commission on

Marine Resources Commission

Medical Assistance Services, Board of

Medical Complaint Investigation Committee

Medicine, Virginia State Board of

Mental Health and Mental Retardation Board, State

Milk Commission

Mines, Minerals and Energy, Board of Examiners in the Department of

Nursing, Virginia State Board of

Nursing Home Administrators, State Board of Examiners for

Oil and Gas Conservation Board, Virginia

Opticians, Virginia State Board of

Optometry, Virginia Board of

Pharmacy, State Board of

Physical Therapy, Advisory Board on

Pilots, Board of Commissioners to Examine

Port Authority, Board of Commissioners of the Virginia

Professional Counselors, Virginia Board of

Psychology, Virginia Board of

Public School Authority, Virginia

Purchases and Supply Appeals Board

Real Estate Board, Virginia

Rehabilitative Services, Board of

Safety and Health Codes Board

Seed Potato Board

Social Services, Board of

Social Work, Virginia Board of

State Health Department Sewage Handling and Disposal Appeal Review Board

Substance Abuse Certification Board

Surface Mining Review, Board of

Treasury Board

Veterinary Medicine, Virginia Board of

Virginia Fire Board, Department of Fire Programs

Virginia Supplemental Retirement System, Board of Trustees

Visually Handicapped, Virginia Board for the

Water Control Board, State

Well Review Board, Virginia

B. Individual members of boards, commissions, committees, councils, and other similar bodies appointed at the state level and receiving compensation for their services on January 1, 1980, but who will not receive compensation under the provisions of this article, shall continue to receive compensation at the January 1, 1980, rate until such member's current term expires.

§ 32.1-163.1. Personal liability of sanitarians defined.—Whenever a sanitarian is acting within the scope of his employment and exercising his discretion in granting or denying applications for permits for onsite sewage disposal systems and is not acting in a grossly negligent or intentionally tortious manner, he shall not be subject to personal liability.

§ 32.1-164.1:1. Validity of certain septic tank permits.—Any septic tank permit issued shall be deemed valid for a period of ~~thirty~~ *fifty-four* months from the date of issuance unless there has been a substantial, intervening change in the soil or site conditions where the septic system is to be located. ~~This section shall apply retroactively to any septic tank permit issued prior to November 1, 1982.~~

§ 32.1-164.4. Land disposal of septage in counties.–The land disposal of *lime-stabilized* septage *and unstabilized septage shall be prohibited. However, until July 1, 1991, land spreading of lime-stabilized septage and shallow injection of unstabilized septage* shall be allowed in counties ~~with a population of less than 100 people per square mile, as determined by the latest population figures available from the Tayloe Murphy Institute~~ , if prior approval is ~~first~~ obtained from the board of supervisors and ~~then from the local health department pursuant to applicable regulations. Approval by the board of supervisors shall be at its discretion~~ *a permit has been obtained from the State Department of Health pursuant to § 32.1-164.3 in accordance with the Board of Health Regulations on Sewage Handling and Disposal* .

§ 32.1-166.4. Meetings.–The Review Board shall meet ~~at the call of the chairman, or at the written request of at least three of its members; provided that it shall act within thirty days following receipt of any appeal made under these provisions~~ *eight times per year to hear appeals of denials of applications for onsite sewage disposal systems* .

Any appeal shall be filed thirty days prior to a meeting in order to be placed on the docket. In accordance with subsections (a)(6) and (b) of § 2.1-344, the Review Board may hold an executive session following a hearing to make its decision. The Review Board may announce its decision publicly immediately following such executive session and shall provide its decision in writing within fifteen days of the date of the hearing to the person making the appeal, his representative and the Department of Health.

§ 32.1-166.6. Review Board to hear appeals.–The Review Board shall ~~have the power and duty~~ to hear all *administrative* appeals of denials of ~~on-site~~ *onsite* sewage disposal system permits and ~~to~~ render its decision on any such appeal, which decision shall be *the* final ~~if no appeal is made therefrom~~ *administrative decision* . Proceedings of the Review Board *and appeals of its decisions* shall be governed by the provisions of Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

In addition to the authority to render a final administrative decision, the Review Board, in its discretion, may develop recommendations for alternative solutions to the conditions resulting in denial of the permit and remand the case to the Department of Health for reconsideration.

§ 62.1-199. Definitions.–As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created by this chapter.

"Board of Directors" means the Board of Directors of the Authority.

"Bonds" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, lease and sale-leaseback transactions or any other evidences of indebtedness of the Authority.

"Capital Reserve Fund" means the reserve fund created and established by the Authority in accordance with § 62.1-215.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred by the local government in the course of the development of the project, carrying charges incurred before placing the project in service, interest on local obligations issued to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the Commonwealth or any combination of any two or more of the foregoing.

"Local obligations" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, leases or any other evidences of indebtedness of a local government.

"Minimum capital reserve fund requirement" means, as of any particular date of computation, the amount of money designated as the minimum capital reserve fund requirement which may be established in the resolution of the authority authorizing the issuance of, or the trust indenture securing, any outstanding issue of bonds.

"Project" means any water supply , *drainfield management contract,* or wastewater treatment facility *including a facility for receiving and stabilizing septage* located or to be located in the Commonwealth by any local government *or private business, if such private business is proposing a project approved by the local governing body* . The term includes, without limitation, water supply and intake facilities; water treatment and filtration facilities; water storage facilities; water distribution facilities; sewage and wastewater (including surface and groundwater) collection, treatment and disposal facilities; drainage facilities and projects; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto.

For the purposes of this chapter, the term, "private business," shall be limited to a person or entity engaged in the business of handling and disposal of sewage from onsite sewage disposal systems.

§ 62.1-218. Grants to local governments.–The Authority shall have the power and authority, with any funds of the Authority available for this purpose, to make grants or appropriations to local governments *or private business as defined in § 62.1-199* . In determining which local governments are to receive grants or appropriations, the State Water Control Board and the Department of Health shall assist the Authority in determining needs for wastewater treatment and water supply facilities.

LD4143124

SENATE JOINT RESOLUTION NO. 82

Offered January 21, 1986

Continuing the Joint Subcommittee studying the laws of the Commonwealth related to sewage handling as these laws interact with the Board of Health's Sewage Handling and Disposal Regulations.

Patrons--Marye, Michie, and Saslaw; Delegates: Ackerman, Glasscock, and DeBoer

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Referred to Committee on Rules

WHEREAS, the Joint Subcommittee studying the laws and regulations related to sewage handling and disposal has held seven meetings and has worked diligently to develop solutions to long standing problems in Virginia; and

WHEREAS, the joint subcommittee has proposed legislation which it believes will resolve some of the problems it encountered; and

WHEREAS, there are still many issues related to sewage handling and disposal which are in need of evaluation and resolution; and

WHEREAS, some of these issues relate to the regulation of soil scientists and the credentialing of sanitarians; and

WHEREAS, the joint subcommittee believes that one of the reasons the Commonwealth has been unable to resolve problems related to sewage handling and disposal in the past is that a piecemeal approach has been taken; and

WHEREAS, the joint subcommittee is committed to a careful and thorough examination of the issues related to sewage handling and disposal in Virginia, now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Subcommittee Studying the Laws of the Commonwealth related to Sewage Handling as these laws interact with the Board of Health's Sewage Handling and Disposal Regulations is hereby continued.

The joint subcommittee shall consist of seven members as follows: two members of the Senate Committee on Education and Health and one member of the Senate at-large to be appointed by the Senate Committee on Privileges and Elections and four members of the House Committee on Health, Welfare and Institutions to be appointed by the Speaker thereof.

In its deliberations, the joint subcommittee shall consider:

1. The need for and feasibility of regulating soil scientists, including an evaluation of levels of regulation such as registration, certification and licensure, catagories of professionals to be regulated and qualifications of these professionals;

2. The implementation of credentialing of sanitarians as recommended by the task force which studied this issue in order to detect and alleviate any potential problems;

3. Assessment of the operations of the Sewage Handling and Disposal Review Board in its first year;

4. Reports on the progress of research in alternative onsite sewage disposal systems; and

5. The developments in sewage handling and disposal in Virginia, particularly those resulting from any legislation approved by the General Assembly during the 1986 Session.

The joint subcommittee may also consider such other matters as it deems relevant and appropriate to the efficient and effective regulation of sewage handling and disposal in the Commonwealth.

The Joint Subcommittee shall complete its work in time to submit its recommendations to the 1987 Session of the General Assembly.

All direct and indirect costs of this study are estimated to be $27,285.