

HOUSE BILL NO. 184

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on/for _____

on _____)

(Patron Prior to Substitute--Delegate Marshall)

A BILL to amend and reenact § 62.1-44.15:27, as it is currently effective and as it may become effective, of the Code of Virginia, relating to administration of Virginia Stormwater Management Programs; regional industrial facility authorities.

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:27, as it is currently effective and as it may become effective, of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15:27. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Establishment of Virginia Stormwater Management Programs.

A. Any locality that operates a regulated MS4 or that notifies the Department of its decision to participate in the establishment of a VSMP shall be required to adopt a VSMP for land-disturbing activities consistent with the provisions of this article according to a schedule set by the Department. Such schedule shall require implementation no later than July 1, 2014. Thereafter, the Department shall provide an annual schedule by which localities can submit applications to implement a VSMP. Localities subject to this subsection are authorized to coordinate plan review and inspections with other entities in accordance with subsection H.

The Department shall operate a VSMP on behalf of any locality that does not operate a regulated MS4 and that does not notify the Department, according to a schedule set by the Department, of its decision to participate in the establishment of a VSMP. A locality that decides not to establish a VSMP shall still comply with the requirements set forth in this article and attendant regulations as required to satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.). A locality that is subject to the provisions of the Chesapeake Bay

27 Preservation Act (§ 62.1-44.15:67 et seq.) also shall adopt requirements set forth in this article and
28 attendant regulations as required to regulate Chesapeake Bay Preservation Act land-disturbing activities
29 in accordance with § 62.1-44.15:28. To comply with the water quantity technical criteria set forth in this
30 article and attendant regulations, a rural Tidewater locality may adopt a tiered approach to water quantity
31 management for Chesapeake Bay Preservation Act land-disturbing activities pursuant to § 62.1-
32 44.15:27.2.

33 Notwithstanding any other provision of this subsection, any county that operates an MS4 that
34 became a regulated MS4 on or after January 1, 2014 may elect, on a schedule set by the Department, to
35 defer the implementation of the county's VSMP until no later than January 1, 2015. During this deferral
36 period, when such county thus lacks the legal authority to operate a VSMP, the Department shall operate
37 a VSMP on behalf of the county and address post-construction stormwater runoff and the required design
38 criteria for stormwater runoff controls. Any such county electing to defer the establishment of its VSMP
39 shall still comply with the requirements set forth in this article and attendant regulations as required to
40 satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment
41 Control Law (§ 62.1-44.15:51 et seq.).

42 B. Any town, including a town that operates a regulated MS4, lying within a county that has
43 adopted a VSMP in accordance with subsection A may decide, but shall not be required, to become subject
44 to the county's VSMP. Any town lying within a county that operates an MS4 that became a regulated MS4
45 on or after January 1, 2014 may elect to become subject to the county's VSMP according to the deferred
46 schedule established in subsection A. During the county's deferral period, the Department shall operate a
47 VSMP on behalf of the town and address post-construction stormwater runoff and the required design
48 criteria for stormwater runoff controls for the town as provided in subsection A. If a town lies within the
49 boundaries of more than one county, the town shall be considered to be wholly within the county in which
50 the larger portion of the town lies. Towns shall inform the Department of their decision according to a
51 schedule established by the Department. Thereafter, the Department shall provide an annual schedule by
52 which towns can submit applications to adopt a VSMP.

53 C. In support of VSMP authorities, the Department shall:

54 1. Provide assistance grants to localities not currently operating a local stormwater management
55 program to help the localities to establish their VSMP.

56 2. Provide technical assistance and training.

57 3. Provide qualified services in specified geographic areas to a VSMP to assist localities in the
58 administration of components of their programs. The Department shall actively assist localities in the
59 establishment of their programs and in the selection of a contractor or other entity that may provide support
60 to the locality or regional support to several localities.

61 D. The Department shall develop a model ordinance for establishing a VSMP consistent with this
62 article and its associated regulations, including the Virginia Stormwater Management Program (VSMP)
63 General Permit for Discharges of Stormwater from Construction Activities.

64 E. Each locality that administers an approved VSMP shall, by ordinance, establish a VSMP that
65 shall be administered in conjunction with a local MS4 program and a local erosion and sediment control
66 program if required pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), and
67 which shall include the following:

68 1. Consistency with regulations adopted in accordance with provisions of this article;

69 2. Provisions for long-term responsibility for and maintenance of stormwater management control
70 devices and other techniques specified to manage the quality and quantity of runoff; and

71 3. Provisions for the integration of the VSMP with local erosion and sediment control, flood
72 insurance, flood plain management, and other programs requiring compliance prior to authorizing
73 construction in order to make the submission and approval of plans, issuance of permits, payment of fees,
74 and coordination of inspection and enforcement activities more convenient and efficient both for the local
75 governments and those responsible for compliance with the programs.

76 F. The Board may approve a state entity, including the Department, federal entity, or, for linear
77 projects subject to annual standards and specifications, electric, natural gas, and telephone utility
78 companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities
79 created pursuant to § 15.2-5102 to operate a Virginia Stormwater Management Program consistent with
80 the requirements of this article and its associated regulations and the VSMP authority's Department-

81 approved annual standards and specifications. For these programs, enforcement shall be administered by
82 the Department and the Board where applicable in accordance with the provisions of this article.

83 G. The Board shall approve a VSMP when it deems a program consistent with this article and
84 associated regulations, including the Virginia Stormwater Management Program (VSMP) General Permit
85 for Discharges of Stormwater from Construction Activities.

86 H. A VSMP authority may enter into agreements or contracts with soil and water conservation
87 districts, adjacent localities, or other public or private entities to carry out or assist with the responsibilities
88 of this article. A VSMP authority may enter into contracts with third-party professionals who hold
89 certificates of competence in the appropriate subject areas, as provided in subsection A of § 62.1-44.15:30,
90 to carry out any or all of the responsibilities that this article requires of a VSMP authority, including plan
91 review and inspection but not including enforcement.

92 I. If a locality establishes a VSMP, it shall issue a consolidated stormwater management and
93 erosion and sediment control permit that is consistent with the provisions of the Erosion and Sediment
94 Control Law (§ 62.1-44.15:51 et seq.). When available in accordance with subsection J, such permit,
95 where applicable, shall also include a copy of or reference to state VSMP permit coverage authorization
96 to discharge.

97 J. Upon the development of an online reporting system by the Department, but no later than July
98 1, 2014, a VSMP authority shall then be required to obtain evidence of state VSMP permit coverage where
99 it is required prior to providing approval to begin land disturbance.

100 K. Any VSMP adopted pursuant to and consistent with this article shall be considered to meet the
101 stormwater management requirements under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et
102 seq.) and attendant regulations, and effective July 1, 2014, shall not be subject to local program review
103 under the stormwater management provisions of the Chesapeake Bay Preservation Act.

104 L. All VSMP authorities shall comply with the provisions of this article and the stormwater
105 management provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and related
106 regulations. The VSMP authority responsible for regulating the land-disturbing activity shall require

107 compliance with the issued permit, permit conditions, and plan specifications. The state shall enforce state
108 permits.

109 M. In the case of a land-disturbing activity located on property controlled by a regional industrial
110 facility authority established pursuant to Chapter 64 (§ 15.2-6400 et seq.) of Title 15.2, if a participating
111 local member of such an authority also administers a VSMP, such locality shall be authorized to administer
112 the VSMP on authority property, in accordance with an agreement entered into with all relevant localities
113 and the existing VSMP for the property.

114 **§ 62.1-44.15:27. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017,**
115 **c. 345) Virginia Programs for Erosion Control and Stormwater Management.**

116 A. Any locality that operates a regulated MS4 or that administers a Virginia Stormwater
117 Management Program (VSMP) as of July 1, 2017, shall be required to adopt and administer a VESMP
118 consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs
119 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as
120 a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67
121 et seq.). The VESMP shall be adopted according to a process established by the Department.

122 B. Any locality that does not operate a regulated MS4 and for which the Department administers
123 a VSMP as of July 1, 2017, shall choose one of the following options and shall notify the Department of
124 its choice according to a process established by the Department:

125 1. Adopt and administer a VESMP consistent with the provisions of this article that regulates any
126 land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or
127 more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the
128 Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.);

129 2. Adopt and administer a VESMP consistent with the provisions of this article that regulates any
130 land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or
131 more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the
132 Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), except that the Department shall provide the

133 locality with review of the plan required by § 62.1-44.15:34 and provide a recommendation to the locality
134 on the plan's compliance with the water quality and water quantity technical criteria; or

135 3. Adopt and administer a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) that regulates
136 any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet
137 or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the
138 Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). For such a land-disturbing activity in a
139 Chesapeake Bay Preservation Area, the VESCP authority also shall adopt requirements set forth in this
140 article and attendant regulations as required to regulate those activities in accordance with §§ 62.1-
141 44.15:28 and 62.1-44.15:34.

142 The Board shall administer a VSMP on behalf of each VESCP authority for any land-disturbing
143 activity that (a) disturbs one acre or more of land or (b) disturbs less than one acre of land and is part of a
144 larger common plan of development or sale that results in one acre or greater of land disturbance.

145 C. Any town that is required to or elects to adopt and administer a VESMP or VESCP, as
146 applicable, may choose one of the following options and shall notify the Department of its choice
147 according to a process established by the Department:

148 1. Any town, including a town that operates a regulated MS4, lying within a county may enter into
149 an agreement with the county to become subject to the county's VESMP. If a town lies within the
150 boundaries of more than one county, it may enter into an agreement with any of those counties that
151 operates a VESMP.

152 2. Any town that chooses not to adopt and administer a VESMP pursuant to subdivision B 3 and
153 that lies within a county may enter into an agreement with the county to become subject to the county's
154 VESMP or VESCP, as applicable. If a town lies within the boundaries of more than one county, it may
155 enter into an agreement with any of those counties.

156 3. Any town that is subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-
157 44.15:67 et seq.) may enter into an agreement with a county pursuant to subdivision C 1 or 2 only if the
158 county administers a VESMP for land-disturbing activities that disturb 2,500 square feet or more.

159 D. Any locality that chooses not to implement a VESMP pursuant to subdivision B 3 may notify
160 the Department at any time that it has chosen to implement a VESMP pursuant to subdivision B 1 or 2.
161 Any locality that chooses to implement a VESMP pursuant to subdivision B 2 may notify the Department
162 at any time that it has chosen to implement a VESMP pursuant to subdivision B 1. A locality may petition
163 the Board at any time for approval to change from fully administering a VESMP pursuant to subdivision
164 B 1 to administering a VESMP in coordination with the Department pursuant to subdivision B 2 due to a
165 significant change in economic conditions or other fiscal emergency in the locality. The provisions of the
166 Administrative Process Act (§ 2.2-4000 et seq.) shall govern any appeal of the Board's decision.

167 E. To comply with the water quantity technical criteria set forth in this article and attendant
168 regulations for land-disturbing activities that disturb an area of 2,500 square feet or more but less than one
169 acre, any rural Tidewater locality may adopt a tiered approach to water quantity management pursuant to
170 § 62.1-44.15:27.2.

171 F. In support of VESMP authorities, the Department shall provide technical assistance and training
172 and general assistance to localities in the establishment and administration of their individual or regional
173 programs.

174 G. The Department shall develop a model ordinance for establishing a VESMP consistent with
175 this article.

176 H. Each locality that operates a regulated MS4 or that chooses to administer a VESMP shall, by
177 ordinance, establish a VESMP that shall be administered in conjunction with a local MS4 management
178 program, if applicable, and which shall include the following:

- 179 1. Ordinances, policies, and technical materials consistent with regulations adopted in accordance
180 with this article;
- 181 2. Requirements for land-disturbance approvals;
- 182 3. Requirements for plan review, inspection, and enforcement consistent with the requirements of
183 this article, including provisions requiring periodic inspections of the installation of stormwater
184 management measures. A VESMP authority may require monitoring and reports from the person

185 responsible for meeting the permit conditions to ensure compliance with the permit and to determine
186 whether the measures required in the permit provide effective stormwater management;

187 4. Provisions charging each applicant a reasonable fee to defray the cost of program administration
188 for a regulated land-disturbing activity that does not require permit coverage. Such fee may be in addition
189 to any fee charged pursuant to the statewide fee schedule established in accordance with subdivision 9 of
190 § 62.1-44.15:28, although payment of fees may be consolidated in order to provide greater convenience
191 and efficiency for those responsible for compliance with the program. A VESMP authority shall hold a
192 public hearing prior to establishing such fees. The fee shall not exceed an amount commensurate with the
193 services rendered, taking into consideration the time, skill, and the VESMP authority's expense involved;

194 5. Provisions for long-term responsibility for and maintenance of stormwater management control
195 devices and other techniques specified to manage the quality and quantity of runoff; and

196 6. Provisions for the coordination of the VESMP with flood insurance, flood plain management,
197 and other programs requiring compliance prior to authorizing land disturbance in order to make the
198 submission and approval of plans, issuance of land-disturbance approvals, payment of fees, and
199 coordination of inspection and enforcement activities more convenient and efficient both for the local
200 governments and those responsible for compliance with the programs.

201 I. The Board shall approve a VESMP when it deems a program consistent with this article and
202 associated regulations.

203 J. A VESMP authority may enter into agreements or contracts with the Department, soil and water
204 conservation districts, adjacent localities, planning district commissions, or other public or private entities
205 to carry out or assist with plan review and inspections. A VESMP authority may enter into contracts with
206 third-party professionals who hold certifications in the appropriate subject areas, as provided in subsection
207 A of § 62.1-44.15:30, to carry out any or all of the responsibilities that this article requires of a VESMP
208 authority, including plan review and inspection but not including enforcement.

209 K. A VESMP authority shall be required to obtain evidence of permit coverage from the
210 Department's online reporting system, where such coverage is required, prior to providing land-
211 disturbance approval.

212 L. The VESMP authority responsible for regulating the land-disturbing activity shall require
213 compliance with its applicable ordinances and the conditions of its land-disturbance approval and plan
214 specifications. The Board shall enforce permits and require compliance with its applicable regulations,
215 including when serving as a VSMP authority in a locality that chose not to adopt a VESMP in accordance
216 with subdivision B 3.

217 M. In the case of a land-disturbing activity located on property controlled by a regional industrial
218 facility authority established pursuant to Chapter 64 (§ 15.2-6400 et seq.) of Title 15.2, if a participating
219 local member of such an authority also administers a VESMP, such locality shall be authorized to
220 administer the VESMP on authority property, in accordance with an agreement entered into with all
221 relevant localities and the existing VESMP for the property.

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