

HOUSE BILL NO. 1224

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on/for \_\_\_\_\_

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Bulova)

A BILL to amend and reenact § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to stormwater management; proprietary best management practices.

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

**1. That § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:**

**§ 62.1-44.15:28. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.**

A. The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for Virginia Stormwater Management Programs. The regulations shall:

- 1. Establish standards and procedures for administering a VSMP;
- 2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;
- 3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;
- 4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VSMP authority shall grant land-disturbing activity approval, the conditions and processes under which approval shall be granted, the

27 procedures for communicating disapproval, the conditions under which an approval may be changed, and  
28 requirements for inspection of approved projects;

29           5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the  
30 implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes  
31 include the costs associated with plan review, VSMP registration statement review, permit issuance, state-  
32 coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing  
33 activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced  
34 fee for land-disturbing activities between 2,500 square feet and up to one acre in Chesapeake Bay  
35 Preservation Act (§ 62.1-44.15:67 et seq.) localities. The fee schedule shall be governed by the following:

36           a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing,  
37 where practicable, an online payment system, and the Department's portion shall be remitted to the State  
38 Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 62.1-  
39 44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the total  
40 revenue generated by the statewide stormwater permit fees collected shall be remitted to the State  
41 Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VSMP  
42 authority.

43           b. Fees collected pursuant to this section shall be in addition to any general fund appropriation  
44 made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a  
45 level sufficient for the Department and the VSMP to fully carry out their responsibilities under this article  
46 and its attendant regulations and local ordinances or standards and specifications where applicable. When  
47 establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the  
48 authority to reduce or increase such fees, and to consolidate such fees with other program-related charges,  
49 but in no case shall such fee changes affect the amount established in the regulations as available to the  
50 Department for program oversight responsibilities pursuant to subdivision 5 a. A VSMP's portion of the  
51 fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant  
52 regulations, ordinances, or annual standards and specifications.

53 c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater  
54 from Construction Activities issued by the Board, or where the Board has issued an individual permit or  
55 coverage under the General Permit for Discharges of Stormwater from Construction Activities for an  
56 entity for which it has approved annual standards and specifications, shall be \$750 for each large  
57 construction activity with sites or common plans of development equal to or greater than five acres and  
58 \$450 for each small construction activity with sites or common plans of development equal to or greater  
59 than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where coverage  
60 has been issued under the Board's General Permit for Discharges of Stormwater from Construction  
61 Activities to a state agency or federal entity for which it has approved annual standards and specifications.  
62 After establishment, such fees may be modified in the future through regulatory actions.

63 d. Until July 1, 2014, the Department is authorized to assess a \$125 reinspection fee for each visit  
64 to a project site that was necessary to check on the status of project site items noted to be in noncompliance  
65 and documented as such on a prior project inspection.

66 e. In establishing the fee schedule under this subdivision, the Department shall ensure that the  
67 VSMP authority portion of the statewide permit fee for coverage under the General Permit for Discharges  
68 of Stormwater from Construction Activities for small construction activity involving a single family  
69 detached residential structure with a site or area, within or outside a common plan of development or sale,  
70 that is equal to or greater than one acre but less than five acres shall be no greater than the VSMP authority  
71 portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within  
72 a common plan of development or sale.

73 f. When any fees are collected pursuant to this section by credit cards, business transaction costs  
74 associated with processing such payments may be additionally assessed;

75 6. Establish statewide standards for stormwater management from land-disturbing activities of one  
76 acre or greater, except as specified otherwise within this article, and allow for the consolidation in the  
77 permit of a comprehensive approach to addressing stormwater management and erosion and sediment  
78 control, consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.)  
79 and this article. However, such standards shall also apply to land-disturbing activity exceeding an area of

80 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation  
81 Area Designation and Management Regulations;

82 7. Establish a procedure by which a stormwater management plan that is approved for a residential,  
83 commercial, or industrial subdivision shall govern the development of the individual parcels, including  
84 those parcels developed under subsequent owners;

85 8. Notwithstanding the provisions of subdivision 5, establish a procedure by which neither a  
86 registration statement nor payment of the Department's portion of the statewide permit fee established  
87 pursuant to that subdivision shall be required for coverage under the General Permit for Discharges of  
88 Stormwater from Construction Activities for construction activity involving a single-family detached  
89 residential structure, within or outside a common plan of development or sale;

90 9. Provide for the certification and use of a proprietary best management practice only if another  
91 state, regional, or national ~~certification~~ program has verified ~~and certified~~ its nutrient or sediment removal  
92 effectiveness and all of such program's established test protocol requirements were met or exceeded. As  
93 used in this subdivision and any regulations or guidance adopted pursuant to this subdivision,  
94 "certification" means a determination by the Department that a proprietary best management practice is  
95 approved for use in accordance with this article;

96 10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that  
97 replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology,  
98 or improve upon the contributing share of the existing predevelopment runoff characteristics and site  
99 hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Except  
100 where more stringent requirements are necessary to address total maximum daily load requirements or to  
101 protect exceptional state waters, any land-disturbing activity that provides for stormwater management  
102 shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality  
103 volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall  
104 resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from  
105 the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow  
106 rate from the site assuming it was in a good forested condition, achieved through multiplication of the

107 forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was  
108 in a good forested condition divided by the runoff volume from the site in its proposed condition, and  
109 shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels  
110 as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to  
111 § 62.1-44.15:27 or 62.1-44.15:33;

112 11. Encourage low-impact development designs, regional and watershed approaches, and  
113 nonstructural means for controlling stormwater;

114 12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to  
115 protect state waters and the public health and to minimize the direct discharge of pollutants into state  
116 waters;

117 13. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer  
118 administration of the VSMP to the Department;

119 14. Establish a statewide permit fee schedule for stormwater management related to municipal  
120 separate storm sewer system permits;

121 15. Provide for the evaluation and potential inclusion of emerging or innovative nonproprietary  
122 stormwater control technologies that may prove effective in reducing nonpoint source pollution;

123 16. Require the owner of property that is zoned for residential use and on which is located a  
124 privately owned stormwater management facility serving one or more residential properties to record the  
125 long-term maintenance and inspection requirements for such facility with the deed for the owner's  
126 property; and

127 17. Require that all final plan elements, specifications, or calculations whose preparation requires  
128 a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately  
129 signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing  
130 in this subdivision shall authorize any person to engage in practice outside his area of professional  
131 competence.

132 B. The Board may integrate and consolidate components of the regulations implementing the  
133 Erosion and Sediment Control program and the Chesapeake Bay Preservation Area Designation and

134 Management program with the regulations governing the Virginia Stormwater Management Program  
135 (VSMP) Permit program or repeal components so that these programs may be implemented in a  
136 consolidated manner that provides greater consistency, understanding, and efficiency for those regulated  
137 by and administering a VSMP.

138 § 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017,  
139 c. 345) **Development of regulations.**

140 The Board is authorized to adopt regulations that establish requirements for the effective control  
141 of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met  
142 in any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other  
143 natural resources, and that specify minimum technical criteria and administrative procedures for VESMPs.  
144 The regulations shall:

- 145 1. Establish standards and procedures for administering a VESMP;
- 146 2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for  
147 reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established  
148 by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be  
149 approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each inspection  
150 of a land-disturbing activity shall be conducted by an inspector certified pursuant to § 62.1-44.15:30, and  
151 (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom  
152 is certified pursuant to § 62.1-44.15:30 and all of whom may be the same person;
- 153 3. Be based upon relevant physical and developmental information concerning the watersheds and  
154 drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size  
155 of land area being disturbed, proximate water bodies and their characteristics, transportation, and public  
156 facilities and services;
- 157 4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law  
158 requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and  
159 sediment problems;

160 5. Contain conservation standards for various types of soils and land uses, which shall include  
161 criteria, techniques, and methods for the control of soil erosion and sediment resulting from land-  
162 disturbing activities;

163 6. Establish water quality and water quantity technical criteria. These criteria shall be periodically  
164 modified as required in order to reflect current engineering methods;

165 7. Require the provision of long-term responsibility for and maintenance of stormwater  
166 management control devices and other techniques specified to manage the quality and quantity of runoff;

167 8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that  
168 include, but are not limited to, specifying the time period within which a VESMP authority shall grant  
169 land-disturbance approval, the conditions and processes under which such approval shall be granted, the  
170 procedures for communicating disapproval, the conditions under which an approval may be changed, and  
171 requirements for inspection of approved projects;

172 9. Establish a statewide fee schedule to cover all costs associated with the implementation of a  
173 VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing  
174 activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include  
175 the costs associated with plan review, permit registration statement review, permit issuance, permit  
176 coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing  
177 activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced  
178 fee for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area  
179 of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay  
180 Preservation Act (§ 62.1-44.15:67 et seq.). The fee schedule shall be governed by the following:

181 a. The revenue generated from the statewide fee shall be collected utilizing, where practicable, an  
182 online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit  
183 in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However,  
184 whenever the Board has approved a VESMP, no more than 30 percent of the total revenue generated by  
185 the statewide fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater  
186 Management Fund, with the balance going to the VESMP authority;

187           b. Fees collected pursuant to this section shall be in addition to any general fund appropriation  
188 made to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a  
189 level sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities  
190 under this article and local ordinances or standards and specifications where applicable. When establishing  
191 a VESMP, the VESMP authority shall assess the statewide fees pursuant to the schedule and shall have  
192 the authority to reduce or increase such fees, and to consolidate such fees with other program-related  
193 charges, but in no case shall such fee changes affect the amount established in the regulations as available  
194 to the Department for program oversight responsibilities pursuant to subdivision a. A VESMP's portion  
195 of the fees shall be used solely to carry out the VESMP's responsibilities under this article and associated  
196 ordinances;

197           c. In establishing the fee schedule under this subdivision, the Department shall ensure that the  
198 VESMP authority portion of the statewide fee for coverage under the General Permit for Discharges of  
199 Stormwater from Construction Activities for small construction activity involving a single-family  
200 detached residential structure with a site or area, within or outside a common plan of development or sale,  
201 that is equal to or greater than one acre but less than five acres shall be no greater than the VESMP  
202 authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one  
203 acre within a common plan of development or sale;

204           d. When any fees are collected pursuant to this section by credit cards, business transaction costs  
205 associated with processing such payments may be additionally assessed;

206           e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which  
207 neither a registration statement nor payment of the Department's portion of the statewide fee established  
208 pursuant to this subdivision 9 shall be required for coverage under the General Permit for Discharges of  
209 Stormwater from Construction Activities for construction activity involving a single-family detached  
210 residential structure, within or outside a common plan of development or sale;

211           10. Establish statewide standards for soil erosion control and stormwater management from land-  
212 disturbing activities;

213 11. Establish a procedure by which a soil erosion control and stormwater management plan or  
214 stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall  
215 govern the development of the individual parcels, including those parcels developed under subsequent  
216 owners;

217 12. Provide for the certification and use of a proprietary best management practice only if another  
218 state, regional, or national certification program has verified and certified its nutrient or sediment removal  
219 effectiveness and all of such program's established test protocol requirements were met or exceeded. As  
220 used in this subdivision and any regulations or guidance adopted pursuant to this subdivision,  
221 "certification" means a determination by the Department that a proprietary best management practice is  
222 approved for use in accordance with this article;

223 13. Require that VESMPs maintain after-development runoff rate of flow and characteristics that  
224 replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology,  
225 or improve upon the contributing share of the existing predevelopment runoff characteristics and site  
226 hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.

227 a. Except where more stringent requirements are necessary to address total maximum daily load  
228 requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the  
229 water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be  
230 deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water  
231 volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land  
232 development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the  
233 expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate  
234 resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to  
235 the peak flow rate from the site assuming it was in a good forested condition, achieved through  
236 multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from  
237 the site when it was in a good forested condition divided by the runoff volume from the site in its proposed  
238 condition. Any land-disturbing activity that complies with these requirements shall be exempt from any  
239 flow rate capacity and velocity requirements for natural or man-made channels as defined in any

240 regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27  
241 or 62.1-44.15:33;

242 b. Any stream restoration or relocation project that incorporates natural channel design concepts  
243 is not a man-made channel and shall be exempt from any flow rate capacity and velocity requirements for  
244 natural or man-made channels as defined in any regulations promulgated pursuant to this article;

245 14. Encourage low-impact development designs, regional and watershed approaches, and  
246 nonstructural means for controlling stormwater;

247 15. Promote the reclamation and reuse of stormwater for uses other than potable water in order to  
248 protect state waters and the public health and to minimize the direct discharge of pollutants into state  
249 waters;

250 16. Establish procedures to be followed when a locality chooses to change the type of program it  
251 administers pursuant to subsection D of § 62.1-44.15:27;

252 17. Establish a statewide permit fee schedule for stormwater management related to MS4 permits;

253 18. Provide for the evaluation and potential inclusion of emerging or innovative nonproprietary  
254 stormwater control technologies that may prove effective in reducing nonpoint source pollution;

255 19. Require the owner of property that is zoned for residential use and on which is located a  
256 privately owned stormwater management facility serving one or more residential properties to record the  
257 long-term maintenance and inspection requirements for such facility with the deed for the owner's  
258 property; and

259 20. Require that all final plan elements, specifications, or calculations whose preparation requires  
260 a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately  
261 signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing  
262 in this subdivision shall authorize any person to engage in practice outside his area of professional  
263 competence.

264 **2. That the Department of Environmental Quality shall prioritize review and certification of any**  
265 **proprietary best management practice (BMP) that was on the Virginia Stormwater BMP**  
266 **Clearinghouse prior to December 31, 2021, and that submits documentation that another state,**

267 regional, or national program has verified its nutrient or sediment removal effectiveness and that it  
268 met or exceeded all of such program's established test protocol requirements.

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