

HOUSE BILL NO. 1986

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Energy

on _____)

(Patron Prior to Substitute--Delegate Roem)

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 regulations; enterprise data center operations.

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 program has verified its nutrient or sediment removal effectiveness and all of
92 such program's established test protocol requirements were met or exceeded. As used in this subdivision
93 and any regulations or guidance adopted pursuant to this subdivision, "certification" means a
94 determination by the Department that a proprietary best management practice is approved for use in
95 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; and

132 18. Require any land disturbance related to the construction, expansion, or operation of enterprise
133 data center operations that is located in Planning District 8 in a county under the county executive form

134 of government within one half mile of any national battlefield park and within one mile of any state forest
135 to infiltrate, evaporate, or reuse the predicted stormwater runoff volume that exceeds the stormwater runoff
136 volume experienced at such site prior to such land disturbance. For purposes of this subdivision,
137 "enterprise data center operation" means an operation that (i) physically houses information technology
138 equipment, such as servers, switches, routers, data storage devices, or related equipment, and (ii) manages
139 and processes digital data and information to provide application services or management for data
140 processing, such as web hosting, Internet, intranet, telecommunication, and information technology.

141 B. The Board may integrate and consolidate components of the regulations implementing the
142 Erosion and Sediment Control program and the Chesapeake Bay Preservation Area Designation and
143 Management program with the regulations governing the Virginia Stormwater Management Program
144 (VSMP) Permit program or repeal components so that these programs may be implemented in a
145 consolidated manner that provides greater consistency, understanding, and efficiency for those regulated
146 by and administering a VSMP.

147 § 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017,
148 c. 345) **Development of regulations.**

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

153 The regulations shall:

- 154 1. Establish standards and procedures for administering a VESMP;
- 155 2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for
156 reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established
157 by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be
158 approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each inspection
159 of a land-disturbing activity shall be conducted by an inspector certified pursuant to § 62.1-44.15:30, and

160 (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom
161 is certified pursuant to § 62.1-44.15:30 and all of whom may be the same person;

162 3. Be based upon relevant physical and developmental information concerning the watersheds and
163 drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size
164 of land area being disturbed, proximate water bodies and their characteristics, transportation, and public
165 facilities and services;

166 4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law
167 requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and
168 sediment problems;

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

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

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

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

181 9. Establish a statewide fee schedule to cover all costs associated with the implementation of a
182 VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing
183 activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include
184 the costs associated with plan review, permit registration statement review, permit issuance, permit
185 coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing
186 activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced

187 fee for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area
188 of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay
189 Preservation Act (§ 62.1-44.15:67 et seq.). The fee schedule shall be governed by the following:

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

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

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

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

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

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

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

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

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

236 a. Except where more stringent requirements are necessary to address total maximum daily load
237 requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the
238 water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be
239 deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water

240 volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land
241 development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the
242 expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate
243 resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to
244 the peak flow rate from the site assuming it was in a good forested condition, achieved through
245 multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from
246 the site when it was in a good forested condition divided by the runoff volume from the site in its proposed
247 condition. Any land-disturbing activity that complies with these requirements shall be exempt from any
248 flow rate capacity and velocity requirements for natural or man-made channels as defined in any
249 regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27
250 or 62.1-44.15:33;

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

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

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

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

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

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

264 19. Require the owner of property that is zoned for residential use and on which is located a
265 privately owned stormwater management facility serving one or more residential properties to record the

