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HOUSE BILL NO. 1986

Offered January 11, 2023

Prefiled January 10, 2023

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.*

 Patron—Roem

Committee Referral Pending

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

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

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

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

c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the Board, or where the Board has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for an

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

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

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

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

79 6. Establish statewide standards for stormwater management from land-disturbing activities of one
80 acre or greater, except as specified otherwise within this article, and allow for the consolidation in the
81 permit of a comprehensive approach to addressing stormwater management and erosion and sediment
82 control, consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et
83 seq.) and this article. However, such standards shall also apply to land-disturbing activity exceeding an
84 area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay
85 Preservation Area Designation and Management Regulations;

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

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

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

100 10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that
101 replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology,
102 or improve upon the contributing share of the existing predevelopment runoff characteristics and site
103 hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.
104 Except where more stringent requirements are necessary to address total maximum daily load
105 requirements or to protect exceptional state waters, any land-disturbing activity that provides for
106 stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i)
107 detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour
108 period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable
109 peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less
110 than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved
111 through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff
112 volume from the site when it was in a good forested condition divided by the runoff volume from the
113 site in its proposed condition, and shall be exempt from any flow rate capacity and velocity
114 requirements for natural or man-made channels as defined in any regulations promulgated pursuant to
115 this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

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

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

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

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

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

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

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

136 18. Require any land disturbance related to the construction, expansion, or operation of enterprise
137 data center operations that is located within one mile of any land (i) owned or operated as a unit of the
138 National Park Service or (ii) designated as a Virginia State Park or state forest to infiltrate, evaporate,
139 or reuse the predicted stormwater runoff volume that exceeds the stormwater runoff volume experienced
140 at such site prior to such land disturbance. For purposes of this subdivision, "enterprise data center
141 operation" means an operation that (a) physically houses information technology equipment, such as
142 servers, switches, routers, data storage devices, or related equipment, and (b) manages and processes
143 digital data and information to provide application services or management for data processing, such as
144 web hosting, Internet, intranet, telecommunication, and information technology.

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

151 § 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c.
152 345) Development of regulations.

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

158 1. Establish standards and procedures for administering a VESMP;

159 2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for
160 reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established
161 by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be
162 approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each
163 inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to
164 § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an
165 inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same
166 person;

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

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

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

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

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

181 8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include,

182 but are not limited to, specifying the time period within which a VESMP authority shall grant
183 land-disturbance approval, the conditions and processes under which such approval shall be granted, the
184 procedures for communicating disapproval, the conditions under which an approval may be changed, and
185 requirements for inspection of approved projects;

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

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

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

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

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

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

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

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

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

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

241 a. Except where more stringent requirements are necessary to address total maximum daily load
242 requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the
243 water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be

244 deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water
 245 volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land
 246 development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the
 247 expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow
 248 rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or
 249 equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through
 250 multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume
 251 from the site when it was in a good forested condition divided by the runoff volume from the site in its
 252 proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt
 253 from any flow rate capacity and velocity requirements for natural or man-made channels as defined in
 254 any regulations promulgated pursuant to this section or any ordinances adopted pursuant to
 255 § 62.1-44.15:27 or 62.1-44.15:33;

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

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

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

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

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

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

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

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

278 21. *Require any land disturbance related to the construction, expansion, or operation of enterprise*
 279 *data center operations that is located within one mile of any land (i) owned or operated as a unit of the*
 280 *National Park Service or (ii) designated as a Virginia State Park or state forest to infiltrate, evaporate,*
 281 *or reuse the predicted stormwater runoff volume that exceeds the stormwater runoff volume experienced*
 282 *at such site prior to such land disturbance. For purposes of this subdivision, "enterprise data center*
 283 *operation" means an operation that (a) physically houses information technology equipment, such as*
 284 *servers, switches, routers, data storage devices, or related equipment, and (b) manages and processes*
 285 *digital data and information to provide application services or management for data processing, such as*
 286 *web hosting, Internet, intranet, telecommunication, and information technology.*