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**HOUSE BILL NO. 1293**

Offered January 14, 2015

Prefiled October 30, 2014

*A BILL to amend and reenact §§ 15.2-2114 and 62.1-44.15:28 of the Code of Virginia, relating to stormwater fees; religious groups.*

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Patron—Morris

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Referred to Committee on Agriculture, Chesapeake and Natural Resources

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

**1. That §§ 15.2-2114 and 62.1-44.15:28 of the Code of Virginia are amended and reenacted as follows:**

**§ 15.2-2114. Regulation of stormwater.**

A. Any locality, by ordinance, may establish a utility or enact a system of service charges to support a local stormwater management program consistent with Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 or any other state or federal regulation governing stormwater management. Income derived from a utility or system of charges shall be dedicated special revenue, may not exceed the actual costs incurred by a locality operating under the provisions of this section, and may be used only to pay or recover costs for the following:

1. The acquisition, as permitted by § 15.2-1800, of real and personal property, and interest therein, necessary to construct, operate and maintain stormwater control facilities;

2. The cost of administration of such programs;

3. Planning, design, engineering, construction, and debt retirement for new facilities and enlargement or improvement of existing facilities, including the enlargement or improvement of dams, levees, floodwalls, and pump stations, whether publicly or privately owned, that serve to control stormwater;

4. Facility operation and maintenance, including the maintenance of dams, levees, floodwalls, and pump stations, whether publicly or privately owned, that serve to control the stormwater;

5. Monitoring of stormwater control devices and ambient water quality monitoring; and

6. Other activities consistent with the state or federal regulations or permits governing stormwater management, including, but not limited to, public education, watershed planning, inspection and enforcement activities, and pollution prevention planning and implementation.

B. The charges may be assessed to property owners or occupants, including condominium unit owners or tenants (when the tenant is the party to whom the water and sewer service is billed), and shall be based upon an analysis that demonstrates the rational relationship between the amount charged and the services provided. Prior to adopting such a system, a public hearing shall be held after giving notice as required by charter or by publishing a descriptive notice once a week for two successive weeks prior to adoption in a newspaper with a general circulation in the locality. The second publication shall not be sooner than one calendar week after the first publication. However, prior to adoption of any ordinance pursuant to this section related to the enlargement, improvement, or maintenance of privately owned dams, a locality shall comply with the notice provisions of § 15.2-1427 and hold a public hearing.

C. A locality adopting such a system shall provide for full waivers of charges to the following:

1. A federal, state, or local government, or public entity, that holds a permit to discharge stormwater from a municipal separate storm sewer system; except that the waiver of charges shall apply only to property covered by any such permit; ~~and~~

2. Public roads and street rights-of-way that are owned and maintained by state or local agencies, including property rights-of-way acquired through the acquisitions process; *and*

3. *A church, religious association, or religious denomination (i) operated exclusively on a nonprofit basis for charitable, religious, or educational purposes or (ii) whose real property is exempt from local taxation pursuant to the provisions of § 58.1-3606.*

D. A locality adopting such a system shall provide for full or partial waivers of charges to any person who installs, operates, and maintains a stormwater management facility that achieves a permanent reduction in stormwater flow or pollutant loadings. The locality shall base the amount of the waiver in part on the percentage reduction in stormwater flow or pollutant loadings, or both, from pre-installation to post-installation of the facility. No locality shall provide a waiver to any person who does not obtain a stormwater permit from the Department of Environmental Quality when such permit is required by statute or regulation.

E. A locality adopting such a system may provide for full or partial waivers of charges to cemeteries,

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59 property owned or operated by the locality administering the program, and public or private entities that  
60 implement or participate in strategies, techniques, or programs that reduce stormwater flow or pollutant  
61 loadings, or decrease the cost of maintaining or operating the public stormwater management system.

62 F. Any locality may issue general obligation bonds or revenue bonds in order to finance the cost of  
63 infrastructure and equipment for a stormwater control program. Infrastructure and equipment shall  
64 include structural and natural stormwater control systems of all types, including, without limitation,  
65 retention basins, sewers, conduits, pipelines, pumping and ventilating stations, and other plants,  
66 structures, and real and personal property used for support of the system. The procedure for the issuance  
67 of any such general obligation bonds or revenue bonds pursuant to this section shall be in conformity  
68 with the procedure for issuance of such bonds as set forth in the Public Finance Act (§ 15.2-2600 et  
69 seq.).

70 G. In the event charges are not paid when due, interest thereon shall at that time accrue at the rate,  
71 not to exceed the maximum amount allowed by law, determined by the locality until such time as the  
72 overdue payment and interest are paid. Charges and interest may be recovered by the locality by action  
73 at law or suit in equity and shall constitute a lien against the property, ranking on a parity with liens for  
74 unpaid taxes. The locality may combine the billings for stormwater charges with billings for water or  
75 sewer charges, real property tax assessments, or other billings; in such cases, the locality may establish  
76 the order in which payments will be applied to the different charges. No locality shall combine its  
77 billings with those of another locality or political subdivision, including an authority operating pursuant  
78 to Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2, unless such locality or political subdivision has given  
79 its consent by duly adopted resolution or ordinance.

80 H. Any two or more localities may enter into cooperative agreements concerning the management of  
81 stormwater.

82 **§ 62.1-44.15:28. Development of regulations.**

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

85 1. Establish standards and procedures for administering a VSMP;

86 2. Establish minimum design criteria for measures to control nonpoint source pollution and localized  
87 flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and  
88 Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel  
89 erosion. These criteria shall be periodically modified as required in order to reflect current engineering  
90 methods;

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

93 4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include,  
94 but are not limited to, specifying the time period within which a VSMP authority shall grant  
95 land-disturbing activity approval, the conditions and processes under which approval shall be granted,  
96 the procedures for communicating disapproval, the conditions under which an approval may be changed,  
97 and requirements for inspection of approved projects;

98 5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the  
99 implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes  
100 include the costs associated with plan review, VSMP registration statement review, permit issuance,  
101 state-coverage verification, inspections, reporting, and compliance activities associated with the  
102 land-disturbing activities as well as program oversight costs. The fee schedule shall *waive fees for*  
103 *land-disturbing activities undertaken by or on behalf of any church, religious association, or religious*  
104 *denomination (i) operated exclusively on a nonprofit basis for charitable, religious, or educational*  
105 *purposes or (ii) whose real property is exempt from local taxation pursuant to the provisions of*  
106 *§ 58.1-3606 and shall also include a provision for a reduced fee for land-disturbing activities between*  
107 *2,500 square feet and up to one acre in Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.)*  
108 *localities. The fee schedule shall be governed by the following:*

109 a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where  
110 practicable, an online payment system, and the Department's portion shall be remitted to the State  
111 Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to §  
112 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the  
113 total revenue generated by the statewide stormwater permit fees collected shall be remitted to the State  
114 Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the  
115 VSMP authority.

116 b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made  
117 to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level  
118 sufficient for the Department and the VSMP to fully carry out their responsibilities under this article and  
119 its attendant regulations and local ordinances or standards and specifications where applicable. When  
120 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 entity for which it has approved annual standards and specifications, shall be \$750 for each large construction activity with sites or common plans of development equal to or greater than five acres and \$450 for each small construction activity with sites or common plans of development equal to or greater than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where coverage has been issued under the Board's General Permit for Discharges of Stormwater from Construction Activities to a state agency or federal entity for which it has approved annual standards and specifications. After establishment, such fees may be modified in the future through regulatory actions.

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

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

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

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

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

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

9. Provide for reciprocity with programs in other states for the certification of proprietary best management practices;

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

182 11. Encourage low-impact development designs, regional and watershed approaches, and  
183 nonstructural means for controlling stormwater;  
184 12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to  
185 protect state waters and the public health and to minimize the direct discharge of pollutants into state  
186 waters;  
187 13. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer  
188 administration of the VSMP to the Department;  
189 14. Establish a statewide permit fee schedule for stormwater management related to municipal  
190 separate storm sewer system permits; and  
191 15. Provide for the evaluation and potential inclusion of emerging or innovative stormwater control  
192 technologies that may prove effective in reducing nonpoint source pollution.  
193 B. The Board may integrate and consolidate components of the regulations implementing the Erosion  
194 and Sediment Control program and the Chesapeake Bay Preservation Area Designation and Management  
195 program with the regulations governing the Virginia Stormwater Management Program (VSMP) Permit  
196 program or repeal components so that these programs may be implemented in a consolidated manner  
197 that provides greater consistency, understanding, and efficiency for those regulated by and administering  
198 a VSMP.