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HOUSE BILL NO. 723

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact §§ 55-519 and 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-519.5, relating to stormwater management facilities; private residential lots; disclosure.

Patrons—Plum and Convirs-Fowler

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-519 and 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-519.5 as follows:

§ 55-519. Required disclosures for buyer to beware; buyer to exercise necessary due diligence.

A. The owner of the residential real property shall furnish to a purchaser a residential property disclosure statement for the buyer to beware of certain matters that may affect the buyer's decision to purchase such real property. Such statement shall be on a form provided by the Real Estate Board on its website.

B. The residential property disclosure statement provided by the Real Estate Board on its website shall include the following:

1. The owner makes no representations or warranties as to the condition of the real property or any improvements thereon, or with regard to any covenants and restrictions as may be recorded among the land records affecting the real property or any improvements thereon, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary, including obtaining a home inspection, as defined in § 54.1-500, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

2. The owner makes no representations with respect to any matters that may pertain to parcels adjacent to the subject parcel, including zoning classification or permitted uses of adjacent parcels, and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to adjacent parcels in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

3. The owner makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to any historic district designated by the locality pursuant to § 15.2-2306, including review of (i) any local ordinance creating such district, (ii) any official map adopted by the locality depicting historic districts, and (iii) any materials available from the locality that explain (a) any requirements to alter, reconstruct, renovate, restore, or demolish buildings or signs in the local historic district and (b) the necessity of any local review board or governing body approvals prior to doing any work on a property located in a local historic district, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

4. The owner makes no representations with respect to whether the property contains any resource protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) adopted by the locality where the property is located pursuant to § 62.1-44.15:74 and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to determine whether the provisions of any such ordinance affect the property, including review of any official map adopted by the locality depicting resource protection areas, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

5. The owner makes no representations with respect to information on any sexual offenders registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 and that purchasers are advised to exercise whatever due diligence they deem necessary with respect to such information, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

6. The owner makes no representations with respect to whether the property is within a dam break inundation zone. Such disclosure statement shall advise purchasers to exercise whatever due diligence they deem necessary with respect to whether the property resides within a dam break inundation zone,

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59 including a review of any map adopted by the locality depicting dam break inundation zones;

60 7. The owner makes no representations with respect to the presence of any stormwater detention
61 facilities located on the property, or any maintenance agreement for such facilities, and purchasers are
62 advised to exercise whatever due diligence they deem necessary to determine the presence of any
63 stormwater detention facilities on the property, or any maintenance agreement for such facilities, in
64 accordance with terms and conditions as may be contained in the real estate purchase contract, but in
65 any event, prior to settlement pursuant to such contract;

66 8. The owner makes no representations with respect to the presence of any wastewater system,
67 including the type or size thereof or associated maintenance responsibilities related thereto, located on
68 the property and purchasers are advised to exercise whatever due diligence they deem necessary to
69 determine the presence of any wastewater system on the property and the costs associated with
70 maintaining, repairing, or inspecting any wastewater system, including any costs or requirements related
71 to the pump-out of septic tanks, in accordance with terms and conditions as may be contained in the real
72 estate purchase contract, but in any event, prior to settlement pursuant to such contract;

73 9. 8. The owner makes no representations with respect to any right to install or use solar energy
74 collection devices on the property;

75 10. 9. The owner makes no representations with respect to whether the property is located in one or
76 more special flood hazard areas and purchasers are advised to exercise whatever due diligence they
77 deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether
78 the property is located in one or more special flood hazard areas, (ii) review of any map depicting
79 special flood hazard areas, and (iii) whether flood insurance is required, in accordance with terms and
80 conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement
81 pursuant to such contract;

82 11. 10. The owner makes no representations with respect to whether the property is subject to one or
83 more conservation or other easements and that purchasers are advised to exercise whatever due diligence
84 a particular purchaser deems necessary in accordance with terms and conditions as may be contained in
85 the real estate purchase contract, but in any event, prior to settlement pursuant to such contract; and

86 12. 11. The owner makes no representations with respect to whether the property is subject to a
87 community development authority approved by a local governing body pursuant to Article 6
88 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2 and that purchasers are advised to exercise whatever
89 due diligence a particular purchaser deems necessary in accordance with terms and conditions as may be
90 contained in the real estate purchase contract, including determining whether a copy of the resolution or
91 ordinance has been recorded in the land records of the circuit court for the locality in which the
92 community development authority district is located for each tax parcel included in the district pursuant
93 to § 15.2-5157, but in any event, prior to settlement pursuant to such contract.

94 C. The residential property disclosure statement shall be delivered in accordance with § 55-520.

95 **§ 55-519.5. Required disclosures; stormwater management facilities.**

96 *Notwithstanding the exemptions in § 55-518, the owner of residential real property upon which is*
97 *located a stormwater management facility shall disclose to the purchaser the specifications and*
98 *requirements and a schedule of audits of the facility. Such disclosure shall be provided to the purchaser*
99 *on a form provided by the Real Estate Board on its website and otherwise in accordance with this*
100 *chapter.*

101 **§ 62.1-44.15:28. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017,**
102 **c. 345) Development of regulations.**

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

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

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

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

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

118 5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the
119 implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes
120 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 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

182 management practices;

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

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

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

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

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

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

210 16. *Require a VSMP that requires a landowner of property zoned for residential use to maintain a*
211 *stormwater management facility on such property to record with the deed for the property a statement*
212 *of the specifications and requirements and a schedule of audits of the facility; and*

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

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

224 § 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c.
225 345) Development of regulations.

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

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

232 2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for
233 reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established
234 by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be
235 approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each
236 inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to
237 § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an
238 inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same
239 person;

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

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

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

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

7. 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;

8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VESMP authority shall grant land-disturbance approval, the conditions and processes under which such 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;

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

a. The revenue generated from the statewide 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 VESMP, no more than 30 percent of the total revenue generated by the statewide fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VESMP 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 VESMP; however, the fees shall be set at a level sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities under this article and local ordinances or standards and specifications where applicable. When establishing a VESMP, the VESMP authority shall assess the statewide fees pursuant to the 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 a. A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities under this article and associated ordinances;

c. In establishing the fee schedule under this subdivision, the Department shall ensure that the VESMP authority portion of the statewide 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 VESMP 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;

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

e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide fee established pursuant to this subdivision 9 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;

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

11. Establish a procedure by which a soil erosion control and stormwater management plan or 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;

12. Provide for reciprocity with programs in other states for the certification of proprietary best

305 management practices;

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

310 a. Except where more stringent requirements are necessary to address total maximum daily load
311 requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the
312 water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be
313 deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water
314 volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land
315 development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the
316 expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow
317 rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or
318 equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through
319 multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume
320 from the site when it was in a good forested condition divided by the runoff volume from the site in its
321 proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt
322 from any flow rate capacity and velocity requirements for natural or man-made channels as defined in
323 any regulations promulgated pursuant to this section or any ordinances adopted pursuant to
324 § 62.1-44.15:27 or 62.1-44.15:33;

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

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

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

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

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

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

338 19. *Require a VESMP that requires a privately maintained stormwater management facility on a lot*
339 *zoned for residential use to record with the deed for the property a statement of the specifications and*
340 *requirements and a schedule of audits of the facility; and*

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