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SENATE BILL NO. 576

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 25, 2018)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 62.1-44.15:31, as it shall become effective, and 62.1-44.15:55, as it is currently effective, of the Code of Virginia, relating to stream restoration; standards and specifications.

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:31, as it shall become effective, and 62.1-44.15:55, as it is currently effective, of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.15:31. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Standards and specifications for state agencies, federal entities, and other specified entities.

A. As an alternative to submitting soil erosion control and stormwater management plans for its land-disturbing activities pursuant to § 62.1-44.15:34, the Virginia Department of Transportation shall, and any other state agency or federal entity may, submit standards and specifications for its conduct of land-disturbing activities for Department of Environmental Quality approval. Approved standards and specifications shall be consistent with this article. The Department of Environmental Quality shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to it for approval.

B. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § 62.1-44.15:34, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, and authorities created pursuant to § 15.2-5102 may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. Such standards and specifications may be submitted for the following types of projects:

1. Construction, installation, or maintenance of electric transmission and distribution lines, oil or gas transmission and distribution pipelines, communication utility lines, and water and sewer lines; and

2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

The Department shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to it for approval. A linear project not included in subdivision 1 or 2, or for which the owner chooses not to submit standards and specifications, shall comply with the requirements of the VESMP or the VESCP and VSMP, as appropriate, in any locality within which the project is located.

C. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § 62.1-44.15:34, any person engaging in more than one jurisdiction in the creation and operation of a wetland mitigation or stream restoration bank that has been approved and is operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of (i) a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the Department, the Marine Resources Commission, or the U.S. Army Corps of Engineers, or (ii) a stream restoration project for purposes of reducing nutrients or sediment entering state waters may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. The Department shall have 60 days after receipt in which to act on standards and specifications submitted to it or resubmitted to it for approval.

D. All standards and specifications submitted to the Department shall be periodically updated according to a schedule to be established by the Department and shall be consistent with the requirements of this article. Approval of standards and specifications by the Department does not relieve the owner or operator of the duty to comply with any other applicable local ordinances or regulations. Standards and specifications shall include:

1. Technical criteria to meet the requirements of this article and regulations developed under this article;

2. Provisions for the long-term responsibility and maintenance of any stormwater management control devices and other techniques specified to manage the quantity and quality of runoff;

3. Provisions for administration of the standards and specifications program, project-specific plan design, plan review and plan approval, and construction inspection and compliance;

4. Provisions for ensuring that personnel and contractors assisting the owner in carrying out the land-disturbing activity obtain training or qualifications for soil erosion control and stormwater management as set forth in regulations adopted pursuant to this article;

5. Provisions for ensuring that personnel implementing approved standards and specifications

60 pursuant to this section obtain certifications or qualifications comparable to those required for VESMP
61 personnel pursuant to subsection C of § 62.1-44.15:30;

62 6. Implementation of a project tracking system that ensures notification to the Department of all
63 land-disturbing activities covered under this article; and

64 7. Requirements for documenting onsite changes as they occur to ensure compliance with the
65 requirements of this article.

66 E. The Department shall perform random site inspections or inspections in response to a complaint to
67 ensure compliance with this article and regulations adopted thereunder.

68 F. The Department shall assess an administrative charge to cover the costs of services rendered
69 associated with its responsibilities pursuant to this section, including standards and specifications review
70 and approval, project inspections, and compliance. The Board may take enforcement actions in
71 accordance with this article and related regulations.

72 **§ 62.1-44.15:55. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017,**
73 **c. 345) Regulated land-disturbing activities; submission and approval of erosion and sediment**
74 **control plan.**

75 A. Except as provided in § 62.1-44.15:56 for state agency and federal entity land-disturbing activities,
76 no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an
77 erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and
78 approved. Upon the development of an online reporting system by the Department, but no later than
79 July 1, 2014, a VESCP authority shall then be required to obtain evidence of Virginia Stormwater
80 Management Program permit coverage where it is required prior to providing approval to begin land
81 disturbance. Where land-disturbing activities involve lands under the jurisdiction of more than one
82 VESCP, an erosion and sediment control plan may, at the request of one or all of the VESCP
83 authorities, be submitted to the Department for review and approval rather than to each jurisdiction
84 concerned. The Department may charge the jurisdictions requesting the review a fee sufficient to cover
85 the cost associated with conducting the review. A VESCP may enter into an agreement with an adjacent
86 VESCP regarding the administration of multijurisdictional projects whereby the jurisdiction that contains
87 the greater portion of the project shall be responsible for all or part of the administrative procedures.
88 Where the land-disturbing activity results from the construction of a single-family residence, an
89 agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by
90 the VESCP authority.

91 B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant
92 written approval within 60 days of the receipt of the plan if it determines that the plan meets the
93 requirements of this article and the Board's regulations and if the person responsible for carrying out the
94 plan certifies that he will properly perform the erosion and sediment control measures included in the
95 plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the
96 land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan
97 shall provide the name of an individual holding a certificate of competence to the VESCP authority, as
98 provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the
99 land-disturbing activity. However, any VESCP authority may waive the certificate of competence
100 requirement for an agreement in lieu of a plan for construction of a single-family residence. If a
101 violation occurs during the land-disturbing activity, then the person responsible for carrying out the
102 agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a
103 certificate of competence, as provided by § 62.1-44.15:52. Failure to provide the name of an individual
104 holding a certificate of competence prior to engaging in land-disturbing activities may result in
105 revocation of the approval of the plan and the person responsible for carrying out the plan shall be
106 subject to the penalties provided in this article.

107 When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons
108 for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the
109 modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the
110 VESCP authority within the time specified in this subsection, the plan shall be deemed approved and the
111 person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion
112 and sediment control plan that has been previously disapproved within 45 days after the plan has been
113 revised, resubmitted for approval, and deemed adequate.

114 C. The VESCP authority may require changes to an approved plan in the following cases:

115 1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
116 2. Where the person responsible for carrying out the approved plan finds that because of changed
117 circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed
118 amendments to the plan, consistent with the requirements of this article and associated regulations, are
119 agreed to by the VESCP authority and the person responsible for carrying out the plan.

120 D. Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline
121 companies, and railroad companies shall, and authorities created pursuant to § 15.2-5102 may, file

122 general erosion and sediment control standards and specifications annually with the Department for
123 review and approval. Such standards and specifications shall be consistent with the requirements of this
124 article and associated regulations and the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and
125 associated regulations where applicable. The specifications shall apply to:

126 1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone utility
127 lines and pipelines, and water and sewer lines; and

128 2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related
129 structures and facilities of the railroad company.

130 The Department shall have 60 days in which to approve the standards and specifications. If no action
131 is taken by the Department within 60 days, the standards and specifications shall be deemed approved.
132 Individual approval of separate projects within subdivisions 1 and 2 is not necessary when approved
133 specifications are followed. Projects not included in subdivisions 1 and 2 shall comply with the
134 requirements of the appropriate VESCP. The Board shall have the authority to enforce approved
135 specifications and charge fees equal to the lower of (i) \$1,000 or (ii) an amount sufficient to cover the
136 costs associated with standard and specification review and approval, project inspections, and
137 compliance.

138 E. Any person engaging, in more than one jurisdiction, in the creation and operation of a wetland
139 mitigation or stream restoration bank or banks, which have been approved and are operated in
140 accordance with applicable federal and state guidance, laws, or regulations for the establishment, use,
141 and operation of (i) wetlands mitigation or stream restoration banks, pursuant to a mitigation banking
142 instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or
143 the U.S. Army Corps of Engineers, or (ii) *a stream restoration project for purposes of reducing*
144 *nutrients or sediment entering state waters* may, at the option of that person, file general erosion and
145 sediment control standards and specifications for wetland mitigation or stream restoration banks annually
146 with the Department for review and approval consistent with guidelines established by the Board.

147 The Department shall have 60 days in which to approve the specifications. If no action is taken by
148 the Department within 60 days, the specifications shall be deemed approved. Individual approval of
149 separate projects under this subsection is not necessary when approved specifications are implemented
150 through a project-specific erosion and sediment control plan. Projects not included in this subsection
151 shall comply with the requirements of the appropriate local erosion and sediment control program. The
152 Board shall have the authority to enforce approved specifications and charge fees equal to the lower of
153 (i) \$1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification
154 review and approval, projection inspections, and compliance. Approval of general erosion and sediment
155 control specifications by the Department does not relieve the owner or operator from compliance with
156 any other local ordinances and regulations including requirements to submit plans and obtain permits as
157 may be required by such ordinances and regulations.

158 F. In order to prevent further erosion, a VESCP authority may require approval of an erosion and
159 sediment control plan for any land identified by the VESCP authority as an erosion impact area.

160 G. For the purposes of subsections A and B, when land-disturbing activity will be required of a
161 contractor performing construction work pursuant to a construction contract, the preparation, submission,
162 and approval of an erosion and sediment control plan shall be the responsibility of the owner.