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HOUSE BILL NO. 859

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact §§ 55.1-703 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 55.1-708.1, relating to stormwater management facilities; private residential lots; disclosure.*

Patrons—Convirs-Fowler and Kory

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-703 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 55.1-708.1 as follows:

§ 55.1-703. 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 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, or any conveyances of mineral rights, 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 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 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 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

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59 they deem necessary with respect to whether the property resides within a dam break inundation zone,
60 including a review of any map adopted by the locality depicting dam break inundation zones;

61 7. The owner makes no representations with respect to the presence of any stormwater detention
62 facilities located on the property, or the existence or recordation of any maintenance agreement for such
63 facilities, and purchasers are advised to exercise whatever due diligence they deem necessary to
64 determine the presence of any stormwater detention facilities on the property, or any maintenance
65 agreement for such facilities, such as contacting their settlement provider, consulting the locality in
66 which the property is located, or reviewing any survey of the property that may have been conducted, in
67 accordance with terms and conditions as may be contained in the real estate purchase contract, but in
68 any event prior to settlement pursuant to such contract;

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

77 9. 8. The owner makes no representations with respect to any right to install or use solar energy
78 collection devices on the property;

79 10. 9. The owner makes no representations with respect to whether the property is located in one or
80 more special flood hazard areas, and purchasers are advised to exercise whatever due diligence they
81 deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether
82 the property is located in one or more special flood hazard areas, (ii) reviewing any map depicting
83 special flood hazard areas, (iii) contacting the Federal Emergency Management Agency (FEMA) or
84 visiting the website for FEMA's National Flood Insurance Program or for the Virginia Department of
85 Conservation and Recreation's Flood Risk Information System, and (iv) determining whether flood
86 insurance is required, in accordance with terms and conditions as may be contained in the real estate
87 purchase contract, but in any event prior to settlement pursuant to such contract;

88 11. 10. The owner makes no representations with respect to whether the property is subject to one or
89 more conservation or other easements, and purchasers are advised to exercise whatever due diligence a
90 particular purchaser deems necessary in accordance with terms and conditions as may be contained in
91 the real estate purchase contract, but in any event prior to settlement pursuant to such contract; and

92 12. 11. The owner makes no representations with respect to whether the property is subject to a
93 community development authority approved by a local governing body pursuant to Article 6
94 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, and purchasers are advised to exercise whatever due
95 diligence a particular purchaser deems necessary in accordance with terms and conditions as may be
96 contained in the real estate purchase contract, including determining whether a copy of the resolution or
97 ordinance has been recorded in the land records of the circuit court for the locality in which the
98 community development authority district is located for each tax parcel included in the district pursuant
99 to § 15.2-5157, but in any event prior to settlement pursuant to such contract.

100 C. The residential property disclosure statement shall be delivered in accordance with § 55.1-709.

101 **§ 55.1-708.1. Required disclosures; stormwater management facilities.**

102 *Notwithstanding the provisions of § 55.1-702, the owner of any residential real property upon which*
103 *a privately owned stormwater management facility is located shall disclose to the purchaser the*
104 *long-term maintenance and inspection requirements for the facility. Such disclosure shall be provided to*
105 *the purchaser in accordance with this chapter and on a form provided by the Real Estate Board on its*
106 *website.*

107 **§ 62.1-44.15:28. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017,**
108 **c. 345) Development of regulations.**

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

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

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

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

119 4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include,
120 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 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;

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

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

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

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

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

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

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

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

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

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

1. Establish standards and procedures for administering a VESMP;

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

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

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

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

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

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

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

317 a. Except where more stringent requirements are necessary to address total maximum daily load
318 requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the
319 water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be
320 deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water
321 volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land
322 development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the
323 expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow
324 rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or
325 equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through
326 multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume
327 from the site when it was in a good forested condition divided by the runoff volume from the site in its
328 proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt
329 from any flow rate capacity and velocity requirements for natural or man-made channels as defined in
330 any regulations promulgated pursuant to this section or any ordinances adopted pursuant to §
331 62.1-44.15:27 or 62.1-44.15:33;

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

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

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

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

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

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

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

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