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## HOUSE BILL NO. 1715

Offered January 17, 2020

*A BILL to amend and reenact § 62.1-44.15:54 of the Code of Virginia, relating to the administration of Virginia Erosion and Sediment Control Programs by the Department of Environmental Quality.*

Patron—Hodges

Referred to Committee on Agriculture, Chesapeake and Natural Resources

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

**1. That § 62.1-44.15:54 of the Code of Virginia is amended and reenacted as follows:**

**§ 62.1-44.15:54. (For contingent expiration date, see Acts 2016, ee. 68 and 758, as amended by Acts 2017, c. 345) Establishment of Virginia Erosion and Sediment Control Program.**

A. Counties and cities shall adopt and administer a VESCP.

1. Any town lying within a county that has adopted its own VESCP may adopt its own program or shall become subject to the county program. If a town lies within the boundaries of more than one county, the town shall be considered for the purposes of this article to be wholly within the county in which the larger portion of the town lies.

2. The Department shall operate a VESCP on behalf of any locality that notifies the Department of its intent to opt-out of operating a VESCP.

B. A VESCP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to assist with carrying out the provisions of this article, including the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities on a unit or units of land as well as for monitoring, reports, inspections, and enforcement where authorized in this article, of such land-disturbing activities.

C. Any VESCP adopted by a county, city, or town shall be approved by the Board if it establishes by ordinance requirements that are consistent with this article and associated regulations.

D. Each approved VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with Virginia stormwater management, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

E. The Board may approve a state entity, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 to operate a VESCP consistent with the requirements of this article and its associated regulations and the VESCP authority's Department-approved annual standards and specifications. For these programs, enforcement shall be administered by the Department and the Board where applicable in accordance with the provisions of this article.

F. Following completion of a compliance review of a VESCP in accordance with subsection D of § 62.1-44.15:52, the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement if deficiencies are found; otherwise, the Board may find the program compliant. If a comprehensive or partial program compliance review conducted by the Department of a VESCP indicates that the VESCP authority has not administered, enforced where authorized to do so, or conducted its VESCP in a manner that satisfies the minimum standards of effectiveness established pursuant to subsection C of § 62.1-44.15:52, the Board shall establish a schedule for the VESCP authority to come into compliance. The Board shall provide a copy of its decision to the VESCP authority that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule required to attain the minimum standard of effectiveness and shall include an offer to provide technical assistance to implement the corrective action. If the VESCP authority has not implemented the necessary compliance actions identified by the Board within 30 days following receipt of the corrective action agreement, or such additional period as is granted to complete the implementation of the corrective action, then the Board shall have the authority to (i) issue a special order to any VESCP, imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per violation for noncompliance with the state program, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § 62.1-44.15:29 or (ii) revoke its approval of the VESCP. The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and proceedings of the Board and the judicial review thereof.

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59 In lieu of issuing a special order or revoking the program, the Board is authorized to take legal  
60 action against a VESCP to ensure compliance.

61 G. If the Board revokes its approval of the VESCP of a county, city, or town, and the locality is in a  
62 district, the district, upon approval of the Board, shall adopt and administer a VESCP for the locality.  
63 To carry out its program, the district shall adopt regulations in accordance with the Administrative  
64 Process Act (§ 2.2-4000 et seq.) consistent with this article and associated regulations. The regulations  
65 may be revised from time to time as necessary. The program and regulations shall be available for  
66 public inspection at the principal office of the district.

67 H. If the Board (i) revokes its approval of a VESCP of a district, or of a county, city, or town not in  
68 a district, or (ii) finds that a local program consistent with this article and associated regulations has not  
69 been adopted by a district or a county, city, or town that is required to adopt and administer a VESCP,  
70 the Board shall find the VESCP authority provisional, and have the Department assist with the  
71 administration of the program until the Board finds the VESCP authority compliant with the  
72 requirements of this article and associated regulations. "Assisting with administration" includes but is not  
73 limited to the ability to review and comment on plans to the VESCP authority, to conduct inspections  
74 with the VESCP authority, and to conduct enforcement in accordance with this article and associated  
75 regulations.

76 I. If the Board revokes its approval of a state entity, federal entity, or, for linear projects subject to  
77 annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and  
78 intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to  
79 § 15.2-5102, the Board shall find the VESCP authority provisional, and have the Department assist with  
80 the administration of the program until the Board finds the VESCP authority compliant with the  
81 requirements of this article and associated regulations. "Assisting with administration" includes the  
82 ability to review and comment on plans to the VESCP authority and to conduct inspections with the  
83 VESCP authority in accordance with this article and associated regulations.

84 J. Any VESCP authority that administers an erosion and sediment control program may charge  
85 applicants a reasonable fee to defray the cost of program administration. Such fee may be in addition to  
86 any fee charged for administration of a Virginia Stormwater Management Program, although payment of  
87 fees may be consolidated in order to provide greater convenience and efficiency for those responsible for  
88 compliance with the programs. A VESCP authority shall hold a public hearing prior to establishing a  
89 schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking  
90 into consideration the time, skill, and the VESCP authority's expense involved.

91 K. The governing body of any county, city, or town, or a district board that is authorized to  
92 administer a VESCP, may adopt an ordinance or regulation where applicable providing that violations of  
93 any regulation or order of the Board, any provision of its program, any condition of a permit, or any  
94 provision of this article shall be subject to a civil penalty. The civil penalty for any one violation shall  
95 be not less than \$100 nor more than \$1,000. Each day during which the violation is found to have  
96 existed shall constitute a separate offense. In no event shall a series of specified violations arising from  
97 the same operative set of facts result in civil penalties that exceed a total of \$10,000, except that a series  
98 of violations arising from the commencement of land-disturbing activities without an approved plan for  
99 any site shall not result in civil penalties that exceed a total of \$10,000. Adoption of such an ordinance  
100 providing that violations are subject to a civil penalty shall be in lieu of criminal sanctions and shall  
101 preclude the prosecution of such violation as a misdemeanor under subsection A of § 62.1-44.15:63.  
102 The penalties set out in this subsection are also available to the Board in its enforcement actions.