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SENATE BILL NO. 530

Offered January 22, 1996

A BILL to amend and reenact §§ 9-6.25:1, 9-6.25:2, 10.1-107, 10.1-659 and 15.1-292.4 of the Code of Virginia; to amend the Code of Virginia by adding in Title 62.1 a chapter numbered 3.7, containing articles numbered 1 and 2, consisting of sections numbered 62.1-44.117 through 62.1-44.146; and to repeal Article 4 (§§ 10.1-560 through 10.1-571) of Chapter 5 and Article 1.1 (§§ 10.1-603.1 through 10.1-603.15) of Chapter 6 of Title 10.1 of the Code of Virginia, relating to the transfer of administration of the Erosion and Sediment Control Law and the stormwater management program.

Patron—Schrock

Referred to the Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-6.25:1, 9-6.25:2, 10.1-107, 10.1-659, and 15.1-292.4 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 62.1 a chapter numbered 3.7, containing articles numbered 1 and 2, consisting of sections numbered 62.1-44.117 through 62.1-44.146, as follow:

§ 9-6.25:1. Advisory boards, commissions and councils.

There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the following advisory boards, commissions and councils within the executive branch:

Advisory Board for the Department for the Deaf and Hard-of-Hearing

Advisory Board for the Department for the Aging

Advisory Board on Child Abuse and Neglect

Advisory Board on Medicare and Medicaid

Advisory Board on Occupational Therapy

Advisory Board on Physical Therapy to the Board of Medicine

Advisory Board on Rehabilitation Providers

Advisory Board on Respiratory Therapy to the Board of Medicine

Advisory Board on Teacher Education and Licensure

Advisory Council on Revenue Estimates

Advisory Council on the Virginia Business-Education Partnership Program

Appomattox State Scenic River Advisory Board

Aquaculture Advisory Board

Art and Architectural Review Board

Board for the Visually Handicapped

Board of Directors, Virginia Truck and Ornamentals Research Station

Board of Forestry

Board of Military Affairs

Board of Rehabilitative Services

Board of Transportation Safety

Board of Trustees of the Family and Children's Trust Fund

Board of Visitors, Gunston Hall Plantation

Board on Veterans' Affairs

Catoctin Creek State Scenic River Advisory Board

Cave Board

Chickahominy State Scenic River Advisory Board

Clinch Scenic River Advisory Board

Coal Surface Mining Reclamation Fund Advisory Board

Coastal Land Management Advisory Council, Virginia

Commonwealth Competition Council

Conservation and Recreation Advisory Board

Council on Indians

Council on the Status of Women

Debt Capacity Advisory Committee

Emergency Medical Services Advisory Board

Falls of the James Committee

Film Office Advisory Board

Forensic Science Advisory Board

INTRODUCED

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- 60 Goose Creek Scenic River Advisory Board
- 61 Governor's Council on Alcohol and Drug Abuse Problems
- 62 Governor's Mined Land Reclamation Advisory Committee
- 63 Hemophilia Advisory Board
- 64 Human Services Information and Referral Advisory Council
- 65 Industrial Development Services Advisory Board
- 66 Interagency Coordinating Council on Housing for the Disabled
- 67 Interdepartmental Board of the State Department of Minority Business Enterprise
- 68 Laboratory Services Advisory Board
- 69 Litter Control and Recycling Fund Advisory Board
- 70 Local Advisory Board to the Blue Ridge Community College
- 71 Local Advisory Board to the Central Virginia Community College
- 72 Local Advisory Board to the Dabney S. Lancaster Community College
- 73 Local Advisory Board to the Danville Community College
- 74 Local Advisory Board to the Eastern Shore Community College
- 75 Local Advisory Board to the Germanna Community College
- 76 Local Advisory Board to the J. Sargeant Reynolds Community College
- 77 Local Advisory Board to the John Tyler Community College
- 78 Local Advisory Board to the Lord Fairfax Community College
- 79 Local Advisory Board to the Mountain Empire Community College
- 80 Local Advisory Board to the New River Community College
- 81 Local Advisory Board to the Northern Virginia Community College
- 82 Local Advisory Board to the Patrick Henry Community College
- 83 Local Advisory Board to the Paul D. Camp Community College
- 84 Local Advisory Board to the Piedmont Virginia Community College
- 85 Local Advisory Board to the Rappahannock Community College
- 86 Local Advisory Board to the Southwest Virginia Community College
- 87 Local Advisory Board to the Thomas Nelson Community College
- 88 Local Advisory Board to the Tidewater Community College
- 89 Local Advisory Board to the Virginia Highlands Community College
- 90 Local Advisory Board to the Virginia Western Community College
- 91 Local Advisory Board to the Wytheville Community College
- 92 Maternal and Child Health Council
- 93 Medical Advisory Board, Department of Motor Vehicles
- 94 Medical Board of the Virginia Retirement System
- 95 Migrant and Seasonal Farmworkers Board
- 96 Motor Vehicle Dealer's Advisory Board
- 97 Nottoway State Scenic River Advisory Board
- 98 Personnel Advisory Board
- 99 Plant Pollination Advisory Board
- 100 Private College Advisory Board
- 101 Private Enterprise Commission
- 102 Private Security Services Advisory Board
- 103 Psychiatric Advisory Board
- 104 Radiation Advisory Board
- 105 Rappahannock Scenic River Advisory Board
- 106 Recreational Fishing Advisory Board, Virginia
- 107 Reforestation Board
- 108 Retirement System Review Board
- 109 Rockfish State Scenic River Advisory Board
- 110 Shenandoah State Scenic River Advisory Board
- 111 Small Business Advisory Board
- 112 Small Business Environmental Compliance Advisory Board
- 113 St. Mary's Scenic River Advisory Committee
- 114 State Advisory Board on Air Pollution
- 115 State Advisory Board for the Virginia Employment Commission
- 116 State Building Code Technical Review Board
- 117 State Council on Local Debt
- 118 State Health Benefits Advisory Council
- 119 State Insurance Advisory Board
- 120 State Land Evaluation Advisory Council
- 121 State Networking Users Advisory Board

- 122 State Public Records Advisory Council
- 123 Statewide Independent Living Council
- 124 Statewide Rehabilitation Advisory Council
- 125 Statewide Rehabilitation Advisory Council for the Blind
- 126 Staunton Scenic River Advisory Committee
- 127 Telecommunications Relay Service Advisory Board
- 128 Tourism and Travel Services Advisory Board
- 129 Virginia Advisory Commission on Intergovernmental Relations
- 130 Virginia Advisory Council for Adult Education and Literacy
- 131 Virginia Coal Mine Safety Board
- 132 Virginia Coal Research and Development Advisory Board
- 133 Virginia Commission for the Arts
- 134 Virginia Commission on the Bicentennial of the United States Constitution
- 135 Virginia Correctional Enterprises Advisory Board
- 136 Virginia Council on Coordinating Prevention
- 137 Virginia Equal Employment Opportunity Council
- 138 Virginia Interagency Coordinating Council
- 139 Virginia Military Advisory Council
- 140 Virginia Public Buildings Board
- 141 Virginia Recycling Markets Development Council
- 142 Virginia Technology Council
- 143 Virginia Transplant Council
- 144 Virginia Veterans Cemetery Board
- 145 Virginia Water Resources Research Center, Statewide Advisory Board
- 146 Virginia Winegrowers Advisory Board.
- 147 § 9-6.25:2. Policy boards, commissions and councils.
- 148 There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the
- 149 following policy boards, commissions and councils:
- 150 Apprenticeship Council
- 151 Athletic Board
- 152 Auctioneers Board
- 153 Blue Ridge Regional Education and Training Council
- 154 Board for Accountancy
- 155 Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects
- 156 Board for Barbers
- 157 Board for Contractors
- 158 Board for Cosmetology
- 159 Board for Geology
- 160 Board for Hearing Aid Specialists
- 161 Board for Opticians
- 162 Board for Professional and Occupational Regulation
- 163 Board for Professional Soil Scientists
- 164 Board for Waterworks and Wastewater Works Operators
- 165 Board of Agriculture and Consumer Services
- 166 Board of Audiology and Speech-Language Pathology
- 167 Board of Coal Mining Examiners
- 168 ~~Board of Conservation and Recreation~~
- 169 Board of Correctional Education
- 170 Board of Dentistry
- 171 Board of Directors, Virginia Student Assistance Authorities
- 172 Board of Funeral Directors and Embalmers
- 173 Board of Health Professions
- 174 Board of Historic Resources
- 175 Board of Housing and Community Development
- 176 Board of Medical Assistance Services
- 177 Board of Medicine
- 178 Board of Mineral Mining Examiners
- 179 Board of Nursing
- 180 Board of Nursing Home Administrators
- 181 Board of Optometry
- 182 Board of Pharmacy

- 183 Board of Professional Counselors
- 184 Board of Psychology
- 185 Board of Recreation Specialists
- 186 Board of Social Services
- 187 Board of Social Work
- 188 Board of Surface Mining Review
- 189 Board of Veterinary Medicine
- 190 Board on Conservation and Development of Public Beaches
- 191 Chesapeake Bay Local Assistance Board
- 192 Child Day Care and Early Childhood Programs, Virginia Council on
- 193 Child Day-Care Council
- 194 Commission on Local Government
- 195 Commonwealth Transportation Board
- 196 Council on Human Rights
- 197 Council on Information Management
- 198 Criminal Justice Services Board
- 199 Disability Services Council
- 200 Farmers Market Board, Virginia
- 201 Immigrant and Refugee Policy Council
- 202 Interdepartmental Council on Rate-setting for Children's Facilities
- 203 Library Board, the Library of Virginia
- 204 Marine Resources Commission
- 205 Milk Commission
- 206 Pesticide Control Board
- 207 Real Estate Appraiser Board
- 208 Real Estate Board
- 209 Reciprocity Board, Department of Motor Vehicles
- 210 Safety and Health Codes Board
- 211 Seed Potato Board
- 212 Southside Virginia Marketing Council
- 213 Specialized Transportation Council
- 214 State Air Pollution Control Board
- 215 State Board of Corrections
- 216 State Board of Elections
- 217 State Board of Health
- 218 State Board of Youth and Family Services
- 219 State Health Department, Sewage Handling and Disposal Appeal Review Board
- 220 State Library Board
- 221 State Mental Health, Mental Retardation and Substance Abuse Services Board
- 222 State Water Control Board
- 223 Substance Abuse Certification Board
- 224 Treasury Board, The, Department of the Treasury
- 225 Virginia Aviation Board
- 226 Virginia Board for Asbestos Licensing
- 227 Virginia Fire Services Board
- 228 Virginia Gas and Oil Board
- 229 Virginia Health Planning Board
- 230 Virginia Health Services Cost Review Council
- 231 Virginia Manufactured Housing Board
- 232 Virginia Parole Board
- 233 Virginia Public Telecommunications Board
- 234 Virginia Soil and Water Conservation Board
- 235 Virginia Voluntary Formulary Board
- 236 Virginia Waste Management Board
- 237 Virginia World Trade Council.
- 238 Waste Management Facility Operators, Board for.
- 239 § 10.1-107. General powers and duties of the Board.
- 240 A. The Board shall advise the Governor and the Director on activities of the Department. Upon the
- 241 request of the Governor, or the Director, the Board shall institute investigations and make
- 242 recommendations.
- 243 The Board shall formulate recommendations to the Director concerning:
- 244 1. Requests for grants or loans pertaining to outdoor recreation.

2. Designation of recreational and historical sites eligible for recreational access road funds.
 3. Designations proposed for scenic rivers, scenic highways, and Virginia byways.
 4. Acquisition of real property by fee simple or other interests in property for the Department including, but not limited to, state parks, state recreational areas, state trails, greenways, natural areas and natural area preserves, and other lands of biological, environmental, historical, recreational or scientific interest.

5. Acquisition of bequests, devises and gifts of real and personal property, and the interest and income derived therefrom.

~~B. The Board shall have the authority to promulgate regulations necessary for the execution of the Virginia Stormwater Management Act, Article 1-1, (§ 10.1-603.1 et seq.) of Chapter 6 of this title.~~

~~§ 10.1-659. Flood protection programs; coordination.~~

The provisions of this chapter shall be coordinated with federal, state and local flood prevention and water quality programs to minimize loss of life, property damage and negative impacts on the environment. This program coordination shall include but not be limited to the following: flood prevention, flood plain management, small watershed protection, dam safety, and soil conservation; stormwater management and erosion and sediment control programs of the Department of Conservation and Recreation; the construction activities of the Department of Transportation which result in hydrologic modification of rivers, streams and flood plains; the water quality, stormwater management and erosion and sediment control and other water management programs of the State Water Control Board; forested watershed management programs of the Department of Forestry; the statewide building code and other land use control programs of the Department of Housing and Community Development; local planning assistance programs of the Council on the Environment; the habitat management programs of the Virginia Marine Resources Commission; the hazard mitigation planning and disaster response programs of the Department of Emergency Services; the fish habitat protection programs of the Department of Game and Inland Fisheries; the mineral extraction regulatory program of the Department of Mines, Minerals and Energy; the flood plain restrictions of the Department of Waste Management; the Chesapeake Bay Preservation Area criteria and local government assistance programs of the Chesapeake Bay Local Assistance Board. The Department shall also coordinate and cooperate with localities in rendering assistance to such localities in their efforts to comply with the planning, subdivision of land and zoning provisions of Chapter 11 (§ 15.1-427 et seq.) of Title 15.1. The Department shall cooperate with other public and private agencies having flood plain management programs, and shall coordinate its responsibilities under this article and any other law. These activities shall constitute the Commonwealth's flood prevention and protection program.

~~§ 15.1-292.4. Regulation of stormwater.~~

A. The governing body of every county, city or town, by ordinance, may adopt a stormwater control program consistent with Article 1-1 (~~§ 10.1-603.1 et seq.~~) of Chapter 6 of Title 10-1 3 (~~§ 62.1-44.132 et seq.~~) of Chapter 3.7 of Title 62.1, or any other state or federal regulation, by establishing a utility or enacting a system of service charges. Any locality which administers a stormwater control program may recover costs associated with planning, design, land acquisition, construction, operation and maintenance activities. Income derived from these charges shall be dedicated special revenue and may be used only for the following:

1. The acquisition by gift, purchase, or condemnation 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. Engineering and design, debt retirement, construction costs for new facilities and enlargement or improvement of existing facilities;
4. Facility maintenance;
5. Monitoring of stormwater control devices; and
6. Pollution control and abatement, consistent with state and federal regulations for water pollution control and abatement.

B. The charges may be assessed to property owners or occupants, including condominium unit owners or tenants (when the tenant, or tenants, is the party to whom the water and sewer service is billed), and shall be based upon their contributions to stormwater runoff; however, prior to adopting such a system, a public hearing shall be held after giving notice as required by § 15.1-504 or by charter. A locality adopting such a system shall provide for full waivers of charges to federal, state, or local government agencies when the agency owns and provides for maintenance of storm drainage and stormwater control facilities or is a unit of the locality administering the program. A locality adopting such a system shall also provide for full waivers of charges to any person who owns and provides for complete private maintenance of storm drainage and stormwater facilities, provided such person has obtained the proper permits from the Department of Environmental Quality. Income derived from service charges may not exceed the actual costs incurred by a locality operating under the provisions of this

306 title.

307 C. Every county, city and town is hereby authorized to issue general obligation bonds or revenue
 308 bonds in order to finance the cost of infrastructure and equipment for a stormwater control program.
 309 Infrastructure and equipment shall include structural and natural stormwater control systems of all types,
 310 including, without limitation, retention basins, sewers, conduits, pipelines, pumping and ventilating
 311 stations, and other plants, structures, and real and personal property used for support of the system. The
 312 procedure for the issuance of any such general obligation bonds or revenue bonds pursuant to this
 313 section shall be in conformity with the procedure for issuance of such bonds as set forth in the Public
 314 Finance Act (§ 15.1-227.1 et seq.).

315 D. In the event charges are not paid when due, interest thereon shall at that time accrue at the rate,
 316 not to exceed the maximum amount allowed by law, determined by the governing body of such county,
 317 city or town until such time as the overdue payment and interest is paid. Charges and interest may be
 318 recovered by the county, city or town by action at law or suit in equity and shall constitute a lien
 319 against the property, ranking on a parity with liens for unpaid taxes.

320 E. Any two or more counties, cities or towns may enter into cooperative agreements concerning the
 321 management of stormwater.

322 CHAPTER 3.7.

323 EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT.

324 Article 1.

325 Erosion and Sediment Control Law.

326 § 62.1-44.117. Short title.

327 *This article shall be known and may be cited as the Erosion and Sediment Control Law.*

328 § 62.1-44.118. Definitions.

329 *As used in this article, unless the context requires a different meaning:*

330 *"Agreement in lieu of a plan" means a contract between the plan-approving authority and the owner*
 331 *which specifies conservation measures that must be implemented in the construction of a single-family*
 332 *residence. This contract may be executed by the plan-approving authority in lieu of a formal site plan.*

333 *"Applicant" means any person submitting an erosion and sediment control plan for approval or*
 334 *requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.*

335 *"Board" means the State Water Control Board.*

336 *"Certified inspector" means an employee or agent of a program authority who (i) holds a certificate*
 337 *of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training*
 338 *program for project inspection and successfully completes such program within one year after*
 339 *enrollment.*

340 *"Certified plan reviewer" means an employee or agent of a program authority who (i) holds a*
 341 *certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's*
 342 *training program for plan review and successfully completes such program within one year after*
 343 *enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land*
 344 *surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1*

345 *"Certified program administrator" means an employee or agent of a program authority who (i)*
 346 *holds a certificate of competence from the Board in the area of program administration or (ii) is*
 347 *enrolled in the Board's training program for program administration and successfully completes such*
 348 *program within one year after enrollment.*

349 *"Conservation plan," "erosion and sediment control plan," or "plan" means a document containing*
 350 *material for the conservation of soil and water resources of a unit or group of units of land. It may*
 351 *include appropriate maps, an appropriate soil and water plan inventory and management information*
 352 *with needed interpretations, and a record of decisions contributing to conservation treatment. The plan*
 353 *shall contain all major conservation decisions to assure that the entire unit or units of land will be so*
 354 *treated to achieve the conservation objectives.*

355 *"Department" means the Department of Environmental Quality.*

356 *"District" or "soil and water conservation district" means a political subdivision of this*
 357 *Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter*
 358 *5 of Title 10.1.*

359 *"Erosion impact area" means an area of land not associated with current land-disturbing activity but*
 360 *subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or*
 361 *into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or*
 362 *less used for residential purposes or to shorelines where the erosion results from wave action or other*
 363 *coastal processes.*

364 *"Land-disturbing activity" means any land change which may result in soil erosion from water or*
 365 *wind and the movement of sediments into state waters or onto lands in the Commonwealth, including,*
 366 *but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term*
 367 *shall not include:*

1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

2. Individual service connections;

3. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced;

4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

5. Surface or deep mining;

6. Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site disposal areas;

7. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

8. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

9. Agricultural engineering operations including, but not limited to, the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act, (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;

10. Disturbed land areas of less than 10,000 square feet in size; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

11. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

12. Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; and

13. Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

"Local erosion and sediment control program" or "local control program" means an outline of the various methods employed by a program authority to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

"Permittee" means the person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

"Plan-approving authority" means the Board, the program authority, or a department of a program authority, responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

"Program authority" means a district, county, city, or town which has adopted a soil erosion and sediment control program which has been approved by the Board.

"State erosion and sediment control program" or "state program" means the program administered by the Board pursuant to this chapter, including regulations designed to minimize erosion and sedimentation.

"State waters" means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Town" means an incorporated town.

§ 62.1-44.119. State erosion and sediment control program.

429 A. The Board shall develop a program and promulgate regulations for the effective control of soil
430 erosion, sediment deposition and nonagricultural runoff which must be met in any control program to
431 prevent the unreasonable degradation of properties, stream channels, waters and other natural resources
432 in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.).

433 The regulations shall:

434 1. Be based upon relevant physical and developmental information concerning the watersheds and
435 drainage basins of the Commonwealth, including, but not limited to, data relating to land use, soils,
436 hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics,
437 transportation, and public facilities and services;

438 2. Include such survey of lands and waters as may be deemed appropriate by the Board or required
439 by any applicable law to identify areas, including multijurisdictional and watershed areas, with critical
440 erosion and sediment problems; and

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

444 B. The Board shall provide technical assistance and advice to, and conduct and supervise
445 educational programs for, districts and localities which have adopted local control programs.

446 C. The program and regulations shall be available for public inspection at the Department.

447 D. The Board shall promulgate regulations establishing minimum standards of effectiveness of
448 erosion and sediment control programs, and criteria and procedures for reviewing and evaluating the
449 effectiveness of erosion and sediment control programs. In developing minimum standards for program
450 effectiveness, the Board shall consider information and standards on which the regulations promulgated
451 pursuant to subsection A of this section are based.

452 E. The Board shall periodically conduct a comprehensive review and evaluation to ensure that all
453 erosion and sediment control programs operating under the jurisdiction of this article meet minimum
454 standards of effectiveness in controlling soil erosion, sediment deposition and nonagricultural runoff.
455 The Board shall develop a schedule for conducting periodic reviews and evaluations of the effectiveness
456 of erosion and sediment control programs.

457 F. The Board shall issue certificates of competence concerning the content, application and intent of
458 specified subject areas of this chapter and accompanying regulations, including program administration,
459 plan review, and project inspection, to personnel of program authorities and to any other persons who
460 have completed training programs or in other ways demonstrated adequate knowledge. The Department
461 shall administer education and training programs for specified subject areas of this article and
462 accompanying regulations, and is authorized to charge persons attending such programs reasonable fees
463 to cover the costs of administering the programs.

464 § 62.1-44.120. Certification of local program personnel.

465 A. The minimum standards of local program effectiveness established by the Board pursuant to
466 subsection D of § 62.1-44.119 shall provide that within one year following the adoption of amendments
467 to the local program adding the provisions of this section, (i) a conservation plan shall not be approved
468 until it is reviewed by a certified plan reviewer; (ii) inspections of land-disturbing activities are
469 conducted by a certified inspector; and (iii) a local program shall contain a certified program
470 administrator, a certified plan reviewer, and a certified project inspector, who may be the same person.

471 B. Any person who holds a certificate of competence from the Board in the areas of plan review,
472 project inspection, or program administration which was attained prior to the adoption of the
473 mandatory certification provisions of subsection A of this section shall be deemed to satisfy the
474 requirements of that area of certification.

475 § 62.144.121. Local erosion and sediment control programs.

476 A. Each district in the Commonwealth shall adopt and administer an erosion and sediment control
477 program for any area within the district for which a county, city, or town does not have an approved
478 erosion and sediment control program.

479 To carry out its program, the district shall adopt regulations consistent with the state program. The
480 regulations may be revised from time to time as necessary. Before adopting or revising regulations, the
481 district shall give due notice and conduct a public hearing on the proposed or revised regulations
482 except that a public hearing shall not be required when the district is amending its program to conform
483 to revisions in the state program. However, a public hearing shall be held if a district proposes or
484 revises regulations that are more stringent than the state program. The program and regulations shall
485 be available for public inspection at the principal office of the district.

486 B. In areas where there is no district, a county, city, or town shall adopt and administer an erosion
487 and sediment control program.

488 C. Any county, city, or town within a district may adopt and administer an erosion and sediment
489 control program.

490 Any town, lying within a county which has adopted its own erosion and sediment control program,

may adopt its own program or 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. Any county, city, or town with an erosion and sediment control program may designate its department of public works or a similar local government department as the plan-approving authority or may designate the district as the plan-approving authority for all or some of the conservation plans.

D. Any erosion and sediment control program adopted by a district, county, city, or town shall be approved by the Board if it is consistent with the state program and regulations for erosion and sediment control.

E. If a review conducted by the Board of a local control program indicates that the program authority has not administered, enforced or conducted its program in a manner that satisfies the minimum standards of effectiveness established pursuant to subsection D of § 62.1-44.119, the Board shall notify the program authority in writing, which notice shall identify corrective action required to attain the minimum standard of effectiveness and shall include an offer to provide technical assistance to implement the corrective action. If the program authority has not implemented the corrective action identified by the Board within thirty days following receipt of the notice, or such additional period as is necessary to complete the implementation of the corrective action, then the Board shall revoke its approval of the program. Prior to revoking its approval of any local control program, the Board shall conduct a formal hearing pursuant to § 9-6.14:12 of the Administrative Process Act. Judicial review of any order of the Board revoking its approval of a local control program shall be made in accordance with Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act.

F. If the Board revokes its approval of a local control program of a county, city, or town, and the locality is in a district, the district shall adopt and administer an erosion and sediment control program for the locality.

G. If the Board (i) revokes its approval of a local control program of a district, or of a county, city, or town not in a district, or (ii) finds that a local program consistent with the state program and regulations has not been adopted by a district or a county, city, or town which is required to adopt and administer a local program, the Board shall, after such hearings or consultations as it deems appropriate with the various local interests involved, develop, adopt, and administer an appropriate program to be carried out within such district, county, city, or town, as applicable, by the Board.

H. If the Board has revoked its approval of any local control program, the program authority may request that the Board approve a replacement program, and the Board shall approve the replacement program if it finds that (i) the program authority is capable of administering the program in accordance with the minimum standards of effectiveness and (ii) the replacement program otherwise meets the requirements of the state program and regulations. The Board shall conduct a formal hearing pursuant to § 9-6.14:12 of the Administrative Process Act on any request for approval of a replacement program.

I. Any program authority which administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration. A program authority shall hold a public hearing prior to enacting an ordinance establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill and administrators' expense involved.

J. The governing body of any county, city or town which (i) is in a district which has adopted a local control program, (ii) has adopted its own local control program, (iii) is subject to a local control program adopted by the Board, or (iv) administers a local control program, may adopt an ordinance providing that violations of any regulation or order of the Board, any provision of its program, any condition of a permit, or any provision of this article shall be subject to a civil penalty. The civil penalty for any one violation shall be \$100, except that the civil penalty for commencement of land-disturbing activities without an approved plan as provided in § 62.1-44.122 shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000. Adoption of such an ordinance providing that violations are subject to a civil penalty shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of § 62.1-44.128.

§ 62.1-44.122. Regulated land-disturbing activities; submission and approval of control plan.

A. Except as provided in § 62.1-44.123, no person may engage in any land-disturbing activity until he has submitted to the district or locality an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program an erosion and sediment control plan may, at the option of the applicant, be submitted to the Board for

552 review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity
553 results from the construction of a single-family residence, an agreement in lieu of a plan may be
554 substituted for an erosion and sediment control plan if executed by the plan-approving authority.

555 B. The plan-approving authority shall review conservation plans submitted to it and grant written
556 approval within forty-five days of the receipt of the plan if it determines that the plan meets the
557 requirements of the Board's regulations and if the person responsible for carrying out the plan certifies
558 that he will properly perform the conservation measures included in the plan and will conform to the
559 provisions of this article.

560 When a plan is determined to be inadequate, written notice of disapproval stating the specific
561 reasons for disapproval shall be communicated to the applicant within forty-five days. The notice shall
562 specify the modifications, terms and conditions that will permit approval of the plan. If no action is
563 taken by the plan-approving authority within the time specified above, the plan shall be deemed
564 approved and the person authorized to proceed with the proposed activity.

565 C. An approved plan may be changed by the authority that approved the plan in the following cases:

566 1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
567 2. Where the person responsible for carrying out the approved plan finds that because of changed
568 circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed
569 amendments to the plan, consistent with the requirements of this chapter, are agreed to by the
570 plan-approving authority and the person responsible for carrying out the plan.

571 D. Electric and telephone utility companies and railroad companies shall file general erosion and
572 sediment control specifications annually with the Board for review and written comments. The
573 specifications shall apply to:

574 1. Construction, installation or maintenance of electric and telephone utility lines; and
575 2. Construction of the tracks, rights-of-way, bridges, communication facilities and other related
576 structures and facilities of the railroad company.

577 The Board shall have sixty days in which to comment. Individual approval of separate projects
578 within subdivisions 1 and 2 of this subsection is not necessary when approved specifications are
579 followed. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the
580 requirements of the appropriate local erosion and sediment control program. The Board shall have the
581 authority to enforce approved specifications.

582 E. In order to prevent further erosion a local program may require approval of a conservation plan
583 for any land identified in the local program as an erosion impact area.

584 F. For the purposes of subsections A and B of this section, when land-disturbing activity will be
585 required of a contractor performing construction work pursuant to a construction contract, the
586 preparation, submission and approval of an erosion and sediment control plan shall be the
587 responsibility of the owner.

588 § 62.1-44.123. State agency projects.

589 A. A state agency shall not undertake a project involving a land-disturbing activity unless (i) the
590 state agency has submitted annual specifications for its conduct of land-disturbing activities which have
591 been reviewed and approved by the Department as being consistent with the state program or (ii) the
592 state agency has submitted a conservation plan for the project which has been reviewed and approved
593 by the Department.

594 B. The Department shall not approve a conservation plan submitted by a federal or state agency for
595 a project involving a land-disturbing activity (i) in any locality which has not adopted a local program
596 with more stringent regulations than those of the state program or (ii) in multiple jurisdictions with
597 separate local programs, unless the conservation plan is consistent with the requirements of the state
598 program.

599 C. The Department shall not approve a conservation plan submitted by a federal or state agency for
600 a project involving a land-disturbing activity in one locality with a local program with more stringent
601 regulations than those of the state program unless the conservation plan is consistent with the
602 requirements of the local program. If a locality has not submitted a copy of its local program
603 regulations to the Department, the provisions of subsection B of this section shall apply.

604 D. The Department shall have sixty days in which to comment on any specifications or conservation
605 plan submitted to it for review, and its comments shall be binding on the state agency and any private
606 business hired by the state agency.

607 E. As on-site changes occur, the state agency shall submit changes in a conservation plan to the
608 Department.

609 F. The state agency responsible for the land-disturbing activity shall ensure compliance with the
610 approved plan or specifications.

611 § 62.1-44.124. Approved plan required for issuance of grading, building, or other permits; security
612 for performance.

613 Agencies authorized under any other law to issue grading, building, or other permits for activities

involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed. Prior to issuance of any permit, the agency may also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the agency, to ensure that measures could be taken by the agency at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him by the approved plan as a result of his land-disturbing activity. If the agency takes such conservation action upon such failure by the permittee, the agency may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within sixty days of the achievement of adequate stabilization of the land-disturbing activity, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

§ 62.1-44.125. Monitoring, reports and inspections.

A. The plan-approving authority or, if a permit is issued in connection with land-disturbing activities which involve the issuance of a grading, building, or other permit, the permit-issuing authority (i) shall provide for periodic inspections of the land-disturbing activity and (ii) may require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the permit-issuing authority or plan-approving authority determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities. Where the plan-approving authority serves notice, a copy of the notice shall also be sent to the issuer of the permit. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this chapter and shall be subject to the penalties provided by § 62.1-44.128.

B. Notwithstanding the above provisions of this section the following may be applied:

1. Where a county, city, or town administers the local control program and the permit-issuing authority and the plan-approving authority are not within the same local government department, the locality may designate one department to inspect, monitor, report and ensure compliance. In the event a district has been designated as the plan-approving authority for all or some of the conservation plans, the enforcement of the program shall be with the local government department; however, the district may inspect, monitor and make reports for the local government department.

2. Where a district adopts the local control program and permit-issuing authorities have been established by a locality, the district by joint resolution with the appropriate locality may exercise the responsibilities of the permit-issuing authorities with respect to monitoring, reports, inspections and enforcement.

3. Where a permit-issuing authority has been established, and such authority is not vested in an employee or officer of local government but in the commissioner of revenue or some other person, the locality shall exercise the responsibilities of the permit-issuing authority with respect to monitoring, reports, inspections and enforcement unless such responsibilities are transferred as provided for in this section.

C. Upon receipt of a sworn complaint of a violation of this section, § 62.1-44.122 or § 62.1-44.123 from the representative of the program authority or the Board responsible for ensuring program compliance, the chief administrative officer, or his designee, of the program authority or the Board may, in conjunction with or subsequent to a notice to comply as specified in subsection A above, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § 62.1-44.122, requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A above. Otherwise, such an order may be issued only after the alleged violator has failed to comply with

675 a notice to comply. The order shall be served in the same manner as a notice to comply, and shall
676 remain in effect for seven days from the date of service pending application by the enforcing authority
677 or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation
678 was alleged to have occurred. If the alleged violator has not obtained an approved plan or any required
679 permits within seven days from the date of service of the order, the chief administrative officer or his
680 designee may issue an order to the owner requiring that all construction and other work on the site,
681 other than corrective measures, be stopped until an approved plan and any required permits have been
682 obtained. Such an order shall be served upon the owner by registered or certified mail to the address
683 specified in the permit application or the land records of the locality in which the site is located. The
684 owner may appeal the issuance of an order to the circuit court of the jurisdiction wherein the violation
685 was alleged to have occurred. Any person violating or failing, neglecting or refusing to obey an order
686 issued by the chief administrative officer or his designee may be compelled in a proceeding instituted in
687 the circuit court of the jurisdiction wherein the violation was alleged to have occurred to obey same and
688 to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and
689 approval of corrective action or obtaining an approved plan or any required permits, the order shall
690 immediately be lifted. Nothing in this section shall prevent the chief administrative officer or his
691 designee from taking any other action specified in § 62.1-44.128.

692 § 62.1-44.126. Cooperation with federal and state agencies.

693 The districts and localities operating their own programs, and the Board are authorized to cooperate
694 and enter into agreements with any federal or state agency in connection with plans for erosion and
695 sediment control with respect to land-disturbing activities.

696 § 62.1-44.127. Appeals.

697 A. Final decisions of counties, cities or towns under this article shall be subject to review by the
698 court of record of the county or city, provided that an appeal is filed within thirty days from the date of
699 any written decision adversely affecting the rights, duties or privileges of the person engaging in or
700 proposing to engage in land-disturbing activities.

701 B. Final decisions of the districts shall be subject to an administrative review by the Board, provided
702 that an appeal is filed within thirty days from the date of the written decision.

703 C. Final decisions of the Board either upon its own action or upon the review of the action of a
704 district shall be subject to judicial review in accordance with the provisions of the Administrative
705 Process Act (§ 9-6.14:1 et seq.).

706 § 62.1-44.128. Penalties, injunctions and other legal actions.

707 A. Violators of §§ 62.1-44.122, 62.1-44.123 or 62.1-44.125 shall be guilty of a Class 1 misdemeanor.

708 B. If a locality has adopted an ordinance establishing a uniform schedule of civil penalties as
709 permitted by subsection J of § 62.1-44.121, any person who violates any regulation or order of the
710 Board, any condition of a permit, any provision of its program, or any provision of this chapter shall,
711 upon a finding of an appropriate general district court, be assessed a civil penalty in accordance with
712 the schedule. The erosion and sediment control administrator, his deputy or a certified inspector for the
713 locality wherein the land lies may issue a summons for collection of the civil penalty and the action may
714 be prosecuted by the locality wherein the land lies. In any trial for a scheduled violation, it shall be the
715 burden of the locality to show the liability of the violator by a preponderance of the evidence. An
716 admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties
717 assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that
718 where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the
719 state treasury.

720 C. The appropriate permit-issuing authority, the program authority, or the Board may apply to the
721 circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation
722 under §§ 62.1-44.122, 62.1-44.123 or 62.1-44.125 without the necessity of showing that an adequate
723 remedy at law does not exist.

724 D. In addition to any criminal or civil penalties provided under this chapter, any person who
725 violates any provision of this chapter may be liable to the program authority, or the Board, as
726 appropriate, in a civil action for damages.

727 E. Without limiting the remedies which may be obtained in this section, any person violating or
728 failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to
729 this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for
730 each violation. A civil action for such violation or failure may be brought by the locality wherein the
731 land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein
732 the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the
733 penalty to be paid into the state treasury.

734 F. With the consent of any person who has violated or failed, neglected or refused to obey any
735 regulation or order of the Board, or any condition of a permit or any provision of this chapter, the
736 Board, the Director or plan-approving or permit-issuing authority may provide, in an order issued by

the Board or plan-approving or permit-issuing authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection B or E.

G. Upon request of a program authority, or the permit-issuing authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, the Attorney General shall take appropriate legal action on behalf of the Board to enforce the provisions of this article.

H. Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.

§ 62.1-44.129. Stop work orders by Board; civil penalties.

A. An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an approved plan or required permit, or from the conduct of land-disturbing activities commenced without an approved plan or required permit, may give written notice of the alleged violation to the program authority and to the Director.

B. Upon receipt of the notice from the aggrieved owner and notification to the program authority, the Director shall conduct an investigation of the aggrieved owner's complaint.

C. If the program authority has not responded to the alleged violation in a manner which causes the violation to cease and abates the damage to the aggrieved owner's property within thirty days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Director require the violator to stop the violation and abate the damage to his property.

D. If (i) the Director's investigation of the complaint indicates that the program authority has not responded to the alleged violation as required by the local program, (ii) the program authority has not responded to the alleged violation within thirty days from the date of the notice given pursuant to subsection A of this section, and (iii) the Director is requested by the aggrieved owner to require the violator to cease the violation, then the Director shall give written notice to the program authority that the Director will request the Board to issue an order pursuant to subsection E of this section.

E. If the program authority has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within ten days following receipt of the notice from the Director, the Board is authorized to issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the plan or permit has ceased, or an approved plan and required permits are obtained, as appropriate, and specified corrective measures have been completed.

F. Such orders are to be issued only after a hearing with reasonable notice to the affected person of the time, place and purpose thereof, and they shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Director. However, if the Board finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, it may issue, without advance notice or hearing, an emergency order directing such person to cease all land-disturbing activities on the site immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend or cancel such emergency order.

G. If a person who has been issued an order or emergency order is not complying with the terms thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction, mandamus, or other appropriate remedy compelling the person to comply with such order.

H. Any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection G of this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. Any civil penalties assessed by a court shall be paid into the state treasury.

§ 62.1-44.130. Authorization for more stringent regulations.

A district or locality is authorized to adopt more stringent soil erosion and sediment control regulations than those necessary to ensure compliance with the Board's regulations. However, this section shall not be construed to authorize any district or locality to impose any more stringent regulations for plan approval or permit issuance than those specified in §§ 62.144.121 and 62.1-44.123.

§ 62.1-44.131. No limitation on authority of Water Control Board or Department of Mines, Minerals and Energy.

The provisions of this article shall not limit the powers or duties presently exercised by the Board under Chapter 3.1 (§ 62.1-44.2 et seq.) of this title, or the powers or duties of the Department of Mines,

798 *Minerals and Energy as they relate to surface mine reclamation under Chapter 16 (§ 45.1-180 et seq.)*
799 *and Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 or oil or gas exploration under the Virginia Oil and*
800 *Gas Act (§ 45.1-361.1 et seq.).*

801 *Article 3.*

802 *Stormwater Management.*

803 *§ 62.1-44.132. Cooperative state-local program.*

804 *The General Assembly has determined that the lands and waters of the Commonwealth are great*
805 *natural resources; that as a result of intensive land development and other land use conversions,*
806 *degradation of these resources frequently occurs in the form of water pollution, stream channel erosion,*
807 *depletion of groundwater resources, and more frequent localized flooding; that these impacts adversely*
808 *affect fish, aquatic life, recreation, shipping, property values and other uses of lands and waters; and*
809 *that existing authorities under the Code of Virginia do not adequately address all of the existing*
810 *impacts. Therefore, the General Assembly finds it in the public interest to enable the establishment of*
811 *stormwater management programs.*

812 *§ 62.1-44.133. Definitions.*

813 *As used in this article, unless the context requires a different meaning:*

814 *"Applicant" means any person submitting a stormwater management plan for approval.*

815 *"Board" means the State Water Control Board.*

816 *"Department" means the Department of Environmental Quality.*

817 *"Flooding" means a volume of water which is too great to be confined within the banks or walls of*
818 *the stream, water body or conveyance system and which overflows onto adjacent lands, causing or*
819 *threatening damage.*

820 *"Land development" or "land development project" means a manmade change to the land surface*
821 *that potentially changes its runoff characteristics.*

822 *"Linear development project" means a land development project that is linear in nature such as, but*
823 *not limited to, (i) construction of electric and telephone utility lines, and natural gas pipelines; (ii)*
824 *construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a*
825 *railroad company; and (iii) highway construction projects.*

826 *"Local stormwater management program" or "local program" means a statement of the various*
827 *methods employed by a locality to manage the runoff from land development projects and may include*
828 *such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and*
829 *evaluation.*

830 *"Nonpoint source pollution" means pollution whose sources cannot be pinpointed but rather is*
831 *washed from the land surface in a diffuse manner by stormwater runoff.*

832 *"Runoff" means that portion of precipitation that is discharged across the land surface or through*
833 *conveyances to one or more waterways.*

834 *"Stormwater management plan" or "plan" means a document containing material for describing how*
835 *existing runoff characteristics will be maintained by a land development project.*

836 *"Subdivision" means the same as defined in § 15.1-465.*

837 *"Watershed" means a defined land area drained by a river or stream or system of connecting rivers*
838 *or streams such that all surface water within the area flows through a single outlet.*

839 *§ 62.1-44.134. Counties, cities and towns may by ordinance establish stormwater management*
840 *programs as a local option.*

841 *Each locality may, by ordinance, establish a local stormwater management program which shall*
842 *include, but is not limited to, the following:*

843 *1. Consistency with regulations promulgated in accordance with provisions of this article;*

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

846 *3. Provisions for the integration of locally adopted stormwater management programs with local*
847 *erosion and sediment control, flood insurance, flood plain management and other programs requiring*
848 *compliance prior to authorizing construction in order to make the submission and approval of plans,*
849 *issuance of permits, payment of fees, and coordination of inspection and enforcement activities more*
850 *convenient and efficient both for the local governments and those responsible for compliance with the*
851 *programs.*

852 *§ 62.1-44.135. Development of regulations.*

853 *The Board is authorized to promulgate regulations which specify minimum technical criteria and*
854 *administrative procedures for stormwater management programs in Virginia. In order to inhibit the*
855 *deterioration of existing waters and waterways, the regulations shall:*

856 *1. Require that state and local programs maintain after-development runoff rate of flow, as nearly as*
857 *practicable, as the pre-development runoff characteristics;*

858 *2. Establish minimum design criteria for measures to control nonpoint source pollution and localized*
859 *flooding, and incorporate the stormwater management regulations promulgated pursuant to the Virginia*

Erosion and Sediment Control Law (§ 62.1-44.117 et seq.) as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;

3. 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; and

4. Require as a minimum the inclusion in local programs of certain administrative procedures which include, but are not limited to, specifying the time period within which a local government which has adopted a stormwater management program must grant written approval of a plan, the conditions under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approved plan may be changed and requirements for inspection of approved projects.

§ 62.1-44.136. State agency projects.

A. A state agency may not undertake any land-clearing, soil movement, or construction activity involving soil movement or land development unless the agency has submitted and obtained approval of a stormwater management plan from the Department. In lieu of such a plan, the agency may annually submit stormwater management standards and specifications.

B. Notwithstanding the provisions of this article, all state agencies shall comply with the stormwater management provisions of the Erosion and Sediment Control Law (§ 62.1-44.117 et seq.) and related regulations. The Department shall perform random site inspections to assure compliance with this chapter and regulations promulgated thereunder.

C. The Department shall have thirty days in which to comment on the stormwater management plan, and its recommendations shall be binding on the state agency or the private business hired by the state agency. Individual approval of separate projects is not necessary when annually approved standards and specifications have been approved.

As on-site changes occur, the state agency shall submit changes in the stormwater management plan to the Department.

The state agency responsible for the land-disturbing activity shall ensure compliance with the approved plan or specifications.

§ 62.1-44.137. Involvement of the Department with local programs.

A. The Department shall provide technical assistance, training, research, and coordination in stormwater management technology to the local governments consistent with the purposes of this article.

B. The Department is authorized to review the plan for any project with real or potential interjurisdictional impacts upon the request of one of the involved localities to determine that the plan is consistent with the provisions of this article. Any such review shall be completed and a report submitted to each locality involved within ninety days of such request.

§ 62.1-44.138. Authorization for more stringent regulations.

Localities are authorized to adopt more stringent stormwater management regulations than those necessary to ensure compliance with the Board's minimum regulations, with the exception of regulations related to plan approval, provided that the more stringent regulations are based upon the findings of local comprehensive watershed management studies and that prior to adopting more stringent regulations a public hearing is held after giving due notice.

§ 62.1-44.139. Regulated activities; submission and approval of a control plan; security for performance; exemptions.

A. Except as provided in § 62.1-44.136, after the adoption of a local ordinance, a person shall not develop any land for residential, commercial, industrial, or institutional use in that locality until he has submitted a stormwater management plan to the locality that has jurisdiction and has obtained approval of the plan from that locality. The plan may include appropriate maps, mathematical calculations, detail drawings and a listing of all major decisions to ensure that the entire unit or units of land will be so treated to achieve the objectives of the local program. Prior to issuance of any permit, the locality may also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the locality, to ensure that measures could be taken by the locality at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the approved stormwater management plan as a result of his land-development project. If the locality takes such action upon such failure by the applicant, the agency may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within sixty days of the completion of the requirements of the approved stormwater management plan, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of such plans and are not intended to otherwise affect the requirements for such plans.

B. Notwithstanding any other provisions of this article, the following activities and projects are

921 *exempt:*

922 1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects
923 conducted under the provisions of Title 45.1;

924 2. Tilling, planting or harvesting of agricultural, horticultural, or forest crops;

925 3. Single-family residences separately built and not part of a subdivision, including additions or
926 modifications to existing single-family detached residential structures;

927 4. Land development projects that disturb less than one acre of land area; however, the governing
928 body of a locality which has adopted a stormwater management program may reduce this exception to a
929 smaller area of disturbed land or qualify the conditions under which this exception shall apply; and

930 5. Linear development projects, provided that (i) less than one acre of land will be disturbed per
931 outfall or watershed, (ii) there will be insignificant increases in peak flow rates, and (iii) there are no
932 existing or anticipated flooding or erosion problems downstream of the discharge point.

933 § 62.1-44.140. Approved plan required for issuance of grading, building, or other permits.

934 Upon the adoption of a local ordinance no grading, building or other permit shall be issued for a
935 property unless a stormwater management plan has been approved that is consistent with the local
936 program and this article and unless the applicant has certified that all land clearing, construction, land
937 development and drainage will be done according to the approved plan.

938 § 62.1-44.141. Recovery of administrative costs.

939 Any locality which administers a stormwater management program may charge applicants a
940 reasonable fee to defray the cost of program administration, including costs associated with plan review,
941 issuance of permits, periodic inspection for compliance with approved plans, and necessary enforcement,
942 provided that charges for such costs are not made under any other law, ordinance or program. The fee
943 shall not exceed an amount commensurate with the services rendered and expenses incurred or \$1,000,
944 whichever is less.

945 § 62.1-44.142. Monitoring, reports and inspections.

946 A. The plan-approving authority or, if a permit is issued in connection with land-disturbing activities
947 which involve the issuance of a grading, building, or other permit, the permit-issuing authority (i) shall
948 provide for periodic inspections of the installation of stormwater management measures and (ii) may
949 require monitoring and reports from the person responsible for carrying out the plan, to ensure
950 compliance with the approved plan and to determine whether the measures required in the plan provide
951 effective stormwater management. The owner, occupier or operator shall be given notice of the
952 inspection and an opportunity to accompany the inspectors. If the permit-issuing authority or
953 plan-approving authority determines that there is a failure to comply with the plan, notice shall be
954 served upon the permittee or person responsible for carrying out the plan by registered or certified mail
955 to the address specified in the permit application or in the plan certification, or by delivery at the site
956 of the development activities to the agent or employee supervising such activities. Where the
957 plan-approving authority serves notice, a copy of the notice shall also be sent to the issuer of the
958 permit. The notice shall specify the measures needed to comply with the plan and shall specify the time
959 within which such measures shall be completed. Upon failure to comply within the time specified, the
960 permit may be revoked and the permittee or person responsible for carrying out the plan shall be
961 deemed to be in violation of this article and upon conviction shall be subject to the penalties provided
962 by § 62.1-44.145.

963 B. Notwithstanding subsection A of this section, the following may be applied:

964 1. Where a county, city, or town administers the local control program and the permit-issuing
965 authority and the plan-approving authority are not within the same local government department, the
966 locality may designate one department to inspect, monitor, report and ensure compliance.

967 2. Where a permit-issuing authority has been established, and such authority is not vested in an
968 employee or officer of local government but in the commissioner of revenue or some other person, the
969 locality shall exercise the responsibilities of the permit-issuing authority with respect to monitoring,
970 reports, inspections, and enforcement unless such responsibilities are transferred as provided for in this
971 section.

972 § 62.1-44.143. Department to review local and state agency programs.

973 A. The Department shall periodically conduct a comprehensive review and evaluation of the
974 effectiveness of each local government's and state agency's stormwater management program. The
975 review shall include an assessment of the extent to which the program has reduced nonpoint source
976 pollution and mitigated the detrimental effects of localized flooding. A summary of these reviews and
977 evaluations shall be submitted annually to the General Assembly.

978 B. If, after such a review and evaluation, a local government is found to have a program which does
979 not comply with the provisions of this article or regulations promulgated thereunder, the Department
980 may issue an order requiring that necessary corrective action be taken within a reasonably prescribed
981 time.

982 § 62.1-44.144. Appeals of decisions of counties, cities or towns.

A. An appeal from a decision of a locality concerning an application for approval or disapproval of a stormwater management plan may be taken by the applicant, or any aggrieved party authorized by law, within thirty days after the rendering of such a decision of the locality, to the circuit court of the jurisdiction in which the land development project is located.

B. Judicial review shall be on the record previously established and shall otherwise be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

§ 62.1-44.145. Penalties, injunctions and other legal actions.

Any person who violates any provision of a local ordinance or program adopted pursuant to the authority of this article shall be guilty of a misdemeanor and shall be subject to a fine not exceeding \$1,000 or up to thirty days imprisonment for each violation or both. Such a local ordinance may also include the following sanctions:

1. A locality operating its own program may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this article or of the local ordinance without the necessity of showing that an adequate remedy at law does not exist.

2. Without limiting the remedies which may be obtained in this section, a locality operating its own program may bring a civil action against any person for violation of any ordinance or any condition of a permit, or any provision of a local program adopted pursuant to this article. The action may seek the imposition of a civil penalty of not more than \$2,000 against the person for each violation.

3. With the consent of any person who has violated or failed, neglected or refused to obey any ordinance or any condition of a permit or any provision of a local program adopted pursuant to this article, the administrator of the local program may provide, in an order issued by the administrator against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subdivision 2 of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subdivision 2.

§ 62.1-44.146. Cooperation with federal and state agencies.

Localities operating their own programs and the Department are authorized to cooperate and enter into agreements with any federal or state agency in connection with plans for stormwater management.

2. That Article 4 (§§ 10.1-560 through 10.1-571) of Chapter 5 and Article 1.1 (§§ 10.1-603.1 through 10.1-603.15) of Chapter 6 of Title 10.1 are repealed.

3. That existing regulations promulgated by the Virginia Soil and Water Conservation Board under the Erosion and Sediment Control Law (§ 10.1-560 et seq.) and by the Board of Conservation and Recreation under the stormwater management program (§ 10.1-603.1 et seq.) shall be transferred to, and administered by, the State Water Control Board and shall remain in full force and effect until any such regulation is amended, modified, or repealed by the State Water Control Board.