

HOUSE BILL NO. 2331

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources

on \_\_\_\_\_)

(Patron Prior to Substitute—Delegate Hodges)

*A BILL to amend and reenact § 62.1-44.15:51 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 62.1-44.15:56.2, relating to Chesapeake Bay Preservation Areas; acceptance of signed and sealed plan in lieu of local plan review.*

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

10     1. That § 62.1-44.15:51 of the Code of Virginia is amended and reenacted and that the Code of Virginia  
11     is amended by adding a section numbered 62.1-44.15:56.2 as follows:

## 12 § 62.1-44.15:51. Definitions.

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

14 "Agreement in lieu of a plan" means a contract between the VESCP authority and the owner that specifies  
15 conservation measures that must be implemented in the construction of a (i) single-family detached  
16 residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover  
17 percentage, including the impervious cover from the farm building or structure to be constructed, of less than  
18 five percent; this contract may be executed by the VESCP authority in lieu of a formal site plan.

19 "Applicant" means any person submitting an erosion and sediment control plan for approval in order to  
20 obtain authorization for land-disturbing activities to commence.

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

"Certified plan reviewer" means an employee or agent of a VESCP authority who (i) holds a certification from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as defined in § 54.1-2200.

29 "Certified program administrator" means an employee or agent of a VESCP authority who (i) holds a  
30 certification from the Board in the area of program administration or (ii) is enrolled in the Board's training

31 program for program administration and successfully completes such program within one year after  
32 enrollment.

33 "Department" means the Department of Environmental Quality.

34 "Director" means the Director of the Department of Environmental Quality.

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

37 "Erosion and sediment control plan" or "plan" means a document containing material for the conservation  
38 of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate  
39 soil and water plan inventory and management information with needed interpretations, and a record of  
40 decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to  
41 ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

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

46 "Farm building or structure" means the same as that term is defined in § 36-97 and also includes any  
47 building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious  
48 surfaces including roads, driveways, and parking areas.

49 "Land disturbance" or "land-disturbing activity" means any man-made change to the land surface that may  
50 result in soil erosion or has the potential to change its runoff characteristics, including the clearing, grading,  
51 excavating, transporting, and filling of land.

52 "Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic  
53 processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or  
54 recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its  
55 bankfull bench and its floodplain.

56 "Owner" means the same as provided in § 62.1-44.3. For a land-disturbing activity that is regulated under  
57 this article, "owner" also includes the owner or owners of the freehold of the premises or lesser estate therein,  
58 mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm,  
59 or corporation in control of a property.

60        "Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular  
61        location.

62        "Person" means any individual, partnership, firm, association, joint venture, public or private corporation,  
63        trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other  
64        political subdivision of the Commonwealth, governmental body, including a federal or state entity as  
65        applicable, any interstate body, or any other legal entity.

66        "Runoff volume" means the volume of water that runs off the land development project from a prescribed  
67        storm event.

68        "*Rural Tidewater locality*" means the same as that term is defined in § 62.1-44.15:24.

69        "Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the  
70        Commonwealth.

71        "Town" means an incorporated town.

72        "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board  
73        that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition,  
74        and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation  
75        of properties, stream channels, waters, and other natural resources and shall include such items where  
76        applicable as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan  
77        review, inspection, and evaluation consistent with the requirements of this article.

78        "Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality  
79        approved by the Board to operate a Virginia Erosion and Sediment Control Program. A locality that has  
80        chosen not to establish a Virginia Erosion and Stormwater Management Program pursuant to subdivision B 3  
81        of § 62.1-44.15:27 is required to become a VESCP authority in accordance with this article.

82        "Virginia Stormwater Management Program" or "VSMP" means a program established by the Board  
83        pursuant to § 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality and  
84        quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii)  
85        disturbs less than one acre of land and is part of a larger common plan of development or sale that results in  
86        one acre or greater of land disturbance.

87        **§ 62.1-44.15:56.2. Acceptance of signed and sealed plan in lieu of local plan review.**

88        A. Any rural Tidewater locality that administers a VESCP pursuant to § 62.1-44.15:27 may require that a

89       *licensed professional retained by the applicant prepare and submit a set of plans and supporting calculations*  
90       *for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area of the*  
91       *locality designated as a Chesapeake Bay Preservation Area.*

92       *B. Such professional shall be licensed to engage in practice in the Commonwealth under Chapter 4 (§*  
93       *54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 and hold a certificate of competence in the*  
94       *appropriate subject area, as provided in § 62.1-44.15:30.*

95       *C. Such plans and supporting calculations prepared and submitted pursuant to subsection A shall be*  
96       *appropriately signed and sealed by the licensed professional with a certification that states: "This plan is*  
97       *designated in accordance with applicable state law and regulations."*

98       *D. The rural Tidewater locality is authorized to accept such signed and sealed plan in satisfaction of the*  
99       *requirement of this article that for a land-disturbing activity of 2,500 square feet or more but less than one*  
100       *acre in an area of the locality designated as a Chesapeake Bay Preservation Area it retain a local certified*  
101       *plan reviewer or conduct a local plan review. This section shall not excuse any applicable performance bond*  
102       *requirement pursuant to § 62.1-44.15:57.*