

## Article 2.5. Chesapeake Bay Preservation Act

### § 62.1-44.15:67. Cooperative state-local program.

A. Healthy state and local economies and a healthy Chesapeake Bay are integrally related; balanced economic development and water quality protection are not mutually exclusive. The protection of the public interest in the Chesapeake Bay, its tributaries, and other state waters and the promotion of the general welfare of the people of the Commonwealth require that (i) the counties, cities, and towns of Tidewater Virginia incorporate general water quality protection measures into their comprehensive plans, zoning ordinances, and subdivision ordinances; (ii) the counties, cities, and towns of Tidewater Virginia establish programs, in accordance with criteria established by the Commonwealth, that define and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries; (iii) the Commonwealth make its resources available to local governing bodies by providing financial and technical assistance, policy guidance, and oversight when requested or otherwise required to carry out and enforce the provisions of this article; and (iv) all agencies of the Commonwealth exercise their delegated authority in a manner consistent with water quality protection provisions of local comprehensive plans, zoning ordinances, and subdivision ordinances when it has been determined that they comply with the provisions of this article.

B. Local governments have the initiative for planning and for implementing the provisions of this article, and the Commonwealth shall act primarily in a supportive role by providing oversight for local governmental programs, by establishing criteria as required by this article, and by providing those resources necessary to carry out and enforce the provisions of this article.

1988, cc. 608, 891, § 10.1-2100; 2013, cc. [756](#), [793](#).

### § 62.1-44.15:68. Definitions.

For the purposes of this article, the following words shall have the meanings respectively ascribed to them:

"Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance with criteria established pursuant to § [62.1-44.15:72](#).

"Criteria" means criteria developed by the Board pursuant to § [62.1-44.15:72](#) for the purpose of determining the ecological and geographic extent of Chesapeake Bay Preservation Areas and for use by local governments in permitting, denying, or modifying requests to rezone, subdivide, or use and develop land in Chesapeake Bay Preservation Areas.

"Daylighted stream" means a stream that had been previously diverted into an underground drainage system, has been redirected into an aboveground channel using natural channel design concepts as defined in § [62.1-44.15:51](#), and would meet the criteria for being designated as a Resource Protection Area (RPA) as defined by the Board under this article.

"Department" means the Department of Environmental Quality.

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

"Secretary" means the Secretary of Natural Resources.

"Tidewater Virginia" means the following jurisdictions:

The Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York, and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.

1988, cc. 608, 891, § 10.1-2101; 2005, c. 41; 2012, cc. 785, 819; 2013, cc. 756, 793; 2015, c. 674.

**§ 62.1-44.15:69. (For expiration date -- see note) Powers and duties of the Board.**

The Board is responsible for carrying out the purposes and provisions of this article and is authorized to:

1. Provide land use and development and water quality protection information and assistance to the various levels of local, regional, and state government within the Commonwealth.
2. Consult, advise, and coordinate with the Governor, the Secretary, the General Assembly, other state agencies, regional agencies, local governments, and federal agencies for the purpose of implementing this article.
3. Provide financial and technical assistance and advice to local governments and to regional and state agencies concerning aspects of land use and development and water quality protection pursuant to this article.
4. Promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).
5. Develop, promulgate, and keep current the criteria required by § 62.1-44.15:72.
6. Provide technical assistance and advice or other aid for the development, adoption, and implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land use and development and water quality protection measures utilizing criteria established by the Board to carry out the provisions of this article.
7. Develop procedures for use by local governments to designate Chesapeake Bay Preservation Areas in accordance with the criteria developed pursuant to § 62.1-44.15:72.
8. Ensure that local government comprehensive plans, zoning ordinances, and subdivision ordinances are in accordance with the provisions of this article. Determination of compliance shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).
9. Make application for federal funds that may become available under federal acts and to transmit such funds when applicable to any appropriate person.
10. Take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of this article including the proper enforcement and implementation of, and continual compliance with, this article.
11. Perform such other duties and responsibilities related to the use and development of land and

the protection of water quality as the Secretary may assign.

1988, cc. 608, 891, § 10.1-2103; 1997, c. 266;2013, cc. 756, 793.

**§ 62.1-44.15:69. (For effective date -- see notes) Powers and duties of the Board.**

The Board is responsible for carrying out the purposes and provisions of this article and is authorized to:

1. Provide land use and development and water quality protection information and assistance to the various levels of local, regional, and state government within the Commonwealth.
2. Consult, advise, and coordinate with the Governor, the Secretary, the General Assembly, other state agencies, regional agencies, local governments, and federal agencies for the purpose of implementing this article.
3. Provide financial and technical assistance and advice to local governments and to regional and state agencies concerning aspects of land use and development and water quality protection pursuant to this article.
4. Promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).
5. Develop, promulgate, and keep current the criteria required by § 62.1-44.15:72.
6. Provide technical assistance and advice or other aid for the development, adoption, and implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land use and development and water quality protection measures utilizing criteria established by the Board to carry out the provisions of this article.
7. Develop procedures for use by local governments to designate Chesapeake Bay Preservation Areas in accordance with the criteria developed pursuant to § 62.1-44.15:72.
8. Ensure that local government comprehensive plans, zoning ordinances, and subdivision ordinances are in accordance with the provisions of this article. Determination of compliance shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).
9. Make application for federal funds that may become available under federal acts and to transmit such funds when applicable to any appropriate person.
10. Take administrative and legal actions pursuant to subdivision (19) of § 62.1-44.15 to ensure compliance by counties, cities, and towns with the provisions of this article including the proper enforcement and implementation of, and continual compliance with, this article.
11. Perform such other duties and responsibilities related to the use and development of land and the protection of water quality as the Secretary may assign.

1988, cc. 608, 891, § 10.1-2103; 1997, c. 266;2013, cc. 756, 793;2016, cc. 68, 758.

**§ 62.1-44.15:70. Exclusive authority of Board to institute legal actions.**

The Board shall have the exclusive authority to institute or intervene in legal and administrative actions to ensure compliance by local governing bodies with this article and with any criteria or regulations adopted hereunder.

1988, cc. 608, 891, § 10.1-2104; 1997, c. 266;2013, cc. 756, 793.

**§ 62.1-44.15:71. (For repeal date -- see notes) Program compliance.**

Program compliance reviews conducted in accordance with § 62.1-44.15:69 and the regulations associated with this article shall be coordinated where applicable with those being implemented in accordance with the erosion and sediment control and stormwater management provisions of this chapter and associated regulations. The Department may also conduct a comprehensive or partial program compliance review and evaluation of a local government program more frequently than the standard schedule.

Following completion of a compliance review of a local government program, the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement should deficiencies be found; otherwise, the Board may find the program compliant. When deficiencies are found, the Board will establish a schedule for the local government to come into compliance. The Board shall provide a copy of its decision to the local government that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule. If the local government 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 compliance actions, then the Board shall have the authority to issue a special order to any local government 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.

The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and proceedings of the Board under this article and the judicial review thereof.

In lieu of issuing a special order, the Board is also authorized to take legal action against a local government to ensure compliance.

2012, cc. 785, 819, § 10.1-2104.1; 2013, cc. 756, 793.

**§ 62.1-44.15:72. Board to develop criteria.**

A. In order to implement the provisions of this article and to assist counties, cities, and towns in regulating the use and development of land and in protecting the quality of state waters, the Board shall promulgate regulations that establish criteria for use by local governments to determine the ecological and geographic extent of Chesapeake Bay Preservation Areas. The Board shall also promulgate regulations that establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or use and develop land in these areas.

B. In developing and amending the criteria, the Board shall consider all factors relevant to the protection of water quality from significant degradation as a result of the use and development of land. The criteria shall incorporate measures such as performance standards, best management practices, and various planning and zoning concepts to protect the quality of state waters while allowing use and development of land consistent with the provisions of this chapter. The criteria adopted by the Board, operating in conjunction with other state water quality programs, shall encourage and promote (i) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding the clean waters of the Commonwealth

from pollution; (iii) prevention of any increase in pollution; (iv) reduction of existing pollution; and (v) promotion of water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

C. Prior to the development or amendment of criteria, the Board shall give due consideration to, among other things, the economic and social costs and benefits which can reasonably be expected to obtain as a result of the adoption or amendment of the criteria.

D. In developing such criteria the Board may consult with and obtain the comments of any federal, state, regional, or local agency that has jurisdiction by law or special expertise with respect to the use and development of land or the protection of water. The Board shall give due consideration to the comments submitted by such federal, state, regional, or local agencies.

E. In developing such criteria, the Board shall provide that any locality in a Chesapeake Bay Preservation Area that allows the owner of an on-site sewage treatment system not requiring a Virginia Pollutant Discharge Elimination System permit to submit documentation in lieu of proof of septic tank pump-out shall require such owner to have such documentation certified by an operator or on-site soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as being qualified to operate, maintain, or design on-site sewage systems.

F. In developing such criteria, the Board shall not require the designation of a Resource Protection Area (RPA) as defined according to the criteria developed by the Board, adjacent to a daylighted stream. However, a locality that elects not to designate an RPA adjacent to a daylighted stream shall use a water quality impact assessment to ensure that proposed development on properties adjacent to the daylighted stream does not result in the degradation of the stream. The water quality impact assessment shall (i) be consistent with the Board's criteria for water quality assessments in RPAs, (ii) identify the impacts of the proposed development on water quality, and (iii) determine specific measures for the mitigation of those impacts. The objective of this assessment is to ensure that practices on properties adjacent to daylighted streams are effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution. The specific content for the water quality impact assessment shall be established and implemented by any locality that chooses not to designate an RPA adjacent to a daylighted stream. Nothing in this subsection shall limit a locality's authority to include a daylighted stream within the extent of an RPA.

G. Effective July 1, 2014, requirements promulgated under this article directly related to compliance with the erosion and sediment control and stormwater management provisions of this chapter and regulated under the authority of those provisions shall cease to have effect.

1988, cc. 608, 891, § 10.1-2107; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, c. 151; 2015, c. 674.

**§ 62.1-44.15:73. Local government authority.**

Counties, cities, and towns are authorized to exercise their police and zoning powers to protect the quality of state waters consistent with the provisions of this article.

1988, cc. 608, 891, § 10.1-2108; 2013, cc. 756, 793.

**§ 62.1-44.15:74. Local governments to designate Chesapeake Bay Preservation Areas; incorporate into local plans and ordinances; impose civil penalties.**

A. Counties, cities, and towns in Tidewater Virginia shall use the criteria developed by the Board to determine the extent of the Chesapeake Bay Preservation Area within their jurisdictions.

Designation of Chesapeake Bay Preservation Areas shall be accomplished by every county, city, and town in Tidewater Virginia not later than 12 months after adoption of criteria by the Board.

B. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan consistent with the provisions of this article.

C. All counties, cities, and towns in Tidewater Virginia shall have zoning ordinances that incorporate measures to protect the quality of state waters in the Chesapeake Bay Preservation Areas consistent with the provisions of this article. Zoning in Chesapeake Bay Preservation Areas shall comply with all criteria set forth in or established pursuant to § 62.1-44.15:72.

D. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into their subdivision ordinances consistent with the provisions of this article. Counties, cities, and towns in Tidewater Virginia shall ensure that all subdivisions developed pursuant to their subdivision ordinances comply with all criteria developed by the Board.

E. (For expiration date -- see note) In addition to any other remedies which may be obtained under any local ordinance enacted to protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities, and towns in Tidewater Virginia may incorporate the following penalties into their zoning, subdivision, or other ordinances:

1. Any person who (i) violates any provision of any such ordinance or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or variance or permit condition authorized under such ordinance shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

2. With the consent of any person who (i) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance or permit condition authorized under such ordinance, the local government may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county, city, or town itself, or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1. Civil charges may be in addition to the cost of any restoration required or ordered by the local governmental body or official.

E. (For effective date -- see notes) In addition to any other remedies which may be obtained under any local ordinance enacted to protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities, and towns in Tidewater Virginia may incorporate the

following penalties into their zoning, subdivision, or other ordinances:

1. Any person who (i) violates any provision of any such ordinance or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or variance or permit condition authorized under such ordinance shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established by § 62.1-44.15:29.1.

2. With the consent of any person who (i) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance or permit condition authorized under such ordinance, the local government may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county, city, or town itself, or its agent, the civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established by § 62.1-44.15:29.1. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1. Civil charges may be in addition to the cost of any restoration required or ordered by the local governmental body or official.

F. Localities that are subject to the provisions of this article may by ordinance adopt an appeal period for any person aggrieved by a decision of a board that has been established by the locality to hear cases regarding ordinances adopted pursuant to this article. The ordinance shall allow the aggrieved party a minimum of 30 days from the date of such decision to appeal the decision to the circuit court.

1988, cc. 608, 891, § 10.1-2109; 1998, cc. 700, 714; 2008, c. 15; 2013, cc. 756, 793; 2016, cc. 68, 758.

**§ 62.1-44.15:75. Local governments outside of Tidewater Virginia may adopt provisions.**

Any local government, although not a part of Tidewater Virginia, may employ the criteria developed pursuant to § 62.1-44.15:72 and may incorporate protection of the quality of state waters into their comprehensive plans, zoning ordinances, and subdivision ordinances consistent with the provisions of this article.

1988, cc. 608, 891, § 10.1-2110; 2013, cc. 756, 793.

**§ 62.1-44.15:76. Local government requirements for water quality protection.**

Local governments shall employ the criteria promulgated by the Board to ensure that the use and development of land in Chesapeake Bay Preservation Areas shall be accomplished in a manner that protects the quality of state waters consistent with the provisions of this article.

1988, cc. 608, 891, § 10.1-2111; 2013, cc. [756](#), [793](#).

**§ 62.1-44.15:77. Effect on other governmental authority.**

The authorities granted herein are supplemental to other state, regional, and local governmental authority. No authority granted to a local government by this article shall affect in any way the authority of the Board. No authority granted to a local government by this article shall limit in any way any other planning, zoning, or subdivision authority of that local government.

1988, cc. 608, 891, § 10.1-2113; 2013, cc. [756](#), [793](#).

**§ 62.1-44.15:78. State agency consistency.**

All agencies of the Commonwealth shall exercise their authorities under the Constitution and laws of Virginia in a manner consistent with the provisions of comprehensive plans, zoning ordinances, and subdivision ordinances that comply with §§ [62.1-44.15:74](#) and [62.1-44.15:75](#).

1988, cc. 608, 891, § 10.1-2114; 2013, cc. [756](#), [793](#).

**§ 62.1-44.15:79. Vested rights protected.**

The provisions of this article shall not affect vested rights of any landowner under existing law.

1988, cc. 608, 891, § 10.1-2115; 2013, cc. [756](#), [793](#).