

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 436

An Act to amend and reenact §§ 2.2-4006 and 36-99 of the Code of Virginia, relating to the Uniform Statewide Building Code; regulations of the Board of Housing and Community Development; new building products.

[H 2480]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4006 and 36-99 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.

2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than ~~thirty~~ 30 days prior to the effective date of the regulation.

5. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.

6. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.

7. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants.

8. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

9. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 and (c) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 2.2-4007, (ii) following the passage of ~~thirty~~ 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 2.2-4007, and (iv) conducts at least one public hearing on the proposed general permit.

10. The development and issuance by the Board of Education of guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools pursuant to § 22.1-202.

11. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23-38.77.

12. Regulations of the Marine Resources Commission.

13. *Regulations adopted by the Board of Housing and Community Development pursuant to subsection D of § 36-99.*

B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it

will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 2.2-4012.

C. A regulation for which an exemption is claimed under this section or § 2.2-4002, or § 2.2-4011 and that is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

§ 36-99. Provisions of Code.

A. The Building Code shall prescribe building regulations to be complied with in the construction and maintenance of buildings and structures, and the equipment therein as defined in § 36-97, and shall prescribe regulations to ensure that such regulations are properly maintained, and shall also prescribe procedures for the administration and enforcement of such regulations. The provisions thereof shall be such as to protect the health, safety and welfare of the residents of the Commonwealth, provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation and barrier-free provisions for the physically handicapped and aged. Such regulations shall be reasonable and appropriate to the objectives of this chapter.

B. In formulating the Code provisions, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, the standards of the International Code Council and the National Fire Protection Association. Notwithstanding the provisions of this section, farm buildings and structures shall be exempt from the provisions of the Building Code, except for a building or a portion of a building located on a farm that is operated as a restaurant as defined in § 35.1-1 and licensed as such by the Board of Health pursuant to Chapter 2 (§ 35.1-11 et seq.) of Title 35.1. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.

C. Where practical, the Code provisions shall be stated in terms of required level of performance, so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, such provisions shall provide for acceptance of materials and methods whose performance has been found by the Board, on the basis of reliable test and evaluation data, presented by the proponent, to be substantially equal in safety to those specified.

D. The Board, upon a finding that sufficient allegations exist regarding failures noted in several localities of performance standards by either building materials, methods, or design, may conduct hearings on such allegations if it determines that such alleged failures, if proven, would have an adverse impact on the health, safety, or welfare of the citizens of the Commonwealth. After at least 21 days' written notice, the Board shall convene a hearing to consider such allegations. Such notice shall be given to the known manufacturers of the subject building material and as many other interested parties, industry representatives, and trade groups as can reasonably be identified. Following the hearing, the Board, upon finding that (i) the current technical or administrative Code provisions allow use of or result in defective or deficient building materials, methods, or designs, and (ii) immediate action is necessary to protect the health, safety, and welfare of the citizens of the Commonwealth, may issue amended regulations establishing interim performance standards and Code provisions for the installation, application, and use of such building materials, methods or designs in the Commonwealth. Such amended regulations shall become effective upon their publication in the Virginia Register of Regulations. Any amendments to regulations adopted pursuant to this subsection shall become effective upon their publication in the Virginia Register of Regulations and shall be effective for a period of 24 months or until adopted, modified, or repealed by the Board.