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## SENATE BILL NO. 891

Offered January 9, 2013

Prefiled January 4, 2013

A BILL to amend and reenact §§ 2.2-4014 and 2.2-4015 of the Code of Virginia and to amend the Code of Virginia by adding in Title 30 a chapter numbered 53, consisting of sections numbered 30-339 through 30-344, relating to the Commission on Small Business Mandates.

Patron—Stuart

Referred to Committee on Rules

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

1. That §§ 2.2-4014 and 2.2-4015 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 30 a chapter numbered 53, consisting of sections numbered 30-339 through 30-344, as follows:

**§ 2.2-4014. Legislative review of proposed and final regulations.**

A. After publication of the Register pursuant to § 2.2-4031, the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable or, the Joint Commission on Administrative Rules, or the Commission on Small Business Mandates may meet and, during the promulgation or final adoption process, file with the Registrar and the promulgating agency an objection to a proposed or final adopted regulation. The Registrar shall publish any such objection received by him as soon as practicable in the Register. Within 21 days after the receipt by the promulgating agency of a legislative objection, that agency shall file a response with the Registrar; the objecting legislative committee or, the Joint Commission on Administrative Rules, or the Commission on Small Business Mandates, whichever raised the objection; and the Governor. If a legislative objection is filed within the final adoption period, subdivision A 1 of § 2.2-4015 shall govern.

B. In addition or as an alternative to the provisions of subsection A, the standing committee of both houses of the General Assembly to which matters relating to the content are most properly referable or, the Joint Commission on Administrative Rules, or the Commission on Small Business Mandates may suspend the effective date of any portion or all of a final regulation with the Governor's concurrence. The Governor and (i) the applicable standing committee of each house or, (ii) the Joint Commission on Administrative Rules, or (iii) the Commission on Small Business Mandates may direct, through a statement signed by a majority of their respective members and by the Governor, that the effective date of a portion or all of the final regulation is suspended and shall not take effect until the end of the next regular legislative session. This statement shall be transmitted to the promulgating agency and the Registrar within the 30-day adoption period, and shall be published in the Register.

If a bill is passed at the next regular legislative session to nullify a portion but not all of the regulation, then the promulgating agency (i) may promulgate the regulation under the provision of subdivision A 4 a of § 2.2-4006, if it makes no changes to the regulation other than those required by statutory law or (ii) shall follow the provisions of §§ 2.2-4007.01 through 2.2-4007.06, if it wishes to also make discretionary changes to the regulation. If a bill to nullify all or a portion of the suspended regulation, or to modify the statutory authority for the regulation, is not passed at the next regular legislative session, then the suspended regulation shall become effective at the conclusion of the session, unless the suspended regulation is withdrawn by the agency.

C. A regulation shall become effective as provided in § 2.2-4015.

D. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

**§ 2.2-4015. Effective date of regulation; exception.**

A. A regulation adopted in accordance with this chapter and the Virginia Register Act (§ 2.2-4100 et seq.) shall become effective at the conclusion of the ~~thirty-day~~ 30-day final adoption period provided for in subsection D of § 2.2-4013, or any other later date specified by the agency, unless:

1. A legislative objection has been filed in accordance with § 2.2-4014, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the expiration of the applicable ~~twenty-one-day~~ 21-day extension period provided in § 2.2-4014;

2. The Governor has exercised his authority in accordance with § 2.2-4013 to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the period for which the Governor has provided for additional public comment;

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3. The Governor and (i) the appropriate standing committees of each house of the General Assembly or, (ii) the Joint Commission on Administrative Rules, or (iii) the Commission on Small Business Mandates have exercised their authority in accordance with subsection B of § 2.2-4014 to suspend the effective date of a regulation until the end of the next regular legislative session; or

4. The agency has suspended the regulatory process in accordance with § 2.2-4007.06, or for any reason it deems necessary or appropriate, in which event the regulation, unless withdrawn by the agency, shall become effective in accordance with subsection B.

B. Whenever the regulatory process has been suspended for any reason, any action by the agency that either amends the regulation or does not amend the regulation but specifies a new effective date shall be considered a readoption of the regulation for the purposes of appeal. If the regulation is suspended under § 2.2-4007.06, such readoption shall take place after the ~~thirty-day~~ 30-day public comment period required by that subsection. Suspension of the regulatory process by the agency may occur simultaneously with the filing of final regulations as provided in subsection B of § 2.2-4013.

When a regulation has been suspended, the agency must set the effective date no earlier than ~~fifteen~~ 15 days from publication of the readoption action and any changes made to the regulation. During that ~~fifteen-day~~ 15-day period, if the agency receives requests from at least ~~twenty-five~~ 25 persons for the opportunity to comment on new substantial changes, it shall again suspend the regulation pursuant to § 2.2-4007.06.

C. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

#### CHAPTER 53.

#### COMMISSION ON SMALL BUSINESS MANDATES.

##### **§ 30-339. Commission on Small Business Mandates; purpose.**

*The Commission on Small Business Mandates (the Commission) is established in the legislative branch of state government. The purpose of the Commission is to review the impact of any mandate established by state law or by rules and regulations promulgated by state agencies on small businesses and make recommendations to the Governor and the General Assembly on actions that may be taken to minimize or alleviate any adverse impact.*

##### **§ 30-340. Membership; terms; vacancies; chairman and vice-chairman; quorum; meetings; compensation.**

A. The Commission shall have a total membership of 24 members that shall consist of 12 legislative members and 12 nonlegislative citizen members. Members shall be appointed as follows: five members of the Senate, to be appointed by the Senate Committee on Rules; seven members of the House of Delegates, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; five nonlegislative citizen members, to be appointed by the Senate Committee on Rules; and seven nonlegislative citizen members, to be appointed by the Speaker of the House of Delegates. Nonlegislative citizen members shall be citizens of the Commonwealth.

Nonlegislative citizen members shall be appointed for terms of four years. Legislative members of the Commission shall serve terms coincident with their terms of office. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

B. The Commission shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The meetings of the Commission shall be held at the call of the chairman or whenever the majority of the members so request.

C. No recommendation of the Commission shall be adopted if a majority of the Senate members or a majority of the House members appointed to the Commission (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Commission.

D. Legislative members of the Commission shall receive compensation as provided in § 30-19.12. Nonlegislative citizen members shall serve without compensation. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for compensation and reimbursement of expenses of the members shall be provided from existing appropriations to the Commission.

##### **§ 30-341. Powers and duties of the Commission.**

*The Commission shall have the power and duty to:*

1. Review existing rules and regulations of state agencies as well as any proposed rule or regulation to determine if any mandate contained therein improperly overburdens small businesses.

2. File with the Registrar and the agency promulgating the regulation an objection to a proposed or final adopted regulation.

3. Suspend the effective date of all or any portion of a final regulation with the concurrence of the Governor as provided in subsection B of § 2.2-4014.

4. Make recommendations to the Governor and General Assembly for action based on its review of

any existing statute, rule, or regulation or any proposed rule or regulation.

**§ 30-342. Annual report.**

The chairman shall submit to the General Assembly and the Governor an annual executive summary of the interim activity and work of the Commission no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

**§ 30-343. Staffing.**

Administrative staff support shall be provided by the Office of the Clerk of the House of Delegates. Legal, research, policy analysis, and other services requested by the Commission shall be provided by the Division of Legislative Services. Technical assistance shall be provided by the staffs of the House Committee on Appropriations and the Senate Committee on Finance. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

**§ 30-344. Sunset.**

The provisions of this chapter shall expire on July 1, 2018.

2. That the initial terms of the members of the Commission on Small Business Mandates appointed pursuant to this act shall be staggered as follows: (i) two members appointed by the Speaker of the House of Delegates and two member appointed by the Senate Committee on Rules to a term of two years, (ii) three members appointed by the Speaker of the House of Delegates and two members appointed by the Senate Committee on Rules to a term of three years, and (iii) two members appointed by the Speaker of the House of Delegates and one member appointed by the Senate Committee on Rules to a term of four years. Thereafter the terms of members shall be four years.