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SENATE BILL NO. 1198

Offered January 14, 2015

Prefiled January 13, 2015

A *BILL to amend and reenact §§ 2.2-4013 and 2.2-4014 of the Code of Virginia, relating to the Administrative Process Act; legislative review of regulations.*

Patron—Wagner

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4013 and 2.2-4014 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4013. Executive review of proposed and final regulations; changes with substantial impact.

A. The Governor shall adopt and publish procedures by executive order for review of all proposed regulations governed by this chapter by June 30 of the year in which the Governor takes office. The procedures shall include (i) review by the Attorney General to ensure statutory authority for the proposed regulations; and (ii) examination by the Governor to determine if the proposed regulations are (a) necessary to protect the public health, safety and welfare and (b) clearly written and easily understandable. The procedures may also include review of the proposed regulation by the appropriate Cabinet Secretary.

The Governor shall transmit his comments, if any, on a proposed regulation to the Registrar and the agency no later than fifteen days following the completion of the public comment period provided for in § 2.2-4007.03. The Governor may recommend amendments or modifications to any regulation that would bring that regulation into conformity with statutory authority or state or federal laws, regulations or judicial decisions.

Not less than fifteen days following the completion of the public comment period provided for in § 2.2-4007.03, the agency may (i) adopt the proposed regulation if the Governor has no objection to the regulation; (ii) modify and adopt the proposed regulation after considering and incorporating the Governor's objections or suggestions, if any; or (iii) adopt the regulation without changes despite the Governor's recommendations for change.

B. Upon final adoption of the regulation, the agency shall forward a copy of the regulation to the Registrar of Regulations for publication as soon as practicable in the Register. All changes to the proposed regulation shall be highlighted in the final regulation, and substantial changes to the proposed regulation shall be explained in the final regulation.

C. If the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he may require the agency to provide an additional thirty days to solicit additional public comment on the changes by transmitting notice of the additional public comment period to the agency and to the Registrar within the ~~thirty-day~~ 30-day final adoption period described in subsection D, and publishing the notice in the Register. The additional public comment period required by the Governor shall begin upon publication of the notice in the Register.

D. A ~~thirty-day~~ 30-day final adoption period for regulations shall commence upon the publication of the final regulation in the Register. The Governor may review the final regulation during this ~~thirty-day~~ 30-day final adoption period and if he objects to any portion or all of a regulation, the Governor may file a formal objection to the regulation, suspend the effective date of the regulation in accordance with subsection B of § 2.2-4014, or both.

If the Governor files a formal objection to the regulation, he shall forward his objections to the Registrar and agency prior to the conclusion of the ~~thirty-day~~ 30-day final adoption period. The Governor shall be deemed to have acquiesced to a promulgated regulation if he fails to object to it or if he fails to suspend the effective date of the regulation in accordance with subsection B of § 2.2-4014 during the ~~thirty-day~~ final adoption period. The Governor's objection, or the suspension of the regulation, or both if applicable, shall be published in the Register.

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

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

§ 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 may meet and, during the promulgation or final adoption process, file with the Registrar and the promulgating agency an objection to a proposed or

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59 final adopted regulation. The Registrar shall publish any such objection received by him as soon as
60 practicable in the Register. Within 21 days after the receipt by the promulgating agency of a legislative
61 objection, that agency shall file a response with the Registrar, the objecting legislative committee or the
62 Joint Commission on Administrative Rules, and the Governor. If a legislative objection is filed within
63 the final adoption period, subdivision A 1 of § 2.2-4015 shall govern.

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

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

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

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