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HOUSE BILL NO. 1564

Offered January 11, 2017

Prefiled January 1, 2017

A *BILL to amend and reenact §§ 2.2-1500, 2.2-2101 as it is currently effective and as it shall become effective, 2.2-4007.04, 2.2-4007.1, and 2.2-4011 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 15 of Title 2.2 an article numbered 2, consisting of sections numbered 2.2-1514.1 through 2.2-1514.8, and by adding in Chapter 25 of Title 2.2 an article numbered 10, consisting of sections numbered 2.2-2537 through 2.2-2541, relating to the Department of Budget and Planning; establishment of the Division of Regulatory Management and the Red Tape Reduction Commission; review of regulatory requirements; report.*

Patrons—Webert, Freitas, Yancey, Massie, Cole, Collins, Edmunds, Fowler, Garrett, Head, Helsel, Knight, Landes, LaRock, Lingamfelter, O'Bannon, Peace and Stolle

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1500, 2.2-2101 as it is currently effective and as it shall become effective, 2.2-4007.04, 2.2-4007.1, and 2.2-4011 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 15 of Title 2.2 an article numbered 2, consisting of sections numbered 2.2-1514.1 through 2.2-1514.8, and by adding in Chapter 25 of Title 2.2 an article numbered 10, consisting of sections numbered 2.2-2537 through 2.2-2541, as follows:

Article 1.

General Provisions.

§ 2.2-1500. **Department of Planning and Budget created; appointment of Director; powers and duties.**

A. There is created a Department of Planning and Budget (the "Department"), which shall be headed by a Director appointed by the Governor to serve at his pleasure.

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor. *The Director shall be responsible for the overall supervision of the Department's divisions, programs, and personnel.*

Article 2.

Division of Regulatory Management.

§ 2.2-1514.1. **Definitions.**

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

"Agency" means the same as that term is defined in § 2.2-4001.

"Division" means the Division of Regulatory Management.

"Plain language explanation" means an explanation written in nontechnical, readily understandable language using words of common, everyday usage.

"Regulation" means the same as that term is defined in § 2.2-4001.

"Regulatory baseline" means the total number of regulatory requirements established by the Division of Regulatory Management pursuant to § 2.2-1514.4 to serve as the initial baseline to sustain a zero net increase in regulatory requirements.

"Regulatory requirement" means any action required to be taken or information required to be provided in accordance with a statute, regulation, or policy in order to access government services or operate and conduct business. "Regulatory requirement" does not include (i) statements or policies concerning the internal management of any agency, (ii) guidance documents, (iii) declaratory rulings, or (iv) intra-agency or interagency memoranda.

"Regulatory requirement replacement request" means a request by an agency to create a new regulatory requirement after the establishment of the regulatory baseline by either replacing or repealing an existing regulatory requirement.

§ 2.2-1514.2. **Division of Regulatory Management established.**

The Division of Regulatory Management is hereby established within the Department of Planning and Budget for the purpose of exercising the powers and duties described in this article.

§ 2.2-1514.3. **Duties of Division.**

The Division shall:

1. *Establish a regulatory baseline of all state regulatory requirements;*

58 2. Maintain the state's regulatory baseline through the establishment of a process for (i) the review
59 of proposed regulations and (ii) the approval or denial of agency regulatory replacement requests;

60 3. Develop guidelines to assist agencies in developing a comprehensive list of regulatory
61 requirements that are enforced or administered by such agencies;

62 4. Establish and maintain a website, including a searchable database of all current regulations and
63 regulatory requirements pursuant to § 2.2-1514.4; and

64 5. Provide staff support to the Red Tape Reduction Commission established pursuant to Article 10
65 (§ 2.2-2537 et seq.) of Chapter 25.

66 **§ 2.2-1514.4. Establishment of state regulatory baseline; public information website.**

67 A. Pursuant to § 2.2-1514.3, the Division shall supervise the establishment of an initial state
68 regulatory baseline. Each agency shall conduct an internal review of its regulatory requirements and
69 submit a list of each requirement, along with the enabling regulation or statute, to the Division by
70 October 1, 2017. The Division shall compile the lists of all agency regulatory requirements and
71 establish the initial state regulatory baseline on or before January 1, 2018.

72 B. The Division shall maintain a website with a searchable database containing the following
73 information:

74 1. A list of all current regulatory requirements;

75 2. A plain language description of the purpose of each regulatory requirement;

76 3. The agency responsible for each regulatory requirement;

77 4. The legislation or regulation authorizing each regulatory requirement; and

78 5. A listing of any changes to the initial regulatory baseline established pursuant to subsection A.

79 **§ 2.2-1514.5. Limitation on new regulatory requirements; regulatory requirement replacement
80 requests; special provisions.**

81 A. Any subsequent regulatory requirement proposed by an agency that is not included in the initial
82 state regulatory baseline shall be considered a new regulatory requirement.

83 B. To maintain a zero net increase in regulatory requirements, the agency proposing a new
84 regulatory requirement shall be required to submit a regulatory requirement replacement request to the
85 Division as provided in § 2.2-1514.6.

86 C. Each regulatory requirement replacement request shall include the following:

87 1. The existing statute authorizing the regulatory requirement;

88 2. The regulation authorizing the regulatory requirement, if applicable;

89 3. The purpose of the regulation;

90 4. The proposed regulatory requirement to be replaced or repealed; and

91 5. The total number of regulatory requirements that will be added if the measure is enacted.

92 **§ 2.2-1514.6. Review of new proposed regulations and accompanying regulatory requirement
93 replacement requests; special provisions for the reduction of regulatory requirements.**

94 A. Each state agency shall achieve regulatory goals as effectively and efficiently without imposing
95 unnecessary regulatory requirements that unduly burden the public. To mitigate the negative economic
96 effects of regulatory requirements, any new proposed regulatory requirement and the accompanying
97 regulatory requirement replacement request or proposed sunset of an existing regulatory requirement
98 shall be submitted to the Division for approval.

99 B. The Division shall evaluate each new proposed regulatory requirement and the accompanying
100 regulatory requirement replacement using the following factors:

101 1. Whether the regulatory requirement is the only effective and necessary way to achieve the desired
102 outcome, including an analysis of whether the requirement (i) complements and does not duplicate
103 existing regulatory requirements and (ii) is simple to administer in both enforcement and compliance;

104 2. The degree to which the regulatory requirement includes performance measures that are directly
105 related to the desired outcome, including a provision establishing enhanced periodic review to ensure
106 intended outcomes or providing for the sunset of the provision upon a determination that the regulatory
107 requirement no longer achieves the original desired outcomes;

108 3. The presence of clear justifications for implementation of the regulatory requirement, including
109 development and implementation processes that are (i) transparent, (ii) easily accessible by the public
110 and contain appropriate and modern notification methods, (iii) written in plain language, and (iv)
111 designed to allow citizens and businesses to clearly understand their rights and obligations under the
112 regulatory requirement;

113 4. Whether the regulatory requirement is the most cost effective manner to achieve the desired
114 outcome and that the benefits of the regulatory requirement are greater than the burdens it imposes;
115 and

116 5. Whether the regulatory requirement does not have a detrimental effect on the state's economy by
117 including a determination that it (i) does not have a negative effect on the economic competitiveness, (ii)
118 is not harder to comply with than similar regulatory requirements in similar jurisdictions, and (iii) is
119 compatible with the strategic goals of promoting a level playing field for all businesses and industries

120 and job creation and economic growth.

121 C. Subject to subsection E, the Division shall approve a regulatory requirement replacement request
122 only if (i) the regulatory requirement has undergone an evaluation pursuant to subsection B and (ii) the
123 total number of regulatory requirements for the requesting agency is either kept at the regulatory
124 baseline for the agency or reduced.

125 D. Any agency seeking an exemption from the approval requirement of subsection D shall submit a
126 request for an exemption at the same time the documentation is submitted for the regulatory requirement
127 replacement request. The request shall also be submitted to (i) the Red Tape Reduction Commission
128 established pursuant to Article 10 (§ 2.2-2537 et seq.) of Chapter 25, (ii) the Clerk of the Senate, and
129 (iii) the Clerk of the House of Delegates. The exemption request shall include a detailed explanation of
130 why the new regulatory requirement should be exempt from the approval requirement.

131 E. In order to ensure that the overall burden of regulatory requirements that are imposed upon the
132 citizens and businesses of the Commonwealth is decreased, until the regulatory baseline established
133 pursuant to § 2.2-1514.4 has been reduced by 35 percent, the Division shall not approve an agency's
134 request for a replacement regulatory requirement unless the agency provides at least two regulatory
135 requirements that are to be replaced or repealed.

136 § 2.2-1514.7. Request for exemptions.

137 A. Any agency seeking an exemption from the approval requirement of § 2.2-1514.6 shall submit a
138 request for an exemption at the same time the documentation is submitted for the regulatory requirement
139 replacement request required by § 2.2-1514.6. The request shall also be submitted to (i) the Red Tape
140 Reduction Commission established pursuant to Article 10 (§ 2.2-2537 et seq.) of Chapter 25, (ii) the
141 Clerk of the Senate, and (iii) the Clerk of the House of Delegates. The exemption request shall include a
142 detailed explanation of why the new regulatory requirement should be exempt from the approval
143 requirement, including how the requirement is necessary to protect the public health, safety, and welfare
144 of the citizens of the Commonwealth.

145 B. Any exemption approved by the Division shall be limited to no more than 18 months in duration.

146 § 2.2-1514.8. Annual report.

147 The Director shall submit an annual report to the Governor and General Assembly on or before
148 November 1 of each year. Such report shall include a description of the activities of the Division and
149 contain (i) a list of all regulatory requirements, (ii) a description of the purpose of each regulatory
150 requirement and the responsible agency, (iii) the law or regulation authorizing each regulatory
151 requirement, and (iv) a list of any changes to the initial regulatory baseline. The report shall be
152 submitted as a report document as provided in the procedures of the Division of Legislative Automated
153 Systems for the processing of legislative documents and reports and shall be posted on the General
154 Assembly's website.

155 § 2.2-2101. (Effective October 1, 2016, until July 1, 2017) Prohibition against service by
156 legislators on boards, commissions, and councils within the executive branch; exceptions.

157 Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils
158 within the executive branch of state government who are responsible for administering programs
159 established by the General Assembly. Such prohibition shall not extend to boards, commissions, and
160 councils engaged solely in policy studies or commemorative activities. If any law directs the
161 appointment of any member of the General Assembly to a board, commission, or council in the
162 executive branch of state government that is responsible for administering programs established by the
163 General Assembly, such portion of such law shall be void, and the Governor shall appoint another
164 person from the Commonwealth at large to fill such a position.

165 The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall
166 be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest
167 Virginia Higher Education Center, who shall be appointed as provided for in § 23.1-3126; to members
168 of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as
169 provided for in § 23.1-3121; to members of the Board of Directors of the New College Institute who
170 shall be appointed as provided for in § 23.1-3112; to members of the Virginia Interagency Coordinating
171 Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans
172 Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of
173 Trustees of the Roanoke Higher Education Authority pursuant to § 23.1-3117; to members of the
174 Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in
175 § 2.2-2423; to members of the Standards of Learning Innovation Committee, who shall be appointed as
176 provided for in § 22.1-253.13:10; to members of the Board of Visitors of the Virginia School for the
177 Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the
178 Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of
179 the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the
180 Council on Virginia's Future, who shall be appointed as provided for in § 2.2-2685; to members of the

181 State Executive Council for Children's Services, who shall be appointed as provided in § 2.2-2648; to
 182 members of the Virginia Board of Workforce Development, who shall be appointed as provided for in
 183 § 2.2-2471; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund
 184 Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth
 185 Panel, who shall be appointed as provided for in § 2.2-222.3; to members of the Forensic Science
 186 Board, who shall be appointed as provided for in § 9.1-1109; to members of the Southwest Virginia
 187 Cultural Heritage Foundation, who shall be appointed as provided in § 2.2-2735; ~~or~~ to members of the
 188 Virginia Growth and Opportunity Board, who shall be appointed as provided in § 2.2-2485; *or to*
 189 *members of the Red Tape Reduction Commission, who shall be appointed as provided in § 2.2-2538.*

190 **§ 2.2-2101. (Effective July 1, 2017) Prohibition against service by legislators on boards,**
 191 **commissions, and councils within the executive branch; exceptions.**

192 Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils
 193 within the executive branch of state government who are responsible for administering programs
 194 established by the General Assembly. Such prohibition shall not extend to boards, commissions, and
 195 councils engaged solely in policy studies or commemorative activities. If any law directs the
 196 appointment of any member of the General Assembly to a board, commission, or council in the
 197 executive branch of state government that is responsible for administering programs established by the
 198 General Assembly, such portion of such law shall be void, and the Governor shall appoint another
 199 person from the Commonwealth at large to fill such a position.

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 221 Cultural Heritage Foundation, who shall be appointed as provided in § 2.2-2735; ~~or~~ to members of the
 222 Virginia Growth and Opportunity Board, who shall be appointed as provided in § 2.2-2485; *or to*
 223 *members of the Red Tape Reduction Commission, who shall be appointed as provided in § 2.2-2538.*

224 *Article 10.*

225 *Red Tape Reduction Commission.*

226 **§ 2.2-2537. Red Tape Reduction Commission; purpose.**

227 *The Red Tape Reduction Commission (the Commission) is established as an advisory commission,*
 228 *within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the*
 229 *Commission is to identify and provide advice and comments to the Governor and General Assembly on*
 230 *measures to reduce the baseline regulatory requirement of the Commonwealth.*

231 **§ 2.2-2538. Membership; terms; quorum; meetings; compensation and expenses.**

232 *A. The Commission shall be composed of 14 members that include two ex officio members, two*
 233 *legislative members, and 10 nonlegislative members as follows:*

- 234 *1. The Governor or his designee;*
- 235 *2. The Lieutenant Governor or his designee;*
- 236 *3. The Speaker of the House of Delegates or his designee;*
- 237 *4. The Senate Majority Leader or his designee;*
- 238 *5. Three nonlegislative citizen members appointed by the Speaker of the House of Delegates;*
- 239 *6. Two nonlegislative citizen members appointed by the Senate Committee on Rules; and*
- 240 *7. Five nonlegislative citizen members appointed by the Governor.*

241 *B. Legislative members and the Governor and Lieutenant Governor, or their designees, shall serve*
 242 *terms coincident with their terms of office. After the initial staggering of terms, nonlegislative citizen*

243 members appointed by the Speaker of the House of Delegates or the Senate Committee on Rules shall be
 244 appointed for a term of two years, and nonlegislative citizen members appointed by the Governor shall
 245 be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a
 246 term, shall be for the unexpired terms. All members may be reappointed. No nonlegislative citizen
 247 member appointed by the legislative appointing authorities shall serve more than four consecutive
 248 two-year terms, and no nonlegislative citizen member appointed by the Governor shall serve more than
 249 two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a
 250 vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies
 251 shall be filled in the same manner as the original appointments.

252 The Governor or his designee shall serve as the chairman of the Commission. The Commission shall
 253 elect a vice-chairman from its membership. A majority of members of the Commission shall constitute a
 254 quorum. The Commission shall meet at least four times each year. The meetings of the Commission
 255 shall be held at the call of the chairman or whenever four or more members so request.

256 C. Legislative members of the Commission shall receive such compensation as provided in
 257 § 30-19.12, and nonlegislative citizen members shall receive compensation as provided in § 2.2-2813
 258 for the performance of their duties. All members shall be reimbursed for all reasonable and necessary
 259 expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

260 **§ 2.2-2539. Duties of the Commission.**

261 A. The Commission shall:

262 1. Review the state's current regulatory requirements;

263 2. Provide recommendations to the Governor and General Assembly regarding regulatory
 264 requirements that are (i) duplicative or unnecessary, (ii) especially burdensome to businesses within the
 265 Commonwealth, (iii) disproportionate in their effect on businesses with fewer than 100 employees, (iv)
 266 disproportionate in their effect on businesses with annual revenues below \$5 million, (v) easily managed
 267 by businesses with 100 or more employees and effectively limit competition by smaller businesses, or (vi)
 268 capable of being repealed with minimal impact on public safety; and

269 3. Submit semiannual reports to the Division of Regulatory Management of the Department of
 270 Planning and Budget for posting on the website established pursuant to § 2.2-1514.3.

271 B. The Commission shall develop a schedule providing for the review of all regulations and
 272 accompanying regulatory requirements every four years to determine whether they should be continued
 273 without change or be amended or repealed, consistent with the stated objectives of applicable law. The
 274 review required by this subsection shall include consideration of the factors contained in subdivision A
 275 2.

276 **§ 2.2-2540. Staff; cooperation and assistance.**

277 The Division of Regulatory Management of the Department of Planning and Budget established
 278 pursuant to Article 2 (§ 2.2-1514.1 et seq.) of Chapter 15 shall provide staff assistance to the
 279 Commission. All agencies, authorities, and institutions of the Commonwealth shall cooperate and
 280 provide such assistance to the Commission as the Commission may request.

281 **§ 2.2-2541. Chairman's executive summary of activity and work of the Commission; report.**

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

287 **§ 2.2-4007.04. Analysis of proposed regulations; review.**

288 A. Before delivering any proposed regulation and associated regulatory requirements under
 289 consideration to the Registrar as required in § 2.2-4007.05, the agency shall submit on the Virginia
 290 Regulatory Town Hall a copy of that regulation to the Department of Planning and Budget. In addition
 291 to determining the public benefit, the Department of Planning and Budget in coordination with the
 292 agency shall, within 45 days, prepare an economic impact analysis of the proposed regulation, as
 293 follows: a regulatory requirement replacement request to the Division of Regulatory Management of the
 294 Department of Planning and Budget pursuant to § 2.2-1514.6.

295 1. The economic impact analysis shall include but need not be limited to the projected number of
 296 businesses or other entities to whom the regulation would apply; the identity of any localities and types
 297 of businesses or other entities particularly affected by the regulation; the projected number of persons
 298 and employment positions to be affected; the impact of the regulation on the use and value of private
 299 property, including additional costs related to the development of real estate for commercial or
 300 residential purposes; and the projected costs to affected businesses, localities, or entities of implementing
 301 or complying with the regulations, including the estimated fiscal impact on such localities and sources of
 302 potential funds to implement and comply with such regulation. A copy of the economic impact analysis
 303 shall be provided to the Joint Commission on Administrative Rules;

304 2. If the regulation may have an adverse effect on small businesses, the economic impact analysis
 305 shall also include (i) an identification and estimate of the number of small businesses subject to the
 306 regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small
 307 businesses to comply with the regulation, including the type of professional skills necessary for
 308 preparing required reports and other documents; (iii) a statement of the probable effect of the regulation
 309 on affected small businesses; and (iv) a description of any less intrusive or less costly alternative
 310 methods of achieving the purpose of the regulation. As used in this subdivision, "small business" has the
 311 same meaning as provided in subsection A of ~~§ 2.2-4007.1~~; and

312 3. In the event the Department cannot complete an economic impact statement within the 45-day
 313 period, it shall advise the agency and the Joint Commission on Administrative Rules as to the reasons
 314 for the delay. In no event shall the delay exceed 30 days beyond the original 45-day period.

315 B. Agencies shall provide the Department with such estimated fiscal impacts on localities and
 316 sources of potential funds. The Department may request the assistance of any other agency in preparing
 317 the analysis. The Department shall deliver a copy of the analysis to the agency drafting the regulation,
 318 which shall comment thereon as provided in ~~§ 2.2-4007.05~~, a copy to the Registrar for publication with
 319 the proposed regulation, and an electronic copy to each member of the General Assembly. No regulation
 320 shall be promulgated for consideration pursuant to ~~§ 2.2-4007.05~~ until the impact analysis has been
 321 received by the Registrar *the Division of Regulatory Management has approved the request pursuant to*
 322 *§ 2.2-1514.6*. For purposes of this section, the term "locality, business, or entity particularly affected"
 323 means any locality, business, or entity that bears any identified disproportionate material impact that
 324 would not be experienced by other localities, businesses, or entities. The analysis shall represent the
 325 Department's best estimate for the purposes of public review and comment on the proposed regulation.
 326 The accuracy of the estimate shall in no way affect the validity of the regulation, nor shall any failure to
 327 comply with or otherwise follow the procedures set forth in this subsection create any cause of action or
 328 provide standing for any person under Article 5 (~~§ 2.2-4025 et seq.~~) or otherwise to challenge the
 329 actions of the Department hereunder or the action of the agency in adopting the proposed regulation.

330 C. In the event the economic impact analysis completed by the Department reveals *Division of*
 331 *Regulatory Management determines* that the proposed regulation *and accompanying regulatory*
 332 *requirement* would have an adverse economic impact on businesses or would impose a significant
 333 adverse economic impact on a locality, business, or entity particularly affected, the Department *Division*
 334 shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations,
 335 and the Senate Committee on Finance within the ~~45-day period~~ *30 days of the determination*. The Joint
 336 Commission on Administrative Rules shall review such rule or regulation and issue a statement
 337 containing the Commission's findings in accordance with ~~§ 30-73.3~~. *For purposes of this section, the*
 338 *term "locality, business, or entity particularly affected" means any locality, business, or entity that bears*
 339 *any identified disproportionate material impact that would not be experienced by other localities,*
 340 *businesses, or entities. The analysis shall represent the Division's best estimate for the purposes of*
 341 *public review and comment on the proposed regulation.*

342 **§ 2.2-4007.1. Periodic review of regulations.**

343 A. As used in this section, "small business" means a business entity, including its affiliates, that (i) is
 344 independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross
 345 annual sales of less than \$6 million.

346 B. In addition to the requirements of §§ 2.2-4007 through 2.2-4007.06, prior to the adoption of any
 347 proposed regulation, the agency proposing a regulation shall prepare a regulatory flexibility analysis in
 348 which the agency shall consider utilizing alternative regulatory methods, consistent with health, safety,
 349 environmental, and economic welfare, that will accomplish the objectives of applicable law while
 350 minimizing the adverse impact on small businesses. The agency shall consider, at a minimum, each of
 351 the following methods of reducing the effects of the proposed regulation on small businesses:

- 352 1. The establishment of less stringent compliance or reporting requirements;
- 353 2. The establishment of less stringent schedules or deadlines for compliance or reporting
354 requirements;
- 355 3. The consolidation or simplification of compliance or reporting requirements;
- 356 4. The establishment of performance standards for small businesses to replace design or operational
357 standards required in the proposed regulation; and
- 358 5. The exemption of small businesses from all or any part of the requirements contained in the
359 proposed regulation.

360 C. Prior to the adoption of any proposed regulation that may have an adverse effect on small
 361 businesses, each agency shall notify the Joint Commission on Administrative Rules, through the Virginia
 362 Regulatory Town Hall, of its intent to adopt the proposed regulation. The Joint Commission on
 363 Administrative Rules shall advise and assist agencies in complying with the provisions of this section.

364 D. In addition to other requirements of ~~§ 2.2-4017~~, all *All* regulations shall be reviewed every four
 365 years to determine whether they should be continued without change or be amended or repealed,

366 consistent with the stated objectives of applicable law, to minimize the economic impact on small
367 businesses in a manner consistent with the stated objectives of applicable law. When a regulation has
368 undergone a comprehensive review as part of a regulatory action that included the solicitation of public
369 comment on the regulation, a periodic review shall not be required until four years after the effective
370 date of the regulatory action.

371 ~~E.~~ B. The regulatory review required by this section shall include consideration of:

- 372 1. The continued need for the rule;
- 373 2. The nature of complaints or comments received concerning the regulation from the public;
- 374 3. The complexity of the regulation;
- 375 4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or
376 regulation; and
- 377 5. The length of time since the regulation has been evaluated or the degree to which technology,
378 economic conditions, or other factors have changed in the area affected by the regulation.

379 ~~F.~~ C. Prior to commencement of the regulatory review required by subsection ~~D~~ A, the agency shall
380 publish a notice of the review in the Virginia Register of Regulations and post the notice on the
381 Virginia Regulatory Town Hall. The agency shall provide a minimum of 21 days for public comment
382 after publication of the notice. No later than 120 days after close of the public comment period, the
383 agency shall publish a report of the findings of the regulatory review in the Virginia Register of
384 Regulations and post the report on the Virginia Regulatory Town Hall.

385 **§ 2.2-4011. Emergency regulations; publication; exceptions.**

386 A. Regulations that an agency finds are necessitated by an emergency situation may be adopted by
387 an agency upon consultation with the Attorney General, which approval shall be granted only after the
388 agency has submitted a request *to the Division of Regulatory Management pursuant to § 2.2-1514.7*
389 ~~stating in writing the nature of the emergency; and the necessity for such action shall be at the sole~~
390 ~~discretion of the Governor.~~

391 B. Agencies may also adopt emergency regulations in situations in which Virginia statutory law or
392 the appropriation act or federal law or federal regulation requires that a regulation be effective in 280
393 days or less from its enactment and the regulation is not exempt under the provisions of subdivision A 4
394 of § 2.2-4006. In such cases, the agency shall state in writing the nature of the emergency and of the
395 necessity for such action and may adopt the regulations. Pursuant to § 2.2-4012, such regulations shall
396 become effective upon approval by the ~~Governor~~ *Division of Regulatory Management* and filing with the
397 Registrar of Regulations.

398 C. All emergency regulations shall be limited to no more than 18 months in duration. During the
399 18-month period, an agency may issue additional emergency regulations as needed addressing the
400 subject matter of the initial emergency regulation, but any such additional emergency regulations shall
401 not be effective beyond the 18-month period from the effective date of the initial emergency regulation.
402 If the agency wishes to continue regulating the subject matter governed by the emergency regulation
403 beyond the 18-month limitation, a regulation to replace the emergency regulation shall be promulgated
404 in accordance with this article *and pursuant to the requirements of Article 2 (§ 2.2-1514.1 et seq.) of*
405 *Chapter 15.* The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be
406 filed with the Registrar within 60 days of the effective date of the emergency regulation and published
407 as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within
408 180 days after the effective date of the emergency regulation and published as soon as practicable.

409 D. In the event that an agency concludes that despite its best efforts a replacement regulation cannot
410 be adopted before expiration of the 18-month period described in subsection C, it may seek the prior
411 written approval of the ~~Governor~~ *Division of Regulatory Management* to extend the duration of the
412 emergency regulation for a period of not more than six additional months. Any such request must be
413 submitted to the ~~Governor~~ *Division of Regulatory Management* at least 30 days prior to the scheduled
414 expiration of the emergency regulation and shall include a description of the agency's efforts to adopt a
415 replacement regulation together with the reasons that a replacement regulation cannot be adopted before
416 the scheduled expiration of the emergency regulation. Upon approval of the ~~Governor~~ *Division of*
417 *Regulatory Management*, provided such approval occurs prior to the scheduled expiration of the
418 emergency regulation, the duration of the emergency regulation shall be extended for a period of no
419 more than six months. Such approval ~~shall be in the sole discretion of the Governor~~ and shall not be
420 subject to judicial review. Agencies shall notify the Registrar of Regulations of the new expiration date
421 of the emergency regulation as soon as practicable.

422 E. Emergency regulations shall be published as soon as practicable in the Register.

423 F. The Regulations of the Marine Resources Commission shall be excluded from the provisions of
424 this section.

425 **2. That the initial appointments of nonlegislative citizen members to the Red Tape Reduction**
426 **Commission as created by this act shall be staggered as follows: (i) one member for a term of two**

427 years, one member for a term of three years, and one member for a term of four years appointed
428 by the Speaker of the House of Delegates; (ii) one member for a term of two years and one
429 member for a term three years appointed by the Senate Committee on Rules; and (iii) one
430 member for a term of one year, two members for a term of two years, and two members for a
431 term of three years appointed by the Governor.