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HOUSE BILL NO. 1790

Offered January 11, 2017

Prefiled January 9, 2017

A *BILL to amend and reenact §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 40 of Title 2.2 a section numbered 2.2-4005.1, relating to the Administrative Process Act; development and periodic review of regulations; report.*

Patrons—Lingamfelter, Hodges, Landes, LeMunyon and Morris

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 40 of Title 2.2 a section numbered 2.2-4005.1 as follows:

§ 2.2-4005.1. General provisions regarding the development of regulations.

All regulations proposed by each agency shall be promulgated with the least burdensome and least intrusive manner possible. The following principles shall guide the development and adoption of all regulations that pertain to citizens engaged in otherwise constitutional and lawful activities:

1. Regulations shall be tailored to achieve the least possible interference in private enterprise and in the lives of citizens of the Commonwealth.

2. Regulations shall be essential to protect the health, safety, and welfare of citizens or for the efficient and cost effective performance of an important government function.

3. Regulations shall be clearly written in a manner that is easily understood by the citizens, professions, and occupations that the regulation governs.

4. No regulation shall be promulgated or remain in effect if there is a less burdensome or intrusive manner to satisfy any state or federal law and achieve the primary purpose of the law for which the regulation was adopted.

5. Regulations shall not be presumed by any agency of government to be perpetual and shall be subjected to regular and recurring agency review as required by § 2.2-4017 to determine if a regulation should be retained in its existing form, amended, or repealed.

6. To the extent practical and feasible, regulations shall set forth the specific and measurable goals that a regulation is designed to achieve. The attainment or nonattainment of these goals shall be considered in the regular and recurring review process to determine if the regulation should be retained in its existing form, amended, or repealed.

7. When a regulation is determined to be inconsequential, irrelevant, or unnecessary in protecting the health, safety, and welfare of citizens or for the efficient and economic performance of an important government function, it shall be terminated.

8. The proposal, development, and promulgation process of regulations shall ensure that public participation is not abridged or inhibited in any manner and shall ensure the right of the public to have reasonable access to such process in order that they may provide comment and concerns related to regulations that may be imposed on them.

§ 2.2-4007.1. Regulatory flexibility for small businesses.

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

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

1. The establishment of less stringent compliance or reporting requirements;

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;

3. The consolidation or simplification of compliance or reporting requirements;

4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

5. The exemption of small businesses from all or any part of the requirements contained in the

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59 proposed regulation.

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

64 D. In addition to other requirements of § 2.2-4017, all regulations shall be reviewed every four years
65 to determine whether they should be continued without change or be amended or repealed, consistent
66 with the stated objectives of applicable law, to minimize the economic impact on small businesses in a
67 manner consistent with the stated objectives of applicable law. When a regulation has undergone a
68 comprehensive review as part of a regulatory action that included the solicitation of public comment on
69 the regulation, a periodic review shall not be required until four years after the effective date of the
70 regulatory action.

71 E. The regulatory review required by this section shall include consideration of:

- 72 1. The continued need for the rule;
- 73 2. The nature of complaints or comments received concerning the regulation from the public;
- 74 3. The complexity of the regulation;
- 75 4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or
76 regulation; and

- 77 5. The length of time since the regulation has been evaluated or the degree to which technology,
78 economic conditions, or other factors have changed in the area affected by the regulation.

79 F. Prior to commencement of the regulatory review required by subsection D, the agency shall
80 publish a notice of the review in the Virginia Register of Regulations and post the notice on the
81 Virginia Regulatory Town Hall. The agency shall provide a minimum of 21 days for public comment
82 after publication of the notice. No later than 120 days after close of the public comment period, the
83 agency shall publish a report of the findings of the regulatory review in the Virginia Register of
84 Regulations and post the report on the Virginia Regulatory Town Hall.

85 **§ 2.2-4017. Regular and recurring review of regulations; report to the Governor and General**
86 **Assembly.**

87 Each Governor shall mandate through executive order a procedure for periodic review during that
88 Governor's administration of regulations of agencies within the executive branch of state government.
89 The procedure shall include (i) a review by the Attorney General to ensure statutory authority for
90 regulations and (ii) a determination by the Governor whether the regulations are (a) necessary for the
91 protection of public health, safety and welfare and (b) clearly written and easily understandable.

92 The Governor may require each agency (i) to review all regulations promulgated by that agency to
93 determine whether new regulations should be adopted and old regulations amended or repealed, and (ii)
94 to prepare a written report summarizing the agency's findings about its regulations, its reasons for its
95 findings and any proposed course of action.

96 A. All agencies shall establish a schedule for regular and recurring review over a ten-year period
97 encompassing all regulations for which the agencies are the primary agency responsible. Such schedule
98 shall require the annual review of at least 10 percent of the regulations by July 1 of each year and
99 contain the information required by subsection C. In reviewing any regulation, the agency shall ensure
100 the participation of any other agencies with an interest in the regulation during the regular and
101 recurring agency review. Notwithstanding the schedule developed pursuant to this section, an agency
102 may review any regulation at any time and as many times as it deems necessary.

103 B. Each agency shall submit the proposed schedule for the regular and recurring review of the
104 agency's regulations for the upcoming year to the Department of Planning and Budget by September 1
105 of each year. The Department of Planning and Budget shall (i) ensure that each proposed schedule
106 complies with the requirements of this section and (ii) consolidate the agency review schedules for
107 submission to the Governor for review and approval by November 1 of each year. After approval of the
108 schedule by the Governor, each agency shall proceed to conduct the annual review of the agency's
109 regulations in compliance with the approved schedule.

110 C. The results of the annual agency review shall be incorporated into a report containing the
111 following information:

112 1. A summary of each regulation reviewed, the legal authority requiring the regulation, when the
113 regulation went into force, and the last time the regulation was reviewed.

114 2. For each regulation a statement citing (i) whether there is a continued need for the rule; (ii) the
115 nature of complaints or comments received concerning the regulation from the public; (iii) the
116 complexity of the regulation; (iv) the extent to which the regulation overlaps, duplicates, or conflicts
117 with federal or state law or regulation; (v) the length of time since the regulation has been evaluated,
118 or the degree to which technological advancement, economic conditions, or other factors have changed
119 in the area affected by the regulation; and (vi) whether the regulation should be continued without
120 change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize

121 *the economic impact on small businesses in a manner consistent with the stated objectives of applicable*
122 *law.*

123 *3. The total number of regulations the agency reviewed for that year, including (i) the number that*
124 *were retained and the rationale for their retention, (ii) the number that were amended and the reason*
125 *for the amendments, and (iii) the number that were repealed and the rationale for repeal.*

126 *4. An assessment by the reviewing agency of whether or not the regulation attained the specific and*
127 *measurable goals it was designed to achieve. If no specific and measurable goals were identified when*
128 *the regulation was developed or amended, such specific and measurable goals shall be developed for*
129 *any regulation retained or amended. Specific and measurable goals shall not be required for any*
130 *regulation that is repealed.*

131 *5. In conjunction with the Department of Planning and Budget, an estimated cost of enforcing the*
132 *retained, amended, or repealed regulations by the Commonwealth and to the extent possible and*
133 *feasible, the estimated cost to citizens, professions, trades, or occupations to comply with the regulation*
134 *that can be reasonably determined. In estimating such cost to citizens, professions, trades, or*
135 *occupations, such costs shall be expressed in the following categories:*

136 *a. Low: an estimated cost of 0 to \$100;*

137 *b. Moderate: an estimated cost of \$101 to \$500;*

138 *c. High: an estimated cost of over \$500.*

139 *6. A validation by the reviewing agency (i) that regulations retained or amended have been adopted*
140 *in the least burdensome and intrusive manner and are written in a clear and understandable manner*
141 *and (ii) that the public was provided an opportunity to provide comments and concerns during the*
142 *review.*

143 *7. Any comments or concerns by the Attorney General concerning the retention, amendment, or*
144 *repeal of a regulation.*

145 *8. A certification by the reviewing agency that any regulation retained or amended meets the*
146 *principles that guide the development and adoption of regulations for citizens, professions, and*
147 *occupations engaged in otherwise constitutional and lawful activities.*

148 *D. The report shall be submitted to the Department of Planning and Budget by July 1 of each year*
149 *for consolidation into an overall report containing all agency regulations reviewed in the current year.*
150 *The final consolidated report shall be approved by the Governor by August 1 of each year. Upon*
151 *approval, the Governor shall submit the report to the chairmen of the standing committees of the House*
152 *of Delegates and the Senate.*