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SENATE BILL NO. 1449

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology)

(Patron Prior to Substitute—Senator Chase)

Senate Amendments in [] — February 6, 2017

A BILL to amend and reenact § 2.2-4011 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 25 of Title 2.2 an article numbered 10, consisting of sections numbered 2.2-2537 through 2.2-2545, relating to the establishment of the Red Tape Reduction Commission; review of regulatory requirements; report.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4011 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 25 of Title 2.2 an article numbered 10, consisting of sections numbered 2.2-2537 through 2.2-2545, as follows:

Article 10.

Red Tape Reduction Commission.

§ 2.2-2537. Definitions.

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

"Agency" means any authority, instrumentality, officer, board, or other unit of the government of the Commonwealth with express or implied authority to issue regulations other than the General Assembly, courts, municipal corporations, counties, other local or regional governmental authorities including sanitary or other districts and joint state-federal, interstate or intermunicipal authorities, the Virginia Housing Development Authority, the Virginia Resources Authority, the Virginia Code Commission with respect to minor changes made under the provisions of § 30-150, and educational institutions operated by the Commonwealth with respect to regulations that pertain to (i) their academic affairs; (ii) the selection, tenure, promotion, and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students. "Agency" does not include any agency of the Supreme Court and any agency that by the Constitution is expressly granted any of the powers of a court of record.

"Commission" means the Red Tape Reduction Commission.

"Plain language" means 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 in Virginia by the Commission pursuant to § 2.2-2539 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 or regulation in order to access government services or operate and conduct business. "Regulatory requirement" does not include (i) regulations and associated regulatory requirements that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved or to meet requirements of federal law or regulations, (ii) statements or policies concerning the internal management of any agency, (iii) guidance documents, (iv) declaratory rulings, or (v) 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.

§ 2.2-2538. Red Tape Reduction Commission; purpose; membership; terms; quorum; meetings; compensation and expenses.

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

B. The Commission shall be composed of nine nonlegislative citizen members as follows: (i) two members appointed by the Speaker of the House of Delegates, (ii) two members appointed by the Senate Committee on Rules, and (iii) five members appointed by the Governor. After the initial staggering of terms, all members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. No nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the

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60 member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original
61 appointments.

62 The Commission shall elect a chairman and vice-chairman from among its membership. A majority
63 of the members shall constitute a quorum. The Commission shall meet at least four times each year. The
64 meetings of the Commission shall be held at the call of the chairman or whenever four or more
65 members so request.

66 C. Members shall receive compensation as provided in § 2.2-2813 for the performance of their
67 duties. All members shall be reimbursed for all reasonable and necessary expenses incurred in the
68 performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

69 **§ 2.2-2539. Duties of the Commission.**

70 The Commission shall:

71 1. Employ such personnel as may be required to carry out the purposes of this chapter;
72 2. Establish a regulatory baseline;
73 3. Maintain the state's regulatory baseline through the establishment of a process for (i) the review
74 of new regulatory requirements and (ii) the approval or denial of agency regulatory replacement
75 requests;

76 4. Develop guidelines to assist agencies in developing a comprehensive list of regulatory
77 requirements that are enforced or administered by such agencies;

78 5. Establish and maintain a website, including a searchable database of all current regulations and
79 regulatory requirements pursuant to § 2.2-2540; and

80 6. Review the current regulatory requirements and provide recommendations to the Governor and
81 General Assembly regarding regulatory requirements that are (i) duplicative or unnecessary, (ii)
82 especially burdensome to businesses within the Commonwealth, (iii) disproportionate in their effect on
83 businesses with fewer than 100 employees, (iv) disproportionate in their effect on businesses with annual
84 revenues below \$5 million, (v) easily managed by businesses with 100 or more employees and effectively
85 limit competition by smaller businesses, or (vi) capable of being repealed with minimal impact on public
86 safety.

87 **§ 2.2-2540. Establishment of state regulatory baseline; public information website.**

88 A. The Commission shall work with state agencies to develop an initial regulatory baseline on or
89 before January 1, 2019. Such development may include agency submission of regulatory requirements
90 that are subject to this chapter.

91 B. The Commission shall maintain a website with a searchable database containing the following
92 information:

93 1. A list of all current regulatory requirements;
94 2. A plain language description of the purpose of each regulatory requirement;
95 3. The agency responsible for each regulatory requirement;
96 4. The statute or act authorizing each regulatory requirement; and
97 5. A listing of any changes to the initial regulatory baseline established pursuant to subsection A.

98 **§ 2.2-2541. Limitation on new regulatory requirements; regulatory requirement replacement**
99 **requests; special provisions.**

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

102 B. To maintain a zero net increase in regulatory requirements, the agency proposing a new
103 regulatory requirement shall be required to submit a regulatory requirement replacement request to the
104 Commission.

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

106 1. The existing statute authorizing the regulatory requirement;
107 2. The purpose of the new regulatory requirement;
108 3. The proposed regulatory requirement to be replaced or repealed; and
109 4. The total number of regulatory requirements that will be added if the measure becomes effective.

110 **§ 2.2-2542. Review of new proposed regulations and accompanying regulatory requirement**
111 **replacement requests; special provisions for the reduction of regulatory requirements.**

112 A. Each state agency shall achieve regulatory goals as effectively and efficiently as possible without
113 imposing unnecessary regulatory requirements that unduly burden the public. To mitigate the negative
114 economic effects of regulatory requirements, any new proposed regulatory requirement and the
115 accompanying regulatory requirement replacement request or proposed sunset of an existing regulatory
116 requirement shall be submitted to the Commission for approval.

117 B. The Commission shall evaluate each new proposed regulatory requirement and the accompanying
118 regulatory requirement replacement using the following factors:

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

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

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

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

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

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

D. In order to ensure that the overall burden of regulatory requirements that are imposed upon the citizens and businesses of the Commonwealth is decreased, until the regulatory baseline established pursuant to § 2.2-2540 has been reduced by 35 percent, the Commission shall not approve an agency's request for a replacement regulatory requirement unless the agency provides at least two regulatory requirements that are to be replaced or repealed.

§ 2.2-2543. Request for exemptions.

A. Any agency seeking an exemption from the approval requirement of § 2.2-2542 shall submit a request for an exemption at the same time the documentation is submitted for the regulatory requirement replacement request required by § 2.2-2542. The request shall be submitted to (i) the Commission, (ii) the Clerk of the Senate, and (iii) the Clerk of the House of Delegates. The exemption request shall include a detailed explanation of why the new regulatory requirement should be exempt from the approval requirement, including how the requirement is necessary to protect the public health, safety, and welfare of the citizens of the Commonwealth.

B. The Commission shall review and determine whether to grant an exemption. Any exemption approved by the Commission shall be limited to no more than 18 months in duration.

§ 2.2-2544. Annual report.

The Commission shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall include a description of the activities of the Commission and contain (i) a list of all regulatory requirements, (ii) a description of the purpose of each regulatory requirement and the responsible agency, (iii) the law or regulation authorizing each regulatory requirement, and (iv) a list of any changes to the regulatory baseline in the current year. The report shall be submitted 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.

§ 2.2-2545. Cooperation and assistance.

All agencies, authorities, and institutions of the Commonwealth shall cooperate and provide such assistance to the Commission as the Commission may request.

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

A. Regulations that an agency finds are necessitated by an emergency situation may be adopted by an agency upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor.

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

C. All emergency regulations shall be limited to no more than 18 months in duration. During the

183 18-month period, an agency may issue additional emergency regulations as needed addressing the
184 subject matter of the initial emergency regulation, but any such additional emergency regulations shall
185 not be effective beyond the 18-month period from the effective date of the initial emergency regulation.
186 If the agency wishes to continue regulating the subject matter governed by the emergency regulation
187 beyond the 18-month limitation, a regulation to replace the emergency regulation shall be promulgated
188 in accordance with this article *and pursuant to the requirements of Article 10 (§2.2-2537 et seq.) of*
189 *Chapter 25.* The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be
190 filed with the Registrar within 60 days of the effective date of the emergency regulation and published
191 as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within
192 180 days after the effective date of the emergency regulation and published as soon as practicable.

193 D. In the event that an agency concludes that despite its best efforts a replacement regulation cannot
194 be adopted before expiration of the 18-month period described in subsection C, it may seek the prior
195 written approval of the Division of Regulatory Management to extend the duration of the emergency
196 regulation for a period of not more than six additional months. Any such request must be submitted to
197 the Division of Regulatory Management at least 30 days prior to the scheduled expiration of the
198 emergency regulation and shall include a description of the agency's efforts to adopt a replacement
199 regulation together with the reasons that a replacement regulation cannot be adopted before the
200 scheduled expiration of the emergency regulation. Upon approval of the Division of Regulatory
201 Management, provided such approval occurs prior to the scheduled expiration of the emergency
202 regulation, the duration of the emergency regulation shall be extended for a period of no more than six
203 months. Such approval shall not be subject to judicial review. Agencies shall notify the Registrar of
204 Regulations of the new expiration date of the emergency regulation as soon as practicable.

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

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

208 **2. That the initial appointments of nonlegislative citizen members to the Red Tape Reduction**
209 **Commission as created by this act shall be staggered as follows: (i) one member for a term of two**
210 **years and one member for a term of three years appointed by the Speaker of the House of**
211 **Delegates; (ii) one member for a term of two years and one member for a term of three years**
212 **appointed by the Senate Committee on Rules; and (iii) two members for a term of one year, two**
213 **members for a term of two years, and one member for a term of three years appointed by the**
214 **Governor.**

215 **3. That the Red Tape Reduction Commission shall submit to the Governor and General Assembly**
216 **not later than November 1, 2017, a report containing (i) the organizational structure of the**
217 **Commission, (ii) duties of staff, and (iii) guidelines for determining what constitutes a regulatory**
218 **requirement.**

219 **[4. That the provisions of this act shall not become effective unless an appropriation effectuating**
220 **the purposes of this act is included in a general appropriation act passed in 2017 by the General**
221 **Assembly that becomes law.]**