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HOUSE BILL NO. 1420

Offered January 15, 2018

A *BILL to amend and reenact §§ 2.2-4006, 9.1-203, 27-95, 27-97, 27-98, 36-118, and 36-119.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 27-97.01, relating to Statewide Fire Prevention Code; powers and duties of Virginia Fire Services Board.*

Patron—Collins

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4006, 9.1-203, 27-95, 27-97, 27-98, 36-118, and 36-119.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 27-97.01 as follows:

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.
2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

5. Regulations of the Board of Agriculture and Consumer Services adopted pursuant to subsection B of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more Board meetings and one public hearing.

6. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants.

7. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Dam Safety Act (§ 10.1-604 et seq.), and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

9. The development and issuance by the Board of Education of guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools pursuant to § 22.1-202.

10. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23.1-704.

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11. Regulations of the Marine Resources Commission.

12. Regulations adopted by the Board of Housing and Community Development pursuant to (i) ~~Statewide Fire Prevention Code (§ 27-94 et seq.)~~, (ii) the Industrialized Building Safety Law (§ 36-70 et seq.), (iii) (i) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) (iii) § 36-98.3, provided that the Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the provisions of § 2.2-4007.06 concerning public petitions; and §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.

13. *Regulations adopted by the Virginia Fire Services Board pursuant to the Statewide Fire Prevention Code (§ 27-94 et seq.), provided that the Board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007.03, and (iii) conducts at least one public hearing as provided in § 2.2-4009 prior to the publishing of the proposed regulations. Notwithstanding the provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the provisions of § 2.2-4007.06 concerning public petitions and §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.*

14. Amendments to regulations of the Board to schedule a substance pursuant to subsection D or E of § 54.1-3443.

15. Waste load allocations adopted, amended, or repealed by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), including but not limited to Article 4.01 (§ 62.1-44.19:4 et seq.) of the State Water Control Law, if the Board (i) provides public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary response to written comments; and (iv) conducts at least one public meeting. Notwithstanding the provisions of this subdivision, any such waste load allocations adopted, amended, or repealed by the Board shall be subject to the provisions of §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.

16. Regulations of the Workers' Compensation Commission adopted pursuant to § 65.2-605, including regulations that adopt, amend, adjust, or repeal Virginia fee schedules for medical services, provided the Workers' Compensation Commission (i) utilizes a regulatory advisory panel constituted as provided in subdivision F 2 of § 65.2-605 to assist in the development of such regulations and (ii) provides an opportunity for public comment on the regulations prior to adoption.

B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this section shall be in accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 2.2-4012.

C. A regulation for which an exemption is claimed under this section or § 2.2-4002 or 2.2-4011 and that is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

§ 9.1-203. Powers and duties of Virginia Fire Services Board; limitation.

A. The Board shall have the responsibility for promoting the coordination of the efforts of fire service organizations at the state and local levels. To these ends, it shall have the following powers and duties to:

1. Ensure the development and implementation of the Virginia Fire Prevention and Control Plan;
2. Review and approve a five-year statewide plan for fire education and training;
3. Approve the criteria for and disbursement of any grant funds received from the federal government and any agencies thereof and any other source and to disburse such funds in accordance therewith;
4. Provide technical assistance and advice to local fire departments, other fire services organizations, and local governments through Fire and Emergency Medical Services studies done in conjunction with the Department of Fire Programs;
5. Advise the Department of Fire Programs on and adopt personnel standards for fire services personnel;
6. Advise the Department of Fire Programs on the Commonwealth's statewide plan for the collection, analysis, and reporting of data relating to fires in the Commonwealth;
7. Make recommendations to the Secretary of Public Safety and Homeland Security concerning legislation affecting fire prevention and protection and fire services organizations in Virginia;

8. Evaluate all fire prevention and protection programs and make any recommendations deemed necessary to improve the level of fire prevention and protection in the Commonwealth;

9. *Adopt the Statewide Fire Prevention Code in accordance with the provisions of § 27-97 and the Administrative Process Act (§ 2.2-4000 et seq.). Whenever the Board proposes a change to the Statewide Fire Prevention Code, the Board may convene an ad hoc committee, including representatives of affected industry groups, for the purpose of advising the Board on such matters;*

10. *Develop the means to publicize the policies and programs of the Department of Fire Programs to educate the public and elicit public support;*

11. Advise the Department of Fire Programs on the Statewide Fire Prevention Code; and

~~10.~~ 12. Investigate alternative means of financial support for volunteer fire departments and advise jurisdictions regarding the implementation of such alternatives.

B. Except for those policies established in § 38.2-401, compliance with the provisions of § 9.1-201 and this section and any policies or guidelines enacted pursuant thereto shall be optional with, and at the full discretion of, any local governing body and any volunteer fire department or volunteer fire departments operating under the same corporate charters.

§ 27-95. Definitions.

As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them:

"Board" means the *Virginia Fire Services Board of Housing and Community Development as provided for in § 9.1-202.*

"Code provisions" means the provisions of the Fire Prevention Code as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated from time to time by such Board.

"Enforcement agency" means the agency or agencies of any local governing body or the State Fire Marshal charged with the administration or enforcement of the Fire Prevention Code.

"Fire Prevention Code" or "Code" means the Statewide Fire Prevention Code.

"Fire prevention regulation" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling and use of substances, materials and devices, including explosives and blasting agents, wherever located, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions or other agencies.

~~"Fire Services Board" means the Virginia Fire Services Board as provided for in § 9.1-202.~~

"Fireworks" means any firecracker, torpedo, skyrocket, or other substance or object, of whatever form or construction, that contains any explosive or inflammable compound or substance, and is intended, or commonly known as fireworks, and which explodes, rises into the air or travels laterally, or fires projectiles into the air.

"Fireworks operator" or "pyrotechnician" means any person engaged in the design, setup, and firing of any fireworks other than permissible fireworks either inside a building or structure or outdoors.

"Inspection warrant" means an order in writing, made in the name of the Commonwealth, signed by any judge or magistrate whose territorial jurisdiction encompasses the building, structure or premises to be inspected or entered, and directed to a state or local official, commanding him to enter and to conduct any inspection, examination, testing or collection of samples for testing required or authorized by the Virginia Statewide Fire Prevention Code.

"Local government" means the governing body of any city, county or town in this Commonwealth.

"Permissible fireworks" means any sparklers, fountains, Pharaoh's serpents, caps for pistols, or pinwheels commonly known as whirligigs or spinning jennies.

"State Fire Marshal" means the State Fire Marshal as provided for by § 9.1-206.

§ 27-97. Adoption of Fire Prevention Code.

The Board of ~~Housing and Community Development~~ is hereby empowered to adopt and promulgate a Statewide Fire Prevention Code, which shall be cooperatively developed with the ~~Fire Services Board of Housing and Community Development~~ pursuant to procedures agreed to by the two ~~Boards~~ boards. The Fire Prevention Code shall prescribe regulations to be complied with for the protection of life and property from the hazards of fire or explosion and for the handling, storage, sale, and use of fireworks, explosives, or blasting agents; and shall provide for the administration and enforcement of such regulations. The Fire Prevention Code shall require manufacturers of fireworks or explosives, as defined in the Code, to register and report information concerning their manufacturing facilities and methods of operation within the Commonwealth in accordance with regulations adopted by the Board. In addition to conducting criminal background checks pursuant to § 27-97.2, the Board shall also establish regulations for obtaining permits for the manufacturing, storage, handling, use, or sales of fireworks or explosives. In the enforcement of such regulations, the enforcing agency may issue annual permits for such

activities to any ~~state regulated~~ *state-regulated* public utility. Such permits shall not apply to the storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1.

The Fire Prevention Code shall prohibit any person, firm, or corporation from transporting, manufacturing, storing, selling, offering for sale, exposing for sale, or buying, using, igniting, or exploding any fireworks except for those persons, firms, or corporations that manufacture, store, market, and distribute fireworks for the sole purpose of fireworks displays permitted by an enforcement agency or by any locality.

The Fire Prevention Code shall supersede fire prevention regulations heretofore adopted by local governments or other political subdivisions. Local governments are hereby empowered to adopt fire prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code, provided *that* such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure, including the voluntary installation of smoke alarms and regulation and inspections thereof in commercial buildings where such smoke alarms are not required under the provisions of the Code. The Fire Prevention Code shall prohibit any person not certified by the State Fire Marshal's Office as a fireworks operator or pyrotechnician to design, set up, or conduct or supervise the design, setup, or conducting of any fireworks display, either inside a building or structure or outdoors and shall require that at least one person holding a valid certification is present at the site where the fireworks display is being conducted. Certification shall not be required for the design, storage, sale, use, conduct, transportation, and set up of permissible fireworks or the supervision thereof or in connection with any fireworks display conducted by a volunteer fire department, provided *that* one member of the volunteer fire department holds a valid certification.

In formulating the Fire Prevention Code, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, standards of the International Code Council, the National Fire Protection Association, and recognized organizations issuing standards for the protection of the public from the hazards of explosives and blasting agents. Such standards shall be based on the companion document to the model building code referenced by the Uniform Statewide Building Code.

The Fire Prevention Code shall require that buildings constructed prior to 1973 be maintained in accordance with state fire and public building regulations in effect prior to March 31, 1986, and that any building ~~which~~ *that* is (i) more than 75 feet or more than six stories high and (ii) used, in whole or in part, as a dormitory to house students by any public or private institution of higher education shall be required to comply with the provisions of § 36-99.3. The Fire Prevention Code shall also require annual fire drills in all buildings having floors used for human occupancy located more than 75 feet above the lowest level of fire department vehicle access. The drills shall be conducted by building staff personnel or the owner of the building in accordance with a plan approved by the appropriate fire official and shall not affect other current occupants. The Board may modify, amend, or repeal any Code provisions as the public interest requires. Any such Code changes shall be developed in cooperation with the ~~Fire Services Board of Housing and Community Development~~ pursuant to procedures agreed to by the two ~~Boards~~ *boards*.

§ 27-97.01. Notice of hearings on adoption of Code, amendments, and repeals.

The adoption, amendment, or repeal of any Code provisions shall be exempt from the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, pursuant to subdivision A 13 of § 2.2-4006. Before the adoption, amendment, or repeal of any Code provisions, the Board shall hold at least one public hearing. In addition to the notice requirement contained therein, the Board shall notify in writing the local fire marshal or, where none, the local governing body of every city or county in the Commonwealth. At any such hearing all persons desiring to do so shall be afforded an opportunity to present their views.

§ 27-98. Enforcement of Fire Prevention Code; appeals from decisions of local enforcing agencies; inspection of buildings.

Any local government may enforce the Fire Prevention Code in its entirety or with respect only to those provisions of the Fire Prevention Code relating to open burning, fire lanes, fireworks, and hazardous materials. If a local governing body elects to enforce only those provisions of the Fire Prevention Code relating to open burning, it may do so in all or in any designated geographic areas of its jurisdiction. The State Fire Marshal shall also have the authority, in cooperation with any local governing body, to enforce the Code. The State Fire Marshal shall also have authority to enforce the Code in those jurisdictions in which the local governments do not enforce the Code and may establish such procedures or requirements as may be necessary for the administration and enforcement of the Code in such jurisdictions. In addition, subject to the approval of the Board of Housing and Community Development, the State Fire Marshal may charge a fee to recover the actual cost of administering and enforcing the Code in jurisdictions for which he serves as the enforcement authority. No fee may be charged for the inspection of any school. The local governing body of any jurisdiction that enforces the Code may establish such procedures or requirements as may be necessary for the administration and

enforcement of the Code. Appeals concerning the application of the Code by the local enforcing agency shall first lie to a local board of appeals and then to the State Building Code Technical Review Board. Appeals from the application of the Code by the State Fire Marshal shall be made directly to the State Building Code Technical Review Board as provided in Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals; however, for the City of Chesapeake no fee charged for the inspection of any place of religious worship designated as Assembly Group A-3 under the Fire Prevention Code shall exceed \$50. For purposes of this section, "defray the cost" may include the fair and reasonable costs incurred for such enforcement during normal business hours, but shall not include overtime costs, unless conducted outside of the normal working hours established by the locality. A schedule of such costs shall be adopted by the local governing body in a local ordinance. A locality shall not charge an overtime rate for inspections conducted during the normal business hours established by the locality. Nothing herein shall be construed to prohibit a private entity from conducting such inspections, provided *that* the private entity has been approved to perform such inspections in accordance with the written policy of the fire official for the locality. Any local fire code may provide for an appeal to a local board of appeals. If no local board of appeals exists, the State Building Code Technical Review Board shall hear appeals of any local fire code violation.

§ 36-118. Interpretation of Code; recommendation of modifications.

The Review Board shall interpret the provisions of the Building Code, ~~and the Fire Prevention Code,~~ and shall make such recommendations, ~~which~~ it deems appropriate, to the Board for modification, amendment, or repeal of any of such provisions. *The Review Board shall also interpret the provisions of the Statewide Fire Prevention Code and shall make such recommendations it deems appropriate to the Virginia Fire Services Board for modification, amendment, or repeal of any such provision.* A record of all such recommendations, and of the Board's *and the Virginia Fire Services Board's* actions thereon, shall be kept in the office of the Review Board. Such record shall be open to public inspection at all times during business hours.

§ 36-119.1. Existing buildings.

This chapter shall not supersede provisions of the Fire Prevention Code promulgated by the *Virginia Fire Services* Board under § 27-97, that prescribe standards to be complied with in existing buildings or structures, provided that such regulations shall not impose requirements that are more restrictive than those of the Uniform Statewide Building Code under which the buildings or structures were constructed. Subsequent alteration, enlargement, rehabilitation, repair, or conversion of the occupancy classification of such buildings and structures shall be subject to the construction and rehabilitation provisions of the Building Code.

2. That the regulations of the Board of Housing and Community Development promulgated pursuant to § 27-97 of the Code of Virginia shall be administered by the Virginia Fire Services Board and shall remain in full force and effect until the Virginia Fire Services Board promulgates regulations pursuant to this act.