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HOUSE BILL NO. 297**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on General Laws
on February 8, 2018)

(Patron Prior to Substitute—Delegate Bulova)

A BILL to amend and reenact § 2.2-4001 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-4002.1, relating to the Administrative Process Act; guidance documents.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4001 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-4002.1 as follows:

§ 2.2-4001. Definitions.

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

"Agency" means any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases.

"Agency action" means either an agency's regulation or case decision or both, any violation, compliance, or noncompliance with which could be a basis for the imposition of injunctive orders, penal or civil sanctions of any kind, or the grant or denial of relief or of a license, right, or benefit by any agency or court.

"Basic law" or "basic laws" means provisions of the Constitution and statutes of the Commonwealth authorizing an agency to make regulations or decide cases or containing procedural requirements therefor.

"Case" or "case decision" means any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit.

"Guidance document" means the same as that term is defined in § 2.2-4101.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007.01 and 2.2-4019 and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 2.2-4020 in connection with case decisions.

"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024.

"Public assistance and social services programs" means those programs specified in § 63.2-100.

"Registrar" means the Registrar of Regulations appointed as provided in § 2.2-4102.

"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws.

"Subordinate" means (i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf.

"Virginia Register of Regulations" means the publication issued under the provisions of Article 6 (§ 2.2-4031 et seq.).

"Virginia Regulatory Town Hall" means the website operated by the Department of Planning and Budget, which has online public comment forums and displays information about regulatory actions under consideration in the Commonwealth and sends this information to registered public users.

§ 2.2-4002.1. Guidance documents.

A. Guidance documents shall be exempt from the provisions of this chapter, pursuant to this section. Guidance documents do not include agency (i) rulings and advisory opinions, (ii) forms and instructions, (iii) bulletins and legislative summaries, (iv) studies and reports, and (v) internal manuals and memoranda.

B. The agency that develops a guidance document shall certify that the document conforms to the definition of a guidance document in § 2.2-4001.

The guidance document shall be subject to a 30-day public comment period, to include public comment through the Virginia Regulatory Town Hall website, after publication in the Virginia Register of Regulations and prior to final publication by the agency.

The agency shall provide notice of the opportunity for public comment to interested parties as

60 identified under § 2.2-4007.02 prior to the start of the 30-day public comment period.

61 C. If a written comment is received during a public comment period asserting that the guidance
62 document is contrary to state law or regulation, or that the document should not be exempted from the
63 provisions of this chapter, the publication of the guidance document by the agency shall be delayed for
64 an additional 30-day period. During this additional period, the agency shall respond to any such
65 comments in writing by certified mail to the commenter or by posting the response electronically in a
66 manner consistent with the provisions for publication of comments on regulations provided in this
67 chapter. Any person who remains aggrieved after publication of the final guidance document may avail
68 himself of the remedies articulated in Article 5 (§ 2.2-4025 et seq.).