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SENATE BILL NO. 796

Offered January 9, 1997

A BILL to amend and reenact §§ 9-6.14:4.1, 9-6.14:7.1, 9-6.16, 9-6.17, and 9-6.18 of the Code of Virginia, and to repeal § 9-6.19 of the Code of Virginia, relating to publication requirements in the Administrative Process Act and Virginia Register Act for emergency regulations, economic impact analyses, and the Administrative Law Appendix.

Patrons—Reasor and Gartlan; Delegates: DeBoer and Murphy

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-6.14:4.1, 9-6.14:7.1, 9-6.16, 9-6.17, and 9-6.18 of the Code of Virginia are amended and reenacted as follows:

§ 9-6.14:4.1. Exemptions and exclusions.

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.

4. The Virginia Housing Development Authority.

5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.

6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which 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.

7. The Milk Commission in promulgating regulations regarding (i) producers' ~~license~~ licenses and ~~base~~ bases, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.

11. The Council on Information Management.

12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.

13, 14. [Repealed.]

15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.

17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, § 3.1-271.1, § 3.1-398, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.

18. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.

20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.

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60 21. The Virginia War Memorial Foundation.

61 22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to
62 the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage
63 pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

64 23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to
65 § 22.1-280.3.

66 24. The Virginia Student Assistance Authorities.

67 25. The Virginia Racing Commission, when acting by and through its duly appointed stewards or in
68 matters related to any specific race meeting.

69 26. The Virginia Small Business Financing Authority.

70 27. The Virginia Economic Development Partnership Authority.

71 28. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations
72 pursuant to clause A (ii) of § 59.1-156.

73 B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

74 1. Money or damage claims against the Commonwealth or agencies thereof.

75 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

76 3. The location, design, specifications or construction of public buildings or other facilities.

77 4. Grants of state or federal funds or property.

78 5. The chartering of corporations.

79 6. Customary military, naval or police functions.

80 7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of
81 the Commonwealth.

82 8. The conduct of elections or eligibility to vote.

83 9. Inmates of prisons or other such facilities or parolees therefrom.

84 10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as
85 well as the treatment, supervision, or discharge of such persons.

86 11. Traffic signs, markers or control devices.

87 12. Instructions for application or renewal of a license, certificate, or registration required by law.

88 13. Content of, or rules for the conduct of, any examination required by law.

89 14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter
90 14 of Title 2.1.

91 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent
92 with duly adopted regulations of the State Lottery Board, and provided that such regulations are
93 published and posted.

94 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,
95 finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

96 17. Any operating procedures for review of child deaths developed by the State Child Fatality
97 Review Team pursuant to § 32.1-283.1.

98 C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia
99 Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:

100 1. Agency orders or regulations fixing rates or prices.

101 2. Regulations which establish or prescribe agency organization, internal practice or procedures,
102 including delegations of authority.

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

107 4. Regulations which:

108 (a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no
109 agency discretion is involved;

110 (b) Are required by order of any state or federal court of competent jurisdiction where no agency
111 discretion is involved; or

112 (c) Are necessary to meet the requirements of federal law or regulations, provided such regulations
113 do not differ materially from those required by federal law or regulation, and the Registrar has so
114 determined in writing; notice of the proposed adoption of these regulations and the Registrar's above
115 determination shall be published in the Virginia Register not less than thirty days prior to the effective
116 date thereof.

117 5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of
118 this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public
119 health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law
120 or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of
121 the law or the appropriation act or the effective date of the federal regulation, and the regulation is not

exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt such regulations. Pursuant to § 9-6.14:9, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. Such regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be ~~published~~ *published filed with the Registrar* within sixty days of the effective date of the emergency regulation *and published as soon as practicable*, and the proposed replacement regulation shall be ~~published~~ *published filed with the Registrar* within 180 days after the effective date of the emergency regulation *and published as soon as practicable*.

6. [Repealed.]

7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.

8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.

9. Regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 which are limited to reducing fees charged to regulants and applicants.

10. 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.

11. General permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.), of Title 10.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty 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 subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

12. General permits issued by the 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 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty 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 subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

Whenever regulations are adopted under this subsection C, 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 subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection A of § 9-6.14:9.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.

2. The award or denial of claims for workers' compensation.

3. The grant or denial of public assistance.

4. Temporary injunctive or summary orders authorized by law.

5. The determination of claims for unemployment compensation or special unemployment.

6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.

E. Appeals from decisions of the Governor's Employment and Training Department otherwise subject to this chapter are excluded from the operation of Article 4 (§ 9-6.14:15 et seq.) of this chapter.

183 F. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia
184 Register Act, is excluded from the operation of subsection C of this section and of Article 2
185 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for
186 activity undertaken pursuant to Title 28.2 by the Marine Resources Commission shall be in accordance
187 with the provisions of this chapter.

188 G. A regulation for which an exemption is claimed under this section and which is placed before a
189 board or commission for consideration shall be provided at least two days in advance of the board or
190 commission meeting to members of the public that request a copy of that regulation. A copy of that
191 regulation shall be made available to the public attending such meeting.

192 H. The Joint Legislative Audit and Review Commission shall conduct a review periodically of
193 exemptions and exclusions authorized by this section. The purpose of this review shall be to assess
194 whether there are any exemptions or exclusions which should be discontinued or modified.

195 I. Minor changes to regulations being published in the Virginia Administrative Code under the
196 Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code
197 Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

198 § 9-6.14:7.1. Public participation; informational proceedings; effect of noncompliance.

199 A. Any person may petition an agency to request the agency to develop a new regulation or amend
200 an existing regulation. The agency receiving the petition shall consider and respond to the petition
201 within 180 days. Agency decisions to initiate or not initiate rulemaking in response to petitions are not
202 subject to judicial review.

203 B. In the case of all regulations, except those regulations exempted by § 9-6.14:4.1, an agency shall
204 provide the Registrar of Regulations with a Notice of Intended Regulatory Action which describes the
205 subject matter and intent of the planned regulation. At least thirty days shall be provided for public
206 comment after publication of the Notice of Intended Regulatory Action. An agency shall not file
207 proposed regulations with the Registrar until the public comment period on the Notice of Intended
208 Regulatory Action has closed.

209 C. Agencies shall state in the Notice of Intended Regulatory Action whether they plan to hold a
210 public hearing on the proposed regulation after it is published. Agencies shall hold such public hearings
211 if required by basic law. If the agency states an intent to hold a public hearing on the proposed
212 regulation in the Notice of Intended Regulatory Action, then it shall hold the public hearing. If the
213 agency states in its Notice of Intended Regulatory Action that it does not plan to hold a hearing on the
214 proposed regulation, then no public hearing is required unless, prior to completion of the comment
215 period specified in the Notice of Intended Regulatory Action: (i) the Governor directs that the agency
216 shall hold a public hearing or (ii) the agency receives requests for a public hearing from twenty-five
217 persons or more.

218 D. Public participation guidelines for soliciting the input of interested parties in the formation and
219 development of its regulations shall be developed, adopted and utilized by each agency pursuant to the
220 provisions of this chapter. The guidelines shall set out any methods for the identification and notification
221 of interested parties, and any specific means of seeking input from interested persons or groups which
222 the agency intends to use in addition to the Notice of Intended Regulatory Action. The guidelines shall
223 set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups
224 and individuals registering interest in working with the agency. Such policy shall address the
225 circumstances in which the agency considers such panels or consultation appropriate and intends to
226 make use of such panels or consultation.

227 E. In formulating any regulation, including but not limited to those in public assistance programs, the
228 agency pursuant to its public participation guidelines shall afford interested persons an opportunity to
229 submit data, views, and arguments, either orally or in writing, to the agency or its specially designated
230 subordinate. However, the agency may, at its discretion, begin drafting the proposed regulation prior to
231 or during any opportunities it provides to the public to submit input.

232 F. In the case of all regulations, except those regulations exempted by § 9-6.14:4.1, the proposed
233 regulation and general notice of opportunity for oral or written submittals as to that regulation shall be
234 published in the Virginia Register of Regulations in accordance with the provisions of subsection B of
235 § 9-6.14:22. In addition, the agency may, in its discretion, (i) publish the notice in any newspaper and
236 (ii) publicize the notice through press releases and such other media as will best serve the purpose and
237 subject involved. The Register and any newspaper publication shall be made at least sixty days in
238 advance of the last date prescribed in the notice for such submittals. All notices, written submittals, and
239 transcripts, summaries or notations of oral presentations, as well as any agency action thereon, shall be
240 matters of public record in the custody of the agency.

241 G. Before delivering any proposed regulation under consideration to the Registrar as required in
242 subsection H below, the agency shall deliver a copy of that regulation to the Department of Planning
243 and Budget. In addition to determining the public benefit, the Department of Planning and Budget in
244 coordination with the agency, shall, within forty-five days, prepare an economic impact analysis of the

proposed regulation. The economic impact analysis shall include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected by the regulation; the projected number of persons and employment positions to be affected; the impact of the regulation on the use and value of private property; and the projected costs to affected businesses, localities or entities to implement or comply with such regulations, including the estimated fiscal impact on such localities and sources of potential funds to implement and comply with such regulation. Agencies shall provide the Department with such estimated fiscal impacts on localities and sources of potential funds. The Department may request the assistance of any other agency in preparing the analysis. The Department shall deliver a copy of the analysis to the agency drafting the regulation, which shall comment thereon as provided in subsection H, and a copy to the Registrar for publication with the proposed regulation. No regulation shall be promulgated for consideration pursuant to subsection H until such impact analysis has been received by the Registrar. For purposes of this section, the term "locality, business, or entity particularly affected" means any locality, business, or entity which bears any identified disproportionate material impact which would not be experienced by other localities, businesses, or entities. The analysis shall represent the Department's best estimate for the purposes of public review and comment on the proposed regulation. The accuracy of the estimate shall in no way affect the validity of the regulation, nor shall any failure to comply with or otherwise follow the procedures set forth in this subsection create any cause of action or provide standing for any person under Article 4 (§ 9-6.14:15 et seq.) of this chapter or otherwise to challenge the actions of the Department hereunder or the action of the agency in adopting the proposed regulation.

H. Before promulgating any regulation under consideration, the agency shall deliver a copy of that regulation to the Registrar together with a summary of the regulation and a separate and concise statement of (i) the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed; (ii) the purpose of the regulation, defined as the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare; (iii) the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation that make changes to the current status of the law; (iv) the issues of the regulation, defined as the primary advantages and disadvantages for the public, and as applicable for the agency or the state, of implementing the new regulatory provisions; and (v) the agency's response to the economic impact analysis submitted by the Department of Planning and Budget pursuant to subsection G. Any economic impact estimate included in the agency's response shall represent the agency's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in no way affect the validity of the regulation. Staff as designated by the Code Commission shall review proposed regulation submission packages to ensure the requirements of this subsection are met prior to publication of the proposed regulation in the Register. The summary, ~~and; the statement of the basis, purpose, substance, and issues; estimated impact and identity of any localities, businesses, or entities particularly affected; the economic impact analysis; and the agency's response~~ shall be published in the Virginia Register of Regulations, together with the notice of opportunity for oral or written submittals on the proposed regulation.

I. When an agency formulating regulations in public assistance programs cannot comply with the public comment requirements of subsection F of this section due to time limitations imposed by state or federal laws or regulations for the adoption of such regulation, the Secretary of Health and Human Resources may shorten the time requirements of subsection F. If, in the Secretary's sole discretion, such time limitations reasonably preclude any advance published notice, he may waive the requirements of subsection F. However, the agency shall, as soon as practicable after the adoption of the regulation in a manner consistent with the requirements of subsection F, publish notice of the promulgation of the regulation and afford an opportunity for public comment. The precise factual basis for the Secretary's determination shall be stated in the published notice.

J. For the purpose of this article, public assistance programs shall consist of those specified in § 63.1-87.

K. If one or more changes with substantial impact are made to a proposed regulation from the time that it is published as a proposed regulation to the time it is published as a final regulation, any person may petition the agency within thirty days from the publication of the final regulation to request an opportunity for oral and written submittals on the changes to the regulation. If the agency receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulation, the agency shall (i) suspend the regulatory process for thirty days to solicit additional public comment; and (ii) file notice of the additional thirty-day public comment period with the Registrar of Regulations, unless the agency determines that the changes made are minor or inconsequential in their impact. The comment period, if any, shall begin on the date of publication of

the notice in the Register. Agency denial of petitions for a comment period on changes to the regulation shall be subject to judicial review.

L. In no event shall the failure to comply with the requirements of subsection F of this section be deemed mere harmless error for the purposes of § 9-6.14:17.

M. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

§ 9-6.16. Definitions.

As used in this chapter:

"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 Resources Authority, the Virginia Code Commission with respect to minor changes made under the provisions of § 9-77.10:1, and educational institutions operated by the Commonwealth with respect to regulations which 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.

"Virginia Administrative Code" means the codified publication of regulations under the provisions of Chapter 8.1 (§ 9-77.4 et seq.) of Title 9.

"Commission" means the Virginia Code Commission.

"Administrative Law Appendix" means the published listing of agency regulations with supplemental information as provided by §§ 9-6.18 and 9-6.19.

"Registrar" means the Registrar of Regulations appointed as provided in § 9-6.17.

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

"Virginia Register of Regulations" means the publication issued under the provisions of the Administrative Process Act in Article 7 (§ 9-6.14:22 et seq.) of Chapter 1.1:1 of Title 9.

§ 9-6.17. Registrar of Regulations; personnel, facilities and services; publications.

The Commission shall engage or appoint on a contract, part-time, or annual basis a professionally experienced or trained Registrar of Regulations. Under the direction of the Commission, the Registrar shall, at a suitable place to be designated by the Commission, perform the duties required by this chapter or assigned by the Commission in accordance with this chapter or Chapter 8.1 of this title. The Commission shall as necessary also (i) appoint clerical or other personnel if any, (ii) arrange by contract or otherwise for the necessary facilities and services, and (iii) provide for the compilation and publication of the Administrative Law Appendix, the Virginia Register of Regulations, and the Virginia Administrative Code pursuant to §§ 9-6.19, 9-6.14:22, and 9-77.7.

§ 9-6.18. Agencies to file regulations with Registrar; other duties; failure to file.

It shall be the duty of every agency to have on file with the Registrar the full text of all of its currently operative regulations, together with the dates of adoption, revision, publication, or amendment thereof and such additional information as may be requested by the Commission or the Registrar for the purpose of published listing in accordance with § 9-6.19 publishing the Virginia Register of Regulations and the Virginia Administrative Code. Thereafter, coincidentally with the issuance thereof, each agency shall from day to day so file, date, and supplement all new regulations and amendments, repeals, or additions to its previously filed regulations. Such filed regulations shall (i) indicate the laws they implement or carry out, (ii) designate any prior regulations repealed, modified, or supplemented, (iii) state any special effective or terminal dates, and (iv) be accompanied by a signed statement or certification that they are full, true, and correctly dated. No regulation or amendment or repeal thereof shall be effective until filed with the Registrar.

Orders condemning or closing any shellfish, finfish or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, of Title 28.2, which are exempt from the requirements of Chapter 1.1:1 (§ 9-6.14:1 et seq.) of this title as provided in subsection B of § 9-6.14:4.1 shall be effective on the date specified by the promulgating agency. Such orders shall continue to be filed with the Registrar either before or after their effective dates in order to satisfy the need for public availability of information respecting the regulations of state agencies.

In addition each agency shall itself (i) maintain a complete list of all of its currently operative regulations for public consultation, (ii) make available to public inspection a complete file of the full texts of all such regulations, and (iii) allow public copying thereof or make copies available either without charge, at cost, or on payment of a reasonable fee. Each agency shall also maintain as a public record a complete file of its regulations which have been superseded on and after June 1, 1975.

Where regulations adopt textual matter by reference to publications other than the Federal Register or Code of Federal Regulations, the agency shall (i) file with the Registrar copies of such referred

publications, (ii) state on the face of or as notations to regulations making such adoptions by reference the places where copies of the referred publications may be procured, and (iii) make copies of such referred publications available for public inspection and copying along with its other regulations.

Unless he finds that there are special circumstances requiring otherwise, the Governor, in addition to the exercise of his authority to see that the laws be faithfully executed, may, until compliance with this chapter is achieved, withhold the payment of compensation or expenses of any officer or employee of any agency in whole or part whenever the Commission certifies to him that the agency has failed to comply with this section or this chapter in stated respects, to respond promptly to the requests of the Registrar, or to comply with the regulations of the Commission.

2. That § 9-6.19 of the Code of Virginia is repealed.

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