

## Department of Planning and Budget 2005 Fiscal Impact Statement

**1. Bill Number** SB 1122

**House of Origin**    ☐ Introduced    ☐ Substitute    ☒ Engrossed  
**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron**        **Obenshain, M.**

**3. Committee**    General Laws

**4. Title**         Administrative Process Act; impact on small businesses.

**5. Summary/Purpose:**

This bill incorporates SB 1218 and SB 1308. It amends and reenacts § 2.2-4007 of the Code of Virginia and amends the Code by adding a section numbered 2.2-4007.1, relating to the Administrative Process Act (APA). Currently, the Department of Planning and Budget (DPB) prepares economic impact analysis on all proposed regulations. This bill, as introduced, would require DPB's economic analysis to include: differentiating between small businesses and other businesses; estimating the projected reporting, recordkeeping and other administrative costs required for compliance by such small businesses with the regulation; and including a description of any less costly alternative method for achieving the purpose of the regulation. The bill would also require agencies to prepare a regulatory flexibility analysis on proposed regulations with a goal of reducing the economic impact on small businesses. In addition, agencies would be required to periodically review their regulations to minimize the economic impact on small businesses. Finally, the bill would permit small businesses to seek judicial review of compliance with this legislation for up to one year following any final agency action, including actions adopting regulations or conducting periodic review of regulations. This bill defines small business as 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.

**6. Fiscal Impact Estimates are:**

**6a. Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2004-05	\$75,549	1	General
2005-06	\$75,549	1	General
2006-07	\$75,549	1	General

**7. Budget amendment necessary:** Yes. One economist position at DPB is provided for above.

**8. Fiscal implications:** The fiscal impacts remain the same; no updates needed. Some of the requirements in the bill are already being met by rulemaking agencies and DPB, under existing provisions in the Administrative Process Act (APA) and Executive Order 21 (2002). The APA requires DPB to evaluate the projected costs of proposed regulations on businesses. In addition, Executive Order 21 requires agencies to evaluate regulatory alternatives, apply performance standards over design standards where possible, and achieve the purpose of the regulation while minimizing the cost on affected entities. The APA and Executive Order 21 also require periodic review of regulations every four years, using criteria similar to those specified in the legislation. However, this legislation would require more detailed reporting and analysis on policy alternatives and costs affecting small businesses than is currently required. It would also require DPB to accurately identify affected small businesses

using the criteria specified in the legislation, and to accurately differentiate small businesses when evaluating costs and regulatory alternatives. In order to achieve these goals, while meeting existing time frame requirements, DPB would require, minimally, one additional full time economist position.

In addition to these fiscal impacts on DPB, for many rulemaking agencies, the bill would require additional resources for preparing documentation and evaluating differential impacts on small businesses. The cost associated with these additional agency resources is unknown.

Finally, under this legislation, DPB and rulemaking agencies would be subject to litigation costs associated with court challenges to compliance with this legislation. The potential costs associated with this litigation are unknown.

**9. Specific agency or political subdivisions affected:** DPB and all executive agencies that have the authority to promulgate regulations affecting small businesses.

**10. Technical amendment necessary:** No

**11. Other comments:** None

**Date:** 01/28/05 / sjl

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