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SENATE BILL NO. 162

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 2.2-4006 and 36-100 of the Code of Virginia, relating to the Administrative Process Act; Board for Housing and Community Development; exemption for certain regulations.

 Patron—Norment

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-4006 and 36-100 of the Code of Virginia are amended and reenacted 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;

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

6. 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.

7. 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.

8. 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.

9. 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 Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1, 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 subsection B of § 2.2-4007, (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 subsection F of § 2.2-4007, and (iv) conducts at least one public hearing on the proposed general permit.

10. 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.

11. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23-38.77.

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59 12. Regulations of the Marine Resources Commission.

60 13. Regulations adopted by the Board of Housing and Community Development pursuant to
61 ~~subsection D of § 36-99~~ (i) *Statewide Fire Prevention Code* (§ 27-94 et seq.), (ii) *the Industrialized*
62 *Building Safety Law* (§ 36-70 et seq.), (iii) *the Uniform Statewide Building Code* (§ 36-97 et seq.), and
63 (iv) § 36-98.3, provided the Board (a) provides a Notice of Intended Regulatory Action in conformance
64 with the provisions of subsection B of § 2.2-4007, (b) publishes the proposed regulation and provides an
65 opportunity for oral and written comments as provided in subsection F of § 2.2-4007, and (c) conducts
66 at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of the
67 proposed regulations. Notwithstanding the provisions of this subdivision, any regulations promulgated by
68 the Board shall remain subject to the provisions of subsection K of § 2.2-4007 concerning public
69 petitions, and §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.

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

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

79 § 36-100. Notice and hearings on adoption of Code, amendments and repeals.

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