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HOUSE BILL NO. 1939

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 2.2-4007.01, 2.2-4012, and 2.2-4013 of the Code of Virginia, relating to promulgation of regulations required by statute.

Patron—Pollard

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4007.01, 2.2-4012, and 2.2-4013 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4007.01. Notice of Intended Regulatory Action; public hearing.

A. In the case of all regulations, except those regulations exempted by § 2.2-4002, 2.2-4006, 2.2-4011, or 2.2-4012.1, an agency shall provide the Registrar of Regulations with a Notice of Intended Regulatory Action that describes the subject matter and intent of the planned regulation. *Whenever legislation is passed during a session of the General Assembly that requires an agency to promulgate regulations, such agency shall file the Notice of Intended Regulatory Action with the Registrar of Regulations within 60 days of the effective date of the legislation.* At least 30 days shall be provided for public comment, to include an on-line public comment forum on the Virginia Regulatory Town Hall, after publication of the a Notice of Intended Regulatory Action. An agency shall not file proposed regulations with the Registrar until the public comment period on the Notice of Intended Regulatory Action has closed.

B. Agencies shall state in the Notice of Intended Regulatory Action whether they plan to hold a public hearing on the proposed regulation after it is published. Agencies shall hold such public hearings if required by basic law. If the agency states an intent to hold a public hearing on the proposed regulation in the Notice of Intended Regulatory Action, then it shall hold the public hearing. If the agency states in its Notice of Intended Regulatory Action that it does not plan to hold a hearing on the proposed regulation, then no public hearing is required unless, prior to completion of the comment period specified in the Notice of Intended Regulatory Action, (i) the Governor directs the agency to hold a public hearing or (ii) the agency receives requests for a public hearing from at least 25 persons.

§ 2.2-4012. Purpose; adoption; effective date; filing; duties of Registrar of Regulations.

A. The purpose of the regulatory procedures shall be to provide a regulatory plan that is predictable, based on measurable and anticipated outcomes, *fulfills the legislative mandate*, and is inclined toward conflict resolution.

B. Subject to the provisions of §§ 2.2-4013 and 2.2-4014, all regulations, including those that agencies, pursuant to § 2.2-4002, 2.2-4006, or 2.2-4011, may elect to dispense with the public procedures provided by §§ 2.2-4007.01 and 2.2-4009, may be formally and finally adopted by the signed order of the agency so stating. *In addition, when such agency is required by statute to promulgate regulations, it shall formally and finally adopt the regulations and have them filed with the Registrar of Regulations and published in the Virginia Register of Regulations within 365 days of the effective date of the legislation. In the event that an agency concludes that despite its best efforts a regulation cannot be promulgated within the 365-day period, it shall publish notice in the Virginia Register of Regulations as to the reasons for the delay. In no event shall the delay exceed 180 days beyond the original 365-day period. Such notice shall be filed with the Registrar of Regulations at least 30 days prior to the 365-day regulation promulgation deadline.*

No regulation except an emergency regulation or a noncontroversial regulation promulgated pursuant to § 2.2-4012.1 shall be effective until the expiration of the applicable period as provided in § 2.2-4015. In the case of an emergency regulation filed in accordance with § 2.2-4011, the regulation shall become effective upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. The originals of all regulations shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies. They, or facsimiles thereof, shall be made available for public inspection or copying. Full and true copies shall also be additionally filed, registered, published, or otherwise made publicly available as required by other laws.

C. Prior to the publication for hearing of a proposed regulation, copies of the regulation and copies of the summary and statement as to the basis, purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget and the agency's response thereto as required by § 2.2-4007.04 shall be transmitted to the Registrar of Regulations, who

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59 shall retain these documents.

60 D. All regulations adopted pursuant to this chapter shall contain a citation to the section of the Code
61 of Virginia that authorizes or requires the regulations and, where the regulations are required to conform
62 to federal law or regulation in order to be valid, a citation to the specific federal law or regulation to
63 which conformity is required.

64 E. Immediately upon the adoption by any agency of any regulation in final form, a copy of (i) the
65 regulation, (ii) a then current summary and statement as to the basis, purpose, substance, issues, and the
66 economic impact estimate of the regulation submitted by the Department of Planning and Budget, and
67 (iii) the agency's summary description of the nature of the oral and written data, views, or arguments
68 presented during the public proceedings and the agency's comments thereon shall be transmitted to the
69 Registrar of Regulations, who shall retain these documents as permanent records and make them
70 available for public inspection. A draft of the agency's summary description of public comment shall be
71 sent by the agency to all public commenters on the proposed regulation at least five days before final
72 adoption of the regulation.

73 § 2.2-4013. Executive review of proposed and final regulations; changes with substantial impact.

74 A. The Governor shall adopt and publish procedures by executive order for review of all proposed
75 regulations governed by this chapter by June 30 of the year in which the Governor takes office. The
76 procedures shall include (i) review by the Attorney General to ensure statutory authority for the
77 proposed regulations; ~~and~~ (ii) examination by the Governor to determine if the proposed regulations are
78 (a) necessary to protect the public health, safety and welfare and (b) clearly written and easily
79 understandable; *and (iii) procedures to ensure that regulations are promulgated within the prescribed*
80 *365-day time frame pursuant to § 2.2-4012.* The procedures may also include review of the proposed
81 regulation by the appropriate Cabinet Secretary.

82 The Governor shall transmit his comments, if any, on a proposed regulation to the Registrar and the
83 agency no later than ~~fifteen~~ 15 days following the completion of the public comment period provided
84 for in § 2.2-4007.03. The Governor may recommend amendments or modifications to any regulation that
85 would bring that regulation into conformity with statutory authority or state or federal laws, regulations
86 or judicial decisions.

87 Not less than ~~fifteen~~ 15 days following the completion of the public comment period provided for in
88 § 2.2-4007.03, the agency may (i) adopt the proposed regulation if the Governor has no objection to the
89 regulation; (ii) modify and adopt the proposed regulation after considering and incorporating the
90 Governor's objections or suggestions, if any; or (iii) adopt the regulation without changes despite the
91 Governor's recommendations for change.

92 B. Upon final adoption of the regulation, the agency shall forward a copy of the regulation to the
93 Registrar of Regulations for publication as soon as practicable in the Register. All changes to the
94 proposed regulation shall be highlighted in the final regulation, and substantial changes to the proposed
95 regulation shall be explained in the final regulation.

96 C. If the Governor finds that one or more changes with substantial impact have been made to the
97 proposed regulation, he may require the agency to provide an additional ~~thirty~~ 30 days to solicit
98 additional public comment on the changes by transmitting notice of the additional public comment
99 period to the agency and to the Registrar within the ~~thirty-day~~ 30-day adoption period described in
100 subsection D, and publishing the notice in the Register. The additional public comment period required
101 by the Governor shall begin upon publication of the notice in the Register.

102 D. A ~~thirty-day~~ 30-day final adoption period for regulations shall commence upon the publication of
103 the final regulation in the Register. The Governor may review the final regulation during this ~~thirty-day~~
104 30-day final adoption period and if he objects to any portion or all of a regulation, the Governor may
105 file a formal objection to the regulation, suspend the effective date of the regulation in accordance with
106 subsection B of § 2.2-4014, or both.

107 If the Governor files a formal objection to the regulation, he shall forward his objections to the
108 Registrar and agency prior to the conclusion of the ~~thirty-day~~ 30-day final adoption period. The
109 Governor shall be deemed to have acquiesced to a promulgated regulation if he fails to object to it or if
110 he fails to suspend the effective date of the regulation in accordance with subsection B of § 2.2-4014
111 during the ~~thirty-day~~ 30-day final adoption period. The Governor's objection, or the suspension of the
112 regulation, or both if applicable, shall be published in the Register.

113 A regulation shall become effective as provided in § 2.2-4015.

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