

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 608

An Act to amend and reenact §§ 2.2-4007.04 and 30-73.3 of the Code of Virginia, relating to the Administrative Process Act; certain review by Joint Commission on Administrative Rules.

[H 1751]

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4007.04 and 30-73.3 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4007.04. Economic impact analysis.

A. Before delivering any proposed regulation under consideration to the Registrar as required in § 2.2-4007.05, the agency shall submit on the Virginia Regulatory Town Hall a copy of that regulation to the Department of Planning and Budget. In addition to determining the public benefit, the Department of Planning and Budget in coordination with the agency shall, within 45 days, prepare an economic impact analysis of the proposed regulation, as follows:

1. 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, including additional costs related to the development of real estate for commercial or residential purposes; and the projected costs to affected businesses, localities, or entities of implementing or complying with the regulations, including the estimated fiscal impact on such localities and sources of potential funds to implement and comply with such regulation. A copy of the economic impact analysis shall be provided to the Joint Commission on Administrative Rules;

2. If the regulation may have an adverse effect on small businesses, the economic impact analysis shall also include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. As used in this subdivision, "small business" has the same meaning as provided in subsection A of § 2.2-4007.1; and

3. In the event the Department cannot complete an economic impact statement within the 45-day period, it shall advise the agency and the Joint Commission on Administrative Rules as to the reasons for the delay. In no event shall the delay exceed 30 days beyond the original 45-day period.

B. 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 § 2.2-4007.05, a copy to the Registrar for publication with the proposed regulation, and an electronic copy to each member of the General Assembly. No regulation shall be promulgated for consideration pursuant to § 2.2-4007.05 until the 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 that bears any identified disproportionate material impact that 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 5 (§ 2.2-4025 et seq.) or otherwise to challenge the actions of the Department hereunder or the action of the agency in adopting the proposed regulation.

C. *In the event the economic impact analysis completed by the Department reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period. The Joint Commission on Administrative Rules shall review such rule or regulation and issue a statement containing the Commission's findings in accordance with § 30-73.3.*

§ 30-73.3. Powers and duties of Commission.

A. The Commission shall have the powers and duties to:

1. Review proposed rules and regulations of any agency during the promulgation or final adoption

process and determine whether or not the rule or regulation (i) is authorized by statute, (ii) complies with legislative intent, and (iii) contains no mandate that improperly burdens businesses *or would impose a significant adverse economic impact on a locality, business, or entity particularly affected as defined in § 2.2-4007.04.*

2. Review the impact of the rule or regulation on (i) the economy, (ii) protection of the Commonwealth's natural resources pursuant to Article XI, Section 1 of the Constitution of Virginia, (iii) government operations of the State and localities, and (iv) affected persons and businesses.

3. File with the Registrar and the agency promulgating the regulation an objection to a proposed or final adopted regulation.

4. Suspend the effective date of any portion or all of a final regulation with the concurrence of the Governor as provided in subsection B of § 2.2-4014.

5. Make recommendations to the Governor and General Assembly for action based on its review of any proposed rule or regulation.

6. Review any existing agency rule, regulation, practice or the failure of an agency to adopt a rule and recommend to the Governor and the General Assembly that a rule be modified, repealed or adopted.

B. If the Commission finds that a rule or regulation improperly burdens businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, it shall report quarterly to the Governor and the General Assembly on any such regulation. The report shall contain a statement of any position taken by the Commission on any such regulation.

C. If the Commission decides to seek suspension of a final rule or regulation, it shall deliver a statement to the Governor, signed by a majority of the members of the Commission, asking the Governor to concur in delaying the effective date of a portion or all of the final regulation until the end of the next regular legislative session as provided in §§ 2.2-4014 and 2.2-4015.

~~C.~~ D. Based upon its review of (i) any final rule or regulation during the promulgation or final adoption process or (ii) any existing agency rule, regulation, practice or failure to adopt a rule or regulation, the Commission may prepare and arrange for the introduction of a bill to clarify the intent of the General Assembly when it enacted a law or to correct any misapplication of a law by an agency.