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SENATE BILL NO. 1449

Offered January 16, 2017

A *BILL to amend and reenact §§ 2.2-1500, 2.2-2101 as it is currently effective and as it shall become effective, 2.2-4007.04, 2.2-4007.1, 2.2-4011, and 2.2-4027 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 15 of Title 2.2 an article numbered 2, consisting of sections numbered 2.2-1514.1 through 2.2-1514.8, and by adding in Chapter 25 of Title 2.2 an article numbered 10, consisting of sections numbered 2.2-2537 through 2.2-2541, relating to the Department of Budget and Planning; establishment of the Division of Regulatory Management and the Red Tape Reduction Commission; review of regulatory requirements; report.*

Patrons—Chase, DeSteph, Dunnivant, Hanger, Norment, Obenshain, Peake, Reeves, Stanley, Sturtevant, Vogel and Wagner

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1500, 2.2-2101 as it is currently effective and as it shall become effective, 2.2-4007.04, 2.2-4007.1, 2.2-4011, and 2.2-4027 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 15 of Title 2.2 an article numbered 2, consisting of sections numbered 2.2-1514.1 through 2.2-1514.8, and by adding in Chapter 25 of Title 2.2 an article numbered 10, consisting of sections numbered 2.2-2537 through 2.2-2541, as follows:

Article 1.

General Provisions.

§ 2.2-1500. Department of Planning and Budget created; appointment of Director; powers and duties.

A. There is created a Department of Planning and Budget (the "Department"), which shall be headed by a Director appointed by the Governor to serve at his pleasure.

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor. *The Director shall be responsible for the overall supervision of the Department's divisions, programs, and personnel.*

Article 2.

Division of Regulatory Management.

§ 2.2-1514.1. Definitions.

As used in this article, unless the context requires a different meaning:

"Agency" means the same as that term is defined in § 2.2-4001.

"Division" means the Division of Regulatory Management.

"Plain language explanation" means an explanation written in nontechnical, readily understandable language using words of common, everyday usage.

"Regulation" means the same as that term is defined in § 2.2-4001.

"Regulatory baseline" means the total number of regulatory requirements established by the Division of Regulatory Management pursuant to § 2.2-1514.4 to serve as the initial baseline to sustain a zero net increase in regulatory requirements.

"Regulatory requirement" means any action required to be taken or information required to be provided in accordance with a statute, regulation, or policy in order to access government services or operate and conduct business. "Regulatory requirement" does not include (i) statements or policies concerning the internal management of any agency, (ii) guidance documents, (iii) declaratory rulings, or (iv) intra-agency or interagency memoranda.

"Regulatory requirement replacement request" means a request by an agency to create a new regulatory requirement after the establishment of the regulatory baseline by either replacing or repealing an existing regulatory requirement.

§ 2.2-1514.2. Division of Regulatory Management established.

The Division of Regulatory Management is hereby established within the Department of Planning and Budget for the purpose of exercising the powers and duties described in this article.

§ 2.2-1514.3. Duties of Division.

The Division shall:

1. Establish a regulatory baseline of all state regulatory requirements;

2. Maintain the state's regulatory baseline through the establishment of a process for (i) the review

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58 of proposed regulations and (ii) the approval or denial of agency regulatory replacement requests;
59 3. Develop guidelines to assist agencies in developing a comprehensive list of regulatory
60 requirements that are enforced or administered by such agencies;

61 4. Establish and maintain a website, including a searchable database of all current regulations and
62 regulatory requirements pursuant to § 2.2-1514.4; and

63 5. Provide staff support to the Red Tape Reduction Commission established pursuant to Article 10
64 (§ 2.2-2537 et seq.) of Chapter 25.

65 **§ 2.2-1514.4. Establishment of state regulatory baseline; public information website.**

66 A. Pursuant to § 2.2-1514.3, the Division shall supervise the establishment of an initial state
67 regulatory baseline. Each agency shall conduct an internal review of its regulatory requirements and
68 submit a list of each requirement, along with the enabling regulation or statute, to the Division by
69 October 1, 2017. The Division shall compile the lists of all agency regulatory requirements and
70 establish the initial state regulatory baseline on or before January 1, 2018.

71 B. The Division shall maintain a website with a searchable database containing the following
72 information:

73 1. A list of all current regulatory requirements;

74 2. A plain language description of the purpose of each regulatory requirement;

75 3. The agency responsible for each regulatory requirement;

76 4. The legislation or regulation authorizing each regulatory requirement; and

77 5. A listing of any changes to the initial regulatory baseline established pursuant to subsection A.

78 **§ 2.2-1514.5. Limitation on new regulatory requirements; regulatory requirement replacement**
79 **requests; special provisions.**

80 A. Any subsequent regulatory requirement proposed by an agency that is not included in the initial
81 state regulatory baseline shall be considered a new regulatory requirement.

82 B. To maintain a zero net increase in regulatory requirements, the agency proposing a new
83 regulatory requirement shall be required to submit a regulatory requirement replacement request to the
84 Division as provided in § 2.2-1514.6.

85 C. Each regulatory requirement replacement request shall include the following:

86 1. The existing statute authorizing the regulatory requirement;

87 2. The regulation authorizing the regulatory requirement, if applicable;

88 3. The purpose of the regulation;

89 4. The proposed regulatory requirement to be replaced or repealed; and

90 5. The total number of regulatory requirements that will be added if the measure is enacted.

91 **§ 2.2-1514.6. Review of new proposed regulations and accompanying regulatory requirement**
92 **replacement requests; special provisions for the reduction of regulatory requirements.**

93 A. Each state agency shall achieve regulatory goals as effectively and efficiently without imposing
94 unnecessary regulatory requirements that unduly burden the public. To mitigate the negative economic
95 effects of regulatory requirements, any new proposed regulatory requirement and the accompanying
96 regulatory requirement replacement request or proposed sunset of an existing regulatory requirement
97 shall be submitted to the Division for approval.

98 B. The Division shall evaluate each new proposed regulatory requirement and the accompanying
99 regulatory requirement replacement using the following factors:

100 1. Whether the regulatory requirement is the only effective and necessary way to achieve the desired
101 outcome, including an analysis of whether the requirement (i) complements and does not duplicate
102 existing regulatory requirements and (ii) is simple to administer in both enforcement and compliance;

103 2. The degree to which the regulatory requirement includes performance measures that are directly
104 related to the desired outcome, including a provision establishing enhanced periodic review to ensure
105 intended outcomes or providing for the sunset of the provision upon a determination that the regulatory
106 requirement no longer achieves the original desired outcomes;

107 3. The presence of clear justifications for implementation of the regulatory requirement, including
108 development and implementation processes that are (i) transparent, (ii) easily accessible by the public
109 and contain appropriate and modern notification methods, (iii) written in plain language, and (iv)
110 designed to allow citizens and businesses to clearly understand their rights and obligations under the
111 regulatory requirement;

112 4. Whether the regulatory requirement is the most cost effective manner to achieve the desired
113 outcome and that the benefits of the regulatory requirement are greater than the burdens it imposes;
114 and

115 5. Whether the regulatory requirement does not have a detrimental effect on the state's economy by
116 including a determination that it (i) does not have a negative effect on the economic competitiveness, (ii)
117 is not harder to comply with than similar regulatory requirements in similar jurisdictions, and (iii) is
118 compatible with the strategic goals of promoting a level playing field for all businesses and industries
119 and job creation and economic growth.

C. Subject to subsection E, the Division shall approve a regulatory requirement replacement request only if (i) the regulatory requirement has undergone an evaluation pursuant to subsection B and (ii) the total number of regulatory requirements for the requesting agency is either kept at the regulatory baseline for the agency or reduced.

D. Any agency seeking an exemption from the approval requirement of subsection D shall submit a request for an exemption at the same time the documentation is submitted for the regulatory requirement replacement request. The request shall also be submitted to (i) the Red Tape Reduction Commission established pursuant to Article 10 (§ 2.2-2537 et seq.) of Chapter 25, (ii) the Clerk of the Senate, and (iii) the Clerk of the House of Delegates. The exemption request shall include a detailed explanation of why the new regulatory requirement should be exempt from the approval requirement.

E. In order to ensure that the overall burden of regulatory requirements that are imposed upon the citizens and businesses of the Commonwealth is decreased, until the regulatory baseline established pursuant to § 2.2-1514.4 has been reduced by 35 percent, the Division shall not approve an agency's request for a replacement regulatory requirement unless the agency provides at least two regulatory requirements that are to be replaced or repealed.

§ 2.2-1514.7. Request for exemptions.

A. Any agency seeking an exemption from the approval requirement of § 2.2-1514.6 shall submit a request for an exemption at the same time the documentation is submitted for the regulatory requirement replacement request required by § 2.2-1514.6. The request shall also be submitted to (i) the Red Tape Reduction Commission established pursuant to Article 10 (§ 2.2-2537 et seq.) of Chapter 25, (ii) the Clerk of the Senate, and (iii) the Clerk of the House of Delegates. The exemption request shall include a detailed explanation of why the new regulatory requirement should be exempt from the approval requirement, including how the requirement is necessary to protect the public health, safety, and welfare of the citizens of the Commonwealth.

B. Any exemption approved by the Division shall be limited to no more than 18 months in duration.

§ 2.2-1514.8. Annual report.

The Director shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall include a description of the activities of the Division and contain (i) a list of all regulatory requirements, (ii) a description of the purpose of each regulatory requirement and the responsible agency, (iii) the law or regulation authorizing each regulatory requirement, and (iv) a list of any changes to the initial regulatory baseline. The report shall be submitted as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

§ 2.2-2101. (Effective until July 1, 2017) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23.1-3126; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23.1-3121; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23.1-3112; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23.1-3117; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Standards of Learning Innovation Committee, who shall be appointed as provided for in § 22.1-253.13:10; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the Council on Virginia's Future, who shall be appointed as provided for in § 2.2-2685; to members of the State Executive Council for Children's Services, who shall be appointed as provided in § 2.2-2648; to

members of the Virginia Board of Workforce Development, who shall be appointed as provided for in § 2.2-2471; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-222.3; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; to members of the Southwest Virginia Cultural Heritage Foundation, who shall be appointed as provided in § 2.2-2735; ~~or~~ to members of the Virginia Growth and Opportunity Board, who shall be appointed as provided in § 2.2-2485; *or to members of the Red Tape Reduction Commission, who shall be appointed as provided in § 2.2-2538.*

§ 2.2-2101. (Effective July 1, 2017) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23.1-3126; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23.1-3121; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23.1-3112; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23.1-3117; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Standards of Learning Innovation Committee, who shall be appointed as provided for in § 22.1-253.13:10; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the State Executive Council for Children's Services, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Board of Workforce Development, who shall be appointed as provided for in § 2.2-2471; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-222.3; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; to members of the Southwest Virginia Cultural Heritage Foundation, who shall be appointed as provided in § 2.2-2735; ~~or~~ to members of the Virginia Growth and Opportunity Board, who shall be appointed as provided in § 2.2-2485; *or to members of the Red Tape Reduction Commission, who shall be appointed as provided in § 2.2-2538.*

Article 10.

Red Tape Reduction Commission.

§ 2.2-2537. Red Tape Reduction Commission; purpose.

The Red Tape Reduction Commission (the Commission) is established as an advisory commission, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Commission is to identify and provide advice and comments to the Governor and General Assembly on measures to reduce the baseline regulatory requirement of the Commonwealth.

§ 2.2-2538. Membership; terms; quorum; meetings; compensation and expenses.

A. The Commission shall be composed of 14 members that include two *ex officio* members, two legislative members, and 10 nonlegislative members as follows:

1. The Governor or his designee;
2. The Lieutenant Governor or his designee;
3. The Speaker of the House of Delegates or his designee;
4. The Senate Majority Leader or his designee;
5. Three nonlegislative citizen members appointed by the Speaker of the House of Delegates;
6. Two nonlegislative citizen members appointed by the Senate Committee on Rules; and
7. Five nonlegislative citizen members appointed by the Governor.

B. Legislative members and the Governor and Lieutenant Governor, or their designees, shall serve terms coincident with their terms of office. After the initial staggering of terms, nonlegislative citizen members appointed by the Speaker of the House of Delegates or the Senate Committee on Rules shall be

appointed for a term of two years, and nonlegislative citizen members appointed by the Governor shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. No nonlegislative citizen member appointed by the legislative appointing authorities shall serve more than four consecutive two-year terms, and no nonlegislative citizen member appointed by the Governor shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

The Governor or his designee shall serve as the chairman of the Commission. The Commission shall elect a vice-chairman from its membership. A majority of members of the Commission shall constitute a quorum. The Commission shall meet at least four times each year. The meetings of the Commission shall be held at the call of the chairman or whenever four or more members so request.

C. Legislative members of the Commission shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive compensation as provided in § 2.2-2813 for the performance of their duties. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

§ 2.2-2539. Duties of the Commission.

A. The Commission shall:

1. Review the state's current regulatory requirements;
2. Provide recommendations to the Governor and General Assembly regarding regulatory requirements that are (i) duplicative or unnecessary, (ii) especially burdensome to businesses within the Commonwealth, (iii) disproportionate in their effect on businesses with fewer than 100 employees, (iv) disproportionate in their effect on businesses with annual revenues below \$5 million, (v) easily managed by businesses with 100 or more employees and effectively limit competition by smaller businesses, or (vi) capable of being repealed with minimal impact on public safety; and

3. Submit semiannual reports to the Division of Regulatory Management of the Department of Planning and Budget for posting on the website established pursuant to § 2.2-1514.3.

B. The Commission shall develop a schedule providing for the review of all regulations and accompanying regulatory requirements every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law. The review required by this subsection shall include consideration of the factors contained in subdivision A 2.

§ 2.2-2540. Staff; cooperation and assistance.

The Division of Regulatory Management of the Department of Planning and Budget established pursuant to Article 2 (§ 2.2-1514.1 et seq.) of Chapter 15 shall provide staff assistance to the Commission. All agencies, authorities, and institutions of the Commonwealth shall cooperate and provide such assistance to the Commission as the Commission may request.

§ 2.2-2541. Chairman's executive summary of activity and work of the Commission; report.

The chairman shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Commission no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

§ 2.2-4007.04. Analysis of proposed regulations; review.

A. Before delivering any proposed regulation and associated regulatory requirements 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: a regulatory requirement replacement request to the Division of Regulatory Management of the Department of Planning and Budget pursuant to § 2.2-1514.6.

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 *the Division of Regulatory Management has approved the request pursuant to § 2.2-1514.6*. 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 *Division of Regulatory Management determines* that the proposed regulation *and accompanying regulatory requirement* 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 *Division* shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period *30 days of the determination*. 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. *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 Division's best estimate for the purposes of public review and comment on the proposed regulation.*

§ 2.2-4007.1. Periodic review of regulations.

A. As used in this section, "small business" means 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.

B. In addition to the requirements of §§ 2.2-4007 through 2.2-4007.06, prior to the adoption of any proposed regulation, the agency proposing a regulation shall prepare a regulatory flexibility analysis in which the agency shall consider utilizing alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small businesses. The agency shall consider, at a minimum, each of the following methods of reducing the effects of the proposed regulation on small businesses:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
5. The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

C. Prior to the adoption of any proposed regulation that may have an adverse effect on small businesses, each agency shall notify the Joint Commission on Administrative Rules, through the Virginia Regulatory Town Hall, of its intent to adopt the proposed regulation. The Joint Commission on Administrative Rules shall advise and assist agencies in complying with the provisions of this section.

D. In addition to other requirements of § 2.2-4017, all *All* regulations shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small

businesses in a manner consistent with the stated objectives of applicable law. When a regulation has undergone a comprehensive review as part of a regulatory action that included the solicitation of public comment on the regulation, a periodic review shall not be required until four years after the effective date of the regulatory action.

E. B. The regulatory review required by this section shall include consideration of:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the regulation from the public;
3. The complexity of the regulation;
4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
5. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

F. C. Prior to commencement of the regulatory review required by subsection D A, the agency shall publish a notice of the review in the Virginia Register of Regulations and post the notice on the Virginia Regulatory Town Hall. The agency shall provide a minimum of 21 days for public comment after publication of the notice. No later than 120 days after close of the public comment period, the agency shall publish a report of the findings of the regulatory review in the Virginia Register of Regulations and post the report on the Virginia Regulatory Town Hall.

§ 2.2-4011. Emergency regulations; publication; exceptions.

A. Regulations that an agency finds are necessitated by an emergency situation may be adopted by an agency upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request *to the Division of Regulatory Management pursuant to § 2.2-1514.7* stating in writing the nature of the emergency; ~~and the necessity for such action shall be at the sole discretion of the Governor.~~

B. Agencies may also adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment and the regulation is not exempt under the provisions of subdivision A 4 of § 2.2-4006. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt the regulations. Pursuant to § 2.2-4012, such regulations shall become effective upon approval by the ~~Governor~~ *Division of Regulatory Management* and filing with the Registrar of Regulations.

C. All emergency regulations shall be limited to no more than 18 months in duration. During the 18-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 18-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 18-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with this article *and pursuant to the requirements of Article 2 (§ 2.2-1514.1 et seq.) of Chapter 15.* The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be filed with the Registrar within 60 days of the effective date of the emergency regulation and published as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within 180 days after the effective date of the emergency regulation and published as soon as practicable.

D. In the event that an agency concludes that despite its best efforts a replacement regulation cannot be adopted before expiration of the 18-month period described in subsection C, it may seek the prior written approval of the ~~Governor~~ *Division of Regulatory Management* to extend the duration of the emergency regulation for a period of not more than six additional months. Any such request must be submitted to the ~~Governor~~ *Division of Regulatory Management* at least 30 days prior to the scheduled expiration of the emergency regulation and shall include a description of the agency's efforts to adopt a replacement regulation together with the reasons that a replacement regulation cannot be adopted before the scheduled expiration of the emergency regulation. Upon approval of the ~~Governor~~ *Division of Regulatory Management*, provided such approval occurs prior to the scheduled expiration of the emergency regulation, the duration of the emergency regulation shall be extended for a period of no more than six months. Such approval ~~shall be in the sole discretion of the Governor~~ and shall not be subject to judicial review. Agencies shall notify the Registrar of Regulations of the new expiration date of the emergency regulation as soon as practicable.

E. Emergency regulations shall be published as soon as practicable in the Register.

F. The Regulations of the Marine Resources Commission shall be excluded from the provisions of this section.

§ 2.2-4027. Issues on review.

The burden shall be upon the party complaining of agency action to designate and demonstrate an error of law subject to review by the court. Such issues of law include: (i) accordance with

427 constitutional right, power, privilege, or immunity, (ii) compliance with statutory authority, jurisdiction
428 limitations, or right as provided in the basic laws as to subject matter, the stated objectives for which
429 regulations may be made, and the factual showing respecting violations or entitlement in connection
430 with case decisions, (iii) observance of required procedure where any failure therein is not mere
431 harmless error, and (iv) the substantiality of the evidentiary support for findings of fact. The
432 determination of such fact issue shall be made upon the whole evidentiary record provided by the
433 agency if its proceeding was required to be conducted as provided in § 2.2-4009 or 2.2-4020 or, as to
434 subjects exempted from those sections, pursuant to constitutional requirement or statutory provisions for
435 opportunity for an agency record of and decision upon the evidence therein.

436 In addition to any other judicial review provided by law, a small business, as defined in subsection A
437 of § 2.2-4007.1, that is adversely affected or aggrieved by final agency action shall be entitled to judicial
438 review of compliance with the requirements of subdivision A 2 of §§ 2.2-1514.6, 2.2-4007.04 and §
439 2.2-4007.1 within one year following the date of final agency action. *For purposes of this paragraph,*
440 *"small business" means a business entity, including its affiliates, that (i) is independently owned and*
441 *operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6*
442 *million.*

443 When the decision on review is to be made on the agency record, the duty of the court with respect
444 to issues of fact shall be to determine whether there was substantial evidence in the agency record to
445 support the agency decision. The duty of the court with respect to the issues of law shall be to review
446 the agency decision de novo. The court shall enter judgment in accordance with § 2.2-4029.

447 Where there is no agency record so required and made, any necessary facts in controversy shall be
448 determined by the court upon the basis of the agency file, minutes, and records of its proceedings under
449 § 2.2-4007.01 or 2.2-4019 as augmented, if need be, by the agency pursuant to order of the court or
450 supplemented by any allowable and necessary proofs adduced in court except that the function of the
451 court shall be to determine only whether the result reached by the agency could reasonably be said, on
452 all such proofs, to be within the scope of the legal authority of the agency.

453 Whether the fact issues are reviewed on the agency record or one made in the review action, the
454 court shall take due account of the presumption of official regularity, the experience and specialized
455 competence of the agency, and the purposes of the basic law under which the agency has acted.

456 **2. That the initial appointments of nonlegislative citizen members to the Red Tape Reduction**
457 **Commission as created by this act shall be staggered as follows: (i) one member for a term of two**
458 **years, one member for a term of three years, and one member for a term of four years appointed**
459 **by the Speaker of the House of Delegates; (ii) one member for a term of two years and one**
460 **member for a term three years appointed by the Senate Committee on Rules; and (iii) one**
461 **member for a term of one year, two members for a term of two years, and two members for a**
462 **term of three years appointed by the Governor.**