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HOUSE BILL NO. 297

Offered January 10, 2018

Prefiled January 3, 2018

A BILL to amend and reenact § 2.2-4001 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-4002.1, relating to the Administrative Process Act; guidance documents.

Patrons—Bulova, Peace and Hodges

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4001 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-4002.1 as follows:

§ 2.2-4001. Definitions.

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

"Agency" means any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases.

"Agency action" means either an agency's regulation or case decision or both, any violation, compliance, or noncompliance with which could be a basis for the imposition of injunctive orders, penal or civil sanctions of any kind, or the grant or denial of relief or of a license, right, or benefit by any agency or court.

"Basic law" or "basic laws" means provisions of the Constitution and statutes of the Commonwealth authorizing an agency to make regulations or decide cases or containing procedural requirements therefor.

"Case" or "case decision" means any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit.

"Guidance document" means the same as that term is defined in § 2.2-4101.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007.01 and 2.2-4019 and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 2.2-4020 in connection with case decisions.

"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024.

"Public assistance and social services programs" means those programs specified in § 63.2-100.

"Registrar" means the Registrar of Regulations appointed as provided in § 2.2-4102.

"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws.

"Subordinate" means (i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf.

"Virginia Register of Regulations" means the publication issued under the provisions of Article 6 (§ 2.2-4031 et seq.).

"Virginia Regulatory Town Hall" means the website operated by the Department of Planning and Budget, which has online public comment forums and displays information about regulatory actions under consideration in the Commonwealth and sends this information to registered public users.

§ 2.2-4002.1. Guidance documents.

A. Guidance documents shall be exempted from the provisions of this chapter, pursuant to this section.

B. The agency that develops a guidance document shall certify (i) that the guidance document does not exceed the provisions of state law and the agency's regulations and (ii) whether or not the guidance document has a significant economic impact to the citizens of the Commonwealth.

For guidance documents with an economic impact certified as insignificant, the guidance document shall be subject to a 30-day public comment period through publication in the Virginia Register of

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59 *Regulations prior to final publication.*

60 *For guidance documents with an economic impact certified as significant, the agency shall comply*
61 *with the provisions of §§ 2.2-4007.02, 2.2-4007.03, and 2.2-4007.04 prior to publication of the*
62 *guidance document.*

63 *C. If a written comment is received during a public comment period asserting that the guidance*
64 *document is contrary to state law or regulation, or that the document should not be exempted from the*
65 *provisions of this chapter, the publication of the guidance document shall be delayed for an additional*
66 *30-day period. During this additional period, the agency shall respond to any such comments in writing*
67 *by certified mail to the commenter or by posting the response electronically in a manner consistent with*
68 *the provisions for publication of comments on regulations provided in this chapter. Any person who*
69 *remains aggrieved after receipt of the agency's response may avail himself of the remedies articulated in*
70 *Article 5 (§ 2.2-4025 et seq.).*