

REVISED

Department of Planning and Budget 2018 Fiscal Impact Statement

1. Bill Number: HB297

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Bulova, D.

3. Committee: General Laws

4. Title: Administrative Process Act; guidance documents.

5. Summary: Requires that agencies that develop guidance documents “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.” The term “guidance document” has the meaning in § 2.2-4101, and generally refers to any document used by agency staff or the public to interpret and apply statute or regulation.

For guidance documents with an economic impact certified as insignificant, the guidance document would be subject to a 30-day public comment period through publication in the Virginia Register of Regulations prior to final publication. For guidance documents with an economic impact certified as significant, the agency must comply with specified provisions of the Administrative Process Act prior to publication of the guidance document.

If a written comment is received during a public comment period asserting that the guidance document is contrary to state law or regulation, the publication of the guidance document is delayed for an additional 30-day period. During this additional period, the agency must respond to any such comments in writing by certified mail to the commenter or by posting the response electronically.

6. Budget Amendment Necessary: Indeterminate – see Item 8.

7. Fiscal Impact Estimates: Indeterminate – see Item 8.

8. Fiscal Implications: As of January 16, 2018, there were 3,732 guidance documents on the Virginia Regulatory Town Hall (Town Hall). In calendar year 2017, 43 agencies made 1,217 changes or additions to guidance documents on the Town Hall. That includes both posting new guidance documents and changes to existing guidance documents. Assuming that the bill is intended to apply to changes to existing guidance documents as well as the creation of new guidance documents, the bill and its requirements would apply to approximately 1,200 actions annually based on activity on the Town Hall. Depending on how the bill is

interpreted, the Department of Taxation reports that it has approximately 10,000 additional documents that could also apply.

The Department of Planning and Budget (DPB) surveyed 18 agencies (primarily those with the most guidance documents) concerning the impact of the bill. As of the writing of this fiscal impact statement, 13 have responded. The Department for Aging and Rehabilitative Services reports that it would need at least 3 additional full-time employees (FTEs); the Department of Social Services reports that it would need at a minimum two additional FTEs; the Department of Education reports that it would require one additional FTE; the Department of Medical Assistance Services estimates that it would need one additional FTE; and the Department of Labor and Industry reports that at a minimum it would require an additional 0.25 FTE. Other surveyed agencies with guidance documents (including the Department of Taxation) indicated that there would be an impact, but did not provide an estimate. The Department of Alcoholic Beverage Control, the Department of Health Professions, and the Department of Professional and Occupational Regulation each indicate that they would not require additional resources.

The requirement that agencies certify that the guidance document does not exceed the provisions of state law and the agency's regulations would likely prompt agencies to seek such certification or at least guidance from the Office of the Attorney General (OAG). Given the frequency with which guidance documents are created or amended, there is the potential for a large additional demand for OAG services from agencies. OAG states that it cannot estimate the magnitude of the impact at this time.

Depending on how the bill is interpreted and applied, it may greatly increase the workload for DPB's economists. § 2.2-4007.04 mandates that agencies provide information to DPB concerning proposed new regulations and proposed regulatory amendments, and that DPB produce an economic impact analysis (EIA) report of the proposed regulatory action. The requirement in this bill that agencies must comply with the provisions of §2.2-4007.04 (when the guidance document has a significant economic impact) presumably mandates that agencies provide information to DPB concerning the guidance document, and that DPB write an EIA report of the proposed guidance document or change to guidance document.

The Office of the Registrar of Regulations' (Office) understanding is that the publication in the Virginia Register of Regulations is intended to be a link to the guidance document instead of the document in its entirety. Under that circumstance, the Office reports that the impact would be minimal and can be borne by existing staff.

9. Specific Agency or Political Subdivisions Affected: All agencies that have guidance documents and are not exempt from the Administrative Process Act; the Department of Planning and Budget; the Office of the Registrar of Regulations.

10. Technical Amendment Necessary: No.

11. Other Comments: None.