

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 guidance documents be subject to a 30-day public comment period through the Virginia Regulatory Town Hall website, after publication in the Virginia Register of Regulations and prior to final publication by the agency. The agency must provide notice of the opportunity for public comment to interested parties prior to the start of the 30-day public comment period. If a written comment is received during the 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. The substitute bill specifies that guidance documents do not include agency (i) rulings and advisory opinions, (ii) forms and instructions, (iii) bulletins and legislative summaries, (iv) studies and reports, and (v) internal manuals and memoranda.

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.

For both the original and substitute bills, 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; and the Department of Education reports that it would require one additional FTE. For the original bill, the Department of Medical Assistance Services (DMAS) estimated that it would need one additional FTE, and the Department of Labor and Industry (DOLI) reported that at

a minimum it would require an additional 0.25 FTE. As of the writing of this fiscal impact statement, neither DMAS nor DOLI has responded concerning the substitute bill.

The Department of Planning and Budget will need to reprogram the Virginia Regulatory Town Hall website to account for the guidance document public comment feature, and will need to monitor and maintain this function. The required resources can be absorbed within current funding.

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.