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SENATE BILL NO. 1283

Offered January 9, 2019

Prefiled January 7, 2019

A BILL to amend and reenact §§ 2.2-4006 and 32.1-102.2:1 of the Code of Virginia, relating to State Medical Facilities Plan; revisions.

Patron—Barker

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4006 and 32.1-102.2:1 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.
2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

5. Regulations of the Board of Agriculture and Consumer Services adopted pursuant to subsection B of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more Board meetings and one public hearing.

6. Regulations of (i) the regulatory boards served by the Department of Labor and Industry pursuant to Title 40.1 and the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 and (ii) the Board of Accountancy that are limited to reducing fees charged to regulants and applicants.

7. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Dam Safety Act (§ 10.1-604 et seq.), and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

9. The development and issuance by the Board of Education of guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools pursuant to § 22.1-202.

10. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23.1-704.

11. Regulations of the Marine Resources Commission.

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59 12. Regulations adopted by the Board of Housing and Community Development pursuant to (i)
60 Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et
61 seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the
62 Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of
63 § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written
64 comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in §§
65 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the provisions
66 of this subdivision, any regulations promulgated by the Board shall remain subject to the provisions of
67 § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning review by the
68 Governor and General Assembly.

69 13. Amendments to regulations of the Board to schedule a substance pursuant to subsection D or E
70 of § 54.1-3443.

71 14. Waste load allocations adopted, amended, or repealed by the State Water Control Board pursuant
72 to the State Water Control Law (§ 62.1-44.2 et seq.), including but not limited to Article 4.01
73 (§ 62.1-44.19:4 et seq.) of the State Water Control Law, if the Board (i) provides public notice in the
74 Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period,
75 forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary
76 response to written comments; and (iv) conducts at least one public meeting. Notwithstanding the
77 provisions of this subdivision, any such waste load allocations adopted, amended, or repealed by the
78 Board shall be subject to the provisions of §§ 2.2-4013 and 2.2-4014 concerning review by the Governor
79 and General Assembly.

80 15. Regulations of the Workers' Compensation Commission adopted pursuant to § 65.2-605, including
81 regulations that adopt, amend, adjust, or repeal Virginia fee schedules for medical services, provided the
82 Workers' Compensation Commission (i) utilizes a regulatory advisory panel constituted as provided in
83 subdivision F 2 of § 65.2-605 to assist in the development of such regulations and (ii) provides an
84 opportunity for public comment on the regulations prior to adoption.

85 16. *Amendments to the State Medical Facilities Plan adopted by the Board of Health following*
86 *review by the State Medical Facilities Plan task force pursuant to § 32.1-102.2:1 if the Board (i)*
87 *provides a Notice of Intended Regulatory Action in accordance with the requirements of § 2.2-4007.01,*
88 *(ii) provides notice and receives comment as provided in § 2.2-4007.03, and (iii) conducts at least one*
89 *public hearing on the proposed amendments.*

90 B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it
91 will receive, consider and respond to petitions by any interested person at any time with respect to
92 reconsideration or revision. The effective date of regulations adopted under this section shall be in
93 accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall
94 become effective as provided in subsection B of § 2.2-4012.

95 C. A regulation for which an exemption is claimed under this section or § 2.2-4002 or 2.2-4011 and
96 that is placed before a board or commission for consideration shall be provided at least two days in
97 advance of the board or commission meeting to members of the public that request a copy of that
98 regulation. A copy of that regulation shall be made available to the public attending such meeting.

99 **§ 32.1-102.2:1. State Medical Facilities Plan; task force.**

100 The Board shall appoint and convene a task force of no fewer than 15 individuals to meet at least
101 once every two years. The task force shall consist of representatives from the Department and the
102 Division of Certificate of Public Need, representatives of regional health planning agencies,
103 representatives of the health care provider community, representatives of the academic medical
104 community, experts in advanced medical technology, and health insurers. The task force shall complete a
105 review of the State Medical Facilities Plan updating or validating existing criteria in the State Medical
106 Facilities Plan at least every ~~four~~ two years.