

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB 601

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Freitas

3. Committee: General Laws

4. Title: Administrative Process Act; review of occupational regulations.

5. Summary: Creates a process for a person to petition an agency to review an existing occupational regulation for compliance with Code of Virginia § 54.1-100, which requires the regulation to be necessary for the protection or preservation of the health, safety, and welfare of the public and to meet other statutorily-enumerated criteria. The bill also requires a 21-day written public comment period following publication of the petition in the Virginia Register.

The bill also creates a judicial review process for a person who is adversely affected or aggrieved (complainant) by an occupational regulation when that person believes the regulation is not necessary for the protection or preservation of the health, safety, and welfare of the public or does not meet other statutorily-enumerated criteria. The bill requires the complainant to demonstrate by a preponderance of the evidence that the challenged occupational regulation on its face or in its effect burdens the entry into or participation in an occupation. The bill then requires the agency to demonstrate by a preponderance of the evidence that the challenged occupational regulation is necessary to protect or preserve the health, safety, and welfare of the public and complies with other statutorily enumerated requirements. The bill provides that if the court finds in favor of the complainant, the court shall declare the regulation null and void.

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

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

8. Fiscal Implications: It is unclear which agencies and regulatory boards would be affected by this legislation. The bill amends the Virginia Administrative Process Act (APA), Code of Virginia § 2.2-4000 et seq., by adding a new section pertaining to compliance with Code of Virginia § 54.1-100. Because the bill amends the APA, it would not affect boards and agencies that are exempt from the APA. Although the bill defines “occupational regulation,” § 54.1-100 in particular and Title 54.1 in general refer to both occupation and profession but do not distinguish between them. The bill may therefore affect some or all of the boards that regulate occupations, including those within the Department of Professional and Occupational Regulation (DPOR), boards within the Department of Health Professions (DHP), local governing bodies, and the Virginia Board of Accountancy (VBOA). The bill would not appear to affect professions regulated by the Supreme Court under Title 54.1.

Within the APA, § 2.2-4007 presently allows any person to petition an agency to request a new regulation or an amendment to an existing regulation. Because the bill would add a section to the APA pertaining specifically to compliance with § 54.1-100, it might result in additional petitions. Depending on the number of additional petitions filed, state agencies and regulatory boards with occupational regulations that are subject to the APA might require additional staffing, or more frequent meetings, to address the increase in workload resulting from additional petitions.

The bill also requires the agency or board with occupational regulations to take appropriate steps to repeal the regulation if the agency finds that it is not in compliance with the provisions of § 54.1-100. Agencies report differing potential for impact, depending upon the extent to which findings occur. DHP states that this bill has a high potential fiscal impact that may necessitate an increase in fees. DPOR believes that any costs associated with the new requirements of this section can be absorbed within current agency resources. The VBOA states staff working hours would likely increase should new petitions occur. If additional regulatory action results from these additional petitions, all agencies involved in the executive branch review process, including the Attorney General and Department of Law, the Office of the Governor including the Cabinet Secretaries, and the Virginia Department of Planning and Budget, would also be impacted and may incur additional costs.

In addition, the bill also would expand the judicial review process under the APA, to include judicial review of an occupational regulation when a person believes that it does not comply with Code of Virginia § 54.1-100. This change may impose a fiscal impact to the extent judicial review occurs. DHP reports that every suit filed in court because of a credentialing or disciplinary decision costs the Board of Medicine between \$25,000 and \$50,000. VBOA reports that developing required evidence would likely require additional staff hours. The bill also requires that if the court finds in favor of the complainant, the court would be required to declare the regulation null and void and remand the case to the agency for further proceedings. If additional regulatory action result from these additional judicial reviews, all agencies involved in the executive branch review process could be impacted.

- 9. Specific Agency or Political Subdivisions Affected:** The Department of Health Professions, the Department of Professional and Occupational Regulation, the Department of Planning and Budget, the Attorney General and Department of Law, the Office of the Governor including the Cabinet Secretaries, local governing bodies, the Virginia Board of Accountancy, and courts.

10. Technical Amendment Necessary: No.

11. Other Comments: None.