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HOUSE BILL NO. 244

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 8, 2022)

(Patron Prior to Substitute—Delegate Webert)

A BILL to amend the Code of Virginia by adding a section numbered 2.2-1501.2, relating to the Department of Planning and Budget; Regulatory Budget Program; report.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 2.2-1501.2 as follows:

§ 2.2-1501.2. *Additional duties of Department; Regulatory Budget Program; report; guidance.*

A. As used in this section:

"Agency" means any executive branch agency or board subject to the Administrative Process Act (§ 2.2-4000 et seq.).

"Regulation" means the same as that term is defined in § 2.2-4001. "Regulation" does not include (i) regulations and associated regulatory requirements where no agency discretion is involved and that are necessary to conform to Virginia statutory law, the appropriation act, or federal law or regulations; (ii) statements or policies concerning the internal management of any agency; (iii) guidance documents; (iv) declaratory rulings; or (v) intra-agency or interagency memoranda.

"Regulatory requirement" means any action required to be taken or information required to be provided in accordance with a regulation. "Regulatory requirement" includes requirements contained in documents incorporated by reference to other sources in accordance with the regulations of the Virginia Code Commission.

"Streamlining" means the reduction of a burden from a regulatory requirement, such as a fee on a training requirement, without eliminating the actual regulation. For the purposes of reduction and maintenance targets set by the Department, streamlining shall count as eliminating a regulatory requirement. Streamlining shall not change the total number of regulations or regulatory requirements reported in annual updates to any agency's baseline regulatory catalogs.

B. The Department, under the direction of the Secretary of Finance, shall establish and administer a continuous Regulatory Budget Program (the Program). The Program shall consist of the following elements:

1. The Department, under the direction of the Secretary of Finance, shall set, by July 1 of each odd-numbered year, a two-year target for each agency to (i) reduce regulations and regulatory requirements; (ii) maintain, but not exceed, the current number of regulations and regulatory requirements; or (iii) allow regulations and regulatory requirements to increase by a specific amount for the designated two-year period ending July 1.

2. The responsible Secretaries shall ensure that the agencies develop and maintain a baseline regulatory catalog that identifies (i) the total number and type of regulations and regulatory requirements currently promulgated or administered by the agencies and (ii) any specific federal or state mandates or statutory authority that require such regulations and associated regulatory requirements.

3. The catalog data shall be updated annually and reported to the Department, in a manner specified by the Department, and published on the Virginia Regulatory Town Hall.

4. Any target set by the Department shall be based on the total number of regulations and regulatory requirements as provided by the baseline regulatory catalog. Progress toward the stated target shall be measured by the number of regulations and regulatory requirements that are either increased, eliminated, or streamlined through regulatory or other action. Progress shall be reflected in the catalog and reported, in a manner specified by the Department, as part of all regulations promulgated by the agency. Each agency shall be responsible for ensuring that any information reported to the Department is accurate and complete.

C. When an agency identifies a regulation or regulatory requirement proposed for elimination or modification that requires a change in state law, the responsible Secretary shall report the recommendation to the Speaker of the House of Delegates, the Chairman of the Senate Committee on Rules, and the Department. The Speaker of the House of Delegates and the Chairman of the Senate Committee on Rules shall assign recommendations to relevant committees that shall assess and may act, in consultation with the agency, upon these recommendations in the regular session of the General Assembly immediately following the year in which the recommendation was made.

D. If necessary to meet the target set by the Department, each agency shall also initiate reforms through a rulemaking or nonregulatory action or to the General Assembly through the legislative recommendation process. If an agency is unable to reach the target set by the Department, it shall

60 provide a separate report to the Secretary of Finance and the Department stating the reasons for not
61 meeting the goal.

62 E. The Secretary of Finance shall report to the Speaker of the House of Delegates and the Chairman
63 of the Senate Committee on Rules on the progress of the Program established pursuant to this section
64 no later than October 1 of each odd-numbered year.

65 If, by July 1 of each odd-numbered year, the Program has achieved less than 75 percent of the
66 agency targets set during the previous two years, either by initiating rulemaking actions or other
67 streamlining actions, or through the legislative recommendation process to the General Assembly, the
68 Secretary of Finance shall include the reasons for not meeting the target reduction in the next available
69 biennial report to the Speaker of the House of Delegates and the Chairman of the Senate Committee on
70 Rules.

71 The Secretary of Finance shall include in the biennial report any additional information the
72 Secretary determines may be helpful to support the General Assembly's regulatory reduction and reform
73 efforts.

74 If, by October 1 of each odd-numbered year, the Program has achieved less than 50 percent of the
75 agency targets set by the Department during the previous two years, either by initiating rulemaking
76 actions or other streamlining actions, or through the legislative recommendation process to the General
77 Assembly, the Speaker of the House of Delegates and the Chairman of the Senate Committee on Rules
78 may direct the House Committee on Appropriations and the Senate Committee on Finance and
79 Appropriations to review the regulatory budget efforts of such agency as part of the Program and report
80 to the General Assembly any findings and recommendations regarding (i) whether the targets set by the
81 Department are reasonable and achievable and (ii) any policies, practices, and methods that may be
82 adopted by the agency to successfully achieve the targets.

83 F. The Department shall track and report on the extent to which agencies comply with existing
84 requirements to periodically review all regulations and regulatory requirements every four years.
85 Agencies shall provide to the Department a schedule listing each regulation and regulatory requirement
86 to be reviewed in each of the four years, to be published on the Virginia Regulatory Town Hall.

87 G. The Department shall, by March 1, 2023, issue guidance for agencies that addresses the
88 following: (i) how regulatory requirements shall be measured to ensure consistency across agencies; (ii)
89 how agencies may determine which regulatory requirements are discretionary and which are mandated
90 by state or federal law; (iii) how documents incorporated by reference are to be treated in the baseline
91 catalogs; and (iv) how agencies shall report information to the Department, including progress toward
92 targets set by the Department. The Department shall seek input from the Office of the Attorney General
93 and the Registrar of Regulations in the drafting of guidance pursuant to this subsection.