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## HOUSE BILL NO. 1366

Offered January 11, 2023

Prefiled July 18, 2022

A BILL to amend and reenact § 2.2-4006 of the Code of Virginia, relating to executive branch agencies; posting of regulations.

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Patron—Head

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Committee Referral Pending

**Be it enacted by the General Assembly of Virginia:****1. That § 2.2-4006 of the Code of Virginia is 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, *except that any such agency action taken by an executive branch agency shall be submitted on the Virginia Regulatory Town Hall at each stage of the regulatory process and shall include an economic impact analysis, if required, in accordance with the provisions of § 2.2-4007.04:*

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 Energy authorized pursuant to §§ 45.2-560 and 45.2-1149.

8. General permits issued by the ~~(a)~~ (i) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 ~~or (b)~~; (ii) 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)~~; or (iii) Virginia Soil and Water Conservation Board pursuant to the Dam Safety Act (§ 10.1-604 et seq.); and ~~(d) the development and issuance of or general wetlands permits developed and issued by the~~ Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission ~~(a)~~ (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; ~~(ii)~~; (b) 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)~~; (c) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and ~~(iv)~~ (d) 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

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59 schools pursuant to § 22.1-202.

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

61 11. Regulations of the Marine Resources Commission.

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

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

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

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

88 16. Amendments to the State Health Services Plan adopted by the Board of Health following receipt  
89 of recommendations by the State Health Services Task Force pursuant to § 32.1-102.2:1 if the Board (i)  
90 provides a Notice of Intended Regulatory Action in accordance with the requirements of § 2.2-4007.01,  
91 (ii) provides notice and receives comments as provided in § 2.2-4007.03, and (iii) conducts at least one  
92 public hearing on the proposed amendments.

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

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