COMMONWEALTH *of* VIRGINIA
*Department of Planning and Budget*

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The Honorable Adam P. Ebbin
Chair, Senate Committee on General Laws and Technology
Senate of Virginia
P.O. Box 26415
Alexandria, VA 22313

The Honorable Michael J. Webert
Virginia House of Delegates
P.O. Box 469
Warrenton, VA 20188

Dear Senator Ebbin and Delegate Webert:

Per the request of the Clerk of the Senate and pursuant to Rule 20(o) of the Rules of the Senate of Virginia, the Department of Planning and Budget is providing this study of the subject matter contained in House Bill 2347.

Please let me know if you have any questions.

Sincerely,

Michael D. Maul

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Enclosure
c: The Honorable Steve Cummings
Ms. Susan Clarke Schaar
Mr. Amigo Wade

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**Background**

If it had been enacted as introduced, House Bill (HB) 2347[1] would have established a Regulatory Budget Program, similar to the regulatory reduction pilot program (pilot program) established by Chapters 444 and 445 of the 2018 Acts of Assembly (2018 Acts). These 2018 Acts directed the Department of Planning and Budget (DPB), under the direction of the Secretary of Finance, to "administer a three-year regulatory reduction pilot program beginning July 1, 2018, and ending July 1, 2021."[2]

The pilot program focused on two pilot agencies, the Department of Criminal Justice Services (DCJS) and the Department of Professional and Occupational Regulation (DPOR). Each pilot agency was directed to submit a "regulatory catalog," which included a count of regulatory requirements by regulation, and then reduce these "baseline" requirements by 25 percent over a three-year period ending July 1, 2021. DPOR achieved a 26.9 percent reduction, primarily through streamlining, while DCJS achieved 14.14 percent. In addition, 39 additional executive branch agencies subject to the Virginia Administrative Process Act (APA) were required to submit a regulatory catalog by July 1, 2020. In total, complete catalogs were received from 36 agencies.

Unlike the 2018 Acts, which only required 25 percent reductions by DCJS and DPOR, the Senate Substitute for HB 2347 would have required a 30 percent reduction by all 41 regulatory agencies in the executive branch.

**Executive Order Number 19 (2022)**

On June 30, 2022, Governor Glenn Youngkin issued Executive Order Number 19 (EO 19), which created the Office of Regulatory Management (ORM) within the Office of the Governor. ORM has been tasked with overseeing and implementing a 25 percent reduction of regulatory requirements across all executive branch agencies.[3] Because ORM is currently implementing this reduction effort, enactment of HB 2347 would have required the Secretary of Finance and DPB to align their efforts under the bill with the existing effort under ORM.

**Study Results**

While DPB has no stance regarding the merits of the Regulatory Budget Program, HB 2347 as introduced could require DPB to depart from its current advisory role regarding regulations. In the 2018 pilot program, the reduction target was set by the legislation and the reduction efforts were self-reported by agencies. In contrast, HB 2347 would increase DPB's role by requiring DPB to set a reduction target for each agency, or else allow the agency to maintain or increase its regulatory requirements. This would appear to shift DPB's role from a purely administrative function toward a policy-making stance. In addition, coordination with ORM would be necessary to ensure agencies are not subject to conflicting or redundant reporting requirements. Because statute would take precedence, if either version of HB 2347 was enacted, it is likely that the bill's reduction provisions would supersede the 25 percent reduction under EO 19.

In all other respects, however, DPB would work with the Secretary of Finance and ORM to align the respective efforts as much as possible in 2024 and 2025. However, because the program created by HB 2347 would remain in place until January 1, 2027, this coordination would only be needed in 2026 if ORM is continued by the next

[1] See https://lis.virginia.gov/cgi-bin/legp604.exe?ses=231&typ=bil&val=hb2347.
[2] These 2018 Acts also directed the Secretary of Finance to submit three annual reports on the status of this program. See https://rga.lis.virginia.gov/Published/2019/RD403, https://rga.lis.virginia.gov/Published/2020/RD394, and https://rga.lis.virginia.gov/Published/2021/RD356/PDF.
[3] See https://townhall.virginia.gov/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf.

administration. Depending upon the success of the efforts to align DPB and ORM's efforts, and the role played by DPB during 2026, it is possible that additional staff at DPB may be required.

It should also be noted that EO 19 appears to relate to all executive branch agencies, including those that are exempt from the APA. In contrast, HB 2347 would limit the scope of the reduction efforts only to those 41 executive branch agencies that are subject to the APA.

Finally, DPB has identified some technical matters with HB 2347 that the patron may wish to consider (see Appendix).

## Appendix

DPB has identified the following technical matters with HB 2347, that the patron may wish to consider:

1. The definition of "regulations" (lines 16 through 22) does not indicate if a regulation is a chapter or a section of the Virginia Administrative Code (VAC), which could cause confusion. In DPB's view, standard practice is to refer to a chapter in the VAC as a "regulation," not a section within a chapter. DPB recommends clarifying the definition of regulation accordingly and offers this suggestion, " "Regulation" *refers to a chapter in the Virginia Administrative Code* and means the same as that term is defined in § 2.2-4001."

2. The definition of "regulations" (at lines 18 through 21) would exclude, "regulations of the boards served by the Department of Health Professions [DHP] or the Department of Professional and Occupational Regulation [DPOR] pursuant to Title 54.1 that are necessary to revise fees in accordance with § 54.1-113." Based on the context of this exception, which addresses revisions to fees, this exception does not apply to "regulations" per se. Instead, this exception likely pertains to regulatory "actions," the revisions whereby regulations are amended. Revisions to fees via regulatory actions are already exempt from the APA via § 2.2-4006(A)(6). If the intent is to exclude the actual DHP and DPOR regulations that impose or levy fees, then the phrasing would be "…that are necessary to ~~revise~~ *levy* fees in accordance with § 54.1-113."

3. The definition of "regulation" (at lines 16 through 18) already excludes mandatory regulations and requirements via this language, "where no agency discretion is involved and that are necessary to conform to Virginia statutory law." As a result, subsection C (lines 47 through 53), which appear to apply only to discretionary regulations and requirements, may not be needed because none of the reductions should require a change in state law. Similarly, subsections D and E (at line 55 and lines 63 through 64) also refer to "the legislative recommendation process to the General Assembly." These provisions may also not be needed because none of the reductions should require a change in state law.

4. The program is described as a "continuous" program on line 34, although it sunsets on January 1, 2027. For avoidance of doubt, the word "continuous" may not be needed.

5. Subsection F (at line 80) appears to require agencies to provide a schedule listing each regulatory requirement to be reviewed, not just the regulations to be reviewed. Because each requirement is a component of a regulation, a schedule of the regulations to be reviewed inherently addresses the requirements therein. Additional reporting on discrete requirements would impose substantial administrative burdens on DPB and agencies.

6. Subsection E (line 60) states that the Secretary of Finance is required to submit a report "no later than October 1 each year" but the report is described as "biennial" (line 65). Accordingly, line 60 may need to be amended to say "no later than October 1 *of* each *odd* year."

7. Subsection E (at line 62 and lines 70 through 71) refers to the following calculations, which could be simplified for clarity:
   - "Less than 75 percent of the 30 percent reduction target" could be simplified to "less than 22.5 percent."
   - "Less than 50 percent of the 30 percent reduction target" could be simplified to "less than 15 percent."