VIRGINIA REGULATORY STREAMLINING BILL

Virginia Institute
for Public Policy

HB 244
LEGISLATIVE ANALYSIS

BACKGROUND

I n 2018, Governor Ralph Northam signed into law HB 883, the Regulatory Reduction Pilot Program. The program was a blend of both occupational licensing and criminal justice reform, combined with regulatory streamlining measures. The program was a pilot in the sense that it focused on two state agencies to start—the Department of Criminal Justice Services (DCJS) and the Department of Professional and Occupational Regulation (DOPR). These agencies were required to produce an inventory of the requirements they impose on members of the public and then reduce burdens by 25 percent. The purpose of creating the inventory was so that **the agency would 1) review its regulations and 2) have an organized way to evaluate whether the requirements it controlled merit amendment of some kind.**

The focus on licensing and criminal justice issues was not a coincidence. There is widespread agreement among economists that **licensing regulations in particular often act as a barrier to employment for those who have a criminal record.** Thus, there is a strong social justice case for reforms of this kind. Moreover, this issue has gained increasing attention since a seminal occupational licensing report was issued by the Obama administration in 2015,[1] which helped inspire reforms in a number of states.

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RESULTS

The results of the pilot program were impressive. DPOR amended roughly 27 percent of its regulatory requirements while the corresponding number for DCJS was 14 percent. For example, a $100 fee required to be paid with a license application might be reduced to $50. This would be counted as one streamlined requirement, as would be the case if the fee were eliminated entirely. **This way of measurement gave the regulatory agency flexibility to reduce certain burdens without being tied to a blunt, across the board reduction.**

During the three years while the pilot program was ongoing, other agencies subject to the state Administrative Process Act were tasked with reviewing their requirements with an end-goal of producing inventories of the requirements. These inventories would lay the groundwork for the potential expansion of the regulatory reduction program. Unfortunately, the pilot program's progress was slowed considerably due to the COVID-19 pandemic. Inventories were supposed to be completed by October of 2020. Instead, they weren't reported until one full year later, in October of 2021. It is very likely the pilot program would have been expanded in 2020 had it not been for the pandemic forcing regulatory agencies to rightfully focus on other pressing priorities.

EXPANSION BILL

Virginia HB 244 (2022) and its companion bill in the Virginia state senate, SB 372, establish a regulatory streamlining program that **expands the pilot program of 2018 to other executive agencies.** The law creates a system whereby the Virginia Secretary of Finance, on a 2-year cycle, establishes regulatory goals for each agency under the authority of the governor. The benefit of an alternating two-year cycle is that the fiscal budget will be passed in odd years while the regulatory budget will be considered in even years. The main difference between the Regulatory Budget Act and the Regulatory Reduction Pilot Program is that the pilot program required a 25 percent reduction in burdens from the two pilot agencies, while **the Regulatory Budget Act gives the finance secretary discretion to set the requirement goal for each agency as he or she sees fit.** This means, for example, the number of requirements could be allowed to rise at one agency while falling at another.

Additionally, the pilot program law was temporary, lasting just three years, while the Regulatory Budget Act is intended to be a permanent feature of the Virginia landscape going forward. Furthermore, at the end of the pilot program, the Department of Planning and Budget (DPB) issued a report with recommendations for how to improve the pilot program. The report included establishing better definitions as to what counts as a regulatory requirement and what does not, and creating more consistency of measuring and reporting regulatory requirements across agencies. These recommendations have been incorporated into the Regulatory Budget Act, as DPB will have to produce guidance on these issues for agencies to follow.

CONCLUSION

Virginia has become a leader in the nation in regulatory improvement since passage of the pilot program in 2018. Virginia was named one of the best states to do business in a 2018 CNBC report, with the 2018 pilot program law singled out as a reason for Virginia's improvement in the rankings from previous years. Virginia also went on to take the top spot in the CNBC rankings in 2021. Moreover, other states have been influenced by Virginia's regulatory pilot program. **The governor of New Mexico issued an executive order in late 2021 that paired occupational licensing with social justice issues.** The New Mexico executive order was a response to a report published in November of 2021 about how to facilitate economic development in New Mexico.[2] The report specifically highlights Virginia's 2018 law, pointing to Virginia as a state that has been "more proactive in addressing obstacles to quick and easy business establishment and expansion." A bill based on Virginia's pilot program called the Fighting Chance Act has also been introduced in Pennsylvania with bipartisan support.[3]

> *"...creating more consistency of measuring and reporting regulatory requirements across agencies."*

[1] US Department of the Treasury, Council of Economic Advisers, and US Department of Labor, Occupational Licensing: A Framework for Policymakers, July 2015.

[2] New Mexico Economic Development Department, Empower & Collaborate, 232.

[3] H.B. 995, Gen. Assemb., 2019 Sess. (Penn. 2020).