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Exempt Action Proposed Regulation Agency Background Document

Agency name	Department of Elections
Virginia Administrative Code (VAC) citation(s)	1 VAC 20-60-35
Regulation title(s)	Polling Place Accessibility Assessments
Action title	Creation of 1 VAC 20-60-35
Date this document prepared	04/28/2016

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of The Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Va. Code § 24.2-310(C) requires all polling places to be accessible to all qualified voters as required under the Virginians with Disabilities Act (§ 51.5-1 et seq.), the Voting Accessibility for the Elderly and Handicapped Act (52 U.S.C. § 20101 et seq.), and the Americans with Disabilities Act relating to public services (42 U.S.C. § 12131 et seq.). The statute further *requires* the State Board of Elections (“SBE”) to provide instructions to the localities to ensure compliance with this statute. Va. Code 24.2-310(C) (“The State Board shall provide instructions to local electoral boards and general registrars to assist localities in complying with the requirements of the Acts.”).

The Help America Vote Act authorizes the protection and advocacy system of each state to “ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places.” (42 U.S.C. § 15461). Pursuant to Va. Code § 51.5-39.13, the Governor appointed the Virginia disAbility Law Center (“DLCV”) as the protection and advocacy program in Virginia. In this role, DLCV is charged with “*protect[ing] and advocat[ing]* for the rights of persons with mental, cognitive, sensory, physical, or other disabilities and to receive federal funds on behalf of the Commonwealth of Virginia to implement the federal Protection and Advocacy for Individuals with Mental Illness Act, the federal Developmental Disabilities Assistance and Bill of Rights Act, the federal Rehabilitation Act, the Virginians with Disabilities Act (§ 51.5-1 et seq.), and such other related programs as may be established in state or federal law.” Va. Code § 51.5-39.13 (emphasis added).

In furtherance of its mission, DLCV randomly selected more than 30 localities in which to conduct accessibility audits of polling locations during the March 1, 2016 presidential primary. At the March 15, 2016 SBE meeting, Clyde Matthews, Deputy Director of DLCV, presented the initial findings from DLCV’s accessibility audits. These initial findings indicate that approximately 20% of the polling locations audited did not comply with Va. Code § 24.2-310(C). To better address this problem going forward, DLCV requested the following:

- 1) Reminder from the State Board to all localities stating that general registrars are legally responsible for selecting polling locations that are accessible as required pursuant to Va. Code § 24.2-310(C);
- 2) Official authorization to conduct audits for the purpose of assessing accessibility;
- 3) Policy Statement from the State Board acknowledging DLCV’s role in ensuring polling place accessibility.

Considering the startling initial findings, coupled with the fact that multiple localities refused to allow DLCV access to their polling places to conduct these important audits, these requests are more than reasonable. As the State Board is mandated to provide instructions to ensure full compliance with this important statute, the State Board should adopt the proposed regulations.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

None.