

Virginia Alcoholic Beverage Control Authority

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The Virginia Alcoholic Beverage Control Authority (“VA ABC” or “Authority”) concurs with the Department of Planning and Budget’s (“DPB”) *economic analysis*; however, the Authority takes exception to the discussion of the Administrative Process Act (“APA”) rules included in the section titled “Benefits and Costs”. Not only is that discussion irrelevant, but it is prejudicial to VA ABC and fails to take into account, or even mention, the relevant portions of the Code of Virginia that exempt fees associated with permits from the APA.

House Bill 390 of the 2020 General Assembly Session amended Section 4.1-103 of the Code of Virginia “General Powers of the Board”. The bill established, among other things, that VA ABC had the inherent authority to establish and collect fees for all permits set forth in the ABC Act including fees associated with applications for such permits. DPB’s economic impact analysis includes considerable discussion about an “APA-compliant process” that includes various opportunities for public comment, but fails to discuss that VA ABC permit fees are not subject to those APA requirements despite the numerous references to the changes in § 4.1-103 mentioned in the ABC background statement and in various conversations between the economic analyst and VA ABC’s regulatory coordinator to that effect. The economic analyst further speculates that VA ABC’s exercise of its authority pursuant to the Code of Virginia to establish and collect permit fees without going through the APA process “may limit the opportunities available to the stakeholders and especially to the permittees to provide input for the fee adjustments or object to such adjustments compared to the opportunities required to be provided by the APA” despite the fact that when VA ABC did seek public input regarding the changes in permit fees the Authority received zero comments and has not received any objections to the industrial permit fees since they were adopted. Furthermore, despite being provided with spreadsheets from VA ABC that indicate there has not been any indication of a decrease in industrial permits issued since the implementation of the fees, the economic analyst again speculates an “adverse impact on industrial permit applicants”.

DPB’s economic impact analysis is a five-page document that includes one paragraph that actually discusses the costs associated with the proposed amendment and the rest consisting primarily of the analyst’s thoughts as to why VA ABC should follow APA requirements that are not applicable to this matter. VA ABC objects to the portions of the economic impact analysis that consists of the irrelevant portions of the APA and objects to those portions used in consideration in determining whether or not the promulgation of the regulatory amendment may proceed.

