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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC30-271
VAC Chapter title(s)	Economic Development Access Fund Policy
Date this document prepared	September 20, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"CTB" means the Commonwealth Transportation Board.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The CTB is authorized generally to make regulations for the protection of and covering traffic on and for the use of systems of state highways pursuant to § 33.2-210 of the Code of Virginia, and more specifically, pursuant to § 33.2-1509 of the Code of Virginia, is authorized to make decisions on

expending funds for constructing, reconstructing, maintaining, or improving access roads within localities to economic development sites on which manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters, or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Small Business and Supplier Diversity will be built under firm contract or are already constructed. This regulation sets forth the policy by which the CTB makes those funding decisions.

According to prior guidance from the Office of the Attorney General, this regulation is exempt from the provisions of the Administrative Process Act pursuant to § 2.2-4002(B)(3) and (4) and § 2.2-4006(A)(4)(a) of the Code of Virginia.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The CTB is authorized by § 33.2-1509 of the Code of Virginia to make decisions on expending funds for constructing, reconstructing, maintaining, or improving access roads within localities to economic development sites. Section 10 of the regulation states the general purpose of the regulation. Subsections A through M of Section 20 set forth the general criteria and conditions the CTB will consider in making such funding decisions for a particular project. The CTB expends funds by voting on a resolution, which specifies the criteria and conditions for the use of such funds on each project, and the terms of the resolution are used to enforce the funding conditions on the locality receiving the funds. The regulation merely provides guidance to the localities to use in preparing a request for funding. In fact, the CTB has adopted a guidance document which specifies, in more detail, all the criteria and conditions that the CTB will consider in making funding decisions for economic development access funds. Therefore, the regulation is not necessary.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No comment was received during the public comment period.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

Although the regulation is clearly written and easily understandable, it is not necessary for the protection of public health, safety and welfare, as it serves the same purpose as a guidance document, which the CTB has adopted and which provides guidance for any locality that wishes to request economic development access funds for a particular project.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The General Assembly passed SB 1253 in its 2021 session, which amended § 33.2-1509 to require the CTB to establish guidelines for the Economic Development Access Fund, and requires that the guidelines consider the number of jobs that will be created by the economic development project, the proposed capital investment by the private sector at the economic development site, and any other relevant criteria related to the economic development project.

The functions performed by the regulation are those that are adequately performed by the existing Economic Development Access Fund guidelines that have been adopted by the Commonwealth Transportation Board as a guidance document. Therefore, VDOT is recommending that the regulation be repealed, but that the guidance document be retained and reviewed for modifications necessary to comply with the requirements of SB 1253.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Although the regulation is not complex, and the CTB has received no complaints concerning the regulation, there is no continued need for the regulation because the CTB has adopted a guidance document to serve the same purpose in providing assistance to localities in requesting funding pursuant to § 33.2-1509 of the Code of Virginia. The most recent substantive amendment of the regulation was in 2012.
