



# Virginia Department of Planning and Budget **Economic Impact Analysis**

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**8 VAC 20-90 Procedure for Adjusting Grievances**  
**Department of Education**  
**Town Hall Action/Stage: 6244 / 10008**  
May 7, 2024

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

## **Summary of the Proposed Amendments to Regulation**

The State Board of Education (Board) proposes several amendments to 8 VAC 20-90 *Procedure for Adjusting Grievances* (regulation) to reflect the current Code. Changes to relevant portions of the Code occurred due to Chapter 875 of the 2020 *Acts of Assembly* (Chapter 875), Chapter 1137 of the 2020 *Acts of Assembly* (Chapter 1137), and Chapter 477 of the 2021 *Acts of Assembly* (Chapter 477).

## **Background**

### *Chapter 875*

Code § 22.1-309 states in part that “In the event a division superintendent determines to recommend dismissal of any teacher, ... the teacher may request a hearing ... .” Prior to Chapter 875, § 22.1-311(A) stated in part that:

Upon a timely request for a hearing pursuant to 22.1-309, the school board or, at the option of the school board, a hearing officer appointed by the school board

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

shall set a hearing within 15 days of the request and the teacher shall be given at least five days' written notice of the time and the place.

Chapter 875 amended this to: 1) add another type of hearing option, 2) remove the mandate that the hearing be set “within 15 days of the request,” and 3) increase the minimum number of days of written notice given to the teacher from five to ten. Consequently, this sentence in § 22.1-311(A) became:

Upon a timely request for a hearing pursuant to 22.1-309, the school board or, at the option of the school board, a hearing officer appointed by the school board **or a three-member fact-finding panel** shall set a hearing and the teacher shall be given at least **ten** days' written notice of the time and the place.

Chapter 875 also added a new subsection § 22.1-311(C) that specifies requirements if a three-member fact-finding panel is used. Among the requirements is that “The teacher and the division superintendent shall each select one panel member, and the two panel members so selected shall select an impartial hearing officer to serve as the chairman of the panel.”

The Board proposes to amend the *Procedure for Dismissals* section (8 VAC 20-90-70) of the regulation so that it is consistent with the changes that occurred in Chapter 875.

#### *Chapter 1137 and 477*

The Board also proposes to amend the *Definitions* section (8 VAC 20-90-70) of the regulation in order to conform the definition of “grievance” and add a definition of “military status,” pursuant to Chapter 1137 and Chapter 477, respectively. Chapter 1137, in part, added sexual orientation and gender identity to the list of bases for which discrimination would give employees grievance rights. Chapter 477 created a new definition for “military status,” which the Board proposes to adopt in its entirety.

### **Estimated Benefits and Costs**

By amending the regulation to be consistent with statute, the law in effect would not change. Nevertheless, it may be beneficial in that it would inform interested parties who read this regulation but not the statute of the actual law in effect.

According to the Department of Education (DOE), the agency is not aware of any three-member fact finding panels having been convened since the 2020 enactment of Chapter 875. Additionally, DOE does not track how many hearings occur annually.

## **Businesses and Other Entities Affected**

All the proposed amendments are essentially already in effect through legislation. The legislation potentially affects teachers who have been recommend for dismissal and the 131 public school divisions in the Commonwealth.<sup>2</sup>

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>4</sup> As the proposed amendments do not have impact beyond better informing the public of the law in effect, no adverse impact is indicated.

### **Small Businesses<sup>5</sup> Affected:<sup>6</sup>**

The proposed amendments do not adversely affect small businesses.

### **Localities<sup>7</sup> Affected<sup>8</sup>**

The proposed amendments neither disproportionately affect any particular locality, nor introduce costs for local governments.

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<sup>2</sup> Data source: DOE

<sup>3</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

<sup>4</sup> Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>5</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

<sup>6</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>7</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>8</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

**Projected Impact on Employment**

The proposed amendments do not affect total employment.

**Effects on the Use and Value of Private Property**

The proposed amendments do not affect the use and value of private property or real estate development costs.