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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) citation	6VAC35-30
Regulation title	Regulations for State Reimbursement of Local Juvenile Residential Facility Costs
Action title	A comprehensive review of the regulation for clarity and improvement
Date this document prepared	May 15, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Regulations for State Reimbursement of Local Juvenile Residential Facility Costs, 6VAC35-30, sets forth the process by which the Department and the Board of Juvenile Justice will approve the Commonwealth's reimbursement of a portion of a locality's cost of constructing a juvenile residential facility. It establishes the process for evaluating requests from localities for state reimbursement of local juvenile residential facility construction costs, including criteria to assess need, priorities for construction projects, and a methodology for determining appropriate costs. The regulation also provides the basis for the Department's "Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities," which address technical matters of construction and furnishings.

The last comprehensive review of the Regulations for State Reimbursement of Local Juvenile Residential Facilities was completed on September 9, 1992. Since that time, there has been a restructuring, both in the Department of Juvenile Justice and in localities. Additionally, many of the terms used in the regulation are outdated. Thus, during the periodic review period, the regulation was reviewed in light of current practices; and it was determined that a comprehensive review of and substantive changes to the regulation are necessary with the goals of enhancing the clarity of its regulation and achieving improvements that will be reasonable, prudent, and will not impose an unnecessary burden on its regulants or the public.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Board of Juvenile Justice is entrusted with general authority to promulgate regulations by §66-10 of the Code of Virginia, which states the Board may “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department.”

Additionally, the legal authority of the Board of Juvenile Justice to promulgate regulations governing reimbursement of construction costs for local juvenile residential facilities is found in §16.1-309.5 (C) of the Code of Virginia. This Code section states that “the Board shall promulgate regulations to include criteria to serve as guidelines in evaluating requests for such reimbursements and to ensure the geographically equitable distribution of state funds for such purpose.”

Moreover, §16.1-322.7 of the Code of Virginia requires the Board of Juvenile Justice to promulgate regulations governing the schedule for and manner of state reimbursement to the cities or counties or any combination thereof for costs of construction of local or regional detention homes. It further requires regulations regarding the minimum standards for the construction, equipment, administration, and operation of the facilities.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The regulation applies to all requests from localities for financial assistance relative to the construction, enlargement, or renovation of detention homes, group homes, or other residential care facilities for children subject to the regulation of the Board of Juvenile Justice. These projects are also governed by the Virginia Public Procurement Act (Chapter 43 of Title 2.2 of the Code of Virginia) and the Construction and Professional Services Manual for Agencies, which is indicated in the regulation. The regulation details the process by which requests for construction projects and requests for financial assistance are submitted, approved, and funded. Having a clear, concise, and consistent process across localities serves the health, safety, and welfare of citizens by ensuring the necessity of construction and uniformity of construction and a consistent and fair process for the reimbursement to localities for such costs.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The Department (Board) of Juvenile Justice proposes to conduct a comprehensive review of the regulation and, if appropriate, address any deficiencies found. The regulation will be reviewed and modifications proposed to ensure that it most effectively and efficiently supports its statutory purpose. This regulation was last amended in 1992 and, since then, there have been procedural and technical changes in the process that should be reflected in the regulation. The Board intends to review the regulation for clarity and applicability and to update the regulation for consistency with current practice.

The Department is in the process of convening an advisory committee with individuals representing the Department, localities, and local facilities. The Department, through the advisory committee, intends to continue the review commenced during the periodic review process and anticipates recommending the following changes:

- ❖ Updating the referenced statutes, regulations, and documents;
- ❖ Updating the definition section and terms used, including clearly defining components of the needs assessment and planning study and detailing what constitutes a substantive change;
- ❖ Streamlining the steps in the approval process by suggesting technical and substantive changes;
- ❖ Adding a pre-screening step to the process to ensure that all projects subject to the regulation are identified early in the planning process;
- ❖ Deleting the preliminary review (6VAC35-30-50), which is not in the correct location in the regulation and duplicative of other parts of the regulation;
- ❖ Defining the Board-approved funding formula and detailing the components of the formula including the required per bed cost;
- ❖ Clarifying when the phased reimbursement of projects may be utilized;
- ❖ Removing funding priorities that are no longer applicable or do not need to be listed in the regulation;
- ❖ Adding language that makes it clear that reimbursement may be denied for failure to submit inspection and progress reports or to notify the Department of substantive changes during the construction phase; and
- ❖ Clarifying which guidelines and other documents should be referenced and/or incorporated to achieve consistency in application across localities.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Retaining the regulation in its current form was considered. However, given changes in terminology and the evolvement of practices since 1992, the agency determined that a comprehensive review and updating of the regulation is essential to improving the process by which localities seek reimbursement for the construction of children's residential facilities and is consistent with the goals to clarify and improve the process.

Also, as part of the review process, the Department assessed whether any of the needed changes, clarifications, or updates can be accomplished through additional guidance documents or training rather than revising the regulatory provisions. The conclusion was reached that reviewing and amending current

regulation is the only practicable alternative for addressing certain issues identified during the periodic review of this regulation.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to: 1) ideas to assist in the development of a proposal; 2) the costs and benefits of the alternatives stated in this background document or other alternatives; and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in §2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email, or fax to **Patricia Rollston, Legislative Analyst at Virginia Department of Juvenile Justice, P.O. Box 1110, Richmond, Virginia 23218-1110, by electronic mail at patricia.rollston@djj.virginia.gov, via telephone at (804) 786-4194, or via facsimile at (804) 371-0773.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is using a participatory approach to amend this regulation and has begun organizing an advisory committee. Individuals who will be invited to participate in the advisory committee will represent the Department of Juvenile Justice, local governing bodies, local detention homes and other residential facilities, and the Board of Juvenile Justice. The agency may consult with experts on technical issues.

Additionally, and in light of correspondence received from Delegate Terrie L. Suit, Chair of the Virginia House of Delegates' General Laws Committee, the Department will also review the policy concerns embodied in HB 585 and give full consideration to the issues raised by the affected constituency on whether the Board of Juvenile Justice should: (i) require smoke detectors; (ii) require other fire detection

and suppression systems; and (iii) require noncombustible construction materials in newly constructed juvenile care facilities that are operated by or under the authority of the Department of Juvenile Justice. The affected constituency will be consulted, and these issues will be considered in the review process.

Family impact

Assess the potential impact of the proposed 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.

The anticipated amendments are not expected to have an impact on the institution of the family and family stability. Although delinquent children and children in need of supervision may be housed in facilities governed by this regulation, the regulation itself governs the process of monitoring construction and reimbursing the costs of construction. Thus, the regulation would neither strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children; would neither encourage nor discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children or elderly parents; would neither strengthen nor erode the marital commitment; and would neither increase nor decrease disposable family income.

Periodic review - Public comment

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response

A public comment period was open from January 21, 2008, through February 20, 2008. No public comments were received during that time.

The regulation continues to meet the criteria set out in Executive Order 36 in that it is necessary for the protection of public health, safety, and welfare. However, amendments are necessary for the regulation to be more clearly written and more easily understandable.

Periodic review - Discussion

If this NOIRA is the result of a periodic review or if the periodic review is to be performed in combination with the NOIRA, please include a discussion of the agency's consideration of: (1) the continued need for the rule; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) 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, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The regulation of the process for the state's reimbursement of local juvenile residential facility costs continues to be necessary as it is mandated by §§16.1-309.5 (C) and 16.1-322.7 of the Code of Virginia. The regulation governs the responsibilities of localities, the Department of Juvenile Justice, and the Board of Juvenile Justice regarding approving construction of certain children's residential facilities and the reimbursement of costs related thereto. Thus, it is both procedurally and substantively complex, requiring knowledge of local and state fiscal and construction processes and requirements.

This regulation has been in effect since September 9, 1992, and amendments are necessary for the regulation to be more clearly written, more easily understandable, and accommodating to practices that have evolved since 1992. While this regulation has not been amended since 1992, several reviews were conducted on the regulation during the intervening time period. Since 1992, there has been a restructuring, both in the Department of Juvenile Justice and in localities. Additionally, many of the terms used in the regulation are outdated.

The regulation does not overlap or conflict with any state law or regulation. Any construction guidance is consistent with and defers to the Uniform Statewide Building Code and other applicable statutes and regulations. The regulation is duplicative only to the extent necessary to implement the applicable statutory components.

During the periodic review period, the regulation was reviewed in light of current practices; and it was determined that a comprehensive review of and substantive changes to the regulation are necessary with the goals of enhancing the clarity of its regulation and achieving improvements that will be reasonable, prudent, and will not impose an unnecessary burden on its regulants or the public. Thus, the Board of Juvenile Justice, at its April 9, 2008, meeting, approved the submission of this NOIRA after a periodic review was conducted on the regulation in accordance with the applicable statute and executive order.