



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

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**1 VAC 20-60 Election Administration**  
**Department of Elections**  
**Town Hall Action/Stage: 6259 / 10025**  
July 10, 2023

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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**

As a result of the 2023 Acts of Assembly Chapters 663<sup>2</sup> and 664<sup>3</sup> (legislation), the State Board of Elections (Board) proposes to establish standards outlining what constitutes material and non-material omissions on a petition for removal of an elected officer.

## **Background**

The legislation sets out the procedures by which an elected officer, or an officer who has been appointed to fill an elective office, may be removed from office. This legislation applies to all elected or appointed Commonwealth, constitutional, and local officers, except officers for whose removal the Constitution of Virginia specifically provides.<sup>4</sup>

As it pertains to the Board and local general registrars, the legislation requires that (i) the general registrar review a petition for removal on a form prescribed by the Board and determine

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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.

<sup>2</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0663&231+ful+CHAP0663>

<sup>3</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0664&231+ful+CHAP0664>

<sup>4</sup> See Code of Virginia § 24.2-230.

its sufficiency; (ii) if sufficient, the general registrar certify the petition within 10 business days and promptly file such certification with the clerk of the circuit court; and (iii) the certification state the number of signatures required, the number of signatures on the petition, the number of valid signatures, along with any signatures found to be invalid and any material omissions from the petition.

Consequently, the Board proposes to establish a form in the regulation and descriptions of material and non-material omissions. Omissions that would be considered material include missing name (or some variation of the name) of the officer, failing to identify the jurisdiction in which the officer serves, missing signatures, etc. Omissions that would not be considered material include using an older form, missing a birthday, or placing signature on the print line and printing the name on signature line, etc. According to the Board, the proposed rules in this action are consistent with the requirements for material omissions on referendum petitions (1 VAC 20-60-20) and material omissions for candidate petitions (1 VAC 20-50-20).

If the petition meets all requirements, the general registrar certifies to the clerk of the court whether the required minimum number of signatures has also been met, which on a removal petition is 10 percent of the votes cast in the last election for that office. However, the general registrars do not review the petition for content or merit, but instead only for form and procedure and whether it meets the requirements as laid out by law and this proposed regulation. If certified to the court, the Commonwealth's Attorney reviews the content and merits and decides on whether to pursue the petition or not.

### **Estimated Benefits and Costs**

The proposed regulation would outline what constitutes material and non-material omissions on a petition for the removal of an officer and provide guidance to the general registrars as to how to evaluate a petition for certification. As such, the proposal should help ensure the information provided to general registrars, circuit courts, and Commonwealth Attorneys are in uniform and consistent formats and contain the same type of information. These changes should help avoid potential administrative cost due to possible errors and the potential for Board staff to receive unnecessary questions from general registrars. Without the proposed standards, registrars may not uniformly review petition signatures and/or may have many questions. Additionally, signatures on a petition for the removal of an officer may be qualified or

disqualified for different reasons which would directly impact whether the required minimum 10 percent of the votes is met.

### **Businesses and Other Entities Affected**

All elected officials and all officials appointed to fill an elective office, except officers for whose removal the Constitution of Virginia specifically provides, are subject to a removal petition. However, removal petitions are filed with the circuit courts, not with the Board or the agency. Therefore, there is no estimate for how many removal petitions are filed. Additionally, proposed regulation applies to petitioners and petition circulators. No affected entity appears to be disproportionately affected.

The Code of Virginia requires the DPB to assess whether an adverse impact may result from the proposed regulation.<sup>5</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposal would mainly help provide guidance and consistency in evaluating and certifying an accurate petition count. Thus, no adverse impact is indicated.

### **Small Businesses<sup>6</sup> Affected:<sup>7</sup>**

The proposed regulation does not appear to adversely affect small businesses.

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<sup>5</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. 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.

<sup>6</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>7</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.

**Localities<sup>8</sup> Affected<sup>9</sup>**

All circuit courts in Virginia that receive a certification from the general registrar regarding the number of signatures on an officer removal petition and all general registrars required to review an officer removal petition would be affected. The proposed regulation does not introduce costs for local governments.

**Projected Impact on Employment**

The proposed regulation does not appear to affect employment.

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

No effect on the use and value of private property or real estate development costs is expected.

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<sup>8</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>9</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.