



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

6 VAC 15-11 Public Participation Guidelines
Department of Corrections
Town Hall Action/Stage: 5942 / 9594
August 31, 2023

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.¹

Summary of the Proposed Amendments to Regulation

The State Board of Local and Regional Jails (Board) proposes to specify in this regulation that “An interested person may be accompanied by counsel or another representative when providing public comment to the agency.” Additionally, the Board proposes to change “Department of Corrections” to “State Board of Local and Regional Jails” where the former currently appears in the regulation.

Background

Pursuant to Chapter 795 of the 2012 *Acts of Assembly* (Chapter 795),² the Board proposes to specify in this regulation that “An interested person may be accompanied by counsel or another representative when providing public comment to the agency.” Prior to Chapter 795, part B of Virginia Code § 2.2-4007.02 was as follows:

B. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public

¹ 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.

² See <http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795+hil>

participation guidelines shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency, to include an on-line public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate. However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments.

Chapter 795 amended this text to:³

B. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to **(i)** submit data, views, and arguments, either orally or in writing, to the agency, to include an online public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate **and (ii) be accompanied by and represented by counsel or other representative.** However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments.

Chapter 759 of the of the 2020 *Acts of Assembly* (Chapter 759)⁴ renamed the State Board of Corrections as the State Board of Local and Regional Jails.

Estimated Benefits and Costs

Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, the Board's proposal to add this language to the regulation would not change the law in effect, but would be beneficial in that it would inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

VAC 15-11 *Public Participation Guidelines* pertains to the public's involvement in the development, amendment, or repeal of the regulations of the Board. Updating the name of the rule-making authority pursuant to Chapter 759 improves clarity, but otherwise should not have substantive impact.

Businesses and Other Entities Affected

The proposed amendments potentially affect all individuals who comment on pending regulatory changes. Individuals who are interested in being accompanied by and represented by

³ Bold added for emphasis.

⁴ See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0759+hil>

counsel or other representative, and were not previously aware of this right, would be particularly affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation. 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. Since the proposed amendments do not introduce cost nor reduce revenue, no adverse impact is indicated.

Small Businesses⁵ Affected:⁶

The proposed amendments do not adversely affect small businesses.

Localities⁷ Affected⁸

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

Projected Impact on Employment

The proposed amendments do not substantively affect employment.

Effects on the Use and Value of Private Property

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

⁵ 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.”

⁶ 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.

⁷ “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.

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