



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) citation	6VAC20-230
Regulation title	Regulations Relating to Special Conservators of the Peace
Action title	Amend the Initial Registration Application requirements regarding bond or insurance verification.
Date this document prepared	August 22, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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 Criminal Justice Services Board (CJSB) seeks to amend its current regulations to establish the minimum bond amounts and minimum amount and type of liability or self insurance for special conservators of the peace.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The Criminal Justice Services Board has the statutory authority to adopt regulations relating to special conservators of the peace appointed pursuant to §19.2-13, to include regulations that establish the qualifications of applicants for registration and to effectively administer the regulatory system promulgated by the Board. [VA Code § 9.1-150.2](#).

The *Code of Virginia* provides that persons registered as or seeking registration as a special conservator of the peace shall be covered by a cash bond, or a surety bond in a reasonable amount to be fixed by the Board or evidence of a policy of liability insurance or self-insurance in an amount and with coverage as fixed by the Board. [VA Code §19.2-13\(C\)](#)

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 Department of Criminal Justice Services established a taskforce to review the Special Conservator of the Peace (SCOP) program and to determine whether or not regulatory or statutory changes were needed. The task force included representatives from the staff agency, the policy board, law enforcement, Attorney General's office, local and state government, the Virginia State Crime Commission and special conservator of the peace practitioners. One of the issues addressed was the concern regarding the bond and liability coverage required of SCOP's.

Currently in order to be a SCOP a registrant is required to maintain either a \$10,000 surety or cash bond or a \$10,000 general liability insurance policy. This amount is the minimum amount that the Board can fix pursuant to §19.2-13 (C). The Criminal Justice Services Board sought input from the Department and the Private Security Services Advisory Board and determined that \$10,000 was not adequate coverage to: 1) provide recourse for an individual harmed or 2) protect the SCOP.

The Criminal Justice Services Board has regulatory authority over similar public safety-related industries, including contract security, armored car services and personal protection. These businesses are required to maintain a minimum of a \$100,000 surety bond or a general liability policy worth \$100,000 per occurrence and \$300,000 in the aggregate. Law enforcement officers are covered under a \$1M law enforcement liability policy, Sheriffs are covered by a \$1.5M liability policy and a \$500K fidelity bond, and there is additional coverage of a \$500K faithful performance bond for state employees.

Special Conservators of the Peace employed by the Commonwealth are covered under government liability policies. However, privately employed special conservators are only required to maintain coverage in the amount of \$10,000. Special Conservators of the Peace are granted full law enforcement authority, they can carry firearms and make arrests. This authority is granted by circuit courts based on a necessity for the security of property or the peace. Special Conservators of the Peace are thus as liable for their actions as are law enforcement officers and persons in other public safety-related industries. In addition, they lack immunity normally granted to law enforcement.

To ensure the health, safety and welfare of citizens and the Special Conservators of the Peace, the Criminal Justice Services Board has proposed that Special Conservators of the Peace maintain either a \$100,000 surety or cash bond equal to that required in other private security industries, or \$500,000 professional law enforcement liability. Professional law enforcement liability will provide errors and omissions (E&O) coverage better suited for the type of service and risk of liability for Special Conservators of the Peace.

http://www.brownyardprograms.com/brownyard-resources/newsletters/vol04_iss01_0210_web.html

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. 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 regulations established in 2004 did not include a fixed minimum amount for a bond or a fixed minimum amount and type of insurance coverage. Instead, the amounts reflect the minimum amount established in §19.2-13. The proposed changes will increase the minimum coverage amount for cash or surety bond from \$10,000 to \$100,000 and amend the \$10,000 general liability or self insurance to a minimum of \$500,000 in professional law enforcement liability insurance.

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.

No viable alternatives for achieving the purpose of the proposed regulatory action could be determined.

Public participation

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Lisa McGee, Regulatory Manager, P.O. Box 1300, Richmond, VA 23218, lisa.mcgee@dcjs.virginia.gov, Fax- (804) 786-6344**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

The agency is using the participatory approach to develop the proposed regulation. The public will be provided the opportunity to comment on the regulatory proposal at the quarterly meetings of the Private Security Services Advisory Board (PSSAB). In accordance with statutory requirements, the PSSAB has the role of advising and assisting the CJSB. Notice of the PSSAB meetings will be posted on the Commonwealth Calendar and the Virginia Regulatory Town Hall website. Any person who is interested in attending PSSAB meetings may contact Lisa McGee at the agency to obtain additional information (telephone 804-371-2419, email lisa.mcgee@dcjs.virginia.gov)

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.

There is no anticipated impact on the institution of the family and family stability.

Proposed Text

6VAC20-230-30. Initial registration application.

C. Each person applying for registration shall file with the department:

1. A properly completed application provided by the department;
2. His mailing address on the application;
3. Fingerprint cards pursuant to [6VAC20-230-40](#);
4. The applicable, nonrefundable application fee;
5. A drug and alcohol test pursuant to [6VAC230-50](#); and
6. Pursuant to § [19.2-13](#) C of the Code of Virginia, documentation verifying that the applicant has secured a surety bond or cash bond ~~in the with a minimum amount not to be less than \$10,000 of \$100,000~~ executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of

~~comprehensive general~~ professional law enforcement liability insurance with a minimum coverage of ~~\$10,000~~ \$500,000 issued by an insurance company authorized to do business in Virginia.

D. Upon completion of the initial registration application requirements, the department may issue a temporary registration letter for not more than 120 days at a time while awaiting the results of the state and national fingerprint search provided the applicant has met the necessary conditions and requirements. This temporary registration letter shall be taken to the circuit court where seeking appointment for special conservator of the peace.

E. Each registration shall be issued to the individual named on the application and shall be valid only for use by that individual. No registration shall be assigned or otherwise transferred to another individual.

F. Each registered individual shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

G. Once the individual has met the requirements and received a temporary registration letter, he shall petition the circuit court for appointment in the jurisdiction where the individual will be employed.

H. Meeting the requirements of registration allows an individual to be eligible for appointment. Registration does not guarantee appointment.

I. Upon completion of an appointment by a circuit court, the individual shall file with the department a copy of the court order granting appointment as a special conservator of the peace. A final registration letter will be issued by the department. This registration letter shall be submitted to a specified entity for a state-issued photo identification card.

