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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) citation(s)	6 VAC35-30
Regulation title(s)	Regulation Governing State Reimbursement of Local Juvenile Residential Facility Costs
Action title	Amends the provisions establishing the criteria and process for evaluating and reviewing requests for state reimbursement of local juvenile residential facility costs.
Date this document prepared	January 2, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Regulation Governing State Reimbursement of Local Juvenile Residential Facility Costs (6VAC35-30) establishes the process the Department of Juvenile Justice (the department) and the Board of Juvenile Justice (the board) must follow when reviewing localities' requests for state reimbursement of a portion of costs associated with construction, renovation, or enlargement of local juvenile residential facilities.

The last comprehensive review and amendment of this regulation took effect in July 2011. While the availability of state funding for reimbursement has been partially frozen for several years, the regulation continues to impose several complex, burdensome requirements on localities engaged in construction and related local juvenile facility projects, regardless of whether they intend to seek state reimbursement for those costs. The regulation requires localities to utilize an outdated, complex funding formula to

determine construction costs. Additionally, the regulation uses vague terminology and contains provisions that are unclear and difficult to understand. This regulatory action seeks to develop amendments that address these areas of concern.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document. .

No acronyms are used in this form.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

On April 11, 2019, the department published its Periodic Review Report of Findings regarding this regulatory chapter. In its findings, the department recommended amending the regulation as the best strategy for "promoting consistency in the application of the regulation's provisions and ensuring compliance."

On November 13, 2019, the board approved the department's request to initiate the NOIRA stage of the regulatory process to conduct a comprehensive review of the regulation.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The promulgating entity is the Board of Juvenile Justice.

Code of Virginia § 16.1-309.5 directs the Commonwealth of Virginia to reimburse localities for "one-half the cost of construction, enlargement, renovation, purchase, or rental of a detention home or other facility the plans and specifications for which were approved by the board and the Governor" in accordance with this statute. The statute instructs the board to promulgate regulations including criteria "to serve as guidelines in evaluating requests for such reimbursements and to ensure the geographically equitable distribution of state funds provided for such purpose." Additionally, § 16.1-309.9 requires the board to approve minimum standards for the construction and equipment of detention homes or other facilities. Finally, § 66-10 grants the board broad authority to "promulgate such regulations as may be necessary to carry out the provisions of this title and or other laws of the Commonwealth."

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The regulation establishes a process for localities engaging in construction, renovation, or similar projects that are seeking reimbursement through legislative enactment or other available channels. Various provisions of the regulation ensure that the board and the department have access to facility construction and renovation plans and can ascertain whether those plans meet building and fire codes and other requirements that impact resident and staff safety and facility security. In these ways, the regulation is necessary to protect the public health, safety, and welfare.

The board last conducted a comprehensive review and amendment of this regulation in 2011. Since that time, a number of juvenile residential facilities across the country have undergone a shift in philosophy, moving from a more punitive approach to a more treatment-based approach for addressing juvenile crime. It is anticipated that this shift in philosophy will impact plans and designs for juvenile facility construction, renovation, and similar projects in the future. This shift may render problematic the current mandated funding formula used to determine construction, renovation, and enlargement costs for local juvenile residential facilities. Moreover, the existing regulation requires localities to comply with the provisions of this chapter regardless of whether they are pursuing reimbursement. The board is considering how best to amend these provisions to ensure that the agency retains some authority to review plans for applicable local facility projects without subjecting such localities to the lengthy process required under the existing regulation.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Based upon a preliminary review of the regulation, the department is contemplating the following changes:

- Removing the provisions in this and other regulatory chapters that make the regulation applicable regardless of whether localities are seeking reimbursement;
- Establishing a new, separate process for localities that are engaging in relevant projects but are not seeking reimbursement;
- Allowing flexibility regarding the deadline for the board's review of certain documents,
- Adding language from the Appropriation Act allowing for state reimbursement for emergency maintenance projects;
- Modifying the current requirement that the locality determine construction costs based on a board-established funding formula; and
- Removing provisions that incorporate into the regulation by reference documents of the department's own creation and documents that are no longer applicable to the process.

The department may identify additional areas of concern during the course of the comprehensive regulatory review.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

Pursuant to § 2.2-4007.1 of the Code, the department considered three alternatives for accomplishing the purpose of the regulation: 1) repeal the regulation; 2) retain the regulation as currently written and supplement the regulation with additional guidance documents and procedures; and 3) amend the regulation. Code of Virginia § 16.1-309.5 requires the board to promulgate regulations to serve as guidance for evaluating reimbursement requests. Repealing this regulation would run counter to the mandates in these statutes and is, therefore, not a viable alternative.

Although the regulation is mandated by statute, it utilizes vague terminology and contains provisions that are unclear, difficult to understand, and excessively burdensome, particularly for those localities for which state reimbursement is not an objective. Retaining the regulation as is, without addressing these issues, will continue to promote confusion and complexity in the process and may result in reduced compliance. Changing the agency’s written procedures to address these concerns is not a viable alternative because any change in written procedures may not contradict the existing regulatory provisions.

The only viable alternative is to modify the regulation. Amending the regulation is the least burdensome alternative available for the board to address these concerns while remaining compliant with the statutory requirements in §§ 16.1-309.5 and 16.1-309.9.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation 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. Please include one of the following choices: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.

The board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the board is 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 written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email, or fax to Kristen Peterson, Regulatory Coordinator; P.O. Box 1110, Richmond, VA 23219; (804) 588-3902 (office); (804) 371-6497 (fax); Kristen.Peterson@djj.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Other than the interdisciplinary review committee, an external panel will not be used to assist in the development of this regulatory proposal. Public comments may be provided at the board's regularly scheduled meetings.