



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

9 VAC 25-780 Local and Regional Water Supply Planning
Department of Environmental Quality
Town Hall Action/Stage: 5627 / 9784
October 27, 2022

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 these economic impacts.¹

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 1105 of the 2020 *Acts of Assembly*,² the State Water Control Board (Board) proposes to amend 9 VAC 25-780 *Local and Regional Water Supply Planning* to: 1) establish regional water supply planning areas, 2) identify the particular regional planning area in which each locality shall participate, 3) require that regional plans identify water supply risks and propose regional strategies to address them, 4) list risks for regional planning units to consider, and 5) add new requirements for increased stakeholder involvement. Pursuant to Chapter 331 of the 2022 *Acts of Assembly*,³ the proposed regulation includes a mechanism for localities to request a change of its designated regional planning area to an adjoining planning area that is based on water supply source, river basin, or existing or planned cross-jurisdictional relationship. The Board also proposes new and amended text for several operational items such

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 <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1105>

³ See <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0331>

as how disagreements or lack of consensus among local governments within a regional planning area should be handled, as well as clarifications and updates in terminology.

Background

The *Local and Regional Water Supply* regulation (9 VAC 25-780) was promulgated in 2005 pursuant to Chapter 227 of the 2003 *Acts of Assembly*,⁴ which required the Board to establish a comprehensive water supply planning process for the development of local, regional and state water supply plans. This legislative action and subsequent regulation were in response to the 2001-2002 drought, during which many water supplies within the Commonwealth experienced inadequate supply to meet demands.⁵

Under the current regulation, all localities are required to submit a plan, but they can choose to develop a plan independently (local plan) or they may choose to plan regionally with other localities (regional plan). In total, 48 water supply plans were submitted in 2008, of which 10 were local plans and 38 were regional plans. In contrast to the proposed amendments, the current planning regions were not specifically determined based on a river basin or with respect to shared sources of water supply.⁶

Each local and regional plan must be reviewed no later than five years after the Board last determined that it was in compliance. If this review indicates that circumstances have changed, or new information has been made available indicating that water demands would not be met by the alternatives contained in the plan, then a revised plan must be submitted to the Board. These circumstances may be caused by changes in demands, the availability of the anticipated source, cumulative impacts, in-stream beneficial uses, or other factors.⁷ If a review indicates that circumstances have not changed sufficiently to warrant a revised plan, then the locality or regional planning unit must notify the Department of Environmental Quality (DEQ) that the existing plan is still in effect. Plans are to be reviewed, revised and resubmitted to DEQ every ten years after the date of last approval, regardless of whether circumstances have changed. According to DEQ, all localities complied in 2013 and 2018.

⁴ See <https://lis.virginia.gov/cgi-bin/legp604.exe?031+ful+CHAP0227&031+ful+CHAP0227>

⁵ Source: Department of Environmental Quality

⁶ Ibid

⁷ Source: 9 VAC 25-780-50.D <https://law.lis.virginia.gov/admincode/title9/agency25/chapter780/section50/>

Estimated Benefits and Costs

Regional Planning Areas

As mentioned above, the current planning regions were not specifically determined based on river basin or with respect to shared sources of water supply. Planning based on river basin, as would occur under the proposed regulation, should result in a more robust plan that addresses shared resources across localities. It may reduce future conflicts over shared resources, permitting challenges, and improve cost-efficiency of new projects via regional cooperation. Such outcomes are beneficial to managing the resources in a manner that meets water supply needs.

Water Supply Risks and Regional Strategies

The statutorily mandated requirement specified in the regulation that regional plans identify water supply risks and propose regional strategies to address them may be consequential, to the extent that these items have not been already addressed in plans. Having water supply risks and proposed regional strategies addressed in plans could improve the ability of the region, and the localities that comprise them, to address water supply problems in the future. DEQ estimates that fulfilling this requirement would require approximately 10 to 20 additional hours of staff time for each locality during each plan development cycle (once every five to 10 years). Some localities are unlikely to have the in-house staff that can perform this work, and would need to hire consultants. DEQ does not have an estimate for the associated cost, but states that it would be a small component of the overall plan development effort and is unlikely to significantly increase cost.

Stakeholders and Public Participation

The current regulation states that there must be a local public hearing during the development of the local (or regional) plan. It also states that the plan shall include a record of the local public hearing, a copy of all written comments and the submitter's response to all written comments received. The Board proposes to add that “The regional planning unit shall give due consideration to public comments and may revise the draft regional water supply plan.”

The current definition of “regional planning unit” is:

a collection of local governments who have voluntarily elected to develop and submit a regional water plan. A regional planning unit may be composed of all local governments located within the bounds of a planning district, any subset of local governments within the bounds of a planning district, or any group of local governments within multiple planning districts.

The board proposes to amend this definition to

a collection of local governments, water authorities, and **participating stakeholders** [emphasis added] that shall develop and submit a regional water supply plan. Planning district commissions are encouraged to participate in the regional planning unit.

The current regulation does not address stakeholders. The Board proposes to add the following definition for “stakeholders:”

includes industrial and agricultural water users, public water authorities, private water suppliers, developers and economic development organizations, and conservation and environmental organizations.

Further, the Board proposes to specify that:

Each local government shall make reasonable efforts to consult and coordinate with all community water systems and self-supplied users that utilize more than 300,000 gallons of water in any month, including agricultural, industrial, and power generation users within its jurisdiction during the preparation of regional water supply plans. Regional planning units shall develop a process for other stakeholder participation in the preparation of a regional water supply plan.

and

The following documents and supporting materials shall be appended to and submitted with the regional water supply plan. ... A summary of the processes used to ensure cross-jurisdictional coordinated water resource planning between local governments and to ensure stakeholder consultation including a list of local governments and stakeholders that participated during the regional water supply plan development, including the process developed

Thus, the proposed regulation does appear to require more opportunity for participation from stakeholders in the development of water supply plans than does the current regulation. This may improve the information upon the plans are based and potentially increase support from affected entities. It would also likely require additional staff time for local governments, although the amount of time is not known.

Businesses and Other Entities Affected

All governments for counties, cities, and incorporated towns in the Commonwealth would be affected by the proposed amendments. All users of water may be affected. Stakeholders such as industrial and agricultural water users, public water authorities, private water suppliers, developers and economic development organizations, and conservation and environmental organizations would be particularly affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁸ 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 described above, there will likely be some increase in costs for local governments related to: 1) the requirement that regional plans identify water supply risks and propose regional strategies and 2) the required increased stakeholder involvement. Because those new requirements essentially stem from the legislation, no adverse impact is indicated for the proposed regulation.

Small Businesses⁹ Affected:¹⁰

The proposed amendments do not appear to adversely affect small businesses.

⁸ 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.

⁹ 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.”

¹⁰ 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.

Localities¹¹ Affected¹²

The proposal affects all localities and all local governments in the Commonwealth. Local governments that do not have the internal capacity to identify water supply risks and propose regional strategies to address them would be particularly affected.

Projected Impact on Employment

The proposed requirements for accommodating increased stakeholder participation and identifying water supply risks and propose regional strategies to address them would effectively require some additional staff time for local governments every five to ten years, but the additional time is unlikely to require new staff. However, some consulting firms that provide services related to identifying water supply risks and proposing regional strategies to address them would likely gain some new business. If particular firms gain contracts for a substantial number of local governments, the demand may be enough to result in a small increase in employment.

Effects on the Use and Value of Private Property

The statutory requirement specified in the regulation that regional plans identify water supply risks and propose regional strategies to address them may result in some increased business for consulting firms that help identify such risks and strategies. These firms may thus increase moderately in value. The proposed amendments do not otherwise appear to directly affect real estate development costs.

¹¹ “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.

¹² § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.