



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

6 VAC 16-10 Public Participation Guidelines
Department of Corrections
Town Hall Action/Stage: 5850 / 9440
December 14, 2021

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 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The Department of Corrections (DOC) proposes to promulgate Public Participation Guidelines (PPGs).

Background

In § 2.2-4007.02, the Virginia Administrative Process Act requires agencies to adopt PPGs for soliciting the input of interested parties in the formation and development of its regulations.² The guidelines shall set out any methods for the identification and notification of interested parties and any specific means of seeking input from interested persons or groups that the agency intends to use in addition to the Notice of Intended Regulatory Action. The PPGs must also set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. 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 <http://law.lis.virginia.gov/vacode/title2.2/chapter40/section2.2-4007.02/>

policy shall address the circumstances in which the agency considers the panels or consultation appropriate and intends to make use of the panels or consultation.

DOC's proposed PPGs follow the model PPGs developed by DPB,³ and also reflect 2012 legislation concerning PPGs. Chapter 795 of the 2012 Acts of Assembly⁴ clarified that in formulating any regulation or in evidentiary hearings on regulations, an interested party shall be entitled to be accompanied by and represented by counsel or other qualified representative.

Chapter 759 of the 2020 Acts of Assembly⁵ renamed the Board of Corrections as the State Board of Local and Regional Jails. As a result, the location in the Virginia Administrative Code where the regulations of the Board of Corrections resided (6 VAC 15) was renamed State Board of Local and Regional Jails. There currently are PPGs in 6 VAC 15, namely 6 VAC 15-11.⁶

DOC and the Registrar of Regulations determined, however, that some of the regulations formerly under the Board of Corrections fall under the authority of DOC. Hence, the Registrar assigned a new location for regulations of DOC within the VAC (6 VAC 16); and since each regulatory entity needs to have PPGs in place, the DOC proposes to promulgate such a regulation now.

Estimated Benefits and Costs

The proposed regulation would benefit the general public and DOC by ensuring that a clear standardized process for obtaining public input from interested parties is used in the formation and development of the agency's regulations.

Businesses and Other Entities Affected

The proposed regulation affects people interested in providing input regarding the formation and development of DOC regulations, as well as DOC.

The Code of Virginia requires the DPB to assess whether an adverse impact may result from the proposed regulation.⁷ An adverse impact is indicated if there is any increase in net cost

³ Chapter 321 of the 2008 Acts of Assembly required DPB, in consultation with the Office of the Attorney General, to develop model PPGs. See <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0321>

⁴ See <https://lis.virginia.gov/cgi-bin/legp604.exe?121+ful+CHAP0795>

⁵ See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0759>

⁶ See <https://law.lis.virginia.gov/admincode/title6/agency15/chapter11/>

⁷ 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

or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The proposed regulation does not produce an adverse impact.

Small Businesses⁸ Affected:⁹

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

Localities¹⁰ Affected¹¹

The proposed regulation does not disproportionately affect any particular localities, and does not affect 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

The proposed regulation does not appear to affect the use and value of private property or real estate development costs.

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.

⁸ 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.”

⁹ 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.

¹⁰ “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.

¹¹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.