



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

17 VAC 5-20 Regulations Governing Permits for the Archaeological Removal of Human Remains

Department of Historic Resources

April 30, 2015

Summary of the Proposed Amendments to Regulation

The Virginia Department of Historic Resources (Department) is responsible for issuing permits for the conduct of archaeological field investigations involving the removal of buried human remains and associated artifacts from unmarked burials, and for archaeological recovery undertaken pursuant to a circuit court-approved removal of a cemetery. Pursuant to Chapter 588 of the 2014 Acts of Assembly, the Virginia Board of Historic Resources (Board) proposes to revise the Regulations Governing Permits for the Archaeological Removal of Human Remains so that permit applications include: 1) proof of ownership of the property of the archaeological site upon which the field investigation will be conducted, 2) a signed statement confirming both financial and other resources for reburial in an appropriate location, and 3) a current email address. The Board also proposes to require the permit applicant to post notice of the planned activity and other information: at the investigation site; to and in consultation with local historical and genealogical commissions/societies; and at a public hearing. Additionally, the Board proposes to require that the notice include “a statement regarding the reason for the proposed relocation,” and “the street address of one or more locations in the project vicinity where a copy of the complete application can be viewed by member of the general public during regular business hours.”

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Both archaeological and court-ordered processes require public notification and a good faith effort to consult with descendants and interested parties. Recently, public concerns about the inadequacy of existing notification and consultation requirements associated with the court-ordered process resulted in significant revisions to the sections of Virginia Code governing these actions,¹ which revisions were signed into law in 2014 (Chapter 588).

The proposal to require proof of ownership of the property of the archaeological site upon which the field investigation will be conducted is beneficial in that it will help prevent the possibility of inadvertent state approval of the misuse of a property owner's land. The cost of providing a copy of a deed within an application package would be small compared to the benefit of reducing the chance of such misuse of property.

According to the Department there has been at least one instance where after human remains were exhumed the permit holder claimed insufficient resources to properly rebury the remains. Thus the proposed requirement that permit applications include a signed statement confirming both financial and other resources for reburial in an appropriate location would potentially provide significant benefit. The cost of providing such information would not likely be large for those who do have sufficient resources.

Providing an email address on the permit application is essentially costless and reflects the existence of current technology. The proposal to require this information on the permit application will be beneficial in that it will help enable efficient communication.

The current regulation only requires that upon notice from the Department that the permit application is complete, that the applicant publishes notice of the planned activity and other information in a newspaper of general circulation in the area where the field investigation will occur. The Board proposes to further require that the applicant provide notice posted at the site of the graveyard or burial; notice to any historic preservation or other such commission, as well as area historical and genealogical societies; and notice at least one public hearing. The proposed increased notice will be beneficial in that it will significantly increase the likelihood that individuals or organizations potentially concerned with the specific proposed removal of buried human remains and associated artifacts will become informed of the planned activity.

The proposed increased notice will produce some cost in time and materials for permit applicants. The time and cost of producing and posting a sign at the site of the graveyard or burial would be fairly small. The Department states that it has contact with the various historic preservation commissions and historical and genealogical societies throughout the Commonwealth, and that it would be willing to help find and to notify the relevant entities for the applicant by request. Thus the practical cost of this proposed additional notice would be quite small as well. If desired, holding a public hearing where public comment is received could be done at a fairly small cost. Such a hearing could be done for example in a room at a library and perhaps take an hour or less if interest turns out to be limited.

The proposal to require that the notice include a statement regarding the reason for the proposed relocation would likely have value in that it would help interested parties have greater understanding of the planned project. Including such a brief statement would not likely be time consuming for the applicant. Maintaining a copy of the complete application at one or more locations in the project vicinity where it can be viewed by member of the general public during regular business hours could be somewhat more costly, but not necessarily prohibitively so. According to the department, libraries are typically willing to keep such items on hand for public convenience.

Businesses and Entities Affected

The proposed amendments affect firms, individuals, organizations, and agencies that own property containing unmarked and/or historic burials and cemeteries that they wish to relocate; individuals with an interest in or objection to this recovery; local and state agencies with a regulatory interest in the process; archaeological firms contracted to perform the recovery; physical anthropologists and their employers; and funeral homes contracted to perform reburials where required by local ordinance. Given current permitting rates, the Department of Historic Resources anticipates that approximately 5 archaeological firms will be affected per year. All would likely be small businesses. Depending on land ownership, permit applicants may also be businesses and may be affected at the same rate.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

¹ Specifically § 57-36 and § 58-38.1

Projected Impact on Employment

The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property

The proposed amendments will require that additional efforts are made to inform the public when there are plans to remove human remains from private and public property.

Small Businesses: Costs and Other Effects

Small firms such as property developers may on rare occasions desire to move human remains so as to go forward on a development project. The proposed amendments will require that additional efforts are made to inform the public when there are plans to remove human remains from private and public property. This will produce a relatively small increase in costs for such firms.

Small Businesses: Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that lower cost while still meeting the policy goal of better informing the public of plans for the removal of buried human remains and associated artifacts from unmarked burials.

Real Estate Development Costs

The proposed amendments will moderately increase real estate development costs in the rare instances where the land to be developed includes human remains.

Legal Mandate

General: 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 and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 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 (JCAR) is notified at the time the proposed regulation is submitted to the *Virginia Register of Regulations* for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

lsg

Town Hall ID: Action 4152 / Stage 7020