



[townhall.virginia.gov](http://townhall.virginia.gov)

## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Board of Local and Regional Jails
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	6 VAC 15-11
<b>VAC Chapter title(s)</b>	Public Participation Guidelines
<b>Action title</b>	Fast-Track Amendment to Public Participation Guidelines
<b>Date this document prepared</b>	4/8/2022

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The proposed regulatory action seeks to amend 6 VAC 15-11-10 ("Purpose") and 6 VAC 15-11-20 ("Definitions") of the Board's public participation guidelines to replace the agency name "Department of Corrections" with "Board of Local and Regionals Jails."

In addition, the action would change 6 VAC 15-11-50 ("Public Comment") of the guidelines to direct the Board, when considering regulatory actions, to afford interested parties an opportunity to be accompanied and represented by counsel or other representatives. This change is mandated by Chapter 795 of the 2012 Acts of Assembly.

### Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

---

"Board" means the Board of Local and Regional Jails

"Department" means the Department of Corrections unless the context clearly indicates otherwise.

"Guidelines" means Public Participation Guidelines

### Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

---

### Mandate and Impetus

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, or board decision). 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."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

---

This amendment is necessary, as the regulations are specific to the Board of Local and Regional Jails, not the Department of Corrections and require correction for proper interpretation. (The Department will establish separate Public Participation Guidelines under its regulatory agency number 6 VAC16.) The Board is authorized to promulgate regulations under Virginia Code §53.1-5.

In addition, during the 2012 legislative session, the General Assembly enacted legislation (Chapter 795 of the 2012 Acts of Assembly) requiring nonexempt rulemaking agencies to afford interested parties, pursuant to the agency's Public Participation Guidelines, with the opportunity to be accompanied and represented by counsel or other representatives with respect to the formation of regulations. This is in addition to the current requirements in the Public Participation Guidelines, which direct agencies, in considering nonemergency, nonexempt regulatory action, to afford interested parties the opportunity to submit data, views, and arguments to the agency.

The proposed amendments are mandated by statute and will ensure the Board's compliance with the statutory provisions. Therefore, the amendments are not expected to be controversial.

The Board voted in support of the amendments unanimously at their meeting 3/16/2022.

### Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the

*promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

---

The promulgating agency is the Board.

Code of Virginia § 2.2-4007.02 requires state agencies to develop, adopt, and use public participation guidelines in order to ensure the involvement of interested persons in the formation and development of the agency's regulations. Among other requirements, subsection B directs agencies, pursuant to such guidelines, to provide interested persons with the opportunity to be accompanied and represented by counsel or other representatives.

In addition, 53.1-5 of the Code of Virginia authorizes the Board to promulgate such regulations as may be necessary to carry out the provisions of Title 53.1 and other laws of the Commonwealth.

### **Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

---

This regulatory action is necessary to reference the proper regulatory authority and to comply with Chapter 375 of the 2011 Acts of Assembly and Chapter 795 of the 2012 Acts of Assembly. The amendments were recommended by the Department of Planning and Budget and will conform the board's Public Participation Guidelines to the Model Guidelines published by the Department of Planning and Budget.

### **Substance**

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

---

The proposed amendment changes the name of the agency from "Department of Corrections" to "Board of Local and Regional Jails" in the Purpose and Definition sections of the board's Public Participation Guidelines to reflect the correct title of the regulatory agency.

In addition, the proposed amendment adds language to Section 50 of the Board's Public Participation Guidelines. The proposed amendment requires the Board, in formulating regulations, to afford Interested parties an opportunity to be accompanied and represented by counsel or other representatives as part of the regulation formation process.

### **Issues**

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

---

There are no disadvantages associated with the regulatory change. The regulatory change will clarify the Board's independence from the Department. This will benefit the public by making it clear that the Board promulgates its own regulations.

In addition, this change will bring the Board into compliance with Code of Virginia § 2.2-4007.02. In addition, it will benefit the general public by ensuring that, with respect to regulatory development, repeal, and amendment, interested persons are able to have adequate representation throughout the regulatory formation process.

### **Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

---

There are no related federal requirements associated with this regulatory action.

### **Agencies, Localities, and Other Entities Particularly Affected**

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

---

#### **Other State Agencies Particularly Affected**

No other state agencies are particularly impacted by the proposed amendment. Other state agencies will be impacted only to the extent they are considered interested persons who wish to be represented by counsel or other representatives in the consideration of the regulatory action in question.

#### **Localities Particularly Affected**

No localities are particularly impacted by the proposed amendment. Localities will be impacted only to the extent they are interested persons who wish to be represented by counsel or other representatives in the consideration of the regulatory action in question.

#### **Other Entities Particularly Affected**

No other entities are particularly impacted by the proposed amendment. Other entities will be impacted only to the extent they are interested persons who wish to be represented by counsel or other representatives in the consideration of the regulatory action in question.

## Economic Impact

*Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.*

### Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources</li> </ul>	<p>The proposed amendment is not expected to have an economic impact on the Board.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>The Board does not expect the proposed amendment to have an economic impact on other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The proposed amendment will not result in any economic benefits for state agencies. The changes are designed to clarify the independence of the Board and ensure that interested persons can receive representation with respect to regulation formation and amendment.</p>

### Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>The proposed amendment is not expected to have an economic impact on localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The proposed amendment will not result in any economic benefits for localities. The changes are designed to clarify the independence of the Board and ensure that interested persons can receive representation with respect to regulation formation and amendment.</p>

### Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>The proposed amendment will impact “interested parties” and the counselor or representatives they utilize to provide representation throughout the formulation of regulations.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small</p>	<p>The number of interested parties and representatives potentially impacted by this proposal cannot be determined. To the extent that a “business,” meets the definition of “small</p>

<p>business means a business entity, including its affiliates, that:  a) is independently owned and operated and;  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>business” and is interested in one of the Board’s regulatory actions, that business will also be impacted.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:  a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;  b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;  c) fees;  d) purchases of equipment or services; and  e) time required to comply with the requirements.</p>	<p>The proposal is not expected to impose costs on affected individuals, businesses, or other entities, as the proposal affords those entities an opportunity to be accompanied or represented by counsel, should they elect that option.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Interested parties may receive an indirect economic benefit from the proposed amendment to the extent that representation in the process results in changes that are economically favorable to that person.</p>

**Alternatives to Regulation**

*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.*

Apart from amending the regulation as proposed, there are no viable alternatives to accomplishing the objective of this regulation. First, the regulation is changed to reflect the correct rule-making authority, which offers clarity to all involved individuals.

Next, § 2.2-4007.02 of the Code of Virginia requires agencies to develop, adopt, and utilize public participation guidelines and to afford interested parties, pursuant to these guidelines, an opportunity to be represented by counsel or other representatives in the formulation of regulations. This mandate must be included in order to be in compliance with state law.

**Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

There are no viable alternatives to accomplishing the objective of this regulation that would not conflict with state law.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Local and Regional Jails is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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://townhall.virginia.gov>. Comments may also be submitted by mail or email to Ryan McCord, Executive Director, State Board of Local and Regional Jails, 6900 Atmore Drive, Richmond, Virginia 23225 or [ryan.mccord@vadoc.virginia.gov](mailto:ryan.mccord@vadoc.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-	New chapter-section	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
------------------	---------------------	-----------------------------	--



section number	number, if applicable		
10	N/A	The Purpose section currently identifies the promulgating agency as the Decrement of Corrections.	The change will substitute the “Department of Corrections” with “Board of Local and Regional Jails” to reflect the correct name of the rule-making authority. The intention is to clarify the separation of the Board and the Department in relation to the promulgation of regulations, and the likely impact will be greater clarity for the general public as to the Board’s promulgation of regulations.
20	N/A	The Definitions section currently defines the “agency” as the Decrement of Corrections.	The change will substitute the “Department of Corrections” with “Board of Local and Regional Jails” to reflect the correct name of the rule-making authority. The intention is to clarify the separation of the Board and the Department in relation to the promulgation of regulations, and the likely impact will be greater clarity for the general public as to the Board’s promulgation of regulations.
50	N/A	Currently, the Board must provide interested parties an opportunity to submit data, views, and arguments to the agency when considering regulatory actions.	The proposal adds language to subsection A requiring the department also to afford such interested parties with an opportunity to be accompanied and represented by counsel or other representatives in its consideration of regulatory actions. The purpose of this amendment is to comply with Chapter 795 of the 2012 Acts of Assembly. While the board has never prohibited such representation in the regulatory formulation process, having express language in the Public Participation Guidelines will ensure that interested parties, board members, and staff are aware of this requirement.

*If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.*

**Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace**

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

*If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.*



*If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.*

**Table 3: Changes to the Emergency Regulation**

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage