



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

12 VAC 5-11 Public Participation Guidelines
Virginia Department of Health
Town Hall Action/Stage: 5944 / 9623
September 6, 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 795 of the 2012 Acts of Assembly (Chapter 795),² the State Board of Health (Board) proposes to specify in this regulation that “An interested person may be accompanied by counsel or another representative when providing public comment to the agency.” Additionally, the Board proposes several stylistic changes and to state that: “The agency may hold a closed meeting for the purposes listed in § 2.2-3711 of the Code of Virginia pursuant to the requirements of § 2.2-3712 of the Code of Virginia,” and “The agency may conduct a meeting through electronic communication means pursuant to §§ 2.2-3708.2 and 2.2-3708.3 of the Code of Virginia.”

Background

Prior to Chapter 795, part B of Virginia Code § 2.2-4007.02 was as follows:

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://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795+hil>

B. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency, to include an on-line public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate. However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments.

Chapter 795 amended this text to:³

B. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to **(i)** submit data, views, and arguments, either orally or in writing, to the agency, to include an online public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate **and (ii) be accompanied by and represented by counsel or other representative.** However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments.

Estimated Benefits and Costs

Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, the Board's proposal to add this language to the regulation would not change the law in effect, but would be beneficial in that it would inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

Similarly, adding the two sentences concerning closed meetings and meetings through electronic communication would not change the law in effect, but would be beneficial in that it would make finding the statutes concerning these topics easier for the public.

Businesses and Other Entities Affected

The proposed amendments potentially affect individuals who comment on pending regulatory changes or are interested on the rules for closed meetings and/or meetings through electronic communication.

³ Bold added for emphasis.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ 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. Since the proposed amendments do not introduce cost or reduce revenue, no adverse impact is indicated.

Small Businesses⁵ Affected:⁶

The proposed amendments do not adversely affect small businesses.

Localities⁷ Affected⁸

The proposed amendments neither disproportionately affect any particular locality, nor introduce costs for local governments.

Projected Impact on Employment

The proposed amendments do not affect employment.

Effects on the Use and Value of Private Property

The proposed amendments do not substantively affect the use and value of private property or real estate development costs.

⁴ 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.

⁵ 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.”

⁶ 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.

⁷ “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.

⁸ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.