



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

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**1 VAC 20-90 Campaign Finance and Political Advertisements**  
**Department of Elections**  
**Town Hall Action/Stage: 5752 / 9529**  
April 26, 2024

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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 the potential economic impacts as of the date of this analysis.<sup>1</sup>

## **Summary of the Proposed Amendments to Regulation**

Pursuant to Chapter 557 of the 2020 Acts of Assembly,<sup>2</sup> the State Board of Elections (Board) proposes to establish disclosure standards for political campaign advertisements for statewide and local offices that are proportionate to the size of the print media.

## **Background**

This regulation governs election campaign finances and political advertisements for the General Assembly as well as local and constitutional offices. In 2020, Chapter 557 repealed the requirement that print media disclosures be displayed in a minimum font size of seven-point and tasked the Board with establishing new standards that such disclosures be displayed instead in a font size proportionate to the size of the advertisement. According to section 24.2-955.1 of the Code, "*Print media*" means billboards, cards, newspapers, newspaper inserts, magazines, printed material disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals,

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<sup>1</sup> 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.

<sup>2</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0557>

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*websites, electronic mail, non-video or non-audio messages placed or promoted for a fee on an online platform, yard signs, and outdoor advertising facilities. If a single print media advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face.”* Also, the print media subject to the proposed standards include advertisements sponsored by a candidate, a candidate campaign committee, a person, or a political committee. The legislative mandate requires such standards to be promulgated no later than July 1, 2021, with enforcement delayed until January 1, 2024. However, print media advertisements paid for or distributed prior to July 1, 2024, will not be subject to the standards established by this action as per the mandate.

### **Estimated Benefits and Costs**

Generally, the proposed language requires that the disclaimer must be a sufficient font size to be clearly readable by the recipient of the communication. For an advertisement that is 24x36 inches or smaller, the Board proposes that twelve-point font size meets this requirement; that the disclosure statement must be contained in a printed box set apart from the other contents of the communication; and that the disclosure statement must have a reasonable degree of color contrast with the advertisement’s background. According to the Board, these proposed standards are consistent with federal print media advertisement requirements established under 11 CFR § 110.11.

The primary benefit of the proposal is that disclosure statements would be more visible and allow voters to see more clearly who has paid for the material, thereby improving the accessibility of the information. The standards should also be helpful for the Department of Elections staff and local election officials to inform candidates about what is expected and where that information can be found. In addition, the standards should help when determining whether a candidate or a campaign has violated the requirements.

On the other hand, since the proposed size of the disclosure statement would be proportional to the size of the advertisement, and previously the Code specified a minimum font size of seven-point, it is more than likely some of the printed materials that exist now would be out of compliance with the proposed standards. In order to accommodate campaigns with such existing materials, the legislation allows the use of printed media paid or distributed before July 1, 2024, providing a six-month grace period given the delayed enforcement date of January 1,

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2024. However, the proposed standards are unlikely to be finalized before that time and some campaigns may not have enough time to adjust their print materials to bring them into compliance. To address that possibility, the Board states it will consider extending the exemption period until the effective date of the regulation to ensure due process for individuals obtaining materials after July 1, 2024 but before the requirements are promulgated and published, provided there is a record of when the materials were produced to ensure that there is evidence that print materials were, in fact, paid for or distributed before the deadline. Thus, depending on the Board's discretion, it appears the campaigns may be expected to comply with the proposed standards when they become final, if that time is after July 1, 2024. It is worth noting that even if the Board delays the exemption period to the publication date of the final regulation, campaigns would lose the six-month grace period the legislation provided.

It is common for printed materials to be used from campaign to campaign, especially in the case of incumbents or primary election winners who go on to run in the general election. Thus, there is the possibility that some print materials that could have been used previously would require a design adjustment if they have not yet been printed, and some existing materials already printed may have to be discarded if the campaign cannot produce evidence for a compliant payment or distribution date acceptable to the Board. If the Board provides an extension until the proposed action becomes final, the print materials paid for or distributed after July 1, 2024, but before the regulation becomes final, could be used and that flexibility would allow campaigns to avoid otherwise potential costs. However, without the six-month grace period envisioned by the legislation, some campaigns may continue to pay for or distribute some non-compliant print materials beyond the publication of the final standards due to shorter notice. To the extent this happens, such campaigns may have to dispose, reprint, or fix such materials, to make them compliant if possible.

For example, if a mistake is found on smaller materials such as signs or pamphlets, campaigns would often make stickers to be placed on the printed material to correct the mistake. This approach could be used to add a compliant disclosure statement to some of the existing non-compliant print materials. In such cases, the compliance cost would be relatively smaller. According to the Board, 500 sheets of white sticker labels, with 10 labels per sheet or 5,000 labels total, costs on average \$60. In other cases, an easy fix may not be feasible, and costs vary based on the type, quality, and amount of materials. For instance, one corrugated plastic 18 x 24

sign costs on average \$25. Poly bag campaign signs of the same size is cheaper and are easier to buy in bulk. Doorhangers cost on average \$200 for a bulk order of 500. A large billboard can cost several thousand dollars per billboard and the cost would increase based on the amount of time the billboard remains.

In addition to possible re-printing costs, violation of the disclosure standards is subject to a \$100 fine for first-time violations and a \$300 fine thereafter for statewide and General Assembly offices; and a \$50 fine for first-time violations and \$100 fine thereafter for local or constitutional offices. According to the Board, a total of \$3,175 in fees were collected in 2022 from such violations. While there is no data to assess if the proposed changes would add to the violations or reduce them, the loss of a six-month grace period would increase the likelihood of a campaign facing such a fine.

In summary, provided the Board extends the exemption period beyond July 1, 2024 until the proposed standards become final so that campaigns are not found out of compliance as of that date, and thus have some time to bring their print materials in compliance with the regulation, some of the potential compliance costs resulting from the destruction of otherwise useable print materials would be avoided. However, if the Board does not extend the exemption period for an additional six months as intended by the General Assembly, the materials that may have to be destroyed during the six-months after the final regulation becomes effective would represent a cost to the campaigns that results from this regulatory action rather than the legislation.

### **Businesses and Other Entities Affected**

The Board reports that the proposed disclosure standards would currently affect 3,200 committees. However, the number of committees can increase to about 5,000 during heavy years such as in 2023 when both houses of the General Assembly were on the ballot as well as many local offices. No entity appears to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or

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<sup>3</sup> 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.

reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>4</sup> As noted above, the cost of any print material that would have to be destroyed during the six-months after the final regulation becomes effective would represent a cost to the campaigns on account of this regulatory action, which would be an adverse impact on campaigns. However, currently it is not known whether the Board would or would not allow such a grace period.

### **Small Businesses<sup>5</sup> Affected:<sup>6</sup>**

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

### **Localities<sup>7</sup> Affected<sup>8</sup>**

According to the Board, the likely impact on localities is that general registrars and local electoral boards would be able to quickly cite a regulation for print media to candidates and voters who have questions about disclosure statements. Thus, the proposal does not introduce costs for local governments, nor does it disproportionately affect them.

### **Projected Impact on Employment**

The proposed amendments do not appear to affect total employment.

### **Effects on the Use and Value of Private Property**

No effects on the use and value of private property nor on real estate development costs are expected.

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<sup>4</sup> 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>5</sup> 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.”

<sup>6</sup> 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.

<sup>7</sup> “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.

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