



Economic Impact Analysis Virginia Department of Planning and Budget

6 VAC 35-10 – Public Participation Guidelines

Department of Juvenile Justice

December 8, 2004

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation 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. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

Section §2.2-4007 of the Code of Virginia requires each agency to develop, adopt, and utilize public participation guidelines for soliciting the input of interested parties in the formation and development of regulations. In addition, section §66-3 of the Code of Virginia requires that when the Department of Juvenile Justice (DJJ) acquires real property for new or existing juvenile correctional facilities or for administrative and other facilities necessary to the operations of the department, it comply with regulations promulgated by the Board of Juvenile Justice to ensure adequate public notice and local hearing. Section §66-10 of the Code of Virginia authorizes the Board of Juvenile Justice to promulgate regulations deemed necessary to carry out the provisions of Title 66 (Juvenile Justice) and other laws of the Commonwealth.

The proposed regulation (1) establishes requirements for maintaining, updating, and purging lists of interested parties, (2) specifies the documents to be sent to persons or entities on

the mailing list, and (3) deletes existing requirements for advisory panels to have at least three members and to meet at least twice.

The proposed regulation includes changes that make it consistent with the Code of Virginia. It includes a new part establishing public notification requirements when DJJ acquires property. These requirements include informing the locality in which the property is located of the acquisition at least 30 days prior to purchase, conducting a public hearing within 30 days of notifying the locality, and preparing and making available to the General Assembly, the Governor, and any executive branch agency which has a role in the review and approval of the purchase a summary of the comments made at the public hearing and any responses offered by DJJ. The proposed regulation also updates references to the Code of Virginia following the recodification of Administrative Process Act in 2001. It also updates the name of the department and the board from Youth and Family Services to Juvenile Justice.

The proposed regulation also adds language to clarify aspects of the regulation and to make it consistent with current practice, modifies existing language for the purposes of clarity, and deletes unnecessary and redundant language. It also makes a number of minor administrative changes. For example, references to operating units within DJJ are replaced with references to the department itself. This change is intended to provide the agency with additional flexibility to determine intra-departmental processes that facilitate the various steps required by the Administrative Process Act.

Estimated Economic Impact

(1) The proposed regulation establishes requirements for maintaining, updating, and purging lists of interested parties. It allows DJJ to add parties to the list that are likely to be regulated by, interested in, or otherwise affected by a proposed regulatory action or whose involvement will serve to enhance public participation in the regulatory process. Individuals and organizations can ask to be added to the list at any time via email, fax, or letter and the list is to be updated as additional interested parties are identified. DJJ is also allowed to delete inactive entries from the list when a letter sent to a postal address is returned as undeliverable or when a

notice sent to an email or fax address are returned as undeliverable over two 24-hour periods at least one week apart.¹

There are no such requirements in the existing regulation. According to DJJ, the agency currently maintains a file containing the names and addresses of parties that have expressed an interest in or have offered comments on regulations and guidelines in the past. Parties are added to the file when they ask to be included and when the agency thinks that they might be interested in a regulation. Current practice regarding the removal of parties from the file is informal and based on the judgment of the agency.

The proposed change is not likely to have a significant economic impact. The requirements for the maintenance, update, and purge of the list of interested parties are not likely to impose any significant costs on DJJ. The proposed requirements formalize much of what is current practice. However, by formalizing current practice and standardizing the requirements relating to purging the list of interested parties, the proposed change could enhance public participation and produce some economic benefits.

(2) Based on the stage of the regulatory process, the proposed regulation specifies the documents to be mailed to persons or entities on the mailing list. These documents include a notice of intended regulatory action, a notice of comment period along with a copy of the proposed regulation, a copy of any final regulation adopted by DJJ, and a notice soliciting comment on the final regulation when the regulatory period has been extended. The existing regulation does not include such a requirement. However, according to DJJ, it is the agency's informal policy to try to mail these documents to parties on the mailing list at the appropriate stage in the regulatory process.

The proposed change is not likely to have a significant economic impact. Meeting the mailing requirements could impose some additional cost on DJJ. According to DJJ, any additional cost is to be covered by the agency's operating budget, including the Director's fund set aside to support administrative functions on behalf of the Board of Juvenile Justice. Thus, the agency does not anticipate any increase in its budget in order to cover the cost of meeting the

¹ Currently, the proposed regulation allows DJJ to delete names from the list of interested parties if an email or fax is undeliverable for more than one day. However, DJJ has agreed to modify the proposed language to state that names can be deleted from the list of interested parties if the email or fax is undeliverable over two 24-hour periods at least one week apart.

mailing requirement. The proposed requirements are also likely to produce economic benefits. By requiring DJJ to mail specified documents at various stages of the regulatory process, the proposed change is likely to encourage more public participation in the regulatory process. It is not possible to precisely estimate the net economic impact of the proposed change at this time. However, as neither the costs nor the benefits are likely to be very large, the net economic impact of the proposed change is not likely to be significant.

(3) The proposed regulation deletes existing requirements for advisory panels to have at least three members and to meet at least twice. Advisory panels are intended to assist the agency in the development of a new regulation or the modification of an existing regulation. According to DJJ, the requirements for advisory panels to have at least three members and to meet at least twice are arbitrary and not essential to the goal of ensuring public participation in the regulatory process. Regardless of these requirements, it has always been the agency's goal to involve as many constituent groups as necessary to ensure a fair discussion. Moreover, with the increasing use of email, the agency believes these requirements to be unnecessary. Email enables DJJ to involve many more individuals and organizations in ongoing reviews and discussions without having to have a certain minimum number of members on the advisory panel and having the advisory panel meet a certain minimum number of times.

The proposed change is not likely to have a significant economic impact. It does not appear that the deletion of these requirements will significantly affect DJJ's ability to solicit input from interested parties when developing a new regulation or modifying an existing one. Thus, there is not likely to be a significant cost to the state in terms of reduced public participation in the regulatory process arising out of the proposed change. On the other hand, to the extent that the proposed change eliminates unnecessary requirements and streamlines the process for developing and modifying regulations, it could produce some economic benefits.

Code Required Changes:

In addition to the changes discussed above, the proposed regulation includes changes intended to make the regulation consistent with the Code of Virginia. Of these changes, the most significant is the establishment of public notification requirements when DJJ acquires property. These requirements include informing the locality in which the property is located of the acquisition at least 30 days prior to acquiring the property, conducting a public hearing within 30

days of notifying the locality, and preparing and making available to the General Assembly, the Governor, and any executive branch agency which has a role in the review and approval of the purchase a summary of the comments made at the public hearing and any responses offered by DJJ.

Chapter 701 of the 1995 Acts of Assembly amended the Code of Virginia to require DJJ, pursuant to regulations promulgated by the Board of Juvenile Justice, to ensure adequate public notice and local hearing in instances when the agency acquires property. The change was intended to allow local governments and citizens the opportunity to comment on the record about the construction of a proposed facility. The proposed change establishes the public notice and hearing requirements. According to DJJ, there have been no instances of the agency acquiring property since the code was amended.

The proposed change is likely to impose costs and benefits. The additional notification requirements are likely to impose additional costs on DJJ. According to DJJ, localities are to be informed about the acquisition of property through a letter sent to the locality's chief administrator. DJJ estimates the cost of producing and sending the letter to be \$35, including staff time, postage, and materials. The cost of holding a public hearing is estimated at \$500, mostly in staff time and materials. A public hearing will be held by DJJ only if the locality does not hold a public hearing or the agency decides that to hold a public hearing in addition to that held by the locality. Finally, the cost of assembling all the comments is estimated at \$800, mostly in staff time and materials. Thus, the maximum additional cost to the state of the proposed change is \$1,335 for each instance when DJJ acquires property. The agency anticipates meeting the additional cost out of its operating budget, including the Director's fund set aside to support administrative functions on behalf of the Board of Juvenile Justice. The proposed change is also likely to produce economic benefits. By providing for additional public hearing and local notification requirements, the proposed change will increase public participation and ensure better awareness of local concerns over the construction of a DJJ facility in that locality. A precise estimate of the net economic impact of the proposed change is not possible at this time. However, given that neither the costs nor the benefits associated the proposed change area very large, the net economic impact is not likely to be large.

All Other Changes:

All remaining changes are not expected to have a significant economic impact. Language is added to clarify aspects of the regulation and to make it consistent with current practice, existing language is modified for the purposes of clarity, and unnecessary and redundant language is deleted. The proposed regulation also makes a number of minor administrative changes. For example, references to operating units within DJJ are replaced with references to the department itself. This change is intended to provide the agency with additional flexibility to determine intra-departmental processes that facilitate the various steps required by the Administrative Process Act. To the extent that these changes improve understanding and implementation of the regulation, they could produce some small economic benefits.

Businesses and Entities Affected

The proposed regulation updates and makes changes to the public participation guidelines of the Board of Juvenile Justice. Thus, the proposed changes affect all businesses and entities regulated by, interested in, or otherwise affected by regulations promulgated by the Board of Juvenile Justice. The number of such businesses and entities is not known.

Localities Particularly Affected

The new public notice and hearing requirements when DJJ acquires property will have a positive effect on localities in the Commonwealth where DJJ acquires property. These requirements will provide localities with the opportunity to voice their opinion on the acquisition of property and ensure better awareness of local concerns over the construction of a DJJ facility within a locality.

Projected Impact on Employment

The proposed regulation is not likely to have a significant impact on employment in Virginia.

Effects on the Use and Value of Private Property

The proposed regulation is not likely to have a significant impact on the use and value of private property. To the extent that the addition new public notice and hearing requirements ensure that local government and local citizen views are considered when DJJ acquires property

or constructs a facility, the proposed regulation could result in a positive effect on property values.