



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

17 VAC 5-40 Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans

Department of Historic Resources

Town Hall Action/Stage: 5798/9597

August 26, 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 a legislative mandate, the Board of Historic Resources (Board) proposes to create a new regulation governing the contextualization of war monuments and memorials.² The proposed chapter, 17 VAC 5-40 *Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans*, would define relevant terms and describe the requirements for localities to obtain Board approval for a contextualizing marker.³ The new regulation would include a form for localities to use when submitting an application to the Department of Historic Resources (DHR). Note: this regulation was previously submitted as a fast-track, but was withdrawn on April 15, 2022 after 10 or more objections to the use of a fast-track were received, pursuant to § 2.2-4012.1.

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 This regulation was originally submitted as a Fast-Track action. Although the proposed text has been amended since, no new economic impacts have been identified. The Economic Impact Analysis for that stage can be found at https://townhall.virginia.gov/L/GetFile.cfm?File=24\5798\9429\EIA_DHR_9429_v1.pdf.

³ A marker could be a plaque, signboard, or other form of signage located near the monument.

Background

Chapters 1100 and 1101 of the 2020 Acts of Assembly allows localities to remove, relocate, contextualize, or cover publicly owned war-related monuments or memorials on the locality's public property, except for those located in publicly owned cemeteries.⁴ The legislation specifically directs the Board to “promulgate regulations governing the manner in which any monument or memorial may be contextualized pursuant to the provisions of this act.”

Accordingly, the new regulation defines “monument” or “memorial” to mean

“any object erected on a locality’s public property pursuant to § 15.2-1812 of the Code of Virginia, intended to commemorate the veterans of any war or conflict, or any engagement of such war or conflict, to include the following: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), Civil War (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000-), Operation Enduring Freedom (2001-), and Operation Iraqi Freedom (2003-). “Monument” or “memorial” includes both the object and the pedestal on which it is placed. “Monument or Memorial” does not include any monument or memorial located in a publicly owned cemetery.”

DHR reports that Virginia has 423 Civil War monuments (both Union and Confederate) and an additional 274 statues or monuments of various types; of the latter, only those that meet this definition would be subject to the legislation as well as the proposed regulation.

The proposed regulation defines “contextualize” as “the use of facts derived from primary or footed secondary sources, to include oral history, to explain the circumstances, influences, and conditions that existed at the time a war memorial or monument was erected, and which resulted in its erection.” “Contextualization Text” would be defined as “text that contextualizes or purports to contextualize a monument or memorial.” “Marker” would be defined as “a marker, plaque, or signage of any kind that bears or contains a Contextualization Text. The term “marker,” though singular, includes one or more markers, plaques, or signs of

⁴ See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=ch1100>. Chapter 1101 is identical. Both chapters overturned an 1890 Act of Assembly that made it unlawful to disturb or interfere with such monuments. Under the new law, local governments may remove, relocate, contextualize, or cover a monument, provided they publish a notice of intent in a local newspaper and conduct a public hearing. The legislation contains specific requirements for the publication of the notice and the hearing, as well as requirements for local governments that vote to remove or relocate a monument or memorial. Thus, adding a marker to contextualize the monument is one option among many, and local governments are not legally mandated to exercise any of these options.

any kind.” These definitions have been revised for greater clarity in response to public comments received at the Fast-Track stage.

Accordingly, the proposed regulation would require that the contextualization text include (i) a description of who commissioned, paid for, and created the monument or memorial, when it was erected, and what it depicts; (ii) a description of the documented reasons for the monument’s or memorial’s creation; (iii) a description of any documented local opposition at any time to the monument or memorial; and (iv) a description of the historical era in which the monument or memorial was erected, including information about who held local political power.⁵ In addition, the design of the marker would have to be distinct from state historical markers and would have to identify the governing body (i.e. the locality) or its agent which funded the production and erection of the marker. The requirements for the contextualization text have been revised for greater clarity in response to public comments received at the Fast-Track stage.

Local governments that elect to contextualize a monument or memorial with a marker would be required to submit an application form to DHR.⁶ The proposed regulation specifies that DHR shall process up to five applications for contextualization per quarter, on a first-come, first-served basis. DHR may review the application for completeness and accuracy before presenting it to the Board. The Board shall evaluate the applications and approve them based on the following considerations: (i) whether the proposed marker contains true and correct contextualization text, (ii) whether the proposed contextualization text provides a complete and accurate historical context, (iii) the quality and validity of the documented sources and the documented research provided, (iv) whether the proposed design is sufficiently distinct from state historical markers, and (v) the appropriateness of the proposed location of the marker.

In addition to new markers, any changes to an existing marker would also have to be approved by the Board. If the Board approves certain contextualization text and the local government wants to make changes, those changes would also have to be approved by the Board.

⁵ See this marker in DeKalb County, Georgia, that contextualizes the 1908 Confederate monument in Decatur Square, for an example provided by DHR: <https://www.ajc.com/news/local/marker-supplies-historical-context-for-dekalb-confederate-monument/3mGyZ6ITzCEGVgz785O1zJ/>.

⁶ See https://ris.dls.virginia.gov/uploads/17VAC5/forms/Application%20to%20Propose%20Contextualization_DRAFT-20210810114954.docx.

The proposed regulation would also prohibit any other contextualization text produced on or near a monument or memorial on anything other than a marker approved by the board, and would require the local government to remove any such unauthorized contextualization text. However, the local government could choose to remove a previously erected marker that had been approved by the Board. The local government would bear all the costs relating to the design, production, and installation of the marker.

Estimated Benefits and Costs

Since the proposed regulation does not mandate any action, and allows actions that were not previously permitted, any costs that arise would be solely at the discretion of local governments. Local governments would be responsible for any costs associated with the production and installation of the markers, if they elect to do so. DHR estimates these costs to range from \$500-\$1,500 per marker. The new regulation would satisfy the legislative mandate and benefit local governments that seek to contextualize monuments via markers by providing them with a process to do so. DHR does not expect that reviewing marker applications would require additional resources or significantly increase staff workload. In localities that chose not to remove or relocate certain monuments, the option of erecting a marker to contextualize the monument may benefit the government officials and the public by offering a new option. Having a marker that accurately describes the historical context would provide an educational benefit for residents of the locality as well as visitors.

Businesses and Other Entities Affected

The proposed amendments do not directly impact businesses in general. If a local government receives approval for a marker and contracts with a local business to fabricate and/or install the marker, that business would benefit from the promulgation of this regulation.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁷ 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

⁷ 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.

combined. As noted above, the proposed regulation does not create any costs. Thus, an adverse impact is not indicated.

Small Businesses⁸ Affected:⁹

The proposed amendments do not appear to adversely affect small businesses. Some small businesses that design, fabricate, or install markers may benefit from the regulation to the extent that they are contracted by local governments seeking to install markers with contextualizing text.

Localities¹⁰ Affected¹¹

The proposed amendments would only impact localities where the local government decided to erect a marker to contextualize a monument. In that case, the local government would need to allocate or raise funds to cover the cost of designing, fabricating, and installing the marker. However, the proposed regulation does not create new costs for local governments in general. Therefore, an adverse impact for local governments is not indicated.

Projected Impact on Employment

The proposed regulation would not affect total employment.

Effects on the Use and Value of Private Property

The proposed regulation does not directly affect the use or value of private property. Real estate development costs are also unaffected.

⁸ 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.”

⁹ 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.

¹⁰ “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.

¹¹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.