



## Proposed Regulation Agency Background Document

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| <b>Agency name</b>                                 | Department of Corrections  |
| <b>Virginia Administrative Code (VAC) citation</b> | 6 VAC 15-28  |
| <b>Regulation title</b>                            | Regulations for Public/Private Joint Venture Work Programs Operated in a State Correctional Facility |
| <b>Action title</b>                                | Amend 6 VAC 15-28  |
| <b>Date this document prepared</b>                 | May 21, 2009 (amended December 8, 2009)  |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

6VAC15-28 governs the form and review process for proposed agreements between the Director of the Department of Corrections and a public or private entity to operate a work program in a state correctional facility. These regulations have been in place in their current form since 1995. Since that time there have been several changes to the Code of Virginia related to “work programs and agreements with other entities.” The proposed amendments affect internal operational practices for the review of proposed agreements between the DOC and public or private entities. Changes delete the requirement for an appointed committee to approve any contractual documents implementing an agreement prior to forwarding it to the Office of the Attorney General to ensure compliance with state statutes and to the Governor. There is no change to the criteria listed in 6VAC15-28-40; all current criteria shall continue to be met before the director approves a proposed agreement.

### Acronyms and Definitions

Current 6VAC15-28 defines “committee” as “the group appointed by the governor which reviews any proposed agreement between the Director of the Department of Corrections and a public or private entity to operate a work program in a state correctional facility for prisoners confined in it. The committee consists of representatives from an employee association or organization, the business community, a chamber of commerce, an industry association, the Office of the Secretary of Commerce and Trade, and the Office of the Secretary of Public Safety.”

“DOC” means the Virginia Department of Corrections

**Legal basis**

The Office of the Attorney General has determined that the Board of Corrections has the statutory authority to amend 6VAC15-28 et seq., pursuant to §53.1-5 of the Code of Virginia.

§ 53.1-45.1 allows the Department of Corrections Director, with the prior approval of the Governor, to enter into an agreement with a public or private entity to operate a work program in a state correctional facility for prisoners confined therein.

**Purpose**

The joint venture programs review process provides an orderly system for proposed agreements to be received and approved, increasing the department’s visibility within the community and private sector, thus improving opportunities for individuals to obtain post-incarceration employment, which may ultimately lead to enhanced community public safety and welfare. Since this regulation was promulgated, the Code of Virginia §§53.1-45.2 through 45.5 (Creation of the Virginia Correctional Enterprises Advisory Board and appointment of Advisory) has been repealed by Acts 2003, cc.94 and 854, cl. 2. The amendments to this regulation will delete references to this committee and assign approval power to the Director of the Department of Corrections.

**Substance**

Amendments to this regulation include deleting committee requirements for review of proposed agreements between the DOC and a public or private entity. The application and approval process for submission of proposed agreements between the DOC and public or private entities will be delegated to the DOC Director. Additionally, the Proposed Joint Venture application Form incorporated by reference will be deleted. All current criteria for approval of proposed agreements will continue to remain in place.

**Issues**

This action poses no disadvantages to the public or the Commonwealth. The amendments affect internal operational practices, and serve to make the regulations more consistent with the Code of Virginia. These regulations should prove advantageous to the department and to participating private entities because the programs allow the department to have access to external resources in order to expand facilities, enter new markets or develop new products; and in turn private entities benefit through utilization of manpower resources from the department.

**Requirements more restrictive than federal**

There are no applicable federal requirements.

**Localities particularly affected**

There are no localities in Virginia that bear any identified disproportionate material impact that would not be experienced by other localities.

**Public participation**

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to Janice Dow, Regulatory Coordinator, Virginia Department of Corrections, P. O. Box 26963, Richmond, VA 23261-6963, telephone (804) 674-3303 x1128, FAX (804) 674-3017, email [janice.dow@vadoc.virginia.gov](mailto:janice.dow@vadoc.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

**Economic impact**

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| <b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b>   | There is no additional cost to implement the proposed regulations.  |
| <b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>   | There is no cost to localities.   |
| <b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>   | The amendments to 6VAC15-28 affect internal operational practices and should not have an impact on public or private entities requesting to work within a state correctional facility. The criteria for review remains unchanged, and only the internal process under which the review takes place has been updated.  |
| <b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means 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.   | The amendments to 6VAC15-28 affect internal operational practices and should not have an impact on public or private entities requesting to work within a state correctional facility. The criteria for review remains unchanged, and only the internal process under which the review takes place has been updated.  |
| <b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b> | There are no projected costs of the new regulations. The amendments to 6VAC15-28 affect internal operational practices and should not have an impact on public or private entities requesting to work within a state correctional facility. The criteria for review remains unchanged, and only the internal process under which the review takes place has been updated. |
| <b>Beneficial impact the regulation is designed</b>   | The new regulations will streamline the review  |

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| to produce. | process for proposed agreements between public or private entities and DOC. |
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**Alternatives**

Amendments will be made in accordance with current Code of Virginia §53.1-45.1 and those repealed in Code of Virginia §§53.1-45.2 through 45.5. There are no other viable alternatives to the proposed regulatory actions.

**Regulatory flexibility analysis**

This regulation does not directly affect services provided by small businesses; however the proposed review and agreement process between the DOC and public or private entities (i) provides such entities with clear requirements, and (ii) ensures consistency in such requirements through the Commonwealth. The amendments would streamline the review process while not affecting the requirements set forth in the current regulations.

**Public comment**

No public comment was received during the NOIRA stage.

**Family impact**

The proposed regulatory action does not strengthen or erode the authority or rights of parents in the education, nurturing and supervision of their children. There will be no impact on economic self-sufficiency, self pride, marital commitment or disposable family income.

**Detail of changes**

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| <b>6 VAC 15-28-10 Definitions</b> |  | “Committee” means the group appointed by the governor which reviews any proposed agreement between the Director of the Department of Corrections and a public or private entity to operate a work program in a state correctional facility for prisoners confined in it. The committee consists of representatives from an employee association or organization, the business community, a chamber of commerce, an industry association, the Office of the Secretary of commerce and Trade, and the Office of the Secretary of Public Safety.” | Delete “Committee” and definition.  |
| <b>6VAC15-28-30 D.</b>            |  | The committee shall evaluate the proposed agreement according to the criteria listed under 6VAC15-28-40  | The <del>committee director</del> shall evaluate the proposed agreement according to the criteria listed under 6VAC15-28- |

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| <b>6VAC 15-28-30 E.</b> |  | Upon approval by the committee, any contractual documents implementing the agreement shall be forwarded to the Office of the Attorney General to ensure compliance with state statutes. | Upon approval by the <del>committee director</del> , any contractual documents implementing the agreement shall be forwarded to the Office of the Attorney General to ensure compliance with state statutes. |
| <b>6VAC15-28-30 F.</b>  |  | Upon the assurance of the Office of the Attorney General that the agreement is in compliance with state statutes, the governor shall review the agreement.                              | <del>Upon the assurance of the</del> The Office of the Attorney General <u>will assure</u> that the agreement is in compliance with state statutes, <del>the</del> The governor shall review the agreement.  |
| <b>6VAC15-28-40 A.</b>  |  | The committee shall review the provisions of any proposed agreement according to the following criteria:  | The <del>committee director</del> shall review the provisions of any proposed agreement according to the following criteria:   |
| <b>6VAC15-28-40 B.</b>  |  | All criteria listed in 6VAC15-28-40 A shall be met before the committee approves a proposed agreement.  | All criteria listed in 6VAC15-28-40 A shall be met before the <del>committee</del> director approves a proposed agreement.   |
| <b>6VAC15-28-9998</b>   |  | FORMS (6VAC15-28) Proposed Joint Venture Application Form.  | Repealed   |