

**Public Participation in Policy-making Actions of the
State Executive Council for Children’s Services
(Proposed SEC Policy 2.4)**

Background:

The process by which the State Executive Council for Children’s Services (SEC) develops and implements policies for the governance of the Children’s Services Act (CSA) has been a topic of discussion over the past several years. Legislation to require the SEC to follow the requirements of the Administrative Process Act (APA), § 2.2-4000 *et seq.* of the *Code of Virginia*, has been introduced, but not passed, in several recent sessions of the General Assembly. One of the reasons cited for these proposals is the desire to make SEC policy-making more transparent, procedurally clear and consistent, and responsive to potential impacts on local government, especially possible fiscal impacts. The 2015 Appropriation Act (Chapter 665, Item 278. E.) directed the Secretary of Health and Human Resources, in cooperation with the Secretary of Education, to convene a work group to provide recommendations on several aspects of SEC structure and governance, including “*whether the Council should have authority to promulgate regulations in accordance with the Administrative Process Act.*”

On November 17, 2015, the work group adopted the following recommendation:

“. . . the Council should not have the authority to promulgate regulations through the Administrative Process Act. The Council should however, develop clear guidelines for public participation in its process of developing and adopting policy. These guidelines should include specific time frames for various stages in the process, expectations for public notice and public comments, and expectations for consideration of fiscal impact on local government.”

The attached proposed policy outlines potential guidelines for the SEC’s consideration to address this recommendation. The organizing principals and framework of this proposal are to establish a process that incorporates relevant elements of the APA¹ and addresses the key concerns of all CSA stakeholders.

¹ The proposed policy also incorporates relevant components from the model public participation guidelines issued by the Department of Planning and Budget as required by Chapters 321 and 575 of the 2008 Acts of the General Assembly.

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<p>Notice of Intent to Develop Policy Approved by the SEC: December 3, 2015 Public Comment Opened: March 22, 2016 Public Comment Close: May 23, 2016</p>

2.4.1 Purpose:

The purpose of this policy is to promote public involvement in the development, amendment, or repeal of policies of the State Executive Council for Children’s Services (SEC).

2.4.2 Authority:

[Section 2.2-2648](#) D 4 of the *Code of Virginia* states that the SEC shall:

“Provide for a public participation process for programmatic and fiscal guidelines and dispute resolution procedures developed for administrative actions that support the purposes of the Children’s Services Act ([§ 2.2-5200 et seq.](#)). The public participation process shall include, at a minimum, 60 days of public comment and the distribution of these guidelines and procedures to all interested parties.”

[§ 2.2-2648](#) D 5 specifies that the SEC shall:

“... consult with the Virginia Municipal League and the Virginia Association of Counties about state policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund.”

In addition, [§ 2.2-2648](#) enumerates specific areas in which the SEC shall be responsible for the development and implementation of guidelines and practices for the Children’s Services Act (CSA).

The Office of Children’s Services (OCS) is established pursuant to [§ 2.2-2649](#) A as the administrative entity of the SEC.

2.4.3 Definitions:

“Administrative policy” means a policy of the SEC that applies only to the operations of the SEC and/or OCS without any impact on groups or stakeholders outside of the SEC or OCS.

“Basic law” means provisions in the *Code of Virginia* that delineate the basic authority and responsibilities of an agency and/or governing body.

“Commonwealth Calendar” means the electronic calendar for official government meetings open to the public as required by [§ 2.2-3707](#) C of the Virginia Freedom of Information Act.

“Fiscal impact analysis” means a systematic review of the potential fiscal impact of a proposed policy which includes and analysis of the impact on CSA state pool funds and other state funding sources, CSA local matching funds requirements, and any potential federal funding sources.

“Legal review” means a review of a proposed policy by the Office of the Attorney General to ensure that the proposed policy is in compliance with all relevant state and federal laws and regulations.

“Notice Stage” means the first stage of an SEC policy development where the SEC indicates the intent initiate a policy-making action.

“Notification list” means a list of persons, maintained by OCS, to be notified of SEC policy-making actions.

“Open meeting” means any scheduled meeting of a unit of state government empowered by an agency’s basic law to establish policies or decide cases related to a policy-making action.

“Person” means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

“Policy” means any requirement adopted by the SEC that governs the implementation of the CSA.

“Policy-making action” means the development, amendment, or repeal of a policy by the SEC.

“Proposed Stage” means the second stage of an SEC policy-making action where the SEC has drafted the proposed requirements for the operation of the CSA, OCS, or the SEC that is within the legal authority of the SEC under [§ 2.2-2648](#) of the *Code of Virginia* or which the SEC is directed to adopt by the General Assembly of Virginia.

“Public comment” means the mechanisms by which the SEC receives input from interested parties concerning policy-making actions.

“Public hearing” means a scheduled time at which members of the SEC meet for the purpose of receiving public comment on a policy-making action.

“Public notice” means informing the public of the policy-making activities of the SEC.

2.4.4 Notification List and Public Notice

A. Notification List

1. The OCS shall maintain a list of persons who have requested to be notified of policy-making actions being considered by the SEC.
2. Any person may request to be placed on a notification list by making a request to OCS via e-mail at csa.office@csa.virginia.gov or 804-662-9815. Notification of persons on the notification list shall be made by electronic means unless the person specifically indicates a preference for notification via First Class mail.
3. When electronic mail is returned as undeliverable on two occasions, at least 24 hours apart, that person will be deleted from the notification list. A single undeliverable message shall be insufficient cause to delete a person from the notification list.
4. When mail delivered by First Class mail is returned as undeliverable on two occasions, that person will be deleted from the list.
5. The OCS may periodically request those persons on the notification list to indicate the desire to remain on or be deleted from the list and their preferred method of notification.
6. All members of the SEC and the State and Local Advisory Team (SLAT) ([§2.2-5201](#)) and all persons registered via the CSA website rosters as chairpersons of CSA Community Policy and Management Teams (CPMT, [§2.2-5205](#)) shall be placed on the notification list without the necessity of a specific request.

B. Additional Public Notice

1. In addition to the use of the notification list, OCS shall utilize the following additional mechanisms for informing the public of proposed policy-making actions of the SEC:
 - a. Prominently display current information about policy-making activities of the SEC on its website at www.csa.virginia.gov. The information shall indicate the stage of the action and when the SEC is scheduled to meet to consider the policy-making action.
 - b. Include notice of policy-making activities on the published agendas of public meetings of the SEC and any related committee, work group, or task force meeting.

2.4.5. Information to be Sent to Persons on the Notification List

A. OCS shall send to persons on the notification list the following information:

1. A notice of intent to develop policy (Initiation of the Notice Stage),

2. A notice of the public comment period on a proposed policy-making action, including the specific proposed policy documents and/or information on how to electronically obtain a copy of the specific proposed policy documents.
- B. The failure of any person to receive any notice of any documents shall not affect the validity of any policy if approved by the SEC.

2.4.6 Public Comment

- A. In considering any policy-making action not exempted in Section 8, the SEC shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing. Such opportunity to comment shall include an on-line public comment forum maintained on the CSA website.
1. To any requesting person, the SEC shall provide a copy of the Notice Stage document.
 2. The SEC shall not be prohibited from developing and drafting policy-making actions prior to or during any opportunity it provides to the public to submit comments.
- B. The SEC shall accept public comments in writing after the issuance of public notice of a policy-making action as defined in Section 4. Public comment in writing shall be accepted as follows:
1. For a minimum of thirty (30) calendar days following the issuance of the Notice Stage (see Section 7 B).
 2. For a minimum of sixty (60) calendar days following the preliminary approval of the proposed policy (see Section 7 C).
 3. For a minimum of sixty (60) calendar days following the approval of a re-proposed policy (see Section 7 E (1) (c)).
 4. An expedited period of public comment for certain proposed policies is described in Section 7 G.
- C. The SEC may determine if any of the comment periods listed in Section 6 B shall be extended.
- D. Oral public comment on any policy-making action shall be welcome at all public meetings of the SEC and any committee, work group, or task force established to consider the policy-making action. Notice of any open meeting shall be posted on the Commonwealth Calendar at least five (5) working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with [§2.2-3707 D](#) of the *Code of Virginia* allowing for contemporaneous notice to be provided to participants and the public.

E. Response to Public Comment

The OCS shall compile a summary description of and prepare a response to all public comment to on the policy-making action and send this to the SEC and all public commenters on the proposed policy at least five (5) calendar days before the meeting of the SEC at which final approval of the proposed policy will be considered.

In this summary description, the OCS shall indicate for each comment or group of comments that are of a similar nature whether the comment has been incorporated into the proposed policy or, if not, a brief explanation of the rationale for the action taken.

2.4.7 SEC Policy-making Process

A. Petition for a Policy-making Action

1. Any person may petition the SEC to initiate a policy-making action. The petition shall state:
 - a. The petitioner's name and contact information; and
 - b. The substance and purpose of the policy-making action that is requested, including reference to any applicable SEC policies and/or reference to the legal authority of the SEC to take the action requested. However, the failure of a petitioner to include the legal authority shall not preclude consideration of the petition.
2. Petitioners shall submit a written petition to the Executive Director of the OCS. The petition shall be included in the documents provided in advance of the next scheduled meeting of the Executive Committee of the SEC. At this meeting, the Chair of the SEC, in consultation with the Executive Committee of the SEC and the Executive Director of the OCS, shall determine the disposition of the petition.
3. Disposition of such petitions may include:
 - a. Acceptance of the petition and initiation of a policy-making action.
 - b. A request for the petitioner to present the request for consideration to the full SEC.
 - c. Denial of the petition.
4. Within ten (10) days of disposition, OCS shall notify the petitioner of that disposition in writing.
5. Nothing in this policy shall prohibit the OCS or the SEC from receiving information or from proceeding on its own motion for initiation of a policy-making action.

B. Notice Stage

1. A determination to begin a policy-making action will be made by the Executive Director of the OCS, in consultation with the Chair and the Executive Committee of the SEC.²
2. At a minimum, the Notice Stage shall include (i) a summary of the intended policy-making action, a statement of the basis, purpose, and substance of; (ii) issues to be addressed in; and (iii) a preliminary estimate of the fiscal impact of the policy-making action.
3. Should the SEC approve the Notice Stage, it shall be issued via public notice and open for public comment as provided for in Section 6 B. The Executive Director of the OCS or designee shall be responsible for compiling, organizing, and presenting to the SEC public comments received.

C. Initiation of the Proposed Stage

1. The SEC shall consider the draft of the proposed policy-making action a maximum of six (6) months after the close of the public comment period of the Notice Stage.
2. The draft shall be made available via public notice no less than five (5) days prior to the scheduled meeting of the SEC at which the draft of the proposed policy-making action will be considered. When distributing the draft, the OCS shall also provide a summary of public comments with the agency's response as provided for in Section 6 E.

D. Approval of Proposed Stage for Public Comment

1. The SEC shall consider issuance of the proposed policy for public comment. At this time, the SEC may take one of three actions:
 - a. Approve the issuance of public notice of the proposed policy for a period of public comment not less than sixty (60) days.
 - b. Reject the proposed policy-making action.
 - c. Take other action to gather further information prior to proceeding on the proposed policy under 1 or 2 above. Such actions may include the appointment of an ad hoc work group, consultations with groups and/or individuals with interest in the proposed policy, or other steps the SEC may deem appropriate.

E. Proposed Stage Fiscal Impact Analysis and Legal Review

² §2.2-2649 B 1 of the *Code of Virginia* provides that the Director of OCS shall “*Develop and recommend to the state executive council programs and fiscal policies that promote and support cooperation and collaboration in the provision of services to troubled and at-risk youths and their families at the state and local levels.*” Section B 2 further requires to OCS to “*Develop and recommend to the Council state interagency policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund.*”

If the SEC approves the Proposed Stage, (i) the OCS shall complete a fiscal impact analysis and (ii) a legal review shall be conducted for consideration by the SEC.

1. Fiscal Impact Analysis

- a. Before taking further action on a proposed policy-making action the SEC shall consider the potential fiscal impact of the policy. The OCS shall provide a thorough analysis of the fiscal impact of the proposed policy-making action based on the best available information.
- b. For non-administrative policy-making actions, in completing the fiscal impact analysis, OCS shall:
 - i. Solicit input from the Virginia Municipal League (VML) and the Virginia Association of Counties (VACO). VML and VACO shall be provided a minimum of thirty (30) days in which to provide comments. The fiscal impact analysis shall include whether there is an estimated impact on localities or other entities and identify any localities or other entities particularly affected by the proposed policy. If no localities or other entities are particularly affected by the proposed policy, the analysis shall so state.
 - ii. The fiscal impact analysis shall be made available via public notice no less than five (5) days prior to the scheduled meeting of the SEC at which the proposed policy-making action will next be considered.

2. Legal Review

- a. When the proposed policy-making action is posted for public comment, the OCS shall submit the proposed policy to the Office of the Attorney General to ensure statutory authority for the proposed policy-making action.
- b. Should the legal review of the proposed policy reveal non-compliance with relevant statutes and/or regulations, the SEC shall be so informed by legal counsel and shall make such revisions in the proposed policy as are necessary.

F. Final Approval

1. No less than five (5) days prior to the scheduled meeting of the SEC for consideration of approval of the policy-making action, the following shall be sent via public notice:
 - a. A draft of the proposed final policy with any deletions indicate with strike through notations and any new language underlined;
 - b. A summary of all changes and the rationale for the change;
 - c. A summary of all comments received and the agency's response as provided in Section 6 E; and

d. The fiscal impact analysis and legal review documents.

2. The SEC may take one of the following actions:

- a. Approve the proposed policy and establish an implementation date;
- b. Reject the proposed policy;
- c. Revise the proposed policy and initiate an additional period of public comment (re-proposed policy); or
- d. Defer final action on the proposed policy in order to gather other specific information prior to taking additional action at a future meeting.

G. Expedited Approval

1. If the Executive Committee of the SEC believes a proposed policy meets the definition of administrative-policy or is deemed to otherwise be non-controversial, it shall so inform the SEC.
2. If the SEC so determines, the proposed policy may be handled via an expedited review process.
3. The expedited review process shall include the following:
 - a. The proposed policy shall be presented at a regular meeting of the SEC with a recommendation that it is eligible for expedited approval;
 - b. The SEC shall make a determination on whether the proposed policy meets the criteria for expedited approval;
 - c. If an affirmative determination is made, public notice of the proposed policy shall be made by the OCS in accordance with Sections 4 A and B. The public comment period shall be open a minimum of thirty (30) days;
 - d. If there are no more than seven (7) individuals raise objections raised through public comment, the proposed policy will become effective fifteen (15) days following the close of the public comment period;
 - e. If more than seven (7) persons raise objections during the public comment period, the expedited review process shall serve as the Notice Stage and the policy-making action shall proceed to the Proposed Stage.

2.4.8 Exemptions:

- A. The following policy-making actions shall be exempt from the provisions of this policy that:
1. Consist only of changes in style or form or corrections of technical errors in existing SEC policies;
 2. Are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, notice of such policies shall be disseminated via public notice within ninety (90) days of the law's effective date;
 3. Are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or
 4. Are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Office of the Attorney General has so determined in writing. Notice of such policies shall be disseminated via public notice not less than thirty (30) days prior to the effective date of the policy.