



Proposed Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18VAC50-22
Regulation title	Board for Contractors Regulations
Action title	Amending Fees
Date this document prepared	September 2, 2008

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

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed regulations will increase fees for the Contractors Board to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The Board's most recent fee increases became effective in August 2005. The Board has incurred an increase in costs for enforcement activities, Information Systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the Board's deficit will continue to increase and the Department will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

§ 54.1-113. (Callahan Act) Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505, shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 54.1-201.4 describes each regulatory board's power and duty to "levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department..."

§ 54.1-304.3 describes the power and duty of the Director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid..."

§ 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

These Code sections require the Department to:

- pay expenses of each board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charged to each board; and
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- Accounts for the revenue collected for each board distinctly.
- Accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board.

- Reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles.
- Recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

§ 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is left to the discretion of the Board, but shall not be in conflict with the purposes of the statutory authority.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The intent of the proposed changes in regulations is to increase licensing fees for regulants of the Board for Contractors. The board must establish fees adequate to support the costs of board operations and a proportionate share of the Department’s operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Board for Contractors provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals and firms that meet specific criteria set forth in the statutes and regulations are eligible to receive a contractor or tradesman license. The board is also tasked with ensuring that its regulants meet standards of conduct that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, could not be investigated and processed in a timely manner. This could provide an opportunity for a dishonest contractor, waiting for action to be taken by the board, to continue to work, harming additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money, but instead, is funded almost entirely from revenue collected through applications for licensure, renewals, examination fees, and other licensing fees. The Department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the Department’s authorized special revenue appropriation.

The Board for Contractors has no other source of revenue from which to funds its operations.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The existing regulations are being amended to increase the fees applicable to several licensing items.

18VAC50-22-100. Fees.

The fee for Class C initial licensure is increased from \$150 to \$200.
The fee for Class B initial licensure is increased from \$175 to \$225.
The fee for Class A initial licensure is increased from \$200 to \$250.
The fee for the declaration of a designated employee at the time of application is increased from \$40 to \$80.
The Virginia Transaction Recovery Fund assessment remains \$25.

18VAC50-22-140. Renewal fees.

The fee for Class C renewal is increased from \$110 to \$175.
The fee for Class B renewal is increased from \$150 to \$200.
The fee for Class A renewal is increased from \$165 to \$225.
The Virginia Transaction Recovery Fund assessment is \$50.

18VAC50-22-170. Reinstatement fees.

The fee for Class C reinstatement is increased from \$260 to \$375.
The fee for Class B reinstatement is increased from \$325 to \$425.
The fee for Class A reinstatement is increased from \$365 to \$475.
The Virginia Transaction Recovery Fund assessment is \$50.

18VAC50-22-250. Fees.

The fee to change a designated employee is increased from \$40 to \$80.
The fee to change a qualified individual is increased from \$40 to \$80.
The fee to add a classification or specialty designation is increased from \$40 to \$80.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary issue for the proposed fee increase is the Department's statutory requirement to comply with the Callahan Act.

Further issues to be addressed as regulations are developed include:

The Callahan Act required DPOR to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. The Board for Contractors is expected to incur a deficit of \$579,707 and a Callahan Act percentage of -3.5%.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to the amount greater than previously anticipated. To avoid increasing the deficit the new fees will need to become effective by the beginning of the 2010 biennium. Otherwise, the Board's deficit will increase to the point that the new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the Board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements in place regarding the licensing of contractors in the Commonwealth of Virginia.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Companies licensed by the Board for Contractors are located throughout the Commonwealth, subsequently; no particular area will be affected more than another.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

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 by mail, email or fax to Eric Olson c/o DPOR, 9960 Mayland Drive, Richmond, VA, 23233, (804) 367-2785 (p), (804) 527-4401 (f), contractor@dpor.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.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Board for Contractors

**Financial Status and Projections
Current Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulators</u>	
2006-08	2,269,331	13,839,035	14,223,872	1,884,494	13.2%	101,714	as of 6/30/08
2008-10	1,884,494	15,546,196	16,427,136	1,003,554	6.1%		
2010-12	1,003,554	21,731,108	18,435,883	4,298,779	23.3%		
2012-14	4,298,779	21,731,108	20,690,264	5,339,623	25.8%		

Fee History

<u>Major Fee Type</u>	<u>2003</u>	<u>2005</u>	<u>Proposed (FY10)</u>
Individual Application:			
Class A	175	200	230
Class B	150	175	220
Class C	125	150	200
Tradesman	75	90	100

Individual Renewal			
Class A	150	165	220
Class B	135	150	210
Class C	100	110	190
Tradesman	35	40	80

Board for Contractors

**Financial Status and Projections
Proposed Regulation Change**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulants</u>	
2006-08	2,269,331	13,839,035	14,223,872	1,884,494	13.2%	101,714	as of 6/30/08
2008-10	1,884,494	13,962,934	16,427,136	-579,708	-3.5%		
2010-12	-579,708	14,741,635	18,435,883	-4,273,956	-23.2%		
2012-14	-4,273,956	14,741,635	20,690,264	-10,222,585	-49.4%		

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Fee History

<u>Major Fee Type</u>	<u>2003</u>	<u>2005</u>
Individual Application:		
Class A	175	200
Class B	150	175
Class C	125	150
Tradesman	75	90
Individual Renewal		
Class A	150	165
Class B	135	150
Class C	100	110
Tradesman	35	40

**Board for Contractors
Fiscal Impact of Proposed Regulation**

Summary:

The proposed regulations will increase fees for the Contractors Board to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The Board's most recent fee increases became effective in August 2005. Proposed fee increases are expected to become effective

during fiscal year 2010. Without the proposed fee increases, the Board will not collect sufficient revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Fiscal Impact:

	FY 2008	FY 2009	FY2010	FY2011
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	0	\$0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	\$0	0	0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: No one-time costs are expected as a result of this regulatory change.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: This regulation change will affect all licensed contractors and tradesmen.

Estimated Number of Regulators: As of June 30, 2008, the Board regulates 101,714 contractors and tradesmen.

Projected Cost to Regulators: All fees cover a two year period. The cost for a Contractor to become licensed will increase by \$30-50, and the cost to renew a license for two years will increase by \$55-80. The cost for a Tradesman to become licensed will increase by \$10, and the cost to renew a license for two years will increase by \$40. Overall, proposed increases in fees will remain a very small portion of the cost to work as a Contractor. No economic impact is anticipated beyond the direct impact of the increased cost to become and remain licensed. Increases in fees are not expected to have a significant effect on individuals deciding to become or remain licensed by the Board.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The Department has considered the following alternatives to increasing fees for the Board for Contractors.

- Reduce services: Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative. In addition, reductions in services would result in delays in issuing licenses, creating barriers to citizens' ability to work, and would decrease the Department's effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety and welfare.

- Obtain a Treasury loan to fund operations: The Department could request a loan from the general fund to cover the Board's deficit and supplement its ongoing operations. However, this would be a short-term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for repayment of the loan.

- Supplement Board activities with general funds: The Department currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriations Act. The Department's boards are intended to be self-funding per Sections 54.1-113, 54.1-201.4, 54.1-304.3, and 54.1-308 of the Code of Virginia. Use of general funds to support board operations does not appear to be an appropriate use of taxpayer dollars.

Enter statement here

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The adjustment of fees is mandated by statute and subsequently there is no flexibility.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

There were no comments received during the NOIRA comment period.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These fee increases are not anticipated to have any significant impact on Virginia's families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18VAC50-22-100		The fee for Class C initial licensure \$150. The fee for Class B initial licensure is \$175. The fee for Class A initial licensure is \$200. Declaration of Designated Employee fee is \$40. Water Well Exam fee is	The fee for Class C initial licensure is increased from \$150 to \$200 to facilitate compliance with the Callahan Act. The fee for Class B initial licensure is increased from \$175 to \$305 to facilitate compliance with the Callahan Act and to include declaration of Designated Employee fee. The fee for Class A initial licensure is

		\$40.	increased from \$200 to \$330 to facilitate compliance with the Callahan Act and to include declaration of Designated Employee. Declaration of Designated Employee fee is currently in the regulations and placed there for accounting purposes. This causes confusion on behalf of the regulant therefore; it will be included in the Class B and Class A application fee. With the implementation of the Certified Water Well System Provider program this fee is no longer applicable to Contractors and should be removed.
18VAC50-22-140		The fee for Class C renewal is \$110. The fee for Class B renewal is \$150. The fee for Class A renewal is \$165.	The fee for Class C renewal is increased from \$110 to \$175 to facilitate compliance with the Callahan Act. The fee for Class B renewal is increased from \$150 to \$200 to facilitate compliance with the Callahan Act. The fee for Class A renewal is increased from \$165 to \$225 to facilitate compliance with the Callahan Act. The Recovery Fund assessment must be paid upon renewal of a license is added to the Regulations. This provision, while statutory in nature, was not included in the Regulations and caused confusion for many renewal candidates. The Recovery Fund provides adequate revenue to ensure that the Fund is able to meet the requirements of § 54.1-1118 et seq. of the Code of Virginia. § 54.1-1119 b of the Code of Virginia provides the Board with the authority to assess current licensees of a total amount of not more than \$50 during any biennium.
18VAC50-22-170		The fee for Class C reinstatement is \$260. The fee for Class B reinstatement is \$325 The fee for Class A reinstatement is \$250.	The fee for Class C reinstatement is increased from \$260 to \$375 to facilitate compliance with the Callahan Act. The fee for Class B reinstatement is increased from \$325 to \$425 to facilitate compliance with the Callahan Act. The fee for Class A reinstatement is increased from \$365 to \$475 to facilitate compliance with the Callahan Act. The Recovery Fund assessment must be paid upon reinstatement of a license is added to the Regulations. This provision, while statutory in nature, was not included in the Regulations and caused confusion for many reinstatement candidates. The Recovery Fund provides adequate revenue to ensure that the Fund is able to meet the requirements of § 54.1-1118 et seq. of the Code of Virginia. § 54.1-1119 b of the Code of Virginia provides the Board with the authority to assess current licensees of a

			total amount of not more than \$50 during any biennium.
18VAC50-22-250		<p>The fee for Change of Designated Employee is \$40.</p> <p>The fee for Change of Qualified Individual is \$40.</p> <p>The fee for Addition of Classification or Specialty is \$40.</p>	<p>The fee for Change of Designated Employee is increased from \$40 to \$80 to facilitate compliance with the Callahan Act.</p> <p>The fee for Change of Qualified Individual is increased from \$40 to \$80 to facilitate compliance with the Callahan Act.</p> <p>The fee for Addition of Classification or Specialty is increased from \$40 to \$80 to facilitate compliance with the Callahan Act.</p>