



## Final Regulation Agency Background Document

<b>Agency name</b>	Board for Contractors
<b>Virginia Administrative Code (VAC) citation</b>	18VAC50-30
<b>Regulation title</b>	Board for Contractors Individual License and Certification Regulations
<b>Action title</b>	Amending Fees
<b>Date this document prepared</b>	June 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

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The final 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.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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When notified that the proposed fee increase would not fulfill the requirements of § 54.1-113 and would necessitate that the Board initiate the regulatory review process for another fee increase during the 3<sup>rd</sup> or 4<sup>th</sup> quarter of FY10, a determination was made to amend the proposed regulations and adjust the fees with this regulatory package.

In order to ensure that the PPG list would be aware of the Board's consideration of an additional increase over the proposed regulations, the PPG list was notified by regular mail and the electronic list was notified via the Town Hall of the discussion and consideration being made at the Board's May 19, 2009, meeting.

As a result of this notification, one electronic comment was received, but it was for an issue not related to the proposed regulatory package. No comment was received at the May 19<sup>th</sup> Board meeting. On May 19, 2009, the Board for Contractors voted to adopt these amendments to 18VAC50-22 as final.

### 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 numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The final 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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The intent of the final 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 fund its operations.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

### **18VAC50-30-90. Fees for licensure and certification.**

The fee for original tradesman license by examination is increased from \$90 to \$130.  
The fee for original tradesman license without examination is increased from \$90 to \$130.  
The fee for card exchange (exchange of locality-issued card for state-issued Virginia tradesman license) is increased from \$40 to \$95.  
The fee for liquefied petroleum gas fitter is increased from \$90 to \$130.  
The fee for natural gas provider is increased from \$90 to \$130.  
The fee for backflow prevention device worker certification is increased from \$90 to \$130.  
The fee for elevator mechanic certification is increased from \$90 to \$130.  
The fee for water well systems provider certification is increased from \$90 to \$130.

### **18VAC50-30-110 Fees for duplicate cards.**

This entire section will be repealed.

### **18VAC50-30-120 Renewal.**

The fee for Tradesman license renewal is increased from \$40 to \$90.  
The fee for liquefied petroleum gas fitter license renewal is increased from \$40 to \$90.  
The fee for natural gas fitter provider license renewal is increased from \$40 to \$90.  
The fee for backflow prevention device worker certification renewal is increased from \$40 to \$90.  
The fee for elevator mechanic certification renewal is increased from \$40 to \$90.  
The fee for water well systems provider certification renewal is increased from \$40 to \$90.

**18VAC50-30-130 Reinstatement.**

The fee for Tradesman license reinstatement is increased from \$130 to \$140.  
 The fee for liquefied petroleum gas fitter license reinstatement is increased from \$130 to \$140.  
 The fee for natural gas fitter provider license reinstatement is increased from \$130 to \$140.  
 The fee for backflow prevention device worker certification reinstatement is increased from \$130 to \$140.  
 The fee for elevator mechanic certification reinstatement is increased from \$130 to \$140.  
 The fee for water well systems provider certification reinstatement is increased from \$130 to \$140.

**18VAC50-30-150 Adding or deleting trade designations.**

The fee for each addition is increased from \$40 to \$90.

**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 there are no disadvantages to the public or the Commonwealth, please indicate.*

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. Since the development of the initial proposal, the current economic down turn has had a negative effect on Board income but has resulted in an increase in certain work areas. Based on a review of current budget data, it was anticipated that, if the fees were increased as proposed, the Board would be forced to submit another fee increase during the 3<sup>rd</sup> quarter of FY10. The promulgation of this fee increase will not only negate the need for another fee increase in the 3<sup>rd</sup> quarter of FY10, it will also soften the fiscal burden to the regulant population as this increase will not be as high as two separate increases would be. The Board was careful to keep the initial license fees unchanged from the proposed amounts. To avoid increasing the deficit the new fees will need to become effective by the beginning of the 2010 biennium.

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.

**Changes made since the proposed stage**

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
18VAC50-30-90 B	Card exchange fee - \$80.	Card exchange fee - \$95.	Fee increased in order to meet modified Callahan projection.
18VAC50-30-120 E	Renewal fees for all individual licenses and certifications - \$80.	Renewal fees for all individual licenses and certifications - \$90.	Fee increased in order to meet modified Callahan projection.
18VAC50-30-150	Fee for adding and deleting trade designations - \$80.	Fee for adding and deleting trade designations - \$90.	Fee increased in order to meet modified Callahan projection.

**Public comment**

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Jon Phillip	Directs individuals to view Town Hall comments for the Board for Contractors regulations 18VAC50-22.	None required.
Luther Dunn	Opposes the fee. Suggest that until the state requires all tradesmen to maintain the appropriate license (tradesmen on the jobsite) the Board will see a decrease in licensed tradesmen.	The Board has previously considered having a tradesman on the jobsite at all times and will certainly consider it again in future regulatory review.

**All changes made in this regulatory action**

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
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<p>18VAC50-30-90</p>		<p>The fee for original tradesman license is \$90.                  The fee for original tradesman license without examination is \$90.                  The fee for card exchange (exchange of locality-issued card for state-issued Virginia tradesman license is \$40.                  The fee for liquefied petroleum gas fitter is \$90.                  The fee for natural gas provider is \$90.                  The fee for backflow prevention device worker certification is \$90.                  The fee for elevator mechanic certification is \$90.                  The fee for water well systems provider certification is \$90.</p>	<p>The fee for original tradesman license by examination is increased from \$90 to \$130 to facilitate compliance with the Callahan Act.                  The fee for original tradesman license without examination is increased from \$90 to \$130 to facilitate compliance with the Callahan Act.                  The fee for card exchange (exchange of locality-issued card for state-issued Virginia tradesman license is increased from \$40 to \$95 to facilitate compliance with the Callahan Act.                  The fee for liquefied petroleum gas fitter is increased from \$90 to \$130.                  The fee for natural gas provider is increased from \$90 to \$130 to facilitate compliance with the Callahan Act.                  The fee for backflow prevention device worker certification is increased from \$90 to \$130 to facilitate compliance with the Callahan Act.                  The fee for elevator mechanic certification is increased from \$90 to \$130 to facilitate compliance with the Callahan Act.                  The fee for water well systems provider certification is increased from \$90 to \$130 to facilitate compliance with the Callahan Act.</p>
<p>18VAC50-30-110.</p>		<p>Fees charged for replacement cards.</p>	<p>Entire section is repealed. Fees will no longer be charged for duplicate cards.</p>
<p>18VAC50-30-120</p>		<p>The fee for Tradesman license renewal is \$40.                  The fee for liquefied petroleum gas fitter license renewal is \$40.                  The fee for natural gas fitter provider license renewal is \$40.                  The fee for backflow prevention device worker certification renewal is \$40.                  The fee for elevator mechanic certification renewal is \$40.                  The fee for water well</p>	<p>The fee for Tradesman license renewal is increased from \$40 to \$90 to facilitate compliance with the Callahan Act.                  The fee for liquefied petroleum gas fitter license renewal is increased from \$40 to \$90 to facilitate compliance with the Callahan Act.                  The fee for natural gas fitter provider license renewal is increased from \$40 to \$90 to facilitate compliance with the Callahan Act.                  The fee for backflow prevention device worker certification renewal is increased from \$40 to \$90 to facilitate compliance with the Callahan Act.                  The fee for elevator mechanic</p>

		systems provider certification renewal is \$40.	certification renewal is increased from \$40 to \$90 to facilitate compliance with the Callahan Act. The fee for water well systems provider certification renewal is increased from \$40 to \$90 to facilitate compliance with the Callahan Act.
18VAC50-30-130		The fee for Tradesman license reinstatement is \$130. The fee for liquefied petroleum gas fitter license reinstatement is \$130. The fee for natural gas fitter provider license reinstatement is \$130. The fee for backflow prevention device worker certification reinstatement is \$130. The fee for elevator mechanic certification reinstatement is \$130. The fee for water well systems provider certification reinstatement is \$130.	The fee for Tradesman license reinstatement is increased from \$130 to \$140 to facilitate compliance with the Callahan Act. The fee for liquefied petroleum gas fitter license reinstatement is increased from \$130 to \$140 to facilitate compliance with the Callahan Act. The fee for natural gas fitter provider license reinstatement is increased from \$130 to \$140 to facilitate compliance with the Callahan Act. The fee for backflow prevention device worker certification reinstatement is increased from \$130 to \$140 to facilitate compliance with the Callahan Act. The fee for elevator mechanic certification reinstatement is increased from \$130 to \$140 to facilitate compliance with the Callahan Act. The fee for water well systems provider certification reinstatement is increased from \$130 to \$140 to facilitate compliance with the Callahan Act.
18VAC50-30-150		The fee for each addition is \$40.	The fee for each addition is increased from \$40 to \$90 to facilitate compliance with the Callahan Act.

**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.

### 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.*

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