



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

|                            |   |
|----------------------------|---|
| <b>Agency Name:</b>        | Board for Contractors   |
| <b>VAC Chapter Number:</b> | 18 VAC 50-22-10 et seq. and 18 VAC 50-30-10 et seq.   |
| <b>Regulation Title:</b>   | Board for Contractors Rules and Regulations AND Board for Contractors – Tradesman Rules and Regulations |
| <b>Action Title:</b>       | Amending  |
| <b>Date:</b>               | October 17, 2002  |

Please refer to the Administrative Process Act (§ 2.2-4000 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

The proposed regulatory change will increase licensing fees for regulants of the Board for Contractors. The accumulated cash balance and projected revenue to be collected from Contractor licensing fees will be inadequate to cover the board's costs by the close of fiscal year 2002 as required by the Callahan Act, Virginia Code Section 54.1-113. Fee increases will allow the board to collect adequate revenue to repay the deficit that is projected for the current biennium, and support its ongoing expenses for upcoming operating cycles.

Reasons for the Proposed Changes:

In accordance with statute, the Board collects licensing fees from which its operating costs and a proportionate share of the Department's expenses are paid. The Board has no other sources of revenue from which to fund its operations. Fee increases are necessary so that the Board can continue to perform its essential functions of licensing, investigation of complaints, and adjudication of disciplinary cases.

Background:

The last fee increase for the Board was in 1995, at which point fees were raised by an average of about \$44 and new fee categories were added for Class C Contractors and Tradesmen. Shortly afterward, the Department was able to realize reductions in expenditures through participation in the Workforce Transition Act and other efficiencies. As a result, actual expenditures charged to the Contractors Board were less than anticipated.

At the close of FY96, the Board had an accumulated cash balance of approximately \$565,000. By the end of FY97, that cash balance had increased to \$1.5 million, and revenues collected substantially exceeded expenditures charged to the Board, so the Board took action to reduce its fees by an average of about \$22. By the close of the 96-98 biennium, the accumulated cash balance had reached \$1.5 million, and projections indicated that revenues would continue to exceed expenditures slightly. To avoid continually increasing its cash balance and Callahan Act percentage, the Board again reduced fees slightly in fiscal year 1999, by an average of about \$5. Projected revenues at that point were expected to remain slightly below expenditures, allowing the board to use its accumulated cash balance and reduce its Callahan Act percentage over the next three-four biennia.

During the 1998-2000, the agency's expenditures increased more than expected, due to the following factors:

- In FY2000, the General Assembly authorized an unusually high salary increase of 6.25%. That increase affected expenditures for FY00, and must be carried forward into future years, resulting in expenditure projections higher than originally anticipated. Projections for future years also include anticipated salary-related costs of the Compensation Reform Plan.

- The Department has increased its use of wage employees to manage increasing levels of enforcement activity, and has also added wage employees devoted specifically to increasing workloads of the Board for Contractors. The costs associated with increased use of wage employees have added to cost increases for this Board.

- Since FY97, the Department has experienced increasing activity levels in the areas of enforcement, investigation, and adjudication:

|      |      |      |      |          |
|------|------|------|------|----------|
| FY97 | FY98 | FY99 | FY00 | Increase |
|------|------|------|------|----------|

|                          |       |       |       |       |       |        |
|--------------------------|-------|-------|-------|-------|-------|--------|
| Cased Closed             | 1,857 | 3,341 | 3,350 | 3,240 | 74.5% |        |
| Investigations Completed | 2,161 |       | 3,350 | 3,404 | 3,395 | 57.1%  |
| Cases Adjudicated        | 262   |       | 418   | 561   | 815   | 211.1% |

Sixty-five percent of these activities are related to the Board for Contractors, therefore the Board is substantially impacted by the higher costs associated with the increasing activity levels.

- The volume of regulants impacts the Board's total costs, both by increasing the need for additional staff to manage increasing workloads, and by increasing the percentage of licensees used to allocate many of the agency's administrative support costs. In fiscal year 1996, the Board for Contractors had 66,462 licensees. As of December 2000, that number had increased to 78,189, representing a total increase of almost 12,000 licensees, or 18%. During the same period, the agency's total licensees increased from 234,365 to 251,495, or about 7%. Because the Board for Contractors is growing at a faster rate than the other regulatory programs, the percentage of Contractor licensees has increased from 28% to 31%, and a higher amount of agency costs are allocated to the Board.

The Board for Contractors' total direct and administrative support costs for the 1998-2000 biennium were more than \$6 million, with revenue collections of about \$5.5 million. Projections indicate that revenue collections in the 2000-02 biennium will again be about \$5.5 million, with expenditures increasing to about \$7 million. The Board is expected to incur a deficit of about \$.5 million by the close of the biennium.

Comparative Factors:

Between 1996 and 2000, the Consumer Price Index increased a total of 13.9%. However, licensing fees charged by the Board for Contractors have decreased an average of 26%.

The following table is used to compare the cost of licensing in Virginia with other nearby states. Comparisons are shown for the cost to a Class A Contractor and an Electrician to become licensed and to renew a license. The total cost shown for the Contractor in Virginia includes the current application fee of \$100, the Designated Employee Fee of \$25, and the Recovery Fund assessment of \$25.

| <u>Licensure State</u>    | <u>VA</u> | <u>NC</u> | <u>SC</u> | <u>WV</u> | <u>MD</u> | <u>FL</u> | <u>GA</u> |
|---------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| <b>General Contractor</b> |           |           |           |           |           |           |           |
| Application               | 150       | 100       | 360       | 90        | 325       | 205       | N/A       |
| Renewal                   | 90        | 100       | 360       | 90        | 279       | 209       | N/A       |

**Electrician**

|             |    |     |     |    |    |     |    |
|-------------|----|-----|-----|----|----|-----|----|
| Application | 40 | 150 | 350 | 90 | 20 | 150 | 30 |
| Renewal     | 25 | 115 | 350 | 20 | 25 | 255 | 75 |

The total Contractor application cost in Virginia is currently substantially less than the cost in three states, and a small percentage more than the cost in two states. The renewal fee is currently less than the fee in four states (substantially less than in three of those states), and equal to the fee in one state. The Electrician application fee is currently substantially less than the fee in four states, and slightly more than the fee in two states. The renewal fee is substantially less than the fee in four states, and the same or slightly more than the fee in two states.

This comparison demonstrates that current fees could be raised to appropriate levels and still remain reasonable, and in many cases much lower in cost, in comparison to amounts charged by other nearby states.

Potential Impact and Consequences:

Increases in fees are not expected to have a significant effect on individuals deciding to become licensed by the Board, or to affect the total volume of Contractor licensees. No economic impact is anticipated beyond the direct impact of the increased cost to become and remain licensed. Licensing fees apply to the two-year period for which the license is valid, and overall, will remain a very small portion of the costs to work as a Contractor.

If these fee increases are not implemented:

- The Board will have inadequate revenues to support its ongoing operations.
- Because this Board represents such a large portion of agency activities and revenue, the Department will have inadequate cash flow to pay for essential operations.
- Revenue collections will be inadequate to fund the Department's authorized appropriation.

Issues to be Addressed as Regulation is Developed:

The Callahan Act requires DPOR to review each board’s expenditures at the close of each biennium, and to adjust fees if necessary. The Board for Contractors closed the 1998-00 biennium with a Callahan Act percentage of 18.2% and a cash balance of \$1,096,718. However, by the close of the 2000-02 biennium, the Board is expected to incur a deficit of \$571,582 and a Callahan Act percentage of -8%.

Once the Board exhausts its cash balance and begins fully using its current revenues, there will be no additional source of revenue to pay its ongoing operating expenses other than to borrow

from the cash balances of other boards. Because the Board for Contractors is the Department's largest board, those cash balances could not support its operations for more than a few months, and would only delay the need for fee increases briefly. Any amounts borrowed from other boards would have to be repaid, and would result in even larger increases in proposed fees in order to repay the deficit.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit is actually incurred. To avoid the upcoming deficit and the need to increase fees to more than needed for ongoing operations, the new fees will need to become effective by the beginning of the 2002-04 biennium. Otherwise, the Board's deficit will increase and the new fees may 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.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

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On October 9, 2002, the Board for Contractors voted to adopt these amendments to 18 VAC 50-22-10 et seq. and 18 VAC 50-30-10 et seq. as final.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

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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.

Section 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.

Section 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..."

Section 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..."

Section 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.

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion in how the fees are adjusted by determining the amount of the adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

Section 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 up to the discretion of the Board, but shall not be in conflict with the purposes of the statutory authority.

### Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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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 Department of Professional and Occupational Regulation (DPOR) receives no general fund money, but instead is funded almost entirely from revenue collected for license applications, 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 proposed increase in fees is necessary in order to maintain the level of protection currently provided by the Board for Contractors. The enforcement of the statutes and regulations increases the level of public safety and welfare by ensuring that fraudulent and unscrupulous contractors are disciplined quickly and efficiently. The ability of the board to continue to process applications in a timely and accurate manner increases the level of public safety and welfare by ensuring that only those applicants that meet or exceed the requirements set forth in the statutes and regulations are granted licenses.

**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. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

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

**18 VAC 50-22-100. Fees.**

The fee for Class C initial licensure is increased from \$65 to \$125.

The fee for Class B initial licensure is increased from \$85 to \$150.

The fee for Class A initial licensure is increased from \$100 to \$175.

The fee for the declaration of a designated employee at the time of application is increased from \$25 to \$30.

**18 VAC 50-22-140. Renewal fees.**

The fee for Class C renewal is increased from \$50 to \$100.

The fee for Class B renewal is increased from \$70 to \$135.

The fee for Class A renewal is increased from \$90 to \$150.

**18 VAC 50-22-170. Reinstatement fees.**

The fee for Class C reinstatement is increased from \$140 to \$225.

The fee for Class B reinstatement is increased from \$170 to \$285.

The fee for Class A reinstatement is increased from \$190 to \$325.

**18 VAC 50-22-250. Fees**

The fee to change a designated employee is increased from \$25 to \$30.

The fee to change a qualified individual is increased from \$25 to \$30.

The fee to add a classification or specialty designation is increased from \$25 to \$30.

**18 VAC 50-30-90. Fees for licensure, certification and examination.**

**Paragraph C.** Tradesman license - original fee - by examination.

The fee for an initial tradesman license is increased from \$40 to \$75.

**Paragraph D.** Tradesman license - original fee - without an examination, through successful completion of an appropriate apprenticeship program offered through the Virginia Voluntary Apprenticeship Act.

The fee for an initial tradesman license is increased from \$40 to \$75.

**Paragraph E.** Commencing July 1, 1995, the Department of Professional and Occupational Regulation will institute a program of issuing tradesmen's cards.

The fee for card exchange application and processing is increased from \$10 to \$20.

**Paragraph F.** Commencing July 1, 1998, the Department of Professional and Occupational Regulation will institute a voluntary program of issuing backflow prevention device worker certification cards.

The fee for the card exchange application and processing is increased from \$10 to \$20. The term of certification will be for a period of 24 months.

**Paragraph G.** Backflow prevention device worker certification through the "grandfather" clause of § 54.1-1131.B.2. of the **Code of Virginia** expired on July 1, 1999.

The prior fee of \$40 is no longer applicable and has been deleted.

**Paragraph H.** Commencing on the effective date of the Board's final regulations, the Department of Professional and Occupational Regulation will add the trades of liquefied petroleum gas fitter and natural gas fitter provider to the trades regulated by the Board for Contractors.

The fee for the initial licensure is increased from \$40 to \$75.

**18 VAC 50-30-110. Fees for duplicate cards.**

The fee for a duplicate card, first request, is increased from \$10 to \$30.

The fee for a duplicate card, second request, is increased from \$20 to \$30.

The fee for a duplicate card, third request, is increased from \$30 to \$45.

**18 VAC 50-30-120. Renewal.**

**Paragraph B.**

The fee for renewal of a tradesman license is increased from \$25 to \$35.

The fee for renewal of a backflow prevention device worker certification card is increased from \$25 to \$35.

**18 VAC 50-30-130. Reinstatement.**

**Paragraph B.**

The fee for reinstatement of a tradesman license (all designations) is increased from \$50 to \$75, in addition to the renewal fee.

The reinstatement fee for a backflow prevention device worker certification card is increased from \$50 to \$75, in addition to the renewal fee.

**18 VAC 50-30-150. Changes, additions, or deletions to trade designations.**

The fee for each change of or additional trade designation is increased from \$25 to \$30.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.*

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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 level of income.

### Statement of Changes Made Since the Proposed Stage

*Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.*

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There have been no changes made to these regulations since the proposed stage.

### Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

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Public comment was received from nine individuals during the public comment period, including a public hearing held on August 21, 2002. None of the individuals was opposed to a fee increase. The Board for Contractors thanked these individuals for their comments.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

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**The changes being proposed to 18 VAC 50-22-10 et seq. are as follows:**

#### **18 VAC 50-22-100. Fees.**

The fee for Class C initial licensure is increased from \$65 to \$125.

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**18 VAC 50-30-150. Changes, additions, or deletions to trade designations.**

The fee for each change of or additional trade designation is increased from \$25 to \$30.

### Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.