



Economic Impact Analysis Virginia Department of Planning and Budget

8 VAC 20-350 – Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits

Department of Education

September 5, 2003

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The Board of Education (board) proposes to amend these regulations to remove provisions governing proprietary schools for students with disabilities, and to make several other significant changes. The board has also proposed new separate regulations specific to proprietary schools for students with disabilities. Proposed amendments to these regulations include, but are not limited to: 1) requiring certification applicants to submit notarized statements declaring that CEO and other administrative officers have no felony convictions, etc., 2) increasing certification fees, 3) financial penalties for noncompliance with regulation requirements, 4) requiring a monitoring visits scheduled at least once every three years, rather than every two years, 5) setting conditions that must be met before students may request the department to resolve a dispute with a school, 6) increasing the required payments into the Student Tuition Guaranty Fund, and 7) [old 500.C, new 500.E] a new methodology in determining the dollar amount of guarantee instrument required for schools.

Estimated Economic Impact

Criminal Record Notarization

The board proposes to require that applications for proprietary school certificates to operate include notarized statements declaring that the school's CEO and other administrative officers:

- a. Have no record of felony convictions related to the operation of a school;
- b. Have no record of convictions involving crimes of moral turpitude;
- c. Have no record, within the last 10 years, that involves fraud or deceptive trade practices;
- d. Have not owned within the last 10 years, a school with habitual violations of legal requirements or a school that closed with violations including, but not limited to, unpaid refunds in Virginia or another state; or
- e. Have not knowingly falsified or withheld information regarding the requirements of approval for obtaining a Certificate to Operate or approval of similar nature in another state.

To the extent that someone with a felony conviction, criminal record, or a history of violations is more likely to defraud the public or commit some other crime related to the operation of a school, the proposed effective prohibitions on permitting such individuals from running or working at proprietary schools may reduce the likelihood and frequency of fraud and other crimes occurring at proprietary schools. On the other hand, a highly skilled school administrator who has paid the penalty for past wrongdoing, and who wishes to run a high-quality proprietary school that serves the public well, will not be permitted to do so under the proposed effective prohibitions. The public would lose out on potential valuable services, and the administrator would lose the opportunity to earn a living in his area of expertise.

Fees

The board proposes to double certification fees. The original certificate to operate fee is doubled from \$300 to \$600. The cost of renewing the certificate to operate increases from \$150 plus 0.1% of gross tuition receipts, to \$300 plus 0.2% of gross tuition receipts. For example, a school with \$1,000,000 of gross receipts per year, the renewal fee increases from \$1,150¹ to \$2,300.² The board needs to raise fees to pay for administrative expenses on an ongoing basis. The higher fees will be paid by partly by the owners of the schools and partly by the students through higher fees. The actual incidence will depend on the general competitiveness of the particular market in which the given school operates.

Financial Penalties

The board proposes to establish several penalties for lack of compliance with the regulations. The following table lists proposed penalties.

<u>Penalty Type</u>	<u>Proposed Penalty Amount</u>
Failure to meet the 60 day deadline for completion of original application	\$200
Request for 30-day extension-incomplete original application	\$200
Failure to meet certificate renewal deadline	\$200
Request for certificate 30-day renewal extension	\$200
Failure to maintain administrative and instructional staff whose qualifications meet requirements	\$500 per occurrence
Failure to maintain student records	\$50 per record \$1,000 maximum
Failure to provide refunds	\$100 per violation \$1,000 maximum
Improper advertising	\$200
Failure to comply with the department's orders	\$500
Failure to maintain adequate guaranty	\$500

¹ Calculation: $\$150 + 0.001 \times \$1,000,000 = \$1,150$

² Calculation: $\$300 + 0.002 \times \$1,000,000 = \$2,300$

Currently, the board may deny, revoke, or suspend or refuse to renew certification for failure to comply with the regulations. The proposed financial penalties enable the board to discourage specified actions or inactions with a tool that allows schools to continue to operate. On the other hand, not all of the penalties may create a net benefit by discouraging specific behavior. For example, the board proposes to assess a \$200 penalty for improper advertising. The regulations specify that schools which “offer specialized courses shall not advertise such courses in a manner that would impugn the value and scope of courses offered by other schools...” Thus, schools are not permitted to advertise accurate differences between their courses and the courses of competitors. Advertising accurate differences between schools can be beneficial for individuals who wish to make informed decisions. Assessing a \$200 penalty for advertising accurate and useful information may generally be expected to create a net cost for the public.

Monitoring Visits

Under the current regulations, the department must conduct scheduled monitoring visits of proprietary schools at least once every two years. The board proposes to amend the regulations so that the department must only conduct monitoring visits at least once every three years. Since the department may make unscheduled inspections, the proposed change will not necessarily result in decreased monitoring of schools’ compliance with the Code of Virginia and regulations. Unscheduled visits may be more effective in detecting noncompliance since schools may seek to comply in preparation for known inspection dates, while not meeting standards on other occasions. The department has indicated that it does not intend to reduce the total number monitoring visits.

Dispute Resolution

The regulations stipulate that “each school shall develop, publish and make available to students a procedure for resolving complaints which shall include information on reporting such complaints to the department. The department may utilize outside services to investigate and resolve complaints.” The board proposes to require that for a student’s complaint to be considered for review, the student must “clearly demonstrate that he has exhausted all grievance

procedures at the school level,” and the complaint must be submitted to the department within one year of the grievance-causing action.

Under the proposed language, schools will have the incentive to be slow in proceeding with and conducting grievance procedures. Since complainants must both exhaust all grievance procedures at the school level prior to submitting their complaints to the department, and submit their complaints to the department within one year of the occurrence of the alleged grievance-causing action, schools will be able to prevent complaints from being reviewed by the department by ensuring that their grievance procedures last until at least one year has passed since the incident in question has occurred.

Student Tuition Guaranty Fund

The board manages a Student Tuition Guaranty Fund for reimbursing tuition and fees collected from students at schools that have ceased operations. Schools must pay into the fund based on their gross tuition collected. The table below shows the required fund payments under the current regulations and under the proposed regulations:

	<u>Current Regulations</u>	<u>Current Regulations</u>	<u>Proposed Regulations</u>	<u>Proposed Regulations</u>
<u>Gross Tuition Collected</u>	<u>Required Payment into the Guaranty Fund</u>	<u>Percentage of Gross Tuition Paid into Fund</u>	<u>Required Payment into the Guaranty Fund</u>	<u>Percentage of Gross Tuition Paid into Fund</u>
\$0 to \$25,000	\$200	More than 100% to 0.8%	\$500	More than 100% to 2.0%
\$25,000 to \$50,000	\$250	1.00% to 0.50%	\$550	2.20% to 1.10%
\$50,000 to \$100,000	\$300	0.60% to 0.30%	\$600	1.20% to 0.60%
\$100,000 to \$200,000	\$400	0.40% to 0.20%	\$700	0.70% to 0.35%
\$200,000 to \$300,000	\$500	0.25% to 0.17%	\$800	0.40% to 0.27%
\$300,000 to \$400,000	\$600	0.20% to 0.15%	\$900	0.30% to 0.23%
\$400,000 to \$500,000	\$700	0.18% to 0.14%	\$1,000	0.25% to 0.20%
\$500,000 to \$750,000	\$1,000	0.20% to 0.13%	\$2,000	0.40% to 0.27%
\$750,000 to \$1,000,000	\$1,250	0.17% to 0.13%	\$2,500	0.33% to 0.25%
\$1,000,000 to \$1,500,000	\$1,500	0.15% to 0.10%	\$3,000	0.30% to 0.20%
\$1,500,000 to \$2,000,000	\$2,000	0.13% to 0.10%	\$4,000	0.27% to 0.20%
Over \$2,000,000	\$2,000 plus 0.1% for amounts over \$2,000,000	0.1%	\$4,000 plus 0.15% for amounts over \$2,000,000	0.20% to 0.15%

In addition, schools that have been operating for less than one assessment year must pay \$150 into the Fund under the current regulations, and \$300 under the proposed regulations. Under both the current and proposed regulations, smaller schools, i.e., schools with lower gross tuition, pay a significantly higher percentage of their tuition into the Guaranty Fund than do schools with

greater tuition amounts. If the probability that a school will cease operations is unrelated to its size, than owners of small schools are subsidizing the effective insurance paid by larger schools. If smaller schools present a higher risk of loss per dollar of tuition collected, then requiring smaller schools to pay a higher percentage into the Guaranty Fund may be consistent with the risk to the Commonwealth. However, no evidence has been presented by the department to indicate that the per-dollar risk is higher for schools with smaller gross tuition amounts. Without such a risk analysis having been carried out by the department, it may be considered unlikely that the fees match the actual risk to the Commonwealth. What is clear is that the fee structure places a significantly higher relative burden on schools with smaller gross tuition collections than on schools with larger collections.

Required Guaranty Instrument

If the department determines that deficiencies exist in the operating circumstances of a certified school, it may require the school to post a guaranty instrument. Under the current regulations, the minimum value of the guaranty is dependent on the enrollment; larger enrollments require higher minimum values for the guaranty instrument. Effectively, the minimum guaranty is usually near \$100 per student.

The proposed regulations base the required minimum instrument value on the tuition liability and the frequency of tuition charges. Schools that collect tuition in multiple installments must have a guaranty instrument sufficient to cover 50% of the tuition liability. Schools that collect tuition in one lump sum must have a guaranty instrument sufficient to cover 100% of the tuition liability. Given this proposed formula, schools will have the incentive to charge most, but not all, of the tuition upfront. For example, similar to a school that requires all tuition paid upfront, a school that charges 95% of the tuition before the school year starts will have the benefit of receiving most of the tuition at the beginning of the year, but with only the cost of a guaranty instrument sufficient to cover 50% of the tuition liability rather than 100%.

Businesses and Entities Affected

The proposed regulations will affect the 140³ proprietary schools licensed in Virginia, the staff and clients of those schools, and individuals contemplating working at or enrolling at proprietary schools.

Localities Particularly Affected

The proposed regulations affect all Virginia localities.

Projected Impact on Employment

The proposed requirement that applications for proprietary school certificates to operate include notarized statements declaring that the school's CEO and other administrative officers do not have a felony conviction, criminal record, or a history of violations, effectively prohibits individuals with such histories from working for proprietary schools.

Effects on the Use and Value of Private Property

The doubling of the certification fees and the increases in the required payments into the Student Tuition Guaranty Fund will reduce the value of the schools by a commensurate amount. The revised guaranty instrument formula will encourage affected schools to charge most, but not all, of their tuition upfront.

³ Source: Department of Education