

Auctioneers Board  
Department of Professional and Occupational Regulation  
Response to Economic Impact Analysis  
November 8, 2010

The Board respectfully disagrees with #2 in the “Summary of the Proposed Amendments to Regulation.” The summary indicates that the Board is amending its regulations to allow it to delay services for, or withhold services from, licensees who fail to pay monies previously owed to the Board. However, the language proposed by the Board merely clarifies the Board’s existing authority; it does not give the Board any new authority.

§ 54.1-201 of the *Code of Virginia* authorizes the Board:

4. To levy and collect fees for 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 of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation.
5. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

The Board is authorized by statute to levy and collect fees sufficient to cover expenses for the administration of the licensing program. Also, the statute authorizes the Board to promulgate regulations necessary to effectively administer its regulatory system. The authority currently in 18VAC25-21-180 and 18VAC25-21-185 of the Board’s regulations already allows it to refuse to grant the renewal or reinstatement of a license of anyone who is determined to violate the Board’s regulations. The Board accomplishes this through consent orders and final orders. These orders often contain language which stipulates that all fines be paid prior to renewal or reinstatement of a license.

The language contained in the proposed 18VAC25-21-95 only clarifies the Board’s existing authority which is concurrent with its present standard operating procedures. These are the same procedures utilized by all of the department’s regulatory boards. For these reasons, the Board respectfully disagrees with #2 in the “Summary of the Proposed Amendments to Regulation” and asserts that this proposed change is not significant and will not incur any costs that will outweigh its benefits.

Additionally, the EIA from DPB also concluded that proposed language is so broadly conceived that regulants may incur costs which could still be challenged. The conclusion based on this assertion is that regulants may be coerced into paying fines and fees which they may not have to pay at all after the action is challenged successfully. However, the board carefully conducts disciplinary hearings in accordance with § 2.2-4020 of the *Code of Virginia*. Based on the results of the hearing and subsequent board action, the board has the authority to sanction a regulant and impose fines which may include the cost of the hearing. The authority to assess costs is granted to the Board under § 54.1-203 of the *Code of Virginia*.

§ 54.1-203. Recovery of cost after grant of formal fact-finding.

After a formal fact-finding pursuant to § 2.2-4020 wherein a sanction is imposed to fine, or to suspend, revoke or deny renewal of any license, certificate or registration, the regulatory board or the Department may assess the holder thereof the cost of conducting such fact-finding when the board or Department has final authority to grant such license, certificate or registration, unless the board or Department determines that the offense was inadvertent or done in a good faith belief that such act did not violate a statute or regulation. The cost shall be limited to (i) the reasonable hourly rate for the hearing officer and (ii) the actual cost of recording the proceedings.

Board action is final unless the respondent appeals with the appellate courts. However, the Board must be able to continue to administer its regulatory program by collecting monies owed to it. In the event that a regulants is successful in appellate court, the Board will comply with any terms of the court's order.

Finally, the EIA suggests that the proposed language of "delaying or withholding services" indicates that the Board would refuse to accept complaints from a person who owes the Board money. However, the only persons with the propensity to be in a position of owing money to the Board are current regulants of the Board, previous regulants who have been sanctioned by the Board, or applicants. The majority of complaints received by the Department come from members of the public. Also, the Department, not the Board, operates a division dedicated strictly to the investigation of complaints against regulants. The decision to accept a complaint and, should an investigation yield sufficient enough evidence, pursue the complaint toward a hearing is controlled by the Compliance and Investigations Division of the Department, not the Board.