



Proposed Regulation Agency Background Document

Agency name	DPOR/Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects (APELSCIDLA Board)
Virginia Administrative Code (VAC) citation	18 VAC 10 -20
Regulation title	Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects Regulations
Action title	To implement a mandatory continuing education program as required by HB1054 (2006)
Date this document prepared	November 6, 2007

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 underlying legislation (§ 54.1-404.2 of the Code of Virginia, as established by HB1054 from the 2006 legislative session - see Chapter 683 of the 2006 Acts of Assembly) requires that the Board develop a continuing education program to require the equivalent of 16 hours per biennium of Board approved continuing education activities for the renewal or reinstatement of architect, professional engineer, and land surveyor licenses. The proposed changes are intended to fulfill the requirements of HB1054.

Other changes which may be necessary may also be considered.

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.

Section 54.1-404.2 of the Code of Virginia, as established by HB1054 from the 2006 legislative session (see Chapter 683 of the 2006 Acts of Assembly), mandates that the Board promulgate regulations to create a continuing education program for the renewal and reinstatement of architect, professional engineer, and land surveyor licenses.

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.

HB1054 was passed during the 2006 legislative session which mandates that the Board implement a continuing education program for the renewal and reinstatement of architect, professional engineer, and land surveyor licenses. This regulatory action is intended to fulfill the requirements as established by HB1054. Such a program should lead to better educated practitioners which should, thereby, increase the protection of the health, safety and welfare of the public.

Other changes which may be necessary may also be considered.

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 Board will develop regulations to implement the continuing education program in accordance with the provisions of § 54.1-404.2 of the Code of Virginia. Provisions relating to the continuing education requirements (and the criteria for what is acceptable continuing education activity) will be included as well relevant administrative requirements (certification of completion, retention of records, grounds for disciplinary action, etc.).

Other changes which may be necessary may also be considered.

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 public and the Commonwealth should be better served as licensed architects, professional engineers, and land surveyors will have to show compliance with the Board's continuing education requirements which should result in architects, professional engineers, and land surveyors being better educated and, therefore, less of a threat to the public due to inadequate knowledge. However, the cost of complying with the new requirements will most likely be passed on by licensed architects, professional engineers, and land surveyors to their customers.

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 applicable federal requirements.

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.

Not applicable.

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 Mark N. Courtney, DPOR, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, tel. (804) 367-8514, fax (804) 527-4294, and APELSCIDLA@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.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	See below.
Projected cost of the regulation on localities	See below.
Description of the individuals, businesses or other entities likely to be affected by the regulation	See below.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	See below.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	See below.

Fiscal Impact of Proposed Regulation

Summary:

This proposed regulatory change establishes a continuing education program which requires 16 hours per biennium of Board approved continuing education activities for the renewal or reinstatement of Professional Engineer, Architect, and Land Surveyor licenses, fulfilling the requirements of HB 1054 of the 2006 legislative session.

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
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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	\$32,000	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	\$32,000	0	0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: Printing (\$5,000) and mailing (\$27,000) costs for two sets of notifications to the affected regulants.

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 Professional Engineers, Architects, and Land Surveyors who wish to renew or reinstate their licenses.

Estimated Number of Regulants: This regulatory change will impact 32,672 regulants, including 24,561 Professional Engineers, 6,673 Architects, and 1,438 Land Surveyors.

Projected Cost to Regulants: No change in licensing fees is anticipated as a result of this regulatory change. Professional Engineer, Architect, and Land Surveyor regulants will have to incur the costs of 16 hours of continuing education every two years. The typical cost of continuing education is from \$30 to \$90 per course hour or approximately \$480 to \$1,440 every two years.

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.

While alternatives to the proposal are not applicable as this is a statutorily mandated requirement, the Board will consider any and all comments received during the comment periods as to any proposed alternatives.

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 regulations were developed with consideration that the affected industries consist of small businesses. The Board considers that the regulatory methods implemented were promulgated to accomplish the applicable law while minimizing the adverse impact on small businesses and are consistent with the regulation of small businesses of other professions.

The amendment does not apply to businesses and contains no compliance or reporting requirements for businesses and has no impact on performance standards for small businesses.

Public comment

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

Commenter	Comment	Agency response
Charles Reid McMurry, LS	Questions the need for mandatory continuing education and seeks clarification of what is required and acceptable to fulfill the Board's requirements.	<p>HB1054 was passed by the General Assembly during the 2006 legislative session which mandates that the Board implement a continuing education program for the renewal and reinstatement of architect, professional engineer, and land surveyor licenses. This regulatory action is intended to fulfill the requirements as established by HB1054.</p> <p>The Board intends to develop criteria for what is acceptable continuing education activity to better protect the health, safety and welfare of the public balanced by the ability of practitioners to find continuing education activity relevant to their area of practice. Further, it is also the Board's intent to develop regulations which will permit acceptable continuing education from a variety of sources, locations, and delivery methods thereby providing regulants with a great deal of flexibility, while being able to minimize the associated costs, in satisfying this requirement.</p>
Howard L. Price	With regard to the cost, 16 hours of continuing education every two years is only one day a year. That is a minimum effort to stay abreast of changes and advances in engineering. Even a small practice should be able to make such an investment in order to stay competitive.	Concur that the statutory requirement of 16 hours every biennium is not an onerous requirement. As to the concern expressed about the quality of training providers, while the Board intends to develop criteria of what is acceptable continuing education activity, ultimately it is up to the marketplace to

	<p>Mr. Price's biggest concern about the proposed regulation is who offers the training, is the content relevant and timely and who certifies the value of the training to the practicing engineer. Some groups see a business opportunity to offer "continuing education" that is of limited value. He does not believe that faculty of engineering colleges are <u>necessarily</u> the best to offer continuing education.</p>	<p>determine which providers are a quality provider and deserving of the dollars of the regulants seeking continuing education credits.</p>
<p>Dave Smith, PE</p>	<p>Given the large number of military, Federal, and Federal contractor engineers working and registered in Virginia, the Board should carefully consider all of its options and select a system that will minimize the out-of-pocket costs to registrants and afford them the maximum flexibility in time and location.</p>	<p>The Board intends to develop criteria for what is acceptable continuing education activity to better protect the health, safety and welfare of the public balanced by the ability of practitioners to find continuing education activity relevant to their area of practice. Further, it is also the Board's intent to develop regulations which will permit acceptable continuing education from a variety of sources, locations, and delivery methods thereby providing regulants with a great deal of flexibility, while being able to minimize the associated costs, in satisfying this requirement.</p>
<p>John Mrowka</p>	<p>Mr. Mrowka is concerned with the lack of opportunities for continuing education that are available in his area. He is also concerned with the way "continuing education" could be interpreted. He believes that the legal mandate for this policy is far too vague to figure out what will be considered to be continuing education and whether or not it will be readily accessible to all individuals seeking recertification. He does not oppose this new regulation, he in fact feel it is important for all professionals to remain current with latest developments, he just cautions the way this mandate is implemented to ensure that it is not too difficult for professionals in Virginia to satisfy the requirements. Mr. Mrowka also believes that it is important to broaden the traditional scope of "continuing education" to something beyond classical university courses.</p>	<p>The Board intends to develop criteria for what is acceptable continuing education activity to better protect the health, safety and welfare of the public balanced by the ability of practitioners to find continuing education activity relevant to their area of practice. Further, it is also the Board's intent to develop regulations which will permit acceptable continuing education from a variety of sources, locations, and delivery methods thereby providing regulants with a great deal of flexibility, while being able to minimize the associated costs, in satisfying this requirement.</p>
<p>Paul J. L'Abbe, PE</p>	<p>If the Board were sincere in obtaining honest feedback for this mandate all board regulants would have been notified by mail. Mr. L'Abbe is not an advocate for or against without knowing the arguments that lead to this mandate. Working for a government contractor, his position does not require a professional engineer license nor does the company</p>	<p>HB1054 was passed by the General Assembly during the 2006 legislative session which mandates that the Board implement a continuing education program for the renewal and reinstatement of architect, professional engineer, and land surveyor licenses. This regulatory action is intended to fulfill the requirements as established by HB1054.</p>

	<p>encourage or reimburse the expenditures of individuals obtaining and maintaining such a license. His busy family lifestyle with very young children does not afford him time away to attend class courses. If he could manage time away for class and travel, he'd have to endure the burden of child care expenses. It does not make monetary sense for him to maintain a professional license as a result of this mandate.</p>	
<p>Jan Harris, PE</p>	<p>It is a given that the board must adopt some continuing education regulations. Ms. Harris has been meeting continuing education requirements in several states and has found only one of these states to have requirements that are difficult to meet: New York. Seminars often do not qualify for continuing education credit in New York as the providers are not registered with that jurisdiction. She understands other states have similar requirements but New York is the one she knows. North Carolina and West Virginia's requirements are relatively simple and leave the screening of providers and course content primarily to the regulant.</p>	<p>The Board intends to develop criteria for what is acceptable continuing education activity to better protect the health, safety and welfare of the public balanced by the ability of practitioners to find continuing education activity relevant to their area of practice. Further, it is also the Board's intent to develop regulations which will permit acceptable continuing education from a variety of sources, locations, and delivery methods thereby providing regulants with a great deal of flexibility, while being able to minimize the associated costs, in satisfying this requirement.</p>
<p>Jan Harris, PE</p>	<p>Ms. Harris estimates the direct annual cost of a business providing continuing education to Virginia professional engineers under the West Virginia and North Carolina rules at \$1,300 per engineer per year. Her estimate for a Virginia professional engineer complying with the New York rules is \$2,500 per engineer per year. Ms. Harris urges the board to adopt regulations along the lines of North Carolina or West Virginia. New York emphasizes that continuing education is more for the purposes of improving technical skills and protecting the public than the purpose of enhancing profits. North Carolina allows regulants not resident in North Carolina to meet their home state continuing education requirements, if any exist. If the home state has no continuing education requirements, the regulant must meet the North Carolina requirements. The board should adopt similar language.</p>	<p>The Board intends to develop criteria for what is acceptable continuing education activity to better protect the health, safety and welfare of the public balanced by the ability of practitioners to find continuing education activity relevant to their area of practice. Further, it is also the Board's intent to develop regulations which will permit acceptable continuing education from a variety of sources, locations, and delivery methods thereby providing regulants with a great deal of flexibility, while being able to minimize the associated costs, in satisfying this requirement. The underlying statute requires the Board to develop criteria for acceptable activity and does not allow the Board to automatically accept continuing education which is accepted by other jurisdictions.</p>
<p>Jan Harris, PE</p>	<p>With respect to Virginia's exemptions to the requirements, Ms. Harris urges the board to allow local, state and federal governments to lead the way by not exempting regulants employed by these</p>	<p>Any exemptions granted by the Board must comply with the provisions of subsection B of § 54.1-404.2 of the Code of Virginia which states: "The Board may grant exemptions or waive or reduce the number of continuing</p>

	<p>agencies. Any regulation that furthers a perception that governments are above the law is flawed. Exemptions or time extensions are appropriate for regulants who are service members deployed overseas and perhaps for those stationed outside the Commonwealth. These exemptions or extensions may even be obligatory under the "Soldiers and Sailors Relief Act". Exemptions for others, including government employees, who elect to spend extended periods outside Virginia or the United States, are not appropriate.</p>	<p>education hours required in cases of certified illness or undue hardship." Each request will be evaluated on the facts specific to that situation and the Board will render a decision in accordance with applicable laws and regulations.</p>
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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.

The contemplated changes 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
670			Add language to the renewal section specifying, and relating to, the continuing education requirement.
680			Add language to the reinstatement section specifying, and relating to, the continuing education requirement.
	683		Add the criteria for acceptable continuing education activity.
	687		Add the criteria for exemptions and waivers

			as referenced in § 54.1-404.2 of the Code of Virginia.
790			Clarify existing language and add language regarding disciplinary action for failing to comply with the continuing education requirements.