



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 50-30 Individual License and Certification Regulations
Department of Professional and Occupational Regulation
Town Hall Action/Stage: 6073 / 10046
October 6, 2023

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

Pursuant to Executive Directive Number One (2022),² the Board for Contractors (Board) proposes to clarify the regulatory language and repeal provisions that are no longer necessary.

Background

According to the Department of Professional and Occupational Regulation (DPOR), the initial impetus for this action was Executive Directive Number One (2022), which directs executive branch entities under the authority of the Governor “...to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, ...”

In order to comply with the directive, the Board proposes to amend this regulation to update definitions; ensure that the language reflects current agency procedures and practices; ensure the regulation compliments current Virginia law and is clearly written and

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.pdf>

understandable; and remove requirements in the regulation that are not necessary to protect the public welfare.

Estimated Benefits and Costs

One of the proposed changes would amend two provisions relating to a plea of nolo contendere for felony or misdemeanor charges. One current provision is pre-licensure, and requires an applicant to disclose “a conviction, in any jurisdiction, of any felony or non-marijuana misdemeanor”; the other provision is post-licensure, and includes in the list of prohibited acts any situation where a regulant has been convicted of “any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, non-marijuana drug distribution, physical injury, or relating to the practice of the profession.” In both provisions, the current regulation states that a plea of nolo contendere is considered to be a conviction for the purposes of a disciplinary action by the Board. However, the Board states that treating nolo contendere pleas as prima facie evidence of guilt appears to be contrary to the provisions of § 54.1-204 of the Code of Virginia. Under the regulation, any conviction of a regulant must be considered in accordance with § 54.1-204 of the Code of Virginia. Although this provision has never been enforced by the Board, its removal would be beneficial in that it would remove a potential conflict with statute and eliminate potential litigation costs if these provisions were enforced in the future.

All of the remaining changes to the regulation appear to be editorial in nature by clarifying or amending the language to reflect current practices. Thus, no economic impact is expected other than improving the understandability of the regulation.

Businesses and Other Entities Affected

Currently there are 31,844 licensed individuals (28,762 tradesman, 1,656 backflow prevention device workers, 968 elevator mechanics, 432 water well systems provers, and 26 accessibility mechanics) who are subject to this regulation. None of the licensed individuals appear to be disproportionately affected.

The Code of Virginia requires the DPB to assess whether an adverse impact may result from the proposed regulation.³ An adverse impact is indicated if there is any increase in net cost

³ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a

or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the repeal of the provision regarding the nolo contendere pleas has never been enforced and would not be enforced because the Board believes it contradicts the statute. Also, the remaining changes are editorial in nature. For these reasons, no adverse impact on any entity is indicated.

Small Businesses⁴ Affected:⁵

The proposed amendments do not appear to adversely affect small businesses.

Localities⁶ Affected⁷

The proposed amendments do not disproportionately or particularly affect localities nor affect costs for local governments.

Projected Impact on Employment

The proposed amendments do not appear to affect employment.

Effects on the Use and Value of Private Property

No effect on the use and value of private property or real estate development costs is expected.

locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁴ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

⁵ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁶ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.