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Proposed Regulation Agency Background Document

Agency name	DPOR - Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC10-20
VAC Chapter title(s)	Regulations Governing Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA Board)
Action title	Fee Adjustment
Date this document prepared	12/29/2022 updated 2/17/2023, 2/22/23, 2/27/23

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (the Board) seeks to amend its current regulations (“regulations”) to adjust its licensing fee structure. 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 next biennium, fees will not provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (“DPOR”) is funded entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees and receives no general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fee revenue collected on behalf of the various Boards funds the

Department’s authorized special revenue appropriation.

The Board has no other source of revenue from which to fund its operations.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

“Department” and “DPOR” means the Department of Professional and Occupational Regulation.

“Board” means the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects

“APELSCIDLA” means Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

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.

§ 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 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.

§ 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 . . .”

§ 54.1-304.3 describes the power and duty of the DPOR 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 . . .”

§ 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;

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

- 1) Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects
- 2) § 54.1-113 (Callahan Act) requires regulatory Boards to periodically review and adjust fees
 § 54.1-201.4 provides the authority to regulatory Boards to levy and collect fees.
 § 54.1-304.3 describes the authority of DPOR to collect and account for fees
 § 54.1-308 requires costs to be paid by regulatory Boards

All of these provisions of the Code of Virginia are mandatory.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The Board must establish fees adequate to support the costs of the 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.

DPOR is funded entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees and receives no general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fee revenue collected on behalf of the various Boards funds the Department’s authorized special revenue appropriation.

The Board has no other source of revenue from which to fund its operations.

With the effective date for new fees anticipated to be in FY2023, it will have been eighteen years since fees for the Board were last increased. The Department generally tries to structure fees so that they will cover the Board’s expenses for a period of 4-8 years, with the assumption that revenues are adequate to cover operating expenses but are not excessive. It is generally anticipated that each Board would need to reassess its fee structure and raise fees in response to ongoing cost increases about every 5-6 years. One-time expenses or unusual cost increases may shorten that time period.

The Department is always concerned about efficiency of operations as a means of maintaining or reducing costs, and has implemented budget review, approval, and monitoring processes, and performance measurement to monitor targets and goals.

While cost increases are not the sole reason for the fee adjustments, some cost categories have increased significantly since the Board fees increased in 2004. In the eighteen fiscal years since the last fee increase, Department Information Technology costs have increased by 193% and agency staff expenses have increased 67%.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The Board reviewed the fees listed in 18VAC10-20-90, 18VAC10-170, 18VAC10-20-280, 18VAC10-20-400, 18VAC10-20-470, 18VAC10-20-630, 18VAC10-20-670, 18VAC10-20-680, and based on projected revenues and expenses, developed a fee schedule that meets the requirements of, the applicable statutes while being the least burdensome to the licensee population.

The following is the expected range of the proposed fee adjustments to be made in this regulatory action.

Range of Fees:

Fee Type		Current Fee	New Fee
<u>Individuals</u>			
New Applicant by exam/comity	Architect	\$75	\$50
New Applicant by exam/comity	Engineer	\$60	\$50
New Applicant by exam/comity	Land Surveyor	\$90	\$50
New Applicant by exam/comity	Land Surveyor B	\$90	\$50
New Applicant by exam/comity	Landscape Architect	\$125	\$50
New Applicant by exam/comity	Photogrammetrist	\$90	\$50
New Applicant by exam/comity	Interior Designer	\$45	\$50
New Applicant by exam/comity	Land Surveyor in Training	\$60	\$30
<u>Organizations</u>			
New Applicant	Business Entity	\$90	\$50
New Applicant	Business Entity Branch	\$45	\$40
<u>Individuals</u>			
Renewal	Architect	\$55	\$95
Renewal	Engineer	\$80	\$95
Renewal	Land Surveyor	\$90	\$95
Renewal	Land Surveyor B	\$90	\$95
Renewal	Landscape Architect	\$110	\$95
Renewal	Photogrammetrist	\$90	\$95
Renewal	Interior Designer	\$45	\$95

<u>Organizations</u>			
Renewal	Business Entity	\$45	\$105
Renewal	Business Entity Branch	\$35	\$75
<u>Individuals</u>			
Late Renewal	Architect	\$25	\$35
Late Renewal	Engineer	\$25	\$35
Late Renewal	Land Surveyor	\$25	\$35
Late Renewal	Land Surveyor B	\$25	\$35
Late Renewal	Landscape Architect	\$25	\$35
Late Renewal	Photogrammetrist	\$25	\$35
Late Renewal	Interior Designer	\$25	\$35
<u>Organizations</u>			
Late Renewal	Business Entity	\$25	\$35
Late Renewal	Business Entity Branch	\$25	\$35

Issues

Identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The *Code of Virginia* establishes the Board as the state agency that oversees licensure of architects, professional engineers, land surveyors, certified interior designers, landscape architects, and business entities providing services in Virginia. The Board’s primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the regulations. Further, the *Code of Virginia* requires the Department to comply with the Callahan Act. The proposed fee adjustments will ensure the Board has sufficient revenues to fund its operating expenses.

The advantages of this change to the public is that the Board will continue to be financially solvent. There are no disadvantages to the public or the Commonwealth in adjusting the Board’s fees as proposed here.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

Requirements are not more restrictive than Federal.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies impacted by this change.

Localities Particularly Affected

There are no localities particularly impacted by this change.

Other Entities Particularly Affected

There are no other entities impacted by this change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

The regulations for the Board are being amended to adjust application, renewal, reinstatement, and miscellaneous fees. This regulatory action will increase the revenue for the Board sufficiently to meet the Board's projected expenditures. There is no direct economic or fiscal impact to other state agencies or businesses.

All costs incurred in support of board activities and regulatory operations are paid by the Department of Professional and Occupational Regulation (DPOR) and funded through fees paid by applicants and regulants. All boards within DPOR must operate within the Code provisions of the Callahan Act (54.1113), 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. DPOR allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and</p>	<p>Revenue from licensing fees is expected increase to sufficiently meet the needs of the Board and cover the expenses. Biennial revenue increase of approximately \$1.18 million is expected. No increase in costs or other effects to expenditures are expected.</p>
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c) whether any costs or revenue loss can be absorbed within existing resources.	
<i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no savings and no changes to costs, fees, or revenues of other state agencies resulting from this regulatory change unless other state agencies pay license fees for employees of the agency. The cost would be the amount of the fee paid for those individuals.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The Boards has no other source of revenue/ funding and therefore requires sufficient fee revenue to meet the expenses.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	There are no savings and no changes to costs, fees, or revenues of localities resulting from this regulatory change unless other state agencies pay license fees for employees of the agency. The costs would be the amount of the fee paid for those individuals.
Benefits the regulatory change is designed to produce.	There are no benefits to localities resulting from this change.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	All architects, professional engineers, land surveyors, certified interior designers, landscape architects, and business entities are affected by the fee change. Fees paid to apply, renew, reinstate, or maintain the license are changing.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	As of December 1, 2022 there were: Architects 7,674 Professional Engineers 30,533 Land Surveyors 1,232 Land Surveyors B 63 Land Surveyors Photogrammetrists 101 Certified Interior Designers 470 Landscape Architects 951 Businesses 4,858 Most business entities are considered small businesses and are affected by the change.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;	The fees are changing from: \$75 to \$50 for a new architect application; \$60 to \$50 for a new engineer application; \$60 to \$30 for a new land surveyor in training application;

<p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>\$90 to \$50 for a new land surveyor (LS), land surveyor B (LS-B), and land surveyor photogrammetrist application; \$125 to \$50 for a new landscape architect application; \$45 to \$50 for a new interior designer application; \$90 to \$50 for a new business entity application; \$45 to \$40 for a new business entity branch application; \$55 to \$95 for an architect license renewal; \$80 to \$95 for an engineer license renewal; \$90 to \$95 for an LS or LS-B or LS Photogrammetrist license renewal; \$110 to \$95 for a landscape architect license renewal; \$45 to \$95 for an interior designer license renewal; \$45 to \$105 for a business entity license renewal; \$35 to \$75 for a business entity branch license renewal</p> <p>The late renewal fee is changing from \$25 to \$35;</p> <p>No other costs are expected for individuals or businesses.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no benefits to the licensed individuals affected by the regulation change. The regulatory changes do allow the Board to continue licensing the individuals and businesses and continue protecting the health, safety and welfare of citizens.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

- **Reduce services.** Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative. In addition, reductions in services would result in delays in issuing licenses, creating barriers to applicants' and licensees' ability to work, and would decrease the Department's effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety, and welfare.
- **Obtain a Treasury loan to fund operations.** The Department could request a loan from the general fund to cover the Board's deficit and supplement its ongoing operations. However, this would be a short-term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for loan repayment.
- **Supplement Board activities with general funds.** The Department currently receives no general fund revenue, and this would require a change in the Code of Virginia and the

Appropriation Act. The Department's Boards are intended to be self-funding pursuant to §§ 54.1-113, 54.1-201, 54.1-304.3, and 54.1-308 of the Code of Virginia. Use of general funds to support Board operations does not appear to be an appropriate use of taxpayer dollars.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

There are no alternatives to complying with the Callahan Act.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

1) There is a continued need for regulation of the APELSCIDLA professions. Due to the personal and financial nature of these professions, at least minimal competency of those engaged in the profession is necessary to protect the health, safety, and welfare of the public. Since the vast majority of regulants either are or work for small businesses, this necessitates the continued regulation of small businesses. The proposed amendments balance the need for minimally competent professionals with the need for simple and clear regulations.

2) There were no comments regarding this fee action.

3) This regulatory action is a simple fee adjustment.

4) The Board has no knowledge of the proposed regulations overlapping, duplicating, or conflicting with any federal or state law or regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No comments were received.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/Board is also 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>.

Anyone wishing to submit comments may do so by one of the following methods:

- Via the **REGULATORY TOWN HALL website** at <http://townhall.virginia.gov/>

OR send to the attention of:

Bonnie Davis, Regulatory Operations Administrator

Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects

Department of Professional and Occupational Regulation

By E-MAIL to: APELSCIDLA@dpor.virginia.gov

By FAX to: (866) 465-6206

By U.S. Mail to: 9960 Mayland Drive, Suite 400, Richmond, VA 23233

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or

agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
18VAC10-20-90 Architects	N/A	Application for Initial Architect License \$75 Renewal \$55	Application for Initial Architect License \$50 Renewal \$95
18VAC10-20-170 Professional Engineers	N/A	Application for Initial Professional Engineer License \$60 Renewal \$80	Application for Initial Professional Engineer License \$50 Renewal \$95
18VAC10-20-280 Land Surveyors	N/A	Application for Surveyor in Training Designation \$60 Application for Initial Land Surveyor, Land Surveyor B, and Land Surveyor Photogrammetrist License \$90 Renewal \$90	Application for Surveyor in Training Designation \$30 Application for Initial Land Surveyor, Land Surveyor B, and Land Surveyor Photogrammetrist License \$50 Renewal \$95
18VAC10-20-400 Landscape Architects	N/A	Application for Initial Landscape Architect License \$125 Renewal \$110	Application for Initial Landscape Architect License \$50 Renewal \$95
18VAC10-20-470 Certified Interior Designers	N/A	Application for Initial Interior Designer Certification \$45 Renewal \$45	Application for Initial Interior Designer Certification \$50 Renewal \$95
18VAC10-20-630 Business Entities	N/A	Application for Business Entity Registration \$90 Application for Business Entity Branch Office Registration \$45 Renewal of Business Entity Registration \$45 Renewal of Business Entity Branch Office Registration \$35	Application for Business Entity Registration \$50 Application for Business Entity Branch Office Registration \$40 Renewal of Business Entity Registration \$105 Renewal of Business Entity Branch Office Registration \$75
18VAC10-20-670 Renewal	N/A	Late Renewal Fee \$25	Late Renewal Fee \$35