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Regulatory
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Proposed Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18 VAC 50 -22 and 18 VAC 50-30
Regulation title	Board for Contractors Regulations AND Board for Contractors – Tradesman Regulations
Action title	Amend
Document preparation date	March 4, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed regulations will increase fees for the Contractors Board to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The Board's most recent fee increases became effective in January 2003. The Board had incurred a substantial deficit at that time due to delays in approval of the new fees, as well as higher than anticipated costs for Enforcement activities, Information Systems development costs, and transfers to the General Fund of the Commonwealth. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the Board's deficit will continue to increase, and the Department will not collect adequate revenue to pay for operations.

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.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, 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.

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 or the Department of Health Professions 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 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.
- Reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles.
- Recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

§ 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is left to the discretion of the Board, but shall not be in conflict with the purposes of the statutory authority.

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 and the problems the proposal is intended to solve.

The intent of the proposed changes in regulations is to increase licensing fees for regulants of the Board for Contractors. 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 current biennium, fees will not provide adequate revenue for those costs.

The Board for Contractors provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals and firms that meet specific criteria set forth in the statutes and regulations are eligible to receive a contractor or tradesman license. The board is also tasked with ensuring that its regulants meet standards of conduct that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, could not be investigated and processed in a timely manner. This could provide an opportunity for a dishonest contractor, waiting for action to be taken by the board, to continue to work, harming additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money, but instead, is funded almost entirely from revenue collected through applications for licensure, renewals, examination fees, and other licensing fees. The Department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the Department's authorized special revenue appropriation.

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

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 existing regulations are being amended to increase the fees applicable to several licensing items.

18 VAC 50-22-100. Fees.

The fee for Class C initial licensure is increased from \$125 to \$150.

The fee for Class B initial licensure is increased from \$150 to \$175.

The fee for Class A initial licensure is increased from \$175 to \$200.

The fee for the declaration of a designated employee at the time of application is increased from \$30 to \$40.

The dishonored check fee will be removed from the regulations.

18 VAC 50-22-140. Renewal fees.

The fee for Class C renewal is increased from \$100 to \$110.

The fee for Class B renewal is increased from \$135 to \$150.

The fee for Class A renewal is increased from \$150 to \$165.

The dishonored check fee will be removed from the regulations.

18 VAC 50-22-170. Reinstatement fees.

The fee for Class C reinstatement is increased from \$225 to \$260.

The fee for Class B reinstatement is increased from \$285 to \$325.

The fee for Class A reinstatement is increased from \$325 to \$365.

The dishonored check fee will be removed from the regulations.

The reinstatement period will change from six months to one year.

18 VAC 50-22-250. Fees.

The fee to change a designated employee is increased from \$30 to \$40.

The fee to change a qualified individual is increased from \$30 to \$40.

The fee to add a classification or specialty designation is increased from \$30 to \$40.

The dishonored check fee will be removed from the regulations.

18 VAC 50-30-90. Fees for licensure, certification and examination.

Paragraph B. Dishonored check fee will be removed from the regulations.

Paragraph C. Tradesman license – original fee – by examination.

The fee for an initial tradesman license is increased from \$75 to \$90.

Paragraph D. Tradesman license – original fee – without an examination, through successful completion of an appropriate apprenticeship program offered through the Virginia Voluntary Apprenticeship Act.

The fee for an initial tradesman license is increased from \$75 to \$90.

Paragraph E. Commencing July 1, 1995, the Department of Professional and Occupational Regulation will institute a program of issuing tradesmen’s cards.

The fee for the card exchange application and processing is increased from \$20 to \$40.

Paragraph F. Commencing July 1, 1998, the Department of Professional and Occupational Regulation will institute a voluntary program of issuing backflow prevention device worker certification cards.

The fee for the card exchange application and processing is increased from \$20 to \$40. The term of certification will be for a period of 24 months.

Paragraph H. Commencing the effective date of the Board’s final regulations, the Department of Professional and Occupational Regulation will add the trades of liquefied petroleum gas fitter and natural gas fitter provider to the trades regulated by the Board for Contractors.

The fee for the initial license is increased from \$75 to \$90.

18 VAC 50-30-120. Renewal.

Paragraph B.

The fee for renewal of a tradesman license is increased from \$35 to \$40.

The fee for renewal of a backflow prevention device worker certification card is increased from \$35 to \$40.

18 VAC 50-30-130. Reinstatement.

Paragraph B.

The fee for reinstatement of a tradesman license is increased from \$75 to \$90, in addition to the renewal fee.

The reinstatement fee for a backflow prevention device worker certification card is increased from \$75 to \$90, in addition to the renewal fee.

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 primary issue for the proposed fee increase is the Department’s statutory requirement to comply with the Callahan Act.

Further issues to be addressed as regulations are developed include:

The Callahan Act required DPOR to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. The Board for Contractors closed the 2000-02 biennium with a deficit of \$930,483 and a Callahan Act percentage of -12.3%. By the close of the 2002-04 biennium the Board is expected to incur a deficit of \$1,473,083 and a Callahan Act percentage of -15.6%.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to the amount cited previously. To avoid increasing the deficit the new fees will need to become effective by the beginning of the 2004-06 biennium. Otherwise, the Board's deficit will increase to the point that the new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the Board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

The removal of the dishonored check fee from the regulations is in response to the determination by DPOR that the fee is one that should be set by the Agency as a result of the cost of processing dishonored checks. Since this fee is an administration fee not a licensing fee, it should not be in the regulations of a specific Board.

The reinstatement period of regulants issued contractor licenses is being extended from six months to one year. This change brings the Tradesman and Contractor licensing programs into agreement (Tradesman currently has a one year reinstatement period) and, in the opinion of the Board, does not have an adverse affect on the consumer. Extending the reinstatement period to one year will result in less of a burden to the regulant, by extending the time they can continue their license with the payment of a reinstatement fee versus the submission of a new application, while protecting the consumer by providing that the contractor was continually licensed during the reinstatement period (see 18 VAC 50-22-180)

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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.

Fiscal Impact:

	FY 2003	FY 2004	FY2005	FY2006
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Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Subprogram	560 44	560 44	560 44	560 44

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: There are no one-time costs associated with the proposed regulations.

Ongoing: There are no ongoing costs associated with the proposed regulations.

Cost to Localities: None anticipated.

Description of Individuals, Businesses, or Other Entities Impacted:

Estimated Number of Regulators: The Board currently has approximately 84,000 licensees.

Projected Cost to Regulators: All fees cover a two year period. Contractor application fees will increase by \$25, and renewal fees will increase \$10 - \$15. Tradesman application fees will increase \$15, and Tradesman renewal fees \$5. Overall, proposed increases in fees will remain a very small portion of the cost to work as a Contractor. No economic impact is anticipated beyond the direct impact of the increased cost to become and remain licensed. Increases in fees are not expected to have a significant effect on individuals deciding to become or remain licensed by the Board.

Financial Status and Projections

Board for Contractors

Number of Regulators 84,206

Current Fees

	<u>1998-2000</u>	<u>2000-2002</u>	<u>2002-2004</u>	<u>2004-2006</u>
Beginning Cash Balance	1,655,787	1,096,719	-930,483	-1,214,525

Revenue	5,462,043	5,557,370	8,878,522	9,233,663
Expenditures:				
Board Expenditures	1,311,160	441,933	533,878	548,417
Board Administration	0	1,068,549	1,290,864	1,326,016
Examinations	32,523	40,154	48,508	49,829
Enforcement	2,406,476	3,406,236	4,114,913	4,226,967
Legal Services	98,359	163,566	197,596	202,977
Information Systems	733,825	864,603	1,044,486	1,072,929
Facilities/ Support				
Services	763,168	758,783	916,650	941,612
Agency				
Administration	660,709	818,107	988,317	1,015,230
Transfers/Other	14,891	22,641	27,352	28,096
Total Expenditures	6,021,111	7,584,572	9,162,564	9,412,072
Cash Balance	1,096,719	-930,483	-1,214,525	-1,392,934
Callahan Percentage	<u>18.2%</u>	<u>-12.3%</u>	<u>-13.3%</u>	<u>-14.8%</u>

NOTES:

a Prior to the 2000-02 biennium, board expenditures for Contractors included both direct board costs, and administrative staff and support costs. As a result of an agency reorganization that combined other boards with the Contractors section, administrative support costs were separated from board costs so they could be allocated to each board in the section. The Contractors Board is by far the largest board, and so receives most of the section's allocated administrative costs.

For comparison, board expenditures for 1998-00 may be compared to the total of board expenditures and board administration for future biennia.

b Most legal services costs represent services provided by the Office of the Attorney General. The OAG determines DPOR's annual cost for services.

c Agency Administration and Information Systems projections include estimates for development of the new licensing and enforcement system over the next few years.

d Information Systems, Facilities/Support Services, and Agency Administration are allocated based on the number of licensees for each board. The number of Contractor licensees has increased from 73,000 in FY98 to over 84,000 currently, and the board's percentage of costs based on number of licenses has increased from 30% to almost 33%. The increased percentage accounts for about 10% of the cost increases in those categories since the 1990-00 biennium.

e Most of the agency's enforcement activities are related to Contractor complaints, investigations, and adjudication processes. The Enforcement Division has experienced substantial workload increases associated with those activities, with related cost increases.

f These projections have been updated to reflect actual FY03 financial activity, after year-end close.

**Financial Status and Projections
Board for Contractors**

Number of Regulators 84,206

Fee Increases

	<u>1998-2000</u>	<u>2000-2002</u>	<u>2002-2004</u>	<u>2004-2006</u>
Beginning Cash Balance	1,655,787	1,096,719	-930,483	-1,214,525
Revenue	5,462,043	5,557,370	8,878,522	11,757,047
Expenditures:				
Board Expenditures	1,311,160	441,933	533,878	548,417
Board Administration	0	1,068,549	1,290,864	1,326,016
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Agency Administration	660,709	818,107	988,317	1,015,230
Transfers/Other	14,891	22,641	27,352	28,096
Total Expenditures	6,021,111	7,584,572	9,162,564	9,412,072
Cash Balance	<u>1,096,719</u>	<u>-930,483</u>	<u>-1,214,525</u>	<u>1,130,450</u>
Callahan Percentage	<u>18.2%</u>	<u>-12.3%</u>	<u>-13.3%</u>	<u>12.0%</u>

Fee History

<u>Major Fee Type</u>	<u>1995</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>	<u>Proposed FY05</u>
Application	130	110	100	175	200
Contractor A	110	90	85	150	175
Contractor B	90	70	65	125	150

Renewal	Contractor C Tradesman	65	45	40	75	90
	Contractor A	120	95	90	150	165
	Contractor B	100	75	70	135	150
	Contractor C	80	55	50	100	110
	Tradesman	50	25	25	35	40

Proposed fees represent an overall average increase of about 4% annually since 1995.

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.

The Department has considered the following alternatives to increasing fees for the Board for Contractors:

- 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 citizen’s 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 repayment of the loan.
- 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 per §§ 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.
- Reduce Department expenditures: The Department has already taken action to control its expenditures. Mandated budget reductions resulted in a reduction of wage employees and has provided for a

delay in filling career service positions. The agency also restructured the procedures in place regarding the payment of examination vendors and delayed implementation of a new licensing system. Over the past five years the agency has taken a proactive stance on reducing expenses which have resulted in an average annual increase per regulant of 1.4%, far below the consumer price index which has averaged a 2.5% gain over the same period.

Public comment

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

The Board received no public comment during the NOIRA stage of these regulations.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

These fee increases 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	Current requirement	Proposed change and rationale
18 VAC 50-22-100	Class C Initial License Fee \$125 Class B Initial License Fee \$150 Class A Initial License Fee \$175 Declaration of Designated Employee \$30	Class C Initial License Fee \$150 Class B Initial License Fee \$175 Class A Initial License Fee \$200 Declaration of Designated Employee \$40
18 VAC 50-22-140	Class C Renewal \$100 Class B Renewal \$135 Class A Renewal \$150	Class C Renewal \$110 Class B Renewal \$150 Class A Renewal \$165
18 VAC 50-	Class C Reinstatement \$225	Class C Reinstatement \$260

22-170	Class B Reinstatement \$285 Class A Reinstatement \$325 Reinstatement period of 6 months	Class B Reinstatement \$325 Class A Reinstatement \$365 Reinstatement period of 1 year
18 VAC 50-22-250	Change of Designated Employee \$30 Change of Qualified Individual \$30 Addition of Classification or Specialty \$30	Change of Designated Employee \$40 Change of Qualified Individual \$40 Addition of Classification or Specialty \$30
18 VAC 50-30-90 C	Tradesman, original, by exam \$75	Tradesman, original, by exam \$90
18 VAC 50-30-90 D	Tradesman, original, without exam \$75	Tradesman, original, without exam \$90
18 VAC 50-30-90 E	Tradesman, card exchange \$20	Tradesman, card exchange \$40
18 VAC 50-30-90 F	Tradesman, backflow prevention device worker certification card, exchange \$20	Tradesman, backflow prevention device worker certification card, exchange \$40
18 VAC 50-30-90 H	Liquefied petroleum gas fitter and natural gas fitter, initial licensure \$75	Liquefied petroleum gas fitter and natural gas fitter, initial license \$90
18 VAC 50-30-120 B	Tradesman, renewal \$35 Backflow prevention device worker renewal \$35	Tradesman, renewal \$40 Backflow prevention device worker renewal \$40
18 VAC 50-30-130 B	Tradesman, reinstatement \$75 Backflow prevention device worker, reinstatement \$75	Tradesman, reinstatement \$90 Backflow prevention device worker, reinstatement \$90