



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Contractors
<b>Virginia Administrative Code (VAC) citation</b>	18VAC50-30
<b>Regulation title</b>	Certified Accessibility Mechanics
<b>Action title</b>	Board for Contractors – Certified Accessibility Mechanics
<b>Date this document prepared</b>	August 12, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

The Board for Contractors seeks to amend its regulations to include "Certified Accessibility Mechanics" among its regulant population. The proposed amendments include adding a definition of "Certified Accessibility Mechanics", the criteria for such certification, the fees associated with such certification, the continuing education associated with such certification, prohibited acts, and the jurisdiction of the Board over such regulants. The proposed amendments also includes an endorsement for "limited Use/limited application" elevators.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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On July 13, 2010, the Board for Contractors voted to adopt the proposed changes to regulations 18VAC50-30 to include "Certified Accessibility Mechanic" definitions and provisions and to make the proposed changes Fast Track changes.

### 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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

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Virginia Code § 54.1-1102 states in part that the Board shall have the power and duty to promulgate regulations to carry out the requirements of Chapter 23.3 of Title 54.1 of the Code of Virginia.

Chapter 81 and Chapter 207 of the Acts of the 2010 General Assembly created the Certified Accessibility Mechanics Program. Section 54.1-1142 (amended by Chapters 81 and 207) authorizes the Board for Contractors to issue certified accessibility mechanic certificates to applicants that meet specified criteria.

Virginia Code § 54.1-201(E) states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

The content of the regulations adopted by the Board shall not be in conflict with the purposes of the statutory authority.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The Board for Contractors seeks to add "Certified Accessibility Mechanic" to its regulant population. This new certification program will encompass, more specifically, areas of contracting work not previously specifically addressed in the definitions and regulations of the Board. This new program will ensure members of the public are able to hire "Certified Accessibility Mechanics" with the required knowledge and skill to do the work sought. Additionally, those mechanics will fall under the laws and regulations of the Board.

### Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

The Board for Contractors expects these proposed regulations to be noncontroversial because of the feedback from participants of industry representatives, localities and interested third-parties in the workgroup created by Senate Bill 811 (Chap. 251 2009 ACT of the General Assembly). "Certified Accessibility Mechanics," a subgroup of currently licensed certified elevator mechanics already under the jurisdiction of the Board for Contractors, will have similar continuing education requirements and fees as those currently licensed elevator mechanics.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

The General Assembly enacted §54.1-1142 of the Code of Virginia. This amendment to the statutes introduces "Certified Accessibility Mechanics" to the regulatory authority of the Board for Contractors. These regulations will define entry requirements, list fees and set certificate maintenance procedures for this new program.

### 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 there are no disadvantages to the public or the Commonwealth, please indicate.*

1) In amending these regulations the Board for Contractors is complying with the provisions of legislation signed into law this year establishing a program to certify accessibility mechanics. After studying data relative to accident rates, inspection reports and the licensing/education requirements in other states, the General Assembly determined a need for this level of regulation in order to protect the public. The primary advantage of the program is to ensure that work done on wheelchair lifts, chair lifts, dumb waiters, private residence elevators, and limited use/limited access elevators is performed by individuals who have received sufficient training and demonstrated enough experience to reasonably assume competency in the repairs they will be completing. At the same time, the legislation takes the step to require ongoing education of those individuals in an effort to ensure that safety issues that arise

as a result of technological advances, are passed on to those who are responsible for repairing the devices.

The only possible disadvantage to the program may arise at the beginning with respect to the approval of continuing education classes and providers. The Board initially experienced difficulty in the Tradesman program with initial approval of continuing education classes and providers, but the difficulties fixed themselves and there are now over 200 providers and even double that in courses. The “Certified Accessibility Mechanics” are a highly technical vocation and its regulant population is expected to be very computer literate and so online continuing education is expected to be offered quickly and easily. It is likely that there will be difficulties that occur during the first renewal cycle, but should become less of a disadvantage as more training programs are approved by the Board and the physical location of the regulant population is identified.

2) This development of this program, through the legislative process, was supported by industry representative, localities and other interested parties, all of whom were in the workgroup created by Senate Bill 811 (Chap. 251 2009 ACT of the General Assembly). Testimony provided and information gathered by the work group indicated that the majority of those individuals currently employed as wheelchair lifts, chair lifts, dumb waiters, private residence elevators, and limited use/limited access elevators would welcome a requirement that ALL individuals performing this type of work, meet those similar standards of training and education as already in place for non-residential elevator companies.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is 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 requirements in the proposed regulations that would be more restrictive than those currently required in Federal Law.

**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.*

There are no localities particularly affected.

**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.*

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1) There are three common methods for determining competency generally accepted in the licensing requirements for individuals in the construction industry: a) written examination; b) practical examination; and, c) independent third party inspection/review of completed work in the scope of the licensing requested. The Board uses all three of these, in various combinations, throughout its licensing programs and is always looking for a method to determine minimum competency that is the least burdensome to the regulant while, at the same time, affording the protection to the public expected of regulatory boards. The Board believes that these amendments are the least stringent that can be promulgated that will still deliver that protection.

2) There are no deadlines or reporting requirements required by these proposed regulations.

3) There are no reporting requirements proposed by these regulations.

4) There are no performance standards proposed by these regulations.

5) The vast majority of contractor businesses licensed by the Board would be identified as small businesses and, since the Board finds the least burdensome alternative in the development of its regulations, it has taken into consideration the affect on small business, negating the need for an exemption.

## Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

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### **Board for Contractors** **Fiscal Impact of Proposed Regulation**

#### **Summary:**

The Board is amending the regulations to include a new certification for accessibility mechanics and a new endorsement for limited use/limited application for the accessibility mechanics. The proposed amendments include adding a definition of "Certified Accessibility Mechanics" and "Limited use/limited application endorsement", the criteria for such certification/endorsement, the fees associated with such certification/endorsement, the continuing education associated with such certification/endorsement, prohibited acts, and the jurisdiction of the Board over such regulants.

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 2011	FY 2012	FY2013	FY2014
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	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: Any one-time costs as a result of this regulatory change are expected to be minimal and will be absorbed within the Department’s current resources and appropriations.

Ongoing: Any ongoing costs as a result of this regulatory change are expected to be minimal and will be absorbed within the Department’s current resources and appropriations.

**Cost to Localities:** No change anticipated.

**Description of Individuals, Businesses, or Other Entities Impacted:** The revised regulations apply to accessibility mechanics and businesses that install residential elevators.

**Estimated Number of Regulators:** There are expected to be a total of approximately 150 accessibility mechanics and businesses/individuals that are affected by the limited use / limited application endorsement.

**Projected Cost to Regulators:** The cost to Applicants for the Accessibility Mechanic Certification and the Limited Use/Limited Application Endorsement will be \$130. Once certified, the renewal fee will be \$90 for a two year certification period.

**Board for Contractors**

**Financial Status and Projections  
Current Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulants</u>	
2008-10	2,419,086	14,503,793	15,957,903	964,976	6.0%	95,407	as of 6/30/2010
2010-12	964,976	21,012,367	19,001,649	2,975,694	15.7%		
2012-14	2,975,694	21,754,494	19,730,835	4,999,353	25.3%		
2014-16	4,999,353	21,754,494	21,868,609	4,885,238	22.3%		

**Fee History \$**

<u>Major Fee Type</u>	<u>2007</u>	<u>2010</u>
Individual Application	90	130
Individual Renewal	40	90

**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.*

Since this is a new program, mandated by law, no other alternatives exist for amending the regulations in order to bring them into compliance the Code of Virginia.

**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.*

No impact on families in Virginia has been identified as resulting from the proposed amendment to the regulation.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
18VAC50-30-10	N/A	Definitions Section.	The proposed change is an administrative change that would include a definition for "Certified Accessibility Mechanic" and "Limited Use/Limited Application Endorsement" under the current definitions section of the Board for Contractors. These definitions are being added to require those engaged in residential elevator installation to hold a license with similar yet different requirements than a "Certified Elevator Mechanic."
18VAC50-30-40	18VAC50-30-40(G) and (H)	Evidence of Ability and Proficiency Section.	The proposed change would include an evidence of ability and proficiency section for both the "Certified Accessibility Mechanic" and "Limited Use/Limited Application Endorsement," respectively, that lay out the required education and experience for each.  The proposed changes are being added to differentiate the requirements from "Certified Elevator Mechanics," already in place with the Board.



18VAC50-30-90	N/A	Fees for Licensure and Certification.	<p>The proposed change would include a fee applicable for licensure and certification for both the “Certified Accessibility Mechanic” and the “Limited Use/Limited Application Endorsement.”</p> <p>The proposed changes include fees equal to those required of all other individual licenses and certifications issued by the Board with the exception of “Limited Use/Limited Application” as this is the first endorsement issued by the Board.</p>
18VAC50-30-100	N/A	Fees for Examinations.	<p>The proposed change would include “Certified Accessibility Mechanic” and the “Limited Use/Limited Application Endorsement” under the provisions for fees charged for examinations.</p> <p>This proposed change addressed the need for an exam for “Certified Accessibility Mechanics.”</p>
18VAC50-30-120	N/A	Renewal.	<p>The proposed change would include a renewal fee for “Certified Accessibility Mechanics.”</p>
18VAC50-30-130	N/A	Reinstatement.	<p>The proposed change would include a reinstatement fee for “Certified Accessibility Mechanics.”</p>
18VAC50-30-185	N/A	Revocation of Licensure or Certification.	<p>The proposed change would include a provision that provides the Board the authority to revoke the “Certified Accessibility Mechanic” certification.</p>
18VAC50-30-190	N/A	Prohibited Acts.	<p>The proposed change would include “Certified Accessibility Mechanic” and “Accessibility Mechanic” as in the current Prohibited Acts section under the jurisdiction of the Board for Contractors.</p> <p>This proposed change enables to Board for Contractors to take disciplinary action over those licensed as “Certified Accessibility Mechanics.”</p>
18VAC50-30-200	18VAC50-30-200(E)	Vocational Training	<p>The proposed change would require that Certified Accessibility training be completed through education providers approved by the Board for Contractors.</p> <p>This change addresses the vocational training requirements for Certified Accessibility Mechanics.</p>
18VAC50-30-220	N/A	Continuing Education Courses	<p>The proposed change will lay out what the Continuing Education Courses for the “Certified Accessibility Mechanic” certificate shall cover.</p> <p>This proposed change is in place to differentiate the Continuing Education</p>

			requirements from those in place for "Certified Elevator Mechanics."
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