Form: TH- 01

Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action

Agency Background Document

Agency Name:	Department of Professional and Occupational Regulation
VAC Chapter Number:	18 VAC 50-22-10 et seq.
Regulation Title:	Board for Contractors Rules and Regulations
Action Title:	Increase licensing fees for regulants of Board for Contractors
Date:	February 27, 2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

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 Department of Professional and Occupational Regulation (DPOR) receives no general fund money, but instead is funded almost entirely from revenue collected for license applications, 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 revenue collected on behalf of the boards funds the Department's authorized special revenue appropriation.

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

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

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.

Section 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.

Section 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…”

Section 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…"

Section 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.

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion in how the fees are adjusted by determining the amount of the adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

Proposed Regulatory Changes:

The proposed regulatory change will increase licensing fees for regulants of the Board for Contractors. The accumulated cash balance and projected revenue to be collected from Contractor licensing fees will be inadequate to cover the board's costs by the close of fiscal year 2002. Fee increases will allow the board to collect adequate revenue to repay the deficit that is projected for the current biennium, and support its ongoing expenses for upcoming operating cycles.

The attached chart shows the Board's actual and projected financial activity and position for 1998 – 2004 under its current fee structure.

Reasons for the Proposed Changes:

In accordance with statute, the Board collects licensing fees from which its operating costs and a proportionate share of the Department's expenses are paid. The Board has no other sources of revenue from which to fund its operations. Fee increases are necessary so that the Board can continue to perform its essential functions of licensing, investigation of complaints, and adjudication of disciplinary cases.

Background:

The last fee increase for the Board was in 1995, at which point fees were raised by an average of about $44 and new fee categories were added for Class C Contractors and Tradesmen. Shortly afterward, the Department was able to realize reductions in expenditures through participation in the Workforce Transition Act and other efficiencies. As a result, actual expenditures charged to the Contractors Board were less than anticipated.

At the close of FY96, the Board had an accumulated cash balance of approximately $565,000. By the end of FY97, that cash balance had increased to $1.5 million, and revenues collected substantially exceeded expenditures charged to the Board, so the Board took action to reduce its fees by an average of about $22. By the close of the 96-98 biennium, the accumulated cash balance had reached $1.5 million, and projections indicated that revenues would continue to exceed expenditures slightly. To avoid continually increasing its cash balance and Callahan Act percentage, the Board again reduced fees slightly in fiscal year 1999, by an average of about $5. Projected revenues at that point were expected to remain slightly below expenditures, allowing the board to use its accumulated cash balance and reduce its Callahan Act percentage over the next three-four biennia.

During the 1998-2000, the agency's expenditures increased more than expected, due to the following factors:

- In FY2000, the General Assembly authorized an unusually high salary increase of 6.25%. That increase affected expenditures for FY00, and must be carried forward into future years, resulting in expenditure projections higher than originally anticipated. Projections for future years also include anticipated salary-related costs of the Compensation Reform Plan.

- The Department has increased its use of wage employees to manage increasing levels of enforcement activity, and has also added wage employees devoted specifically to increasing workloads of the Board for Contractors. The costs associated with increased use of wage employees have added to cost increases for this Board.

- Since FY97, the Department has experienced increasing activity levels in the areas of enforcement, investigation, and adjudication:

	FY97	FY98	FY99	FY00	Increase
Cased Closed	1,857	3,341	3,350	3,240	74.5%
Investigations Completed	2,161	3,350	3,404	3,395	57.1%

Cases Adjudicated	262	418	561	815	211.1%

Sixty-five percent of these activities are related to the Board for Contractors, therefore the Board is substantially impacted by the higher costs associated with the increasing activity levels.

- The volume of regulants impacts the Board's total costs, both by increasing the need for additional staff to manage increasing workloads, and by increasing the percentage of licensees used to allocate many of the agency's administrative support costs. In fiscal year 1996, the Board for Contractors had 66,462 licensees. As of December 2000, that number had increased to 78,189, representing a total increase of almost 12,000 licensees, or 18%. During the same period, the agency's total licensees increased from 234,365 to 251,495, or about 7%. Because the Board for Contractors is growing at a faster rate than the other regulatory programs, the percentage of Contractor licensees has increased from 28% to 31%, and a higher amount of agency costs are allocated to the Board.

The Board for Contractors' total direct and administrative support costs for the 1998-2000 biennium were more than $6 million, with revenue collections of about $5.5 million. Projections indicate that revenue collections in the 2000-02 biennium will again be about $5.5 million, with expenditures increasing to about $7 million. The Board is expected to incur a deficit of about $.5 million by the close of the biennium.

Comparative Factors:

Between 1996 and 2000, the Consumer Price Index increased a total of 13.9%. However, licensing fees charged by the Board for Contractors have decreased an average of 26%.

The following table is used to compare the cost of licensing in Virginia with other nearby states. Comparisons are shown for the cost to a Class A Contractor and an Electrician to become licensed and to renew a license. The total cost shown for the Contractor in Virginia includes the current application fee of $100, the Designated Employee Fee of $25, and the Recovery Fund assessment of $25.

License	VA	NC	SC	WV	MD	FL	GA
General Contractor							
Application	150	100	360	90	325	205	N/A
Renewal	90	100	360	90	279	209	N/A
Electrician							
Application	40	150	350	90	20	150	30
Renewal	25	115	350	20	25	255	75

The total Contractor application cost in Virginia is currently substantially less than the cost in three states, and a small percentage more than the cost in two states. The renewal fee is currently less than the fee in four states (substantially less than in three of those states), and equal to the fee in one state. The Electrician application fee is currently substantially less than the fee in four states, and slightly more than the fee in two states. The renewal fee is substantially less than the fee in four states, and the same or slightly more than the fee in two states.

This comparison demonstrates that current fees could be raised to appropriate levels and still remain reasonable, and in many cases much lower in cost, in comparison to amounts charged by other nearby states.

Potential Impact and Consequences:

Increases in fees are not expected to have a significant effect on individuals deciding to become licensed by the Board, or to affect the total volume of Contractor licensees. No economic impact is anticipated beyond the direct impact of the increased cost to become and remain licensed. Licensing fees apply to the two-year period for which the license is valid, and overall, will remain a very small portion of the costs to work as a Contractor.

If these fee increases are not implemented:

- The Board will have inadequate revenues to support its ongoing operations.
- Because this Board represents such a large portion of agency activities and revenue, the Department will have inadequate cash flow to pay for essential operations.
- Revenue collections will be inadequate to fund the Department's authorized appropriation.

Issues to be Addressed as Regulation is Developed:

The Callahan Act requires 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 1998-00 biennium with a Callahan Act percentage of 18.2% and a cash balance of $1,096,718. However, by the close of the 2000-02 biennium, the Board is expected to incur a deficit of $571,582 and a Callahan Act percentage of –8%.

Once the Board exhausts its cash balance and begins fully using its current revenues, there will be no additional source of revenue to pay its ongoing operating expenses other than to borrow from the cash balances of other boards. Because the Board for Contractors is the Department’s largest board, those cash balances could not support its operations for more than a few months, and would only delay the need for fee increases briefly. Any amounts borrowed from other boards would have to be repaid, and would result in even larger increases in proposed fees in order to repay the deficit.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit is actually incurred. To avoid the upcoming deficit and the need to increase fees to more than needed for ongoing operations, the new fees will need to become effective by the beginning of the 2002-04 biennium. Otherwise, the Board's deficit will increase and the new fees may 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.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet 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 citizens' 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 Appropriations Act. The Department's boards are intended to be self-funding per Sections 54.1-113, 54.1-201.4, 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. During fiscal year 2000, decisions were made to postpone discretionary spending, particularly in the area of information systems and equipment upgrades. In fiscal year 2001, the Department implemented an operating budget below its appropriation level in an attempt to postpone cost increases. Such decisions have helped to delay fee increases, but cannot avoid them altogether. Over the past five years, Department expenditures have increased a total of 20.3%, or an average of 4% annually. This annual increase is quite small given cost increases associated with salary increases, inflationary increases, increases in the volume of enforcement activities, increases in mandated regulatory activities, and increases in the number of licensees over the same period of time. The small increase in expenditures represents the Department's efforts to hold cost increases to the minimum necessary, and thus avoid unnecessary increases in fees.

Family Impact Statement

Please provide a preliminary analysis of the potential 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.

These fee increases are not anticipated to have any significant impact on Virginia's families.