

## Department of Planning and Budget 2018 Fiscal Impact Statement

**1. Bill Number:** SB55

**House of Origin**    ☒ Introduced    ☐ Substitute    ☐ Engrossed  
**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:** DeSteph

**3. Committee:** General Laws and Technology

**4. Title:** Professional and Occupational Regulation, Department of; disciplinary actions by regulatory boards.

**5. Summary:** Requires a regulatory board under the Department of Professional and Occupational Regulation to determine the factual basis for its decisions through an informal fact-finding conference under the Administrative Process Act (§ 2.2-4000 et seq.) unless the regulant and the regulatory board agree to resolve the matter through a consent order or the regulant consents to waive the conference to go directly to a formal hearing. If the conference is waived, or if it fails to dispose of the case by consent, the bill requires the regulatory board to conduct a formal hearing. The bill also provides that, if a regulant is successful in a motion to quash a subpoena duces tecum issued in furtherance of an investigation, the court shall award reasonable costs and attorney fees or \$500, whichever is greater.

**6. Budget Amendment Necessary:** No.

**7. Fiscal Impact Estimates:** Preliminary. See Item 8, below.

**7a. Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2018	0	0	n/a
2019	\$732,304	4.0	NGF
2020	\$718,616	4.0	NGF
2021	\$718,616	4.0	NGF
2022	\$718,616	4.0	NGF
2023	\$718,616	4.0	NGF
2024	\$718,616	4.0	NGF

**8. Fiscal Implications:** This bill increases the administrative and enforcement responsibilities of the Department of Professional and Occupational Regulation (DPOR). The bill would permit respondents in disciplinary cases to request formal hearings by waiving the informal fact-finding conferences as currently required. Also, formal hearings could be requested after the informal fact-finding conference is conducted. Additionally, informal fact-finding conferences that are currently bypassed in “prima facie” cases would be required under this bill (approximately 100 each year). Therefore, the number of disciplinary informal fact-finding conferences are expected to increase by approximately 100 conferences annually.

Additionally, the number of formal hearings are expected to increase by approximately 100 hearings annually. Under the Administrative Process Act (APA), formal hearings must be conducted by attorneys who serve as hearing officers (rather than presiding officers who may be staff members or board members) and will require legal representation by the Office of Attorney General (OAG). Hearing Officers are available from a list of approved Hearing Officers maintained by the Supreme Court of Virginia and would be compensated by DPOR.

Expenditure Impact: This legislation substantially increases DPOR's case processing and adjudication responsibilities, requiring the addition of four positions. Two adjudication specialist positions are necessary to support the hearing officers and OAG staff with case preparation. One records management specialist position will be needed to scan, send, and compile records due to increased documentation and evidence needed for formal hearings. One administrative assistant position is necessary to help meet the Administrative Process Act deadlines and to conduct follow-up on all cases. The total cost of salaries and benefits for the four positions totals \$329,212 in FY 2019 (assuming 23 pay periods) and \$343,524 in FY 2020. This is a recurring cost that will continue into future years.

In FY 2019, DPOR will need to purchase furniture and equipment for the new positions at an estimated cost of \$28,000 (a one-time expenditure). Other operating costs beginning in FY 2019 and recurring in future years include telephone, employee development, computer operating support, and supplies estimated at \$56,800 each year.

Costs to conduct the additional informal fact-finding conferences and the new formal hearings will increase by \$318,292 in FY 2019 and will continue into future years. Court reporters needed for the informal fact-finding conferences and formal hearings, averaging \$217 per case in FY 2017 and FY 2018, will increase costs by \$43,400 annually. The cost for hearing officers is estimated to average \$350 per hour at an average of four hours per case, for a total of \$140,000 each fiscal year. OAG attorneys representing DPOR in the formal hearings will cost \$141.39 per hour, the FY 2018 rate charged to DPOR, at an estimated eight hours per case for preparation, attending the formal hearings, and follow-up. DPOR's OAG costs will increase by approximately \$113,112 annually. It is estimated that ten additional board meetings will be needed to accommodate the formal hearings at an annual cost for board member travel expenses of \$21,780.

Board meeting room availability within DPOR's facilities is limited. External room rentals may be necessary to conduct formal hearings. The frequency of external room rentals and rental costs are currently unknown; therefore, facility costs for formal hearings are indeterminate at this time.

Revenue Impact: In accordance with the provisions of § 54.1-113 (Callahan Act), Code of Virginia, licensing fees are established at rates adequate to cover a program's operating costs and a proportionate share of agency support costs. Initially, most boards will be able to support the increased expenses with existing cash balances. Fee increases averaging \$5 per license or certification may be required to cover the costs of the informal fact-finding conferences and formal hearings.

**9. Specific Agency or Political Subdivisions Affected:** Department of Professional and Occupational Regulation; Office of Attorney General; courts.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.