

## **Recommendations: Operations and Performance of the Department of Professional and Occupational Regulation**

---

### **RECOMMENDATION 1**

The General Assembly may wish to consider amending the Code of Virginia to eliminate the occupational regulation of common interest community managers, opticians, and residential energy analysts and firms. (Chapter 2)

---

### **RECOMMENDATION 2**

The Board for Professional Occupational Regulation (BPOR) should review the need for continued regulation of soil scientists, waste management facility operators, and landscape architects. In carrying out these reviews, BPOR should follow the guidelines set in § 54.1-311 of the Code of Virginia for determining the need for regulation and the appropriate degree of regulation for an occupation. BPOR should begin reporting its evaluation findings to the General Assembly by December 31, 2019 and complete these evaluations by December 31, 2020. (Chapter 2)

---

### **RECOMMENDATION 3**

The Board for Professional Occupational Regulation (BPOR) should review the need for continued state certification of (i) common interest community manager employees; (ii) interior designers; (iii) backflow prevention device workers; and (iv) wetland delineators. BPOR should begin reporting its evaluation findings to the General Assembly by December 31, 2019 and complete these evaluations by December 31, 2020. (Chapter 2)

---

### **RECOMMENDATION 4**

The General Assembly may wish to consider eliminating regulation of natural gas automobile mechanics and technicians by repealing §§ 54.1-2355 through 54.1-2358 of the Code of Virginia. (Chapter 2)

---

### **RECOMMENDATION 5**

The General Assembly may wish to consider amending the Code of Virginia to require that any proposed legislation to increase or begin regulation of an occupation under the Department of Professional and Occupational Regulation must first be evaluated by the Board for Professional and Occupational Regulation using the criteria described in § 54.1-311 of the Code of Virginia. (Chapter 2)

---

#### **RECOMMENDATION 6**

The Department of Professional and Occupational Regulation (DPOR) should establish one or more new positions vested with the following agency-wide duties: (i) coordinating and assisting in the development of agency regulations; (ii) coordinating agency legislative efforts; (iii) leading agency communications with external parties; and (iv) serving as staff to the Board for Professional and Occupational Regulation. (Chapter 2)

---

#### **RECOMMENDATION 7**

The Secretary of Commerce and Trade should complete the executive review of two pending regulatory actions: (i) lead-based paint renovation, repair, and painting regulations; and (ii) the proposed fee increase for hearing aid specialists. (Chapter 2)

---

#### **RECOMMENDATION 8**

The boards for the Department of Professional and Occupational Regulation (DPOR) should develop formal guidance describing when board review of an application for a license is necessary based on the applicant's reported criminal convictions. Guidance should describe the types of felonies and misdemeanors that warrant board review and how long they remain relevant to an application. (Chapter 3)

---

#### **RECOMMENDATION 9**

The Department of Professional and Occupational Regulation (DPOR) should begin performing reviews of randomly selected applications to verify work experience. Reviews should be conducted on an ongoing basis and should include at least five percent of the completed applications received by each of DPOR's boards each year. (Chapter 3)

---

#### **RECOMMENDATION 10**

The General Assembly may wish to consider amending the Code of Virginia to give the Department of Professional and Occupational Regulation authority to request and receive criminal record name searches as part of the review of individuals for initial licensure for any of the occupations that it regulates. (Chapter 3)

---

#### **RECOMMENDATION 11**

The Department of Professional and Occupational Regulation should perform checks of new applicants for past occupational disciplinary violations when there is evidence that the applicant may have recently worked in another state. (Chapter 3)

---

### **RECOMMENDATION 12**

The Department of Professional and Occupational Regulation should perform regular unannounced site audits of education providers for personal care occupations and real estate professionals to confirm that they are operating legitimately. Audits should include at least five percent of education providers for those occupations, each year. Every newly approved education provider should be audited within a year of approval. (Chapter 3)

---

### **RECOMMENDATION 13**

The Department of Professional and Occupational Regulation should develop an internal plan to replace or upgrade the current licensing system. The new or improved licensing system should have the capacity to (i) accept and process applications and payments online; (ii) improve the ease of online renewals; and (iii) integrate licensing data with enforcement case management data. The plan should identify the expected staffing needs during and after the system upgrade or replacement project, how staffing needs will be met, and the cost of the proposed upgrade or project. The plan should be submitted to the Department of Planning and Budget, along with the agency's appropriation request, by July 1, 2019. (Chapter 3)

---

### **RECOMMENDATION 14**

The Department of Professional and Occupational Regulation (DPOR) should conduct a comprehensive assessment of the staffing needs of its five licensing sections and take steps to address unmet staffing needs. The purpose of the assessment is to ensure that each section has sufficient staffing resources to (i) meet DPOR's performance goals for processing transactions and handling customer inquiries and (ii) perform the needed verifications and audits recommended in this report. If the assessment finds additional positions are needed, DPOR should evaluate whether existing part-time positions in the licensing sections should be converted to full-time positions and if existing positions elsewhere in DPOR can be reallocated to the licensing sections. (Chapter 3)

---

### **RECOMMENDATION 15**

The Board for Contractors should require all licensed contractors to complete an in-person education course that explains all of their occupational rules before they can receive their license. This requirement should go into effect by December 31, 2019. (Chapter 4)

---

### **RECOMMENDATION 16**

The Department of Professional and Occupational Regulation staff should email regulators of the Board for Contractors and the Board for Barbers and Cosmetology at least annually to inform them of all changes to occupational rules. (Chapter 4)

---

**RECOMMENDATION 17**

The Department of Professional and Occupational Regulation (DPOR) should establish an evidentiary standard for evaluating whether to advance regulatory enforcement cases from the intake to the investigation stage. The standard should be a relatively low burden of proof, such as “reasonable suspicion.” Cases that meet the standard should not be closed. (Chapter 4)

---

**RECOMMENDATION 18**

The Department of Professional and Occupational Regulation (DPOR) should establish “preponderance of evidence” as the evidentiary standard for advancing regulatory enforcement cases from the investigation stage. Cases that meet the standard should not be closed. (Chapter 4)

---

**RECOMMENDATION 19**

The Department of Professional and Occupational Regulation (DPOR) should develop an internal policy that defines specific criteria that must be met before a case can be closed by enforcement staff for lack of jurisdiction or reasons other than insufficient evidence or compliance. (Chapter 4)

---

**RECOMMENDATION 20**

All regulatory boards under the Department of Professional and Occupational Regulation should develop a process through which board members, or board staff with delegated authority, review and approve all decisions made by enforcement staff to close regulatory enforcement cases for insufficient evidence, or reasons other than compliance or lack of jurisdiction, at the intake and investigation stages. (Chapter 4)

---

**RECOMMENDATION 21**

All regulatory boards under the Department of Professional and Occupational Regulation (DPOR) should develop formal guidance that addresses (i) whether they wish to delegate authority to DPOR staff to close enforcement cases for compliance and (ii) the circumstances under which cases cannot be closed for compliance. Each board should have its guidance in place no later than December 31, 2019. (Chapter 4)

---

**RECOMMENDATION 22**

The Department of Professional and Occupational Regulation (DPOR), in consultation with DPOR regulatory boards, should develop formal guidance that prescribes whether and under what circumstances DPOR staff should fully investigate and act on violations identified during an investigation. Guidance should be finalized no later than December 31, 2019. (Chapter 4)

---

**RECOMMENDATION 23**

The Board for Barbers and Cosmetology should direct Department of Professional and Occupational Regulation staff to conduct unannounced inspections of personal care shops and salons in Virginia to ensure compliance with occupational rules. Inspections should begin by July 1, 2019. (Chapter 4)

---

**RECOMMENDATION 24**

The Board for Contractors should direct Department of Professional and Occupational Regulation staff to conduct unannounced audits of contracting documents to ensure compliance by contractors with occupational rules. Audits should begin by July 1, 2019. (Chapter 4)

---

**RECOMMENDATION 25**

The Department of Professional and Occupational Regulation should establish a standardized process through which regulants under each board can formally request that their regulatory enforcement case, which has reached the full board, be remanded for an informal fact finding (IFF) conference. This process should be available to any regulant who (i) has a reasonable basis to claim that the initial IFF conference was unfair; (ii) has new evidence to present that is integral to the case; or (iii) did not initially opt for an IFF conference but would like one. (Chapter 4)

---

**RECOMMENDATION 26**

The Department of Professional and Occupational Regulation should develop detailed sanction guidelines for occupational rule violations. The guidelines should provide direction on (i) factors to be considered in sanction decisions; (ii) appropriate sanctions for particular violations; and (iii) how sanctions should escalate for multiple or subsequent violations. (Chapter 4)

---

**RECOMMENDATION 27**

The General Assembly may wish to consider amending § 54.1-111 of the Code of Virginia to authorize the director of the Department of Professional and Occupational Regulation (DPOR), or a designee, to issue cease and desist notices to individuals and businesses that are found through investigation to be engaged in the unlicensed practice of occupations overseen by DPOR and its boards. (Chapter 4)

---

#### **RECOMMENDATION 28**

The Department of Professional and Occupational Regulation (DPOR) should develop criteria for determining when to issue cease and desist notices to individuals and businesses determined to be practicing a profession or occupation without the required license. DPOR should begin issuing cease and desist notices for unlicensed practice when the criteria are met. The notices should explain DPOR's requirements for obtaining a license, and make clear that § 54.1-111 of the Code of Virginia establishes criminal penalties for unlicensed practice and gives DPOR authority to initiate a civil court action to enjoin unlicensed practice and to recover civil penalties for violations. (Chapter 4)

---

#### **RECOMMENDATION 29**

The Department of Professional and Occupational Regulation (DPOR) should base staffing cost assumptions on historical staffing costs when calculating the expense projections that are used to determine when fee changes should occur and what the new fees should be. (Chapter 5)

---

#### **RECOMMENDATION 30**

The Department of Professional and Occupational Regulation (DPOR) should report, at least annually, the fund status of each of the regulatory boards to its members. At a minimum, DPOR should provide a detailed explanation of revenues and expenditures for the previous year in comparison to what was projected, the board's current fund balance, and revenue and expense projections for two biennia into the future. (Chapter 5)

---

#### **RECOMMENDATION 31**

The General Assembly may wish to consider amending § 54.1-113 of the Code of Virginia as follows, effective July 1, 2022: (i) to require that a regulatory board must reduce its fees if the board's fund balance exceeds a certain percentage of expenses allocated to it for the previous biennium or a set dollar amount, whichever is greater; and (ii) to require that, at the close of any biennium, all unspent or unencumbered revenue in excess of the cap be distributed to current regulants. This amendment should only apply to the Department of Professional and Occupational Regulation and its regulatory boards. (Chapter 5)

---

#### **RECOMMENDATION 32**

The Department of Professional and Occupational Regulation should (i) immediately fill the assistant director position in its Human Resources division and (ii) assess whether additional full-time or part-time staff positions are needed in the human resources division to address current hiring backlogs. (Chapter 6)

---

### **RECOMMENDATION 33**

The director, deputy directors, and division directors of the Department of Professional and Occupational Regulation (DPOR) should rank all vacant positions based on how critical they are to DPOR's ability to fulfill its responsibilities. Human resources staff should use the rankings to prioritize the advertising and filling of positions, using hiring processes that reflect best practices. (Chapter 6)

---

### **RECOMMENDATION 34**

The Department of Professional and Occupational Regulation should transfer IT-related responsibilities for its licensing system and technical aspects of website management, records management, and electronic forms, from the licensing division to the Information Technology division. (Chapter 6)

---

### **RECOMMENDATION 35**

The Department of Professional and Occupational Regulation should reassign to other divisions the following functions that are currently assigned to the licensing division: (i) handling Freedom of Information Act requests; (ii) scanning documents; (iii) managing policies and procedures; (iv) evaluating business processes; and (v) agency-wide training. (Chapter 6)

---

### **RECOMMENDATION 36**

The Department of Professional and Occupational Regulation (DPOR) should develop an internal plan that describes its objectives for resolving long-standing problems. The plan should, at a minimum, include actions and timelines for addressing (i) DPOR's licensing fraud vulnerabilities; (ii) lack of guidance for enforcement decisions; (iii) key staff position vacancies; (iv) excessive fund balances; and (v) outdated information technology licensing system. DPOR should report on progress toward meeting objectives in its biennial report, starting with its next report. (Chapter 6)

---