



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Cemetery Board
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC47-20
<b>Regulation title</b>	Cemetery Board Regulations
<b>Action title</b>	Fee Adjustment
<b>Date this document prepared</b>	October 25, 2011

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

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

The proposed regulations will adjust fees for the Cemetery Board to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The Cemetery Board's most recent fees became effective January 1, 2006. The Cemetery Board has incurred an increase in costs for enforcement activities, Information Systems development costs, and application processing and customer support services. By the close of the next biennium fees will not provide adequate revenue for those costs.

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.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

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DPOR means Department of Professional and Occupational Regulation

## 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 Code of Virginia citation and General Assembly chapter number(s), 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.*

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The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Cemetery 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.

§ 54.1-2311 provides that Cemetery Board regulants pay the Board a fee which fees shall be remitted to the State Treasurer and shall placed to the credit and special fund of the Department to be used in the administration of this chapter.

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; and
- 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.

**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, the environmental benefits, and the problems the proposal is intended to solve.*

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The intent of the proposed change in the regulations is to adjust licensing fees for regulants of the Cemetery Board. The board must establish fees adequate to support the costs of the board operations and a proportionate share of the Department’s operations. By the close of the next biennium, fees will not provide adequate revenue for those costs.

The Cemetery Board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those persons that meet specific criteria set forth in the statutes and regulations are eligible to receive a cemetery company or sales personnel registration. The Cemetery Board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the Cemetery Board by citizens, could not be investigated and processed in a timely manner. This could provide an opportunity for a dishonest regulant waiting for action to be taken by the Cemetery Board, to continue to work, harming additional citizens.

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, renewal and other licensing fees. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts which will provide that revenue. Fee revenue collected on behalf of the various boards funds the Department’s authorized special revenue appropriation.

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

**Substance**

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)*

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The Cemetery Board’s existing regulations are being amended based on projected revenues and expenses with the adjustments being the least burdensome to the regulant population.

Current Regulation	Fee Type		Current Fee	Proposed Fee
18VAC47-20-70	New Applicant	Company (per cemetery)	50	200
18VAC47-20-70	New Applicant	Salesperson (per cemetery)	20	75
18VAC47-20-140	Renewal	Company (per cemetery)	50	200
18VAC47-20-140	Renewal	Salesperson (per cemetery)	20	75
18VAC47-20-140	Reinstatement	Company (per cemetery)	50	200
18VAC47-20-140	Reinstatement	Salesperson (per cemetery)	20	75
18VAC47-20-70	Add a Cemetery	Company	50	200

**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 indicate.*

The primary issue for the proposed fee adjustment 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 requires DPOR to review each board’s expenditures at the close of each biennium, and to adjust fees if necessary. For the 2010-2012 biennium the Cemetery Board is expected to have a \$116,787 cash balance and a Callahan Act percentage of 12.4% and for the 2012-2014 biennium, the Cemetery Board is expected to incur a deficit of \$110,747 and a Callahan Act percentage of -60.0%.

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 an amount greater than previously anticipated. To avoid increasing the deficit, the new fees will need to become effective in 2012. 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.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.*

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There are no federal requirements in place regarding the licensing of cemetery companies and sales personnel.

**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.*

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Cemetery companies, cemeteries and sales personnel licensed by the Cemetery Board are located throughout the Commonwealth, subsequently; no particular area will be affected more than another.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to Christine Martine, c/o Cemetery Board, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, e-mail [cemetery@dpor.virginia.gov](mailto:cemetery@dpor.virginia.gov), fax (866)350-7849. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

**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 requirements create the anticipated economic impact.*

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**Cemetery Board**

**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>
2008-10	187,909	52,766	123,888	116,787	94.3%
2010-12	116,787	59,248	156,609	19,426	12.4%
2012-14	19,426	54,478	184,651	-110,747	-60.0%
2014-16	-110,747	54,478	191,163	-247,432	-129.4%

**Number of Regulants**

1,769 as of 9/1/2011

**Fee History \$**

<u>Major Fee Type</u>	<u>2000</u>	<u>2006</u>	<u>Proposed 2013</u>
Company Application Fee Per Cemetery	600	50	200
Company Renewal Fee Per Cemetery	600	50	200
Sales Personnel Individual Application Fee	50	20	75
Sales Personnel Individual Renewal Fee	50	20	75

**Cemetery Board**

**Financial Status and Projections  
Proposed Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>
2008-10	187,909	52,766	123,888	116,787	94.3%
2010-12	116,787	59,248	156,609	19,426	12.4%
2012-14	19,426	185,250	184,651	20,025	10.8%
2014-16	20,025	185,250	191,163	14,112	7.4%

**Number of  
Regulants**

1,769 as of 9/1/2011

**Fee History \$**

<u>Major Fee Type</u>	<u>2000</u>	<u>2006</u>	<u>2013</u>
Company Application Fee Per Cemetery	600	50	200
Company Renewal Fee Per Cemetery	600	50	200
Sales Personnel Individual Application Fee	50	20	75
Sales Personnel Individual Renewal Fee	50	20	75

**Cemetery Board  
Fiscal Impact of Proposed Regulation**

**Summary:**

The proposed regulations will adjust fees for the Cemetery Board to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The Board's most recent fee change was a fee decrease that was effective in January 2006, after the initial fees were established when the program began in July 2000. Proposed fee increases are expected to become effective during fiscal year 2013. Without the proposed fee increases, the Board will not collect sufficient 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. The Board has no other source of income.

**Fiscal Impact:**

	FY 2012	FY 2013	FY2014	FY2015
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: No one-time costs are expected as a result of this regulatory change.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

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

**Description of Individuals, Businesses, or Other Entities Impacted:** This regulation change will affect all licensed cemetery companies, cemeteries, and related cemetery sales personnel.

**Estimated Number of Regulators:** As of September 1, 2011, the Board regulates 90 Cemetery companies, 146 Cemeteries, and 1,533 Cemetery sales personnel.

**Projected Cost to Regulators:** All fees cover a two year period. The cost for a Cemetery Company to become licensed or renew a license will increase by \$150. The cost for Cemetery Sales Personnel to become licensed or to renew a license will increase by \$55. 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.

**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.*

The Department has considered the following alternatives to adjusting fees for the Cemetery Board:

**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.

**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.*

The adjustment of fees is mandated by statute and subsequently there is no flexibility.

**Public comment**

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

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Donald E. Wilson	Mr. Wilson believes the four fold increase in proposed fees is excessive given the fact that the fees are borne by law abiding cemetery companies. If the fees are increased then those cemeteries which don't comply with the Cemetery Board's laws and regulations who create more work for the Board should be made to pay for and make up the shortfall. Also the Board should impose higher fines for violations of the Board's law and regulations. He feels the listed alternatives are lacking and the board should impose higher fees on those licensees who violate the board's laws and regulations.	The Cemetery Board (the board) is required to collect fees which provide adequate revenue to support its mandated and approved activities and functions. The Callahan Act (§ 54.1-113 of the <i>Code of Virginia</i> ) requires the board to revise its fees when in the last two years, the expenses are ten percent less than the moneys collected on behalf of the board, so the fees are sufficient to cover expenses. The adjustment to fees is required for all licensees of the board not just those who may have violated the board's laws or regulations. Any monetary penalties collected from licensees for violations are paid to the state literary fund and not to the board. The proposed fees are still significantly less than the original fees of \$600 for a cemetery company and each affiliated cemetery.

**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.*

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

**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 if implemented 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.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, rationale, and consequences</b>
18VAC47-20-70	N/A	Application fee for Cemetery company license is \$50 per cemetery. Application fee for addition of cemetery is \$50 per cemetery. Application fee for sales personnel registration is \$20 per cemetery.	Application fee for Cemetery company license is adjusted to \$200 per cemetery to facilitate compliance with the Callahan Act. Application fee for addition of cemetery is adjusted to \$200 per cemetery to facilitate compliance with the Callahan Act. Application fee for sales personnel registration is adjusted to \$75 per cemetery to facilitate compliance with the Callahan Act.
18VAC47-20-140	N/A	Renewal fee for Cemetery company license is \$50 per cemetery. Reinstatement fee for Cemetery company license is \$50 per cemetery. Renewal fee for sales personnel registration is \$20 per cemetery. Reinstatement fee for sales personnel registration is \$20 per cemetery.	Renewal fee for Cemetery company license is adjusted to \$200 per cemetery to facilitate compliance with the Callahan Act. Reinstatement fee for Cemetery company license is adjusted to \$200 per cemetery to facilitate compliance with the Callahan Act. Renewal fee for sales personnel registration is adjusted to \$75 per cemetery to facilitate compliance with the Callahan Act. Reinstatement fee for sales personnel registration is adjusted to \$75 per cemetery to facilitate compliance with the Callahan Act.