



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
<b>Virginia Administrative Code (VAC) citation</b>	180VAC 160-20
<b>Regulation title</b>	Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
<b>Action title</b>	Fee Adjustment
<b>Date this document prepared</b>	July 8, 2014

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 increase fees for the Board for Waterworks Wastewater Works Operators and Onsite Sewage System Professionals (Board) to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The Board's most recent increase to its fees was approximately twelve years ago wherein at that time, it was anticipated that fees would require adjustment in approximately six to eight years. The Board has since incurred an increase in costs which include Information System development costs, application processing, and customer support services. Without the proposed fee increases, the Board will incur a deficit by the end of the 2016 biennium and will not collect adequate 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 (Department) 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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No acronyms or technical terms were identified that were not defined in the "Definitions" section of the regulations.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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1) § 54.1-113 (Callahan Act) requires regulatory boards to periodically review and adjust fees.

§ 54.1-201.4 provides the authority to regulatory boards to levy and collect fees.

§ 54.1-304.3 describes the authority of DPOR to collect and account for fees.

§ 54.1-308 requires costs to be paid by regulatory boards.

2) Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals.

All of these provisions of the Code of Virginia are mandatory.

### 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 changes in regulations is to increase licensing fees for regulants of the 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 Department receives no general fund money but, instead, is funded almost entirely from revenue collected for license and certificate application fees, renewal fees, examination fees, and other licensing fees. 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 various boards funds the Department's authorized special revenue appropriation.

The 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.)*

The Board will review the fees listed in 18VAC160-20-102, and based on projected revenues and expenses, develop a fee schedule that meets the requirements of the applicable statutes while being the least burdensome to the regulant population.

### 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 increase 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 required the Department to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. The Board is expected to incur a deficit of \$-36,121.00 by the end of the 2016-2018 biennium and a Callahan Act percentage of -5.2%.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now to avoid a greater deficit than currently projected. In order to address the deficit as currently projected, new fees will need to become effective by late in fiscal year 2016. 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 waterworks operators, wastewater works operators and onsite sewage system professionals performing work in the Commonwealth of Virginia.

### 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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Individuals licensed by the 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 Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Trisha Henshaw, Executive Director, Board for Waterworks and Wastewater Works and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, Fax 1-866-350-5354, or email to WaterWasteOper@dpor.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

**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. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.*

<p><b>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</b></p>	<p>All licensed waterworks operators, wastewater works operators, and onsite sewage system professionals are affected by this regulatory proposal..</p>
<p><b>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</b></p>	<p>1) As of July 1, 2014 there are 5,331 current regulants affected by the regulatory change.</p> <p>2) No small businesses are affected by the regulatory change unless the business chooses to pay the individual license renewal fee for an employee.</p>
<p><b>Benefits expected as a result of this regulatory proposal.</b></p>	<p>The increase in revenue expected from the fees increased in the regulatory change will ensure that revenues in future years will be sufficient but not excessive to cover the Board’s ongoing operating expenses.</p>
<p><b>Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.</b></p>	<p>There are no projected to costs to localities as a result of implementing or enforcing the amended regulations unless the locality chooses to pay the individual license renewal fee for an employee.</p>
<p><b>All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real</b></p>	<p>The two year license renewal fee for licensees will increase \$20 or \$10 per year. No other costs to individuals or other entities are expected.</p>

estate development.	
<b>Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.</b>	No costs to Virginia, the Department, or the Board are expected from this regulatory change.
<b>See Fiscal Impact by year below:</b>	

	FY 2014	FY 2015	FY2016	FY2017
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

**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 increasing fees for the 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**

*Pursuant to §2.2-4007.1B of the Code of Virginia, 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.*

No public comment was received during the NOIRA period.

**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.*

This fee adjustment is 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. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

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

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18 VAC 160-20-102. C		<p>Application fee for waterworks operators, wastewater works operators and onsite sewage system professionals : \$100.00</p> <p>Renewal fee for waterworks operators, wastewater works operators and onsite sewage system professionals : \$80.00</p> <p>Late renewal fee for waterworks operators, wastewater works operators and onsite sewage system professionals (includes a \$25.00 late renewal fee in addition to the \$80.00 renewal fee) : \$105.00</p>	<p>The proposed change will increase the fee to renew the license of any wastewater works operator, waterworks operator, and onsite sewage system professional from \$80.00 to \$100.00. An increase of \$20.00. The increase of the renewal fee is to facilitate compliance with the Callahan Act. Without the proposed fee adjustments, the Board will not collect sufficient revenue to pay for operations.</p>