



Virginia
Regulatory
Town Hall

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Proposed Regulation Agency Background Document

Agency name	Board for Waterworks and Wastewater Works Operators
Virginia Administrative Code (VAC) citation	18 VAC 10-20
Regulation title	Board for Waterworks and Wastewater Works Operators Regulations
Action title	Amend
Document preparation date	July 23, 2003

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The purpose of the proposed action is to adjust fees as necessary in accordance with § 54.1-113 of the Code of Virginia (Callahan Act). Any other changes that may be necessary may also be considered.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, 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.

§ 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.

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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The intent of the proposed changes in regulations is to increase fees for applicants and regulants of the Board for Waterworks and Wastewater Works Operators. 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 applications, renewals, examination fees, and other 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 revenues collected on behalf of the boards fund the Department’s authorized special revenue appropriation.

The ability of the board to continue to process applications in a timely and accurate manner increases the level of public safety and welfare by ensuring that only those applicants that meet or exceed the requirements set forth in the statutes and regulations are granted licenses, certificates, or registrations.

The Board for Waterworks and Wastewater Works Operators has no other source of revenue from which to fund its operations.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)

Fees will be increased as necessary to comply with the § 54.1-113 of the Code of Virginia. Any other changes which may be necessary may also be considered.

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 there are 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.

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 level of income.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

Fiscal Impact of Proposed Regulation

Summary:

The proposed regulations will increase fees for the Board to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses.

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.

Fiscal Impact:

	FY 2003	FY 2004	FY2005	FY2006
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Subprogram	560 44	560 44	560 44	560 44

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: There are no one-time costs associated with the proposed regulations.

Ongoing: There are no ongoing costs associated with the proposed regulations.

Cost to Localities: None anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: The approximately 5,460 individuals licensed as Waterworks Operators and Wastewater Works Operators.

Estimated Number of Regulators: The Department currently regulates approximately 5,460 Waterworks and Wastewater Works Operators.

Projected Cost to Regulators: The cost to a new applicant to obtain a license will increase from \$85 to \$100. The cost to renew a license for two years will increase from \$45 to \$80.

**Financial Status and Projections
Current Fees**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulators</u>
1998-00	109,713	423,758	447,037	86,434	19.3%	5,069
2000-02	86,434	410,626	443,761	53,299	12.0%	5,141
2002-04	53,299	399,809	499,002	-45,894	-9.2%	5,457
2004-06	-45,894	403,807	550,184	-192,271	-34.9%	
2006-08	-192,271	407,845	611,805	-396,231	-64.8%	

Fee History

<u>Major Fee Type</u>	<u>1991</u>	<u>1992</u>	<u>2001 / Current</u>
Application Fee	65	95	85
Renewal Fee	55	55	45

**Financial Status and Projections
Proposed Fees**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulators</u>
1998-00	109,713	423,758	447,037	86,434	19.3%	5,069
2000-02	86,434	410,626	443,761	53,299	12.0%	5,141
2002-04	53,299	399,809	499,002	-45,894	-9.2%	5,457
2004-06	-45,894	649,545	550,184	53,467	9.7%	
2006-08	53,467	656,041	611,805	97,703	16.0%	
2008-10	97,703	662,601	680,327	79,977	11.8%	

Fee History

<u>Major Fee Type</u>	<u>1991</u>	<u>1992</u>	<u>2001 / Current</u>	<u>Proposed</u>
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Application Fee	65	95	85	100
Renewal Fee	55	55	45	80

Water / Wastewater Expenditures by Type

	<u>1998-00</u>	<u>2000-02</u>	<u>2002-04</u>	<u>2004-06</u>	<u>2006-08</u>
Board Expenditures	98,967	111,868	120,433	132,786	147,658
Board Administration	133,046	121,688	145,509	160,434	178,403
Exams	48,194	50,908	56,609	62,415	69,406
Enforcement	17,809	583	666	734	817
Legal Services	1,713	1,325	1,735	1,913	2,128
Information Systems	49,515	54,889	59,638	65,755	73,119
Facilities	52,104	49,091	57,805	63,734	70,872
Agency Admin	44,674	51,991	55,217	60,881	67,699
Other/Transfers	1,015	1,418	1,390	1,532	1,704
	<u>447,037</u>	<u>443,761</u>	<u>499,002</u>	<u>550,184</u>	<u>611,805</u>

NOTES:

The Facilities category generally includes some expenditures for replacement equipment and one-time purchases of information systems equipment.

The Board Section experienced vacancies in 2000-02 that resulted in decreased expenditures in that category.

Enforcement costs for this board were unusually high in 1998-00. A change in the methodology for allocating Enforcement costs was implemented in the 2000-02 biennium, to reduce the impact of occasional large cases on smaller boards with infrequent enforcement activity. The new methodology is based on a five-year average.

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.

The Callahan Act requires that the Board’s fees be sufficient to cover its expenses so no alternatives exist which would allow the Board to remain in compliance with the requirements of the Callahan Act.

Public comment

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

Three comments from the public were received. None addressed the fee increase issue.

One addressed the manner in which the Board’s staff handled an application and two asked that their facility be relieved from regulation as a waterworks facility. The Board’s statutory authority is limited to the individuals that operate waterworks and wastewaters facilities. The regulation of the facilities themselves is under the authority of the Virginia Department of Health and the Virginia Department of Environmental Quality, respectively.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

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

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

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

Adjust fees in 18 VAC 160-20-102 increase the amount charged for license initial application and renewal.

Under the current regulations the application fee includes the initial examination fee. A separate examination fee is required only in the event the applicant fails the examination and must sit for the examination again. The proposal establishes the application fee at an amount necessary to sustain Department operations. The proposal also establishes the examination and reexamination fee at the amount charged by an outside vendor to provide examination services to the Department based on a contract entered into in compliance with the Virginia Public Procurement act (§ 11-35 et seq. of the Code of Virginia).