



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Board of Funeral Directors and Embalmers, Department of Health Professions
VAC Chapter Number:	18VAC 65-20-10 et seq. 18VAC65-40-20 et seq.
Regulation Title:	Regulations of the Board of Funeral Directors and Embalmers Regulations for the Funeral Service Intern Program
Action Title:	Increase in fees
Date:	1/12/10

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The issue to be addressed is the need of the Board of Funeral Directors and Embalmers to increase their fees to cover expenses for essential functions of licensing, investigation of complaints against licensees and facilities, adjudication of disciplinary cases, and the inspections required for public safety and security in the Commonwealth.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures. By the close of the FY09 fiscal year, the Board of Funeral Directors and Embalmers had a surplus of \$19,797 and is projected to have a deficit of (\$84) by the end of FY10. It is projected that Board will continue to have deficits through the fiscal years going forward, culminating in a projected deficit of (\$239,418) by FY14. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, consideration of a fee increase is essential. In order to have sufficient funding for the operation of

the Board by fiscal year 2012, it is necessary to promulgate amendments to regulations at the earliest possible date.

Legal basis

18VAC65-20-10 et seq. Regulations of the Board of Funeral Directors and Embalmers and 18VAC65-40-10 et seq., Regulations for the Funeral Service Intern Program are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to **levy and collect fees** that are **sufficient to cover all expenses** for the administration of a regulatory program.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.*

The **contemplated regulation is mandated by § 54.1-113**; however the board must exercise some discretion in the amount and type of fees that will be increased in order to comply with the statute.

§ 54.1-113. 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.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

In its analysis of the funding under the current fee structure for programs under the Board of Funeral Directors and Embalmers, the following deficits are projected:

Board of Funeral Directors and Embalmer

Cash Balance as of June 30, 2009

19,797

FY10 Budget Revenue	544,190
Total FY10 Direct and Allocated Budget Expenditures	<u>564,071</u>
Projected Cash Balance as of June 30, 2010	<u><u>(84)</u></u>
Projected Cash Balance as of June 30, 2010	(84)
FY11 Budget Revenue	544,190
Total FY11 Direct and Allocated Budget Expenditures	<u>581,189</u>
Projected Cash Balance as of June 30, 2011	<u><u>(37,082)</u></u>
Projected Cash Balance as of June 30, 2011	(37,082)
FY12 Budget Revenue	544,190
Total FY12 Direct and Allocated Budget Expenditures	<u>602,604</u>
Projected Cash Balance as of June 30, 2012	<u><u>(95,496)</u></u>
Projected Cash Balance as of June 30, 2012	(95,496)
FY13 Budget Revenue	544,190
Total FY13 Direct and Allocated Budget Expenditures	<u>613,493</u>
Projected Cash Balance as of June 30, 2013	<u><u>(164,800)</u></u>
Projected Cash Balance as of June 30, 2013	(164,800)
FY14 Budget Revenue	544,190
Total FY14 Direct and Allocated Budget Expenditures	<u>618,809</u>
Projected Cash Balance as of June 30, 2014	<u><u>(239,418)</u></u>

As of June 30, 2008, the board had a cash shortfall of (\$26,017). By shifting the allocation of staff managed by the Executive Director and other cost savings in enforcement with fewer inspections and investigations, the board underspent its budget for FY09 by \$60,000, resulting in a surplus of \$19,797. However, the figures used in projections must assume all cost centers will expend their budgets, so the shortfall of FY08 can be expected to grow significantly. FY10-

FY14 costs account for the recent organizational changes in the board with the Executive Director now managing three boards, so the allocation for her management (cost center 206) has increased. The direct staff charged to Funeral has increased from approximately 1.33 FTEs in FY09 to 1.7 FTEs partially in FY10 and entirely in FY11-FY14. The result of the organizational change will have an increase in the board’s allocation for other cost centers within the Department, such as data, human resources, and the Director’s office.

In 2005, the Department notified the board that without a fee increase the projected shortfall on June 30, 2006 would be (\$15,295) and that by the end of the FY06-FY08 biennium, the shortfall would be (\$146,667). Accordingly, the board began the regulatory process with a request to publish a NOIRA in July, 2005. The process took 2 ½ years and was not concluded until January of 2007. By that time, the increase that had been adopted was insufficient to make up for the accumulated shortfall and have enough revenue to cover expenditures.

Therefore, fee increases for licensees regulated by the Board of Funeral Directors and Embalmers are necessary in order for the Board and the Department to continue performing essential functions of licensing new funeral service providers and establishments and registering interns and crematories and of protecting the public from unsafe, unsanitary facilities and from continued practice by incompetent or unethical practitioners.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

In 2005, the annual renewal fee was \$150 for funeral service licensees; it was increased by \$25 to \$175 in the amended regulations that became effective January of 2007. Prior to that action, fees had not been increased since 1998. A funeral service establishment license was increased from \$225 to \$300, in part to help cover the cost of a routine inspection which is estimated to cost the board from \$350 to \$400.

At this time, no specific regulatory language has been developed; the agency will develop alternative fee structures that will address the deficit in funding for the board to consider in its adoption of proposed regulations. Expenditures related to various statutory functions of the board, such as the inspection of facilities, will be examined to determine if fees directly related to those activities are sufficient to cover the expenses. In addition, the board will apply the Principles for Fee Development adopted by the agency in 1999 to ensure equitable distribution of costs and fees that are proportional to the activities they support.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Department of Health Professions could consider two possible solutions to the deficit of the Board of Funeral Directors and Embalmers; they are as follows:

1. Increase fees through the promulgation of regulations.

As required by law, the board is obligated to establish and collect fees that are necessary to fund operations of the board and the Department. An alternative is to seek the revenue from licensees and applicants to fully fund appropriated expenditures. Costs of services will be paid by consumers who use the services of providers, but licensure fees represent a miniscule percentage of the over-all costs of health care. The cost of operation of regulatory boards does not significantly affect the cost or access to health care. However, failure to fully fund the licensing and disciplinary services through fees will have a detrimental affect on quality and availability of services.

2. Reduce department/board operations and staff and remain at current fee level.

In order to prevent deficit spending, the department would need to lay off staff to reduce expenses associated with operations. The net result being a delay in the performance of or the elimination of the following responsibilities:

- **Investigations and discipline**
- **Examinations leading to license**
- **License renewals**
- **Regulation**
- **Inspections and approvals of new facility permits**

Delays in licensing and investigation could place the public at risk as victims of unscrupulous practitioners and could increase costs as new facilities and licensees would not be available. It is believed that these consequences would not be acceptable to the administration, the General Assembly, or to the general public.

To avoid increases in fees, the board and the Department of Health Professions have delayed hiring of new positions and held some positions approved for hiring. Travel restrictions are in effect, and the agency has reduced the use of media services for recruitment.

Renewal Schedule

Establishments, facilities and individuals licensed or registered by the Board of Funeral Directors and Embalmers renew every year by March 31st. Therefore, it is essential to have an increased fee in place by early 2012 in order to prevent the shortfall from growing even larger and necessitating an even greater fee increase.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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 comments may do so via the Regulatory Townhall website , www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. 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 after the publication of proposed amendments and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

The board will be using the participatory approach in the development of the proposal through inclusion of the public in meetings of the Regulatory Committee and the board at which fee proposals will be discussed and licensees and other interested parties will have the opportunity to offer comment.

Family impact

The proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, or strengthen or erode the marital commitment. There could be a very modest decrease in disposable family income depending on the amount and nature of the fee increase.