



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Professional and Occupational Regulation
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 120-30-100
<b>Regulation title</b>	Regulations Governing Polygraph Examiners
<b>Action title</b>	Fee Increase in accordance with the Callahan Act (§ 54.1-113)
<b>Document preparation date</b>	December 12, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The proposed regulations will increase fees for the Polygraph Examiners and Polygraph Examiner Interns to ensure that revenues are sufficient but not excessive to cover the program's ongoing operating expenses. Fees were decreased in 1998 and in 1999 based on a surplus experienced by the program. This surplus has been depleted since that time with program expenses exceeding the income produced by regulant fees. Current fees are not adequate to pay continuing operating costs. Without the proposed fee increases, the program's deficit will continue to increase and the Department will not collect adequate revenue to pay for operations.

All costs incurred in support of program 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.

## 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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

§ 54.1-113 requires regulatory boards to revise their licensure fees so that the fees are sufficient but not excessive to cover the boards' fees. § 54.1-1802 requires that the Director of the Department of Professional and Occupational Regulation promulgate regulations that are not inconsistent with the laws of Virginia necessary to carry out the provisions of Chapter 18 of Title 54.1 of the *Code of Virginia* and Chapter 1 (§ 54.1-100 et seq. of the *Code of Virginia*).

18 VAC 120-30-30 provides authority for the Director of the Department of Professional and Occupational Regulation to appoint an advisory board to advise the Department on any matters relating to the practice or licensure of polygraph examiners in Virginia.

## 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. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.*

The existing regulations are being amended to increase the fees applicable to several licensing items.

### **18 VAC 120-30-100. Fees.**

The fee for an examiners license by reciprocity is increased from \$45 to \$95.

The fee for an intern registration is increased from \$20 to \$75.

The fee for an examiners license by exam is increased from \$75 to \$200.

The fee for a re-examination is increased from \$75 to \$200.

The fee for renewal of an examiners license increased from \$15 to \$55.

The fee for reinstatement of an examiners license is increased from \$50 to \$75.

The dishonored check fee will be removed from the regulations.

### **Polygraph Examiner Licensing Program**

### **Fiscal Impact of Proposed Regulation**

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 2006	FY 2007	FY2008	FY2009
Fund / fund detail	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:** Localities who pay the licensing fees for employees applying for a polygraph license could incur the additional \$15 cost for the CCRE. Based on historical data, the additional cost is not anticipated to be more than \$100 annually per locality.

**Description of Individuals, Businesses, or Other Entities Impacted:** Polygraph examiners in Virginia who perform pre-employment examinations as well as examinations as part of a criminal investigation.

**Estimated Number of Regulators:** There are currently 254 licensed polygraph examiners and 22 licensed interns. Less than 25 new applicants are expected annually.

**Projected Cost to Regulators:** No change is expected in the Department’s licensing fees as a result of these regulations. If fees are not paid by their employers, new applicants will incur an additional \$15 cost for the CCRE required as a part of these regulatory changes. The additional cost to become licensed is not considered prohibitive for entry into the profession.

## Financial Status and Projections Board for Polygraph Examiners

Number of Regulators	<u>276</u>				
	<u>2000-2002</u>	<u>2002-2004</u>	<u>2004-2006</u>	<u>2006-2008</u>	<u>2008-2010</u>
<b>Beginning Cash Balance</b>	31,259	32,557	27,210	-4,767	-23,614
<b>Revenue</b>	14,135	10,950	10,653	10,802	10,953
<b>Expenditures:</b>					
<b>Board Expenditures</b>	4,644	4,603	23,880	8,374	9,379
<b>Board Administration</b>	1,786	3,694	5,923	6,720	7,527
<b>Examinations</b>	2,441	3,080	4,938	5,603	6,276
<b>Enforcement</b>	12	7	11	13	14
<b>Legal Services</b>	391	1,248	2,001	2,270	2,543
<b>Information Systems</b>	1,084	824	1,321	1,499	1,679
<b>Facilities/ Support Services</b>	1,422	1,425	2,285	2,592	2,904
<b>Agency Administration</b>	1,029	1,109	1,778	2,018	2,260
<b>Transfers/Other</b>	28	307	492	559	626
<b>Total Expenditures</b>	12,837	16,297	42,630	29,649	33,207
<b>Cash Balance</b>	<b>32,557</b>	<b>27,210</b>	<b>-4,767</b>	<b>-23,614</b>	<b>-45,868</b>
<b>Callahan Percentage</b>	<b><u>253.6%</u></b>	<b><u>167.0%</u></b>	<b><u>-11.2%</u></b>	<b><u>-79.6%</u></b>	<b><u>-138.1%</u></b>

**NOTES:**

Projected board expenditures include a one-time expenditure of \$16,500 in the 2004-06 biennium for examination development.

Fee increases have been proposed to the Board based on the projected deficit, but are not part of this regulatory action.

### 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.*

The Department has considered the following alternatives to increasing fees for the Polygraph Examiners Advisory Board:

- Reduce services: Because the regulatory activities conducted by the Department 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 program'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 Department 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.

**Family impact**

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.*

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These regulatory amendments are not anticipated to have any significant impact on Virginia families.

**Periodic review**

*If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section. If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

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This NOIRA is not the result of a periodic review.