



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 145-20 Professional Soil Scientists Regulations
18 VAC 145-30 Regulations Governing Certified Professional Wetland Delineators
18 VAC 145-40 Regulations for the Geology Certification Program
Department of Professional and Occupational Regulation
Town Hall Action/Stage: 5495/9706
September 13, 2022

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The Board for Professional Soil Scientists, Wetland Professionals and Geologists (Board) proposes to increase the fees charged to licensed and certified professionals so that future revenues are sufficient to cover projected expenditures.

Background

Section 54.1-2203 of the Code of Virginia (Code) provides for voluntary certification as a wetland delineator and authorizes the Board to certify these individuals.² Similarly, Virginia Code § 54.1-2208.2 authorizes the Board to certify geologists; this program is also optional for these professionals. In contrast, Virginia Code § 54.1-2205 requires soil scientists to be licensed

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² The “practice of wetland delineation” is defined in Virginia Code § 54.1-2200 as “the delineation of wetlands by accepted principles and methods including, but not limited to, observation, investigation, and consultation on soil, vegetation, and hydrologic parameters; and preparation of wetland delineations, descriptions, reports and interpretive drawings.”

according to Board requirements. Thus, this Board licenses one set of professionals and voluntarily certifies two other occupations.³

In general, Virginia Code § 54.1-201.4 authorizes professional boards to levy fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board, and a proportional share of the expenses of the Department of Professional and Occupational Regulation (DPOR). In addition, Virginia Code § 54.1-113, known as the Callahan Act, newly requires DPOR boards to distribute excess revenue to current regulants and reduce the fees when “unspent and unencumbered revenue exceeds \$100,000 or 20 percent of the total expenses allocated to the regulatory board for the past biennium, whichever is greater.”⁴ The Callahan Act previously required DPOR boards, as well as those administered by the Department of Health Professions, to adjust fees in situations in which “expenses allocated to [the board] for the past biennium...[are] more than ten percent greater or less than money collected on behalf of the board.”

Lastly the Appropriation Act was amended in 2019 to require DPOR to hold funds in reserve to “offset the anticipated, future costs of restructuring its organization, including additional staffing needs and the replacement or upgrade of the Department’s information technology systems requirements.” The most recent version of this language appears in Item 369 of the 2022 Appropriation Act.⁵

DPOR reports fees for soil scientists and wetland professionals were last adjusted in 2010, when they were decreased to comply with Callahan Act requirements.⁶ Conversely, fees

³ Soil scientists were also permitted to become voluntarily certified until Chapters 777 and 859 of the 2011 *Acts of Assembly* established a mandatory licensure program for this profession to become effective on July 1, 2013. See <https://leg1.state.va.us/cgi-bin/legp504.exe?111+ful+CHAP0777> and <https://leg1.state.va.us/cgi-bin/legp504.exe?111+ful+CHAP0859>, respectively. More information about the subsequent regulatory action establishing the licensure requirements is available on the Virginia Regulatory Town Hall (Town Hall) at <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=3539>. The regulation became effective March 1, 2015.

⁴ See <https://law.lis.virginia.gov/vacode/title54.1/chapter1/section54.1-113/> for the full requirements of the Act. The new requirements regarding unspent revenue took effect on July 1, 2022; these changes were made by Chapters 517 and 697 of the 2019 *Acts of Assembly*.

⁵ See <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/369/>. Under Item 4-13.00 of the Appropriation Act, “the provisions of this act shall prevail over any conflicting provision of any other law, without regard to whether such other law is enacted before or after this act.” Consequently, if a situation were to arise where the Appropriation Act conflicted with the new provisions of the Callahan Act, the language in the Appropriation Act would apply.

⁶ See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=3291> and <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=3292>, respectively. Note that these actions were promulgated by the Board for Soil Scientists and Wetland Professionals, which did not include geologists in 2010.

for geologists were last adjusted in 2015, when it was necessary to raise fees to comply with the Callahan Act requirements.⁷ Since the 2010 fee decreases took effect, DPOR reports that the agency's information technology costs have increased by 86 percent and that the agency's staff costs have increased by 22 percent.⁸ Based on DPOR's projections for Board revenues and expenditures at the current fee levels, the Board indicates that its fees are no longer sufficient to cover expenses in accordance with the Code provisions cited above.

The proposed fee increases are expected to increase the Board's revenues by approximately \$58,000 per biennium. Specifically, the Board proposes to raise initial application fees, renewal fees, late renewal fees, and reinstatement fees for all three professions. These fees are currently the same for all three professions and would be increased by identical amounts across the three professions. Thus the changes summarized in the Table below reflect identical changes that would be made to sections 18 VAC 145-20-151 (fees for soil scientists), 18 VAC 145-30-90 (fees for wetland professionals), and 18 VAC 145-40-20 (fees for geologists.)

Current and Proposed Fees

Fee Type	Current Fee	Proposed Fee	Percentage increase
Application	\$90	\$120	33%
Renewal	\$70	\$120	71%
Late renewal	\$25	\$35	40%
Reinstatement	\$90	\$120	33%

In addition to the fees listed in the Table, 18 VAC 145-30-90 includes an examination fee of \$150 for wetland professionals, and 18 VAC 145-40-20 includes a \$20 fee to apply for the Geologist-in-Training designation as well as an examination fee, which is set by a contract with a private vendor. These fees would all remain the same.

⁷ See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=3650>. The Board for Geologists was a separate board until 2012, when it was merged with the Board for Professional Soil Scientists and Wetland Professionals to create the Board as it currently exists. This post-merger action increased the geologists' certification fees to match the fees for soil scientists and wetland professionals.

⁸ See Agency Background Document (ABD), page 8, https://townhall.virginia.gov/l/GetFile.cfm?File=15\5495\9706\AgencyStatement_DPOR_9706_v1.pdf.

Estimated Benefits and Costs

DPOR reports that the Board had a balance of \$61,110 at the end of the 2020-2022 biennium.⁹ If fees remain unchanged, the Board's balance is projected to be \$7,492 at the end of the current biennium (2022-2024) and -\$41,726 (a deficit) at the end of the following biennium (2024-2026).¹⁰ DPOR projections indicate that the fee increases would bring in an additional \$58,000 in biennial revenue and that the new fees will become effective in FY 2024.¹¹

Since the proposed changes would increase fees for soil scientists, wetland professionals, and geologists, currently licensed or certified professionals in these areas as well as those seeking license or certification in the future would incur additional costs. However, the certifications for wetland professionals and geologists are voluntary and DPOR reports that the Board of Professional and Occupational Regulation recently recommended that soil scientists revert back to a certification program.¹² DPOR also noted that the 2015 fee increase for geologists did not reduce the number of geologists seeking certification. This indicates that the demand for voluntary certification may not be sensitive to fee increases, at least for this profession.

Businesses and Other Entities Affected

The proposed amendments would affect 81 licensed soil scientists, 117 certified wetland delineators and 912 certified geologists. The proposed amendments would also affect new applicants for these professional designations. On average there are 15 soil scientists, eight wetland delineators, and 75 geologists applying for initial licensure or certification each year.¹³

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.¹⁴ An adverse impact is indicated if there is any increase in net cost or

⁹ Geologists' certification fees are the most significant driver of revenues, since they are the largest group of regulants for this Board. However, these certifications are valid for two years and renewed in even years, causing Board revenues to fluctuate significantly between even and odd years. Thus, the projected balances and the expected impact of the fee changes are presented by biennium.

¹⁰ Email from DPOR dated August 25, 2022.

¹¹ Even if we assume the entire projected revenue increase were received in FY 2024, the projected balance for the 2022-2024 biennium would be \$65,492, which would not be sufficient to trigger the new Callahan Act requirements to reduce fees or redistribute revenues to regulants.

¹² See <https://rga.lis.virginia.gov/Published/2020/RD690>. DPOR reported that no legislator carried a bill that would codify this change. (Email from DPOR to DPB dated August 25, 2022.)

¹³ ABD, page 6.

¹⁴ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic

reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As the proposal raises fees, an adverse impact is indicated.

Small Businesses¹⁵ Affected:¹⁶

Types and Estimated Number of Small Businesses Affected

Small businesses may be affected to the extent that they employ licensed soil scientist, certified wetland delineators, certified geologists and pay the fees for these employees to obtain or maintain their license or certification. DPOR does not have information on how many of these professionals are employed by small businesses.

Costs and Other Effects

To the extent that small businesses employ these individuals and pay for their professional designations, such firms may encounter a small increase in cost associated with the proposed higher fees.

Alternative Method that Minimizes Adverse Impact

Changing the soil scientist program to a voluntary certification could reduce adverse impact; however, this change requires legislative action and cannot be implemented through this regulation.

Localities¹⁷ Affected¹⁸

Localities would not be directly affected by the proposed fee increases. To the extent that some local governments hire and pay the licensure or certification renewal fees for soil scientists,

impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

¹⁵ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

¹⁶ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹⁷ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁸ Code § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

wetland delineators, or geologists, such localities may encounter the small increase in cost associated with the proposed higher fee. DPOR does not have information on whether any localities employ these professionals directly.

Projected Impact on Employment

These professionals have a specialized skillset and the demand for their services would not be affected by the proposed fee changes. Thus, the proposed amendments are unlikely to substantively affect their employment rates.

Effects on the Use and Value of Private Property

To the extent that some businesses that hire these professionals pay for them to maintain their license or certification, such firms may encounter the small increase in cost associated with the proposed higher fees. The potential increase in cost would not likely be large enough to substantively affect the actions and value of these firms. The proposed amendments do not affect real estate development costs.