



Proposed Regulation Agency Background Document

Agency name	Board for Professional Soil Scientists, Wetland Professionals, and Geologists
Virginia Administrative Code (VAC) citation	18 VAC 70-20
Regulation title	Board for Geology Regulations
Action title	Fee Adjustment 2012
Date this document prepared	September 26, 2012

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 changes in the regulation will increase certification fees for professional geologists and align the fees with those of professional soil scientists and wetland professionals (The boards merged July 1, 2012.). The Board for Professional Soil Scientists, Wetland Professionals, and Geologists must establish fees adequate to support the costs of the Board's operations and a proportionate share of the Department of Professional and Occupational Regulation's operations.

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.

"Department" means the Department of Professional and Occupational Regulation.

"Board" means the Board for Professional Soil Scientists, Wetland Professionals, and Geologists.

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.

- 1) § 54.1-113 (Callahan Act) requires regulatory boards to periodically review and adjust fees. It states, in part, "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.A.4 describes the power and duty of regulatory boards to "levy and collect 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 proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation."

§ 54.1-304.3 describes the authority of the Department 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 Department shall be paid".

§ 54.1-308 requires costs to be paid by regulatory boards. It states, "The compensation of the Director and the employees within the Department, including the compensation of the members of each board, shall be paid out of the total funds collected and charged to the accounts of the respective boards. The Director shall maintain a separate account for each board showing the moneys collected on its behalf and the expenses allocated to each board."

- 2) The above citations from the *Code of Virginia* mandate that the Board manage and periodically review and adjust fees.

The referenced Code sections require the Department to:

- pay expenses of each board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charged to each board; and
- adjust fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- distinctly accounts for the revenue collected for each board;
- accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board;
- reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles; and

- recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

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.

The intent of the proposed changes in the regulation is to increase certification fees for professional geologist applicants and regulants of the Board for Professional Soil Scientists, Wetland Professionals, and Geologists. The Board must establish fees adequate to support the costs of Board operations and a proportionate share of the Department’s operations.

The Board provides protection for the health, safety and welfare of the citizens of the Commonwealth by ensuring that only individuals who meet specific criteria set forth in statute and regulations receive certification as professional geologists; by ensuring its regulants meet standards of practice and conduct set forth in the regulation; and by imposing penalties for not complying with the governing statutes and regulations. Without adequate funding, complaints against regulants, brought to the attention of the Board by citizens, cannot be investigated and processed in a timely manner. Ensuring that professional geologists have at least the minimal competencies to perform geological work protects the health, safety and welfare of Virginia citizens

The Department receives no general fund money, but instead, is funded almost entirely from revenue collected through applications for certification, licensure, renewals, examination fees, and other certification and licensing 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 adequate revenue. Fee revenues collected on behalf of the boards fund the Department’s authorized special revenue appropriation.

The Board for Professional Soil Scientists, Wetland Professionals, and Geologists has no other source of revenue from which to funds 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 existing regulation is being amended to increase the fees related to obtaining and maintaining certification as a professional geologist.

18VAC70-20-30. Fees.

- 1) The application fee for certification is increased from \$40 to \$90.
- 2) The fee for renewal of certification is increased from \$35 to \$70.

- 3) The penalty fee for late renewal remains \$25.
- 4) The reinstatement fee is increased from \$40 to \$90.

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 *Code of Virginia* establishes the Board as the state agency that oversees certification of professional geologists providing services in Virginia. The Board's primary mission is to protect the citizens of the Commonwealth, and it views certification as a broad concept that offers the public significant protection by prescribing requirements for minimal competencies; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the regulations. Further, the *Code of Virginia* compels the Department to comply with the Callahan Act. The proposed fee increases will ensure that the Board has sufficient revenues to fund its operating expenses.

There are no disadvantages to the public or the Commonwealth in raising the Board's fees as proposed in this Form TH-02.

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.

No federal requirements have been identified.

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.

No localities that will be particularly affected by the proposed increases in the fees have been identified.

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.

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 Kathleen R. Nosbisch, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA, 23233, Geology@dpor.virginia.gov, phone (804) 367-8514, fax (866) 465-6206. 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.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

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 requirements creates the anticipated economic impact.

Board for Professional Soil Scientists, Wetland Professionals, and Geologists

**Financial Status and Projections
Proposed Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>
20010-12	195,202	61,850	82,218	174,834	212.6%
2012-14	174,834	57,045	100,649	131,230	130.4%
2014-16	131,230	92,420	128,881	94,769	73.5%
2016-18	94,769	92,420	160,042	27,147	17.0%

**Number of
Regulants**

883 as of 7/1/2012

Fee History \$

<u>Major Fee Type</u>	<u>1995</u>	<u>1999</u>	<u>2006</u>	<u>Proposed 2013</u>
Application Fee	100	40	40	90
Renewal Fee	110	80	35	70

Board for Professional Soil Scientists, Wetland Professionals, and Geologists

**Financial Status and Projections
Current Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>
20010-12	195,202	61,850	82,218	174,834	212.6%
2012-14	174,834	57,045	100,649	131,230	130.4%
2014-16	131,230	56,765	128,881	59,114	45.9%
2016-18	59,114	56,765	160,042	-44,163	-27.6%

Number of Regulants

883 as of 7/1/2012

Fee History \$

<u>Major Fee Type</u>	<u>1995</u>	<u>1999</u>	<u>2006</u>	<u>Proposed 2013</u>
Application Fee	100	40	40	90
Renewal Fee	110	80	35	70

**Board for Professional Soil Scientists, Wetland Professionals, and Geologists
Fiscal Impact of Proposed Regulation**

Summary:

The proposed regulations will adjust fees for Geologists within the Board for Professional Soil Scientists, Wetland Professionals, and Geologists, to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The Geologists most recent fee changes were fee decreases that were

effective in November 2006 and July 1999. The proposed fees are lower than the fees in effect in 1995 and match fees in place for the other professions within the Board. Without the proposed fee adjustments, the Board will not collect sufficient 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 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. The Board has no other source of income.

Fiscal Impact:

	FY 2013	FY 2014	FY2015	FY2016
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

Description of Costs:

One-Time: No one-time costs are expected as a result of this regulatory change.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: This regulation change will affect all certified professional geologists and applicants.

Estimated Number of Regulators: As of July 1, 2012, the Board regulates 883 professional geologists.

Projected Cost to Regulators: All fees cover a two year period. The cost for a geologist to become certified will increase by \$50 from \$40 to \$90. The cost for geologist to renew a certification will increase by \$35, from \$35 to \$70. No economic impact is anticipated beyond the direct impact of the increased cost to become and remain certified. Increases in fees are not expected to have a significant effect on individuals deciding to become or remain certified by the Board.

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 for Geology:

- 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 certifications, and would decrease the Department’s effectiveness in ensuring that certificate holders 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

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. Consequently, 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.

Commenter	Comment	Agency response
Ronald	I vote for almost all points of the paper.	The Board thanks the commenter for his support.

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.

The proposed regulatory changes are 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), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18VAC70-20-30		<p>The application fee for certification is \$40.</p> <p>The fee for renewal of certification is \$35.</p> <p>The penalty fee for late renewal is \$25.</p> <p>The reinstatement fee is \$40.</p>	<p>The application fee for certification is increased from \$40 to \$90 to facilitate compliance with the Callahan Act.</p> <p>The fee for renewal of certification is increased from \$35 to \$70 to facilitate compliance with the Callahan Act.</p> <p>No proposed change.</p> <p>The reinstatement fee is increased from \$40 to \$90 to facilitate compliance with the Callahan Act.</p>