



Final Regulation Agency Background Document

Agency name	Board for Professional Soil Scientists, Wetland Professionals, and Geologists
Virginia Administrative Code (VAC) citation	18VAC 70-20
Regulation title	Board for Geology Regulations
Action title	Fee Adjustment 2012
Date this document prepared	January 28, 2014

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

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

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.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

The Board for Professional Soil Scientists, Wetland Professionals, and Geologists approved 18VAC70-20-30 Fees (which became 18VAC 145-40-20 Fees August 15, 2012, when the Board for Geology

merged with the Board for Professional Soil Scientists and Wetland Professionals) at its January 9, 2014 meeting.

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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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 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. By the close of the next biennium, fees will not provide adequate revenue for the operational costs.

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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” 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 there are 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.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

There have not been any further changes since the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

There was not public comment received.

All changes made in this regulatory action

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

Current section number	Proposed new section number, if	Current requirement	Proposed change and rationale

	applicable		
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>