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Proposed Regulation Agency Background Document

Agency name	Board for Professional Soil Scientists, Wetland Professionals and Geologists
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 145-20 18 VAC 145-30 18 VAC 145-40
VAC Chapter title(s)	Regulations Governing Professional Soil Scientist Regulations Governing Wetland Delineators Regulations for the Geology Certification Program
Action title	Fee Adjustment
Date this document prepared	July 28, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board for Professional Soil Scientists, Wetland Professionals and Geologists (the Board) seeks to amend its current regulations ("regulations") to adjust its licensing fee structure. The Board must establish fees adequate to support the costs of the 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 those costs.

The Department of Professional and Occupational Regulation ("DPOR") is funded entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees and receives no general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fee revenue collected on behalf of the various Boards funds the Department's authorized special revenue appropriation.

The Board has no other source of revenue from which to fund its operations.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

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

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

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

§ 54.1-113 (Callahan Act). 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 maintained under § [54.1-308](#) or [54.1-2505](#) shows that 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, the regulatory board shall (i) distribute all such excess revenue to current regulants and (ii) reduce the fees levied by it for certification, licensure, registration, or permit and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 54.1-201.4 describes each regulatory Board's power and duty to "levy and collect fees for the 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 . . ."

§ 54.1-304.3 describes the power and duty of the DPOR Director 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 the Department shall be paid . . ."

§ 54.1-308 provides for compensation of the Director, employees, and Board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each Board showing moneys collected on its behalf and expenses allocated to the Board.

These 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
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- accounts for the revenue collected for each Board distinctly;
- accounts for direct Board expenses for each Board, and allocates a proportionate share of agency operating expenses to each Board;

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

- 1) Board for Professional Soil Scientists, Wetland Professionals and Geologists
- 2) § 54.1-113 (Callahan Act) requires regulatory Boards to periodically review and adjust fees
§ 54.1-201.4 provides the authority to regulatory Boards to levy and collect fees.
§ 54.1-304.3 describes the authority of DPOR to collect and account for fees
§ 54.1-308 requires costs to be paid by regulatory Boards

All of these provisions of the Code of Virginia are mandatory.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The Board must establish fees adequate to support the costs of the 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 those costs.

DPOR is funded entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees and receives no general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fee revenue collected on behalf of the various Boards funds the Department's authorized special revenue appropriation.

The Board has no other source of revenue from which to fund its operations.

With the effective date for new fees anticipated to be in FY2024, it will have been 14 years since fees for Professional Soil Scientists and Wetland Professionals were decreased significantly to allow the Board to spend down its accumulated cash balance. In 2015, Geologists merged with Professional Soil Scientists, Wetland Professionals. At that time, Geologists fees were increased to align with the Professional Soil Scientists and Wetland Professionals fees. The Department generally tries to structure fees so that they will cover the Board's expenses for a period of 4-8 years, with the assumption that revenues are adequate to cover operating expenses but are not excessive. It is generally anticipated that each Board

would need to reassess its fee structure and raise fees in response to ongoing cost increases about every 5-6 years. One-time expenses or unusual cost increases may shorten that time period. The Department is always concerned about efficiency of operations as a means of maintaining or reducing costs, and has implemented budget review, approval, and monitoring processes, and performance measurement to monitor targets and goals.

While cost increases are not the sole reason for the fee increases, some cost categories have increased significantly since the Professional Soil Scientists and Wetland Professionals fees decreased in 2010 and the Geologists fees increased in 2015. Additionally, the agency anticipates increased future costs related to the replacement or upgrade of information technology systems and additional staffing needs related to organizational restructuring.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The Board reviewed the fees listed in 18VAC145-20-151, 18VAC145-30-90, 18VAC145-40-20, and based on projected revenues and expenses, developed a fee schedule that meets the requirements of the applicable statutes while being the least burdensome to the licensee population.

The following is the expected range of the proposed fee increases to be made in this regulatory action.

Range of Fees:

Fee Type	Current Fee	New Fee
New Application	\$90	\$120
Exam – Re Exam	\$150	\$150
Renewal	\$70	\$120
Late Renewal	\$25	\$35
Reinstatement	\$90	\$120

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The *Code of Virginia* establishes the Board as the state agency that oversees licensure of soil scientists, wetland delineators, and geologists providing services in Virginia. The Board’s primary mission is to protect the citizens of the Commonwealth 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* requires the

Department to comply with the Callahan Act. The proposed fee adjustments will ensure the Board has sufficient revenues to fund its operating expenses. Without taking any action, the Board will have a \$7,492 balance at the end of the biennium, with a 5.2% Callahan act percentage.

The advantages of this change to the public is that the Board will continue to be financially solvent. There are no disadvantages to the public or the Commonwealth in raising the Board’s fees as proposed here.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

No federal requirements have been identified.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies impacted by this change.

Localities Particularly Affected

There are no localities particularly impacted by this change.

Other Entities Particularly Affected

There are no other entities impacted by this change.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

The proposed change will increase fees in the soil scientists, wetland delineator and geologist regulations under the Board for Professional Soil Scientists, Wetland Professionals and Geologists. This change will ensure that revenues are sufficient but not excessive to cover the Board’s ongoing operating expenses. The last fee change was a fee decrease for the soil scientists and wetland delineators in 2010

And a fee increase for geologists in 2015 once they were merged with the Board for Professional Soil Scientists and Wetland Professionals.

All costs incurred in support of board activities and regulatory operations are paid by the Department of Professional and Occupation Regulation (DPOR) and funded through fees paid by applicants and regulants. All boards within DPOR must operate within the Code provisions of the Callahan At (54.1-113), and the general provisions of 54.1-201. Each regulatory programs' revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. DPOR allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Impact on State Agencies

<p><i>For DPOR:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>Revenue from licensing fees is expected increase to sufficiently meet the needs of the Board and cover the expenses. Biennial revenue increase of approximately \$58,000 is expected. No increase in costs or other effects to expenditures are expected.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no savings and no changes to costs, fees, or revenues of other state agencies resulting from this regulatory change unless other state agencies pay license fees for employees of the agency. The cost would be the amount of the fee paid for those individuals.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The Board has no other source of revenue/funding and therefore requires sufficient fee revenue to meet the expenses.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no savings and no changes to costs, fees, or revenues of localities resulting from this regulatory change unless other state agencies pay license fees for employees of the agency. The cost would be the amount of the fee paid for those individuals.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no benefits to localities resulting from this change.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>The regulatory change will affect all licensed soil scientists and certified wetland delineators and geologists and also individuals seeking to become licensed as soil scientists, certified wetland delineators or geologists. No other businesses or other entities are affected.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p>	<p>As of 7/1/22, there are 81 soil scientists; 117 wetland delineators, and 912 geologists. On average, there are approximately 15 soil scientists, 8 wetland delineators, and 75 geologists annually.</p>

<p>a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>The fees are increasing from \$90 to \$120 for a new application, \$90 to \$120 for renewal fee, \$25 to \$35 for late renewals and \$90 to \$120 for reinstatements across all three professions. No other costs are expected for individuals or businesses.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no benefits to the licensed individuals affected by the regulation change. The regulatory change does allow the board to continue licensing the individuals and businesses and continue protecting the health, safety and welfare of citizens.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

The Department has considered the following alternatives to increasing fees for Professional Soil Scientists, Wetland Professionals and Geologists:

- **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 licenses, creating barriers to applicants' and licensees' 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 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 loan repayment.
- **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 pursuant to §§ 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

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

The adjustment of fees is mandated by statute. Consequently, there is no flexibility.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

There is a continued need for regulation of the soil scientist, wetland delineator and geology professions. Due to the nature of the services provided by these professions, at least minimal competency of those engaged in the three professions is necessary to protect the health, safety, and welfare of the public. The proposed amendments balance the need for minimally competent professionals with the need for simple and clear regulations. The amendments add clarity to the regulations and where possible, regulations are repealed or incorporated into other regulations.

The Department is always concerned about efficiency of operations as a means of maintaining or reducing costs, and has implement budget review, approval, and monitoring processes, and performance measurement to monitor targets and goals.

While costs increases are not the sole reason for the fee increases, some cost categories have increased significantly since the Professional Soil Scientists and Wetland Professional's fees decreased in 2010 and the Geologists fees increased in 2015. The twelve fiscal years since the last fee decrease in 2010, agency Information Technology costs have increased by 86% and agency staff expenses have increased 22%. Additionally the agency anticipates increased future costs related to replacement or upgrades of information technology systems and additional staffing needs related to organizational restructuring.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

None

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/Board 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>.

Anyone wishing to submit comments may do so by one of the following methods:

- Via the **REGULATORY TOWN HALL website** at [http://townhall.virginia.gov/](http://townhall.virginia.gov)

OR send to the attention of:

Kathleen “Kate” Nosbisch, Executive Director

Board for Professional Soil Scientists, Wetland Professionals and Geologists

Department of Professional and Occupational Regulation

By E-MAIL to:

BPSSANDWP@dpor.virginia.gov

By FAX to:

(866) 465-6206

By U.S. Mail to:

9960 Mayland Drive, Suite 400

Richmond, VA 23233

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
18VAC145-20-151		New application fee \$90 Renewal fee \$70 Late renewal fee more than 25 days after license expiration \$25 Reinstatement fee more than six months after license expiration \$90	New application fee increased from \$90 to \$120 to facilitate compliance with the Callahan Act New renewal fee increased from \$70 to \$120 to facilitate compliance with the Callahan Act Late renewal fee more than 25 days after license expiration increased from \$25 to \$35 to facilitate compliance with the Callahan Act Reinstatement fee more than six months after license expiration from \$90 to \$120 to facilitate compliance with the Callahan Act
18VAC 145-30-90		Application \$90 Renewal fee \$70 Late renewal fee \$25 Reinstatement fee \$90	Application from \$90 to \$120 to facilitate compliance with the Callahan Act. Renewal fee from \$70 to \$120 to facilitate compliance with the Callahan Act. Late renewal fee \$35 to facilitate compliance with the Callahan Act.

			Reinstatement fee from \$90 to \$120 to facilitate compliance with the Callahan Act.
18VAC145-40-20		<p>Application fee for certification \$90</p> <p>Renewal fee for certification \$70</p> <p>Penalty for late renewal \$25</p> <p>Reinstatement fee \$90</p>	<p>Application for certification from \$90 to \$120 to facilitate compliance with the Callahan Act.</p> <p>Renewal fee for certification from \$70 to \$120 to facilitate compliance with the Callahan Act.</p> <p>Penalty for late renewal from \$25 to \$25 to facilitate compliance with the Callahan Act.</p> <p>Reinstatement fee from \$90 to \$120 to facilitate compliance with the Callahan Act.</p>