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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC160-40
VAC Chapter title(s)	Onsite Sewage System Professionals Licensing Regulations
Action title	Chapter 40 Fee Adjustment
Date this document prepared	February 1, 2021

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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (“the Board”) intends to amend the Onsite Sewage System Professionals Licensing Regulations to adjust license application, renewal, and reinstatement fees for onsite sewage system operator, onsite sewage system installer, and onsite soil evaluator licenses.

The Board must establish fees adequate to support the costs of the Board’s operations and a proportionate share of the Department’s operations. By the close of the next biennium (2022-2024), fees will not provide adequate revenue for those costs. The Department of Professional and Occupational Regulation (“the Department”) is funded almost entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees. The Department receives no general fund money.

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 that revenue.

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 or technical definitions used in this form.

No acronyms or technical definitions are used in this form.

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.”

This regulatory change was prompted by a Department review of the Board’s current financial position, and projected revenues and expenses for the current (2020-2022) and next (2022-2024) biennia. The Department’s Financial Services Director reports that by the close of the current biennium expenses are expected to exceed revenues by approximately 17%. By the close of the next biennium, expenses are expected to exceed revenues by approximately 16%. Section 54.1-113 of the Code of Virginia (“the Callahan Act”) 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 10 percent greater or less than moneys collected on behalf of the board, it shall revise 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.

This regulatory change is also made in anticipation of an upcoming change in the Callahan Act that will become effective July 1, 2022 (FY 2023). The regulatory change is expected to ensure revenue to the Board’s account will be approximately equal to expenditures allocated to the Board, while keeping the cash balance of the account relatively stable to ensure compliance with the Callahan Act.

On January 14, 2021, the Board reviewed its current and projected financial position, and authorized an adjustment to license application, renewal, and reinstatement fees so that fees are sufficient, but not excessive to cover expenses.

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.

The agency is the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. Chapter 23 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure program for onsite sewage system professionals. Section 54.1-2301 of the Code of Virginia states, in part:

C. The Board shall establish a program for licensing individuals as onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators.

D. The Board, in consultation with the Board of Health, shall adopt regulations for the licensure of (i) onsite soil evaluators; (ii) installers of alternative onsite sewage systems, as defined in § 32.1-163; and (iii) operators of alternative onsite sewage systems, as defined in § 32.1-163. Such regulations shall include requirements for (a) minimum education and training, including approved training courses; (b) relevant work experience; (c) demonstrated knowledge and skill; (d) application fees to cover the costs of the program, renewal fees, and schedules; (e) the division of onsite soil evaluators into classes, one of which shall be restricted to the design of conventional onsite sewage systems; and (f) other criteria the Board deems necessary.

Section 54.1-201 of the Code of Virginia states, in part:

A. The powers and duties of regulatory boards shall be as follows:

4. 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.

Further, Section 54.1-113 of the Code of Virginia states, in part:

A. 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 10 percent greater or less than moneys collected on behalf of the board, it shall revise 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.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The General Assembly has charged the Board with the responsibility for regulating those who install or operate onsite sewage systems, and those who perform the duties of an onsite soil evaluator, by requiring that such individuals obtain a license in order to engage in these occupations. Residences that do not have access to public water systems must rely on onsite septic systems to properly and safely dispose of wastewater they produce. Installation and operation of onsite septic systems by those who lack sufficient expertise poses a risk to the public health and welfare. Soil evaluators are responsible for testing soils to determine whether sites are appropriate for installation of a disposal system, designing such systems, and certifying that such systems comply with applicable state regulations and local ordinances. Soil evaluators who lack sufficient expertise to perform these duties may pose a risk to the public health and welfare. In addition, the improper installation or operation of an onsite septic system

can pose a substantial risk of financial harm to homeowners who will be responsible for assuming the costs to remediate damage and repair/replace defective systems.

This action will be limited to adjusting license application, renewal, and reinstatement fees. No other issues are expected to be addressed.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board reviewed the fees listed in 18VAC160-40-40, 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 Board determined that lowering the initial application fee will reduce costs for entry into the profession, as applicants for initial licensure for master licenses must typically also assume costs for taking the licensure examination.

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

Fee Type	Current Fee	New Fee	Change
Initial application (for each profession, class, and category of license)	\$100	\$85	Decrease by \$15.
Renewal (for each profession, class, and category of license)	\$80	\$105	Increase by \$25.
Reinstatement (for each profession, class, and category of license)	\$105 (renewal fee + \$25 reinstatement fee)	\$140 (renewal fee + \$35 reinstatement fee)	Increase reinstatement fee by \$10.

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 following alternatives to the regulatory change were considered:

- 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.

Onsite sewage system installer, onsite sewage system operator, and onsite soil evaluator licenses are issued to individuals, and do not fall within the meaning of the term “small business” as defined in § 2.2-4007.1.

**Periodic Review and
Small Business Impact Review Announcement**

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

In accordance with the Board’s Public Participation Guidelines (18VAC160-11), notification of this regulatory action will be made to persons on the agency’s notification list. In addition, notification of this action will be posted on the agency’s website.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts 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://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to:

Joseph C. Haughwout, Jr.
Regulatory Administrator
9960 Mayland Drive
Perimeter Center, Suite 400
Richmond, VA 23233
WaterWasteOper@dpor.virginia.gov
(866) 350-5354 (fax)

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 be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the

Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.