



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

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|----------------------------|---|
| Agency Name: | 41 |
| VAC Chapter Number: | 30 |
| Regulation Title: | Board for Barbers and Cosmetology Rules and Regulations |
| Action Title: | Promulgating |
| Date: | June 11, 2002 |

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed regulatory changes will promulgate regulations for the newly combined Board for Barbers and Cosmetology as directed by Acts 2000, c.726, cl.3.; clarify and standardize requirements for licensure; provide for and ensure that health, sanitation standards, and safety are adequate in facilities where barbering and cosmetology are practiced; and extend the temporary work permit period from 30 to 45 days to allow sufficient time for posting examination scores and avoid interruption of employment. The proposal also seeks to repeal existing Barber and Cosmetology regulations.

The proposed regulatory changes will also adjust licensing fees for regulants of the Board for Barbers and Cosmetology.

Sub-regulating the licensure and practice of waxing and haircutting was considered during the process of promulgating proposed regulations. The 2002 General Assembly passed HB337 that enact the licensure of Wax Technician. At the June 3, 2002 board for Barbers and Cosmetology Meeting, the Board established qualifications pertaining to the requirements for waiver of the examination as stated in Section 54.1-703.1. Waiver of examination; wax technicians. Code of Virginia. The Board will begin promulgation of regulation pertaining to licensure of wax technicians at the September 9, 2002 Board for Barbers and Cosmetology Meeting.

At the April 22, 2002 Board for Barbers and Cosmetology Meeting, the Board approved the consideration of licensure of haircutting during the next regulatory review that the Board will begin at the September 9, 2002 Board for Barbers and Cosmetology meeting.

The accumulated cash balance and projected revenue to be collected from licensing fees will be inadequate to cover the board's operating costs by the close of the fiscal year 2002 as required by the Callahan Act, Virginia Code Section 54.1-113. Fee increases will allow the board to collect adequate revenue to repay the deficit that is projected for the current biennium, and support its ongoing expenses for upcoming operating cycles.

In accordance with statute, the Board collects licensing fees from which its operating costs and a proportionate share of the Department's expenses are paid. The Board has no other sources of revenue from which to fund its operations. Fee increases are necessary for the Board to continue to perform its essential functions of licensing, investigation of complaints, and adjudication of disciplinary cases.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The proposed regulatory action to promulgate regulations governing the licensure and practice of barbering and cosmetology for the newly combined Board for Barbers and Cosmetology is mandated by Acts 2000,c.726,cl. 3.

- Section 54.1-201.5. of the Code of Virginia describes each regulatory boards power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

The proposed regulatory action to adjust the fees is mandated by the following sections of the Code of Virginia. 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.

- Section 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 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.

- Section 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.

- Section 54.1-304.3 describes the power and duty of the 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.

- Section 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;
- 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.
- Reviews the actual and projected financial position of each board each biennium to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles.
- 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.

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion in how the fees are adjusted by determining the amount of the adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The intent of the proposed regulatory action is to promulgate regulations governing the licensure and practice of barbering and cosmetology. These regulations are necessary to ensure competence and integrity of all licensees and to ensure that the health and sanitary standards and safety are adequate in shops, salons, schools, and other facilities where barbering and cosmetology are practiced. Promulgation of these regulations for the newly combined Board for Barbers and Cosmetology is mandated by Acts 2000,c.726,c1.3.

The purpose of the fee adjustment is as follows:

The intent of the proposed changes in regulations is to adjust licensing fees for regulants of the Board for Barbers and Cosmetology. The Board must establish fees adequate to support the costs of board operations and a proportionate share of the Department's operations. By the beginning of the 2002-04 biennium, fees will no longer provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (DPOR) receives no general fund money, but instead is funded almost entirely from revenue collected for license applications, renewals, examination fees, and other 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 that revenue. Fee revenue collected on behalf of the boards funds the Department's authorized special revenue appropriation.

The Board for Barbers and Cosmetology has no other source of revenue from which to fund its operations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The proposed regulations will change the VAC Chapter Number to 18 VAC 41-30-10 et seq. These regulations will contain provisions for both barbering and cosmetology as directed by Acts 2000,c.726, cl.3.; standardize and clarify requirements for licensure; ensure competency and integrity of all licensees; provide for and ensure that health and sanitation standards are adequate in facilities where these services are provided; and extend the temporary work permit period from 30 to 45 days to allow sufficient time for posting examination scores and avoid interruption of employment.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

The proposed regulatory action is an advantage to the public in that it will provide clear and effective regulations to ensure competency and integrity and prevent deceptive or misleading practices by practitioners of barbering and cosmetology. The new provision to extend the temporary permit from 30 to 45 days is an advantage to regulants and the revised sanitation and safety standards are to the advantage of the public. The new provision pertaining to licensure by endorsement clarifies and standardizes the requirements for applicants to obtain a license in Virginia based on a current license held in any other state or jurisdiction of the United States. There are no disadvantages to the public or the Commonwealth with regards to the combining of the regulations governing the licensure and practice of barbering and cosmetology.

The proposed fee adjustment is an advantage to the public in that the Board for Barbers and Cosmetology, within the Department of Professional and Occupational Regulation, is fulfilling its statutory requirement in that it must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. The proposed fee adjustment in the proposed regulatory action is an advantage to the public in that the Department is fulfilling its statutory requirement 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 to comply with the Callahan Act in order to administer this regulatory program in a cost effective manner. In that the fees apply to the two-year period for which the license is valid, and overall,

will remain a very small portion of the costs to work, there are no disadvantages to the public or the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Background:

Until recently, barbers were regulated by the Board for Barbers, and cosmetologists and nail technicians were regulated by the Board for Cosmetology. The boards were combined at the beginning of fiscal year 2001.

The last fee adjustment for the Board for Barbers was in July 1995, at which point fees were raised by an average of about \$51. The last fee increase for the Board for Cosmetology was in July 1995, when fees were raised an average of about \$18. Shortly afterward, the Department was able to realize reductions in expenditures through participation in the Workforce Transition Act and other efficiencies. As a result, actual expenditures charged to the Barbers and Cosmetology Boards were less than anticipated.

At the close of FY96, the Board for Barbers had an accumulated cash balance of approximately \$139,909. The Board's cash balance increased until it reached \$223,406 at the end of fiscal year 1999. Revenues collected substantially exceeded expenditures charged to the Board. To avoid continually increasing its cash balance and Callahan Act percentage, the Board took action to reduce its fees in fiscal year 1997 by an average of about \$30, and in fiscal year 1999 made a smaller reduction in fees, averaging about \$6. Projected revenues at that point were expected to remain slightly below expenditures, allowing the board to use its accumulated cash balance and reduce its Callahan Act percentage over the next 4-5 operating cycles.

The Board for Cosmetology had accumulated a cash balance of \$866,561 at the close of fiscal year 1996. That balance increased to \$1,188,660 by the close of fiscal year 1997. To avoid continuing to increase its cash balance and Callahan Act percentage, the board reduced its fees during 1997 by an average of about \$23. At the close of the 1996-98 biennium, projections indicated that the board would need to increase fees in approximately four-six years. The board made one further reduction in fees during fiscal year 2000 to bring its reinstatement fees more in line with the Department's overall practice, but that adjustment had no material impact on revenues or the board's financial position. At the close of the 1998-00 biennium, the board's cash balance had decreased to \$569,169, and it had a Callahan Act percentage of 25.2%. Expenditures for the biennium were substantially more than revenues, and the board was

drawing on its cash balances to cover its operating expenses. This situation was projected to continue into the current biennium.

When the boards were combined on July 1, 2000, their cash balances and financial histories were combined for purposes of projecting the new board’s financial position and analyzing its fees.

During the 1998-2000 biennium, the agency's expenditures increased more than expected, due to the following factors:

- In FY2000, the General Assembly authorized a salary increase of 6.25%. That increase affected expenditures for FY00, and must be carried forward into future years, resulting in expenditure projections higher than originally anticipated. Projections for future years also include anticipated salary-related costs of the Compensation Reform Plan.

- The Department has increased its use of wage employees to manage increasing levels of enforcement activity, which has added to cost increases for this Board.

- Since FY97, the Department has experienced increasing activity levels in the areas of enforcement, investigation, and adjudication:

| | FY97 | FY98 | FY99 | FY00 | Increase |
|--------------------------|-------|-------|-------|-------|----------|
| Cased Closed | 1,857 | 3,341 | 3,350 | 3,240 | 74.5% |
| Investigations Completed | 2,161 | 3,350 | 3,404 | 3,395 | 57.1% |
| Cases Adjudicated | 262 | 418 | 561 | 815 | 11.1% |

- About 4.5% of total enforcement costs are allocated to the Board for Barbers and Cosmetology. In fiscal year 1997, total enforcement costs charged to the board were \$64,409. For fiscal year 2001, enforcement costs are projected to be approximately \$106,000, representing an increase of over \$40,000 or 13% annually.

The Board for Barbers and Cosmetology's combined direct and administrative support costs for the 1998-2000 biennium were more than \$2.5 million, with revenue collections of \$1.98 million. Projections indicate that revenue collections in the 2000-02 biennium will increase only slightly to about \$2,006,000, with expenditures increasing to about \$2.8 million. By the close of the current biennium, the Board is expected to have a cash balance of about \$4,000, and without fee increases is expected to incur a deficit early in fiscal year 2003.

Comparative Factors

Between 1996 and 2000, the Consumer Price Index increased a total of 13.9%. During the same period, licensing fees charged by the Board for Barbers and Cosmetology have decreased an average of 36% for barbers, and 23% for cosmetologists.

The following table is used to compare the cost of licensing in Virginia with other nearby states. Comparisons are shown for the cost to a barber and a cosmetologist to become licensed and to renew a license.

| License | VA | NC | SC | WV | MD | FL | GA |
|----------------|----|----|-----|----|----|-----|----|
| Barber: | | | | | | | |
| Application | 60 | 70 | 100 | 5 | 50 | 25 | 50 |
| Renewal | 25 | 30 | 45 | 25 | 50 | 105 | 35 |
| Cosmetologist: | | | | | | | |
| Application | 0 | 28 | 45 | 5 | 25 | 80 | 45 |
| Renewal | 25 | 39 | 3 | 25 | 25 | 60 | 35 |

This comparison demonstrates that current fees could be raised to appropriate levels and still remain reasonable, and in some cases lower in cost, in comparison to amounts charged by other nearby states.

Potential Impact and Consequences

Adjustments in fees are not expected to have a significant effect on individuals deciding to become licensed by the Board, or to affect the total volume of barber, cosmetologist, and nail technician practitioners, salons, schools, and instructors. No economic impact is anticipated beyond the direct impact of the increased cost to become and remain licensed. Licensing fees apply to the two-year period for which the license is valid, and overall, will remain a very small portion of the costs to work as a barber or cosmetologist.

If these fee adjustments are not implemented:

- The Board will have inadequate revenues to support its ongoing operations.
- Because this Board represents a large portion of agency activities and revenue, the Department will have inadequate cash flow to pay for essential operations.
- Revenue collections will be inadequate to fund the Department's authorized appropriation.

Issues to be Addressed as Regulation is Developed

The Callahan Act requires DPOR to review each board’s expenditures at the close of each biennium, and to adjust fees if necessary. The Board for Barbers and Cosmetology closed the 1998-00 biennium with a combined Callahan Act percentage of 31.8% and a cash balance of \$801,299. However, by the close of the 2000-02 biennium, the Board is expected to have a cash balance of only \$4,000 and a Callahan Act percentage of .1%. Since its revenues are less than expenditures, the board is expected to incur a deficit early in fiscal year 2003.

Once the Board exhausts its cash balance and begins fully using its current revenues, there will be no additional source of revenue to pay its ongoing operating expenses other than to borrow from the cash balances of other boards. The Board for Barbers and Cosmetology is the Department’s second largest board. Borrowing from other boards’ cash balances could support its operations for only a limited amount of time, and would only delay the need for fee

adjustments briefly. Any amounts borrowed from other boards would have to be repaid, and would result in even larger increases in proposed fees in order to repay the deficit.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee adjustments now, before a deficit is actually incurred. To avoid the upcoming deficit and the need to adjust fees to more than needed for ongoing operations, the new fees will need to become effective by the beginning of the 2002-04 biennium. Otherwise, the Board’s deficit will increase and the new fees may be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the Board having to consider additional fee increases in the near future.

All cost 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 indirect costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

Fiscal Impact:

| | FY 2002 | FY 2003 | FY2004 | FY2005 |
|--------------------|------------|------------|------------|------------|
| Fund | NGF (0900) | NGF (0900) | NGF (0900) | NGF (0900) |
| Program/Subprogram | 560 44 | 560 44 | 560 44 | 560 44 |

| Impact of Regulatory Changes: | | | | |
|-------------------------------|---|---|---|---|
| One-Time Costs | 0 | 0 | 0 | 0 |
| Ongoing Costs | 0 | 0 | 0 | 0 |
| Total Fiscal Impact | 0 | 0 | 0 | 0 |

Description of Costs:

One-Time: None

Ongoing: None

Cost to Localities: None anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: Individuals, businesses, and schools licensed to perform services as barbers, cosmetologists, and nail care technicians.

Estimated Number of Regulators: Approximately 56,700 individuals, businesses, and schools.

Projected Cost to Regulators: Licensing fees apply to the two-year period for which the license is valid. No economic impact is anticipated beyond the direct impact of the increased cost to become and remain licensed. Increases in fees are not expected to have a significant effect on individuals deciding to become or remain licensed by the Board. Overall, proposed increases in fees will remain a very small portion of the costs to work as a Barber or Cosmetologist.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The proposed regulatory changes will promulgate regulations for the newly combined Board for Barbers and Cosmetology as directed by Acts 2000, c.726,cl.3. and clarify and standardize requirements for licensure. All substantive changes to existing sections of the currently separate regulations are noted below.

- **18 VAC 41-30-10.** the definition of Direct supervision is being added to the regulations to clarify the requirement of supervision when services are being performed by a temporary permit holder or registered apprentice.
- **18 VAC 41-30-20.** is being added to the regulations to clarify the eligibility requirements for applicants with a record of criminal convictions.
- **18 VAC 55-22-30.** clarifies and standardizes the requirements for license by endorsement for barbers, cosmetologists and nail technicians. The current regulatory sections that address license by endorsement for barbers, 18 VAC 40-20-120, and cosmetologists and nail technicians, 18 VAC 55-22-100, vary significantly.
- **18 VAC 41-30-50.** establishes that the educational credit shall be based on completed performances and that applicants trained in a Virginia State Institution or the United States armed forces are eligible for examination. The current sections of regulation pertaining to exceptions to training requirements for Barbers, 18 VAC 40-20-50, and Cosmetology, 18 VAC 55-22-70, provided an arbitrary 50% educational credit for Virginia licensees with less than two years work experience when enrolling or transferring for training in either practice. In addition, the current regulations do not specify that applicants receiving training from a Virginia State Institution or the United States armed forces are eligible for examination.
- **18 VAC 41-30-60.D.** clarifies that the examination fees shall consist of the administrative expenses of the department ensuing from the board's examination procedures and contract

charges and that the exam service contracts shall be established in compliance with the Virginia Public Procurement Act. This subsection also establishes that any examination fee shall not exceed a cost of \$225.00 to the candidate.

- **18 VAC 41-30-90.** extends the temporary work permit period from 30 to 45 days to allow sufficient time for posting examination scores and avoid interruption of employment and specifies that no applicant shall be issued more than one permit:
- **18 VAC 41-30-100.** clarifies and standardizes the requirements for instructor certifications for barbers, cosmetologists and nail technicians. The current regulatory sections that address requirements for instructor certification for barbers, 18 VAC 40-20-100, cosmetologists, 18 VAC 55-22-110, and nail technicians, 18 VAC 55-22-120, vary significantly.
- **18 VAC 41-30-140.** adjusts, combines, and standardizes the current sections of the regulation pertaining to fees for barbers, 18 VAC 40-20-20, 18 VAC 40-20-110 through 18 VAC 40-20-200, and cosmetologists and nail technicians, 18 VAC 55-22-160, 18 VAC 55-22-170, 18 VAC 55-22-270, 18 VAC 55-22-300, and 18 VAC 55-22-310.
- **18 VAC 41-30-200.** clarifies that the area where classroom instruction is given and the area where practical instruction and services are provided must be separate areas.
- **18 VAC 41-30-270.A. – J.** amends, combines and clarifies the current sanitation requirements for barbers, 18 VAC 40-20-290, and cosmetologists and nail technicians, 18 VAC 55-22-340, to create detailed sanitation and safety standards for shops, salons, and schools. The new language in 18 VAC 41-30-270.D. stipulates that compliance with these rules does not confer compliance with other requirements set forth by federal, state and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health.

This section is divided into the following subsections: 18 VAC 41-30-270.A. – Sanitation and safety standards; 18 VAC 41-30-270.B. - Disinfection and storage of implements; 18 VAC 41-30-270.C. – General sanitation and safety requirements; 18 VAC 41-30-270.D. – Equipment sanitation; 18 VAC 41-30-270.E. – Articles, tools and products; 18 VAC 41-30-270.F. – Chemical storage and emergency information; and 18 VAC 41-30-270.G. – Client health guidelines. 18 VAC 41-30-270.H. stipulates that all licensee and temporary permit holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational and Safety Division of the Virginia Department of Labor and Industry. 18 VAC 41-30-270.I. establishes that all shops, salons, schools and facilities shall immediately report the results of any inspection by the Virginia Department of Health. 18 VAC 41-30-270.J. stipulates that all shops, salons, schools and facilities shall maintain a self-inspection form on file to be updated annually and maintained for 5 years to be reviewed at the board's discretion.

Alternatives

Please describe the specific 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.

Failure to promulgate new regulations will result in the newly created Board for Barbers and Cosmetology maintaining two sets of Rules and Regulations. One set of regulations for the barber profession and one set of regulations for the cosmetology profession and the Board would not be in compliance with Acts 2000, c.726, cl.3.

Other regulatory provisions would not provide for less burdensome alternatives.

The alternatives considered in lieu of a fee adjustment is as follows:

The Department has considered the following alternatives to increasing fees for the Board for Barbers and Cosmetology.

- 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 citizens' 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 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 Appropriations Act. The Department's boards are intended to be self-funding per Sections 54.1-113, 54.1-201.4, 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.
- Reduce Department expenditures: The Department has already taken action to control its expenditures. During fiscal year 2000, decisions were made to postpone discretionary spending, particularly in the area of information systems and equipment upgrades. In fiscal year 2001, the Department implemented an operating budget below its appropriation level in an attempt to postpone cost increases. Such decisions have helped to delay fee increases, but cannot avoid them altogether. Over the past five years, Department expenditures have increased a total of 20.3%, or an average of 4% annually. This annual increase is quite small given cost increases associated with salary increases, inflationary increases, increases in the volume of enforcement activities, increases in mandated regulatory activities, and increases in the number of licensees over the same period of time. The small increase in expenditures

represents the Department's efforts to hold cost increases to the minimum necessary, and thus avoid unnecessary increases in fees.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The following public comments and agency responses are based on the proposed text for the regulations at the time of the NOIRA comment period. The provision to create a subregulated category for a wax technician was subsequently deleted in order to promulgate regulations to meet statutory mandates pertaining to the newly combined Board and fee adjustments.

Commenter: Lieng P. Tran
7404 Vandenburg Court
Lanham, Maryland 20706
Letter dated July 17, 2001

Summary of Comment: Ms. Tran is a licensed Nail Technician and Esthetician in Maryland who is on the Board's PPG list. She suggests that the Board establish a license strictly for waxing services and/or revise the current Nail Technician license to be a Nail and Waxing Technician license. Ms. Tran states that the estimated cost of obtaining a cosmetology license in Virginia, so that she could perform nail and waxing services in this state, is approximately \$6000. She believes this cost and the additional, unrelated training prevents skilled individuals from performing waxing as a service in Virginia.

Agency Response: The 2002 General Assembly passed HB337 that enact the licensure of Wax Technician. At the June 3, 2002 board for Barbers and Cosmetology Meeting, the Board established qualifications pertaining to the requirements for waiver of the examination as stated in Section 54.1-703.1. Waiver of examination; wax technicians. Code of Virginia. The Board will begin promulgation of regulation pertaining to licensure of wax technicians at the September 9, 2002 Board for Barbers and Cosmetology Meeting.

Commenter: Barbara Hensley, Instructor and Co-Owner
ATI Hollywood The School of Hair Design
3535-D Franklin Road S.W.
Roanoke, Virginia 24014-2255
(540)343-0153
Letter dated July 26, 2001

Summary of Comment: Ms. Hensley believes that the sub-regulation of haircutting and waxing would create both a health and safety issue to the public and an unnecessary burden on cosmetology schools. She believes that cosmetology schools would incur a "great deal of expense to implement this as it would be a separate program."

Ms. Hensley also believes that haircutters and wax technicians would practice outside their scope of practice without the proper training. Ms. Hensley is concerned that salon insurance would increase.

Agency Response: The 2002 General Assembly passed HB337 that enact the licensure of Wax Technician. At the June 3, 2002 board for Barbers and Cosmetology Meeting, the Board established qualifications pertaining to the requirements for waiver of the examination as stated in Section 54.1-703.1. Waiver of examination; wax technicians. Code of Virginia. The Board will begin promulgation of regulation pertaining to licensure of wax technicians at the September 9, 2002 Board for Barbers and Cosmetology Meeting. At the April 22, 2002 Board for Barbers and Cosmetology Meeting, the Board approved the consideration of licensure of haircutting during the next regulatory review that the Board will begin at the September 9, 2002 Board for Barbers and Cosmetology meeting.

Commenter: Bonnie Bender, Director, Staunton School of Cosmetology
128 E. Beverley Street
Staunton, Virginia 24401
(540) 885-0808
Letter dated August 9, 2001

Summary of Comment: Agrees that the standards for health, sanitary and safety practices of licensees should be reviewed and revised as needed.

In the context of increased fees, Ms. Bender suggests that the Board “review the operating practices in the Richmond Office.”

Ms. Bender also suggests that the Board review the temporary permit application process. She believes the forms take too long to be completed. She believes the temporary permit should be issued for 60 days, rather than 30, so that students can work and support their families until an exam date.

Ms. Bender additionally states that she believes students do not receive the necessary admission card and exam information until the day before the State Board. She believes there have been instances where the student was not notified at all.

Ms. Bender suggests that waxing be provided by “educated technicians.”

Ms. Bender believes it would be deceptive to lead a student to believe that they could be trained to be a skilled haircutter in a period of six hundred hours. She states that teaching a student a “crash course in haircutting will not benefit the Cosmetology Industry or the standards we have tried to maintain.”

Agency Response: The Board, through the language of its proposed regulations, will revise the safety and sanitary standards for the practices of barbering, cosmetology, nail technicians, and wax technicians. The Board believes that the new regulatory language provides the necessary protections for the citizens of the Commonwealth of Virginia.

The Board, through the language of its proposed regulations, will be increasing the length of a temporary permit from thirty (30) days to forty-five (45) days. Exam personnel has indicated that forty-five days will amply cover the period of time from the date of the examination through the applicant's receipt of his/her exam scores.

The application deadline has been increased from two weeks to three weeks prior to the examination to increase the time frame for examination notification. Specific information pertaining to examination notification will be requested for research of this issue.

At the April 22, 2002 Board for Barbers and Cosmetology Meeting the Board approved the consideration of licensure of haircutting during the next regulatory review that the Board will begin at the September 9, 2002 Board for Barbers and Cosmetology meeting.

The 2002 General Assembly passed HB337 that enact the licensure of Wax Technician. At the June 3, 2002 board for Barbers and Cosmetology Meeting, the Board established qualifications pertaining to the requirements for waiver of the examination as stated in Section 54.1-703.1. Waiver of examination; wax technicians. Code of Virginia. The Board will begin promulgation of regulation pertaining to licensure of wax technicians at the September 9, 2002 Board for Barbers and Cosmetology Meeting.

Commenter: Judy Madden, Business Consultant
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(703) 719-9541
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Letter dated August 23, 2001

Summary of Comment: Requests that the Board look more closely at the statutory inclusion of "waxing, tweezing" in the statutory definition of the work on human hair by a cosmetologist. Ms. Madden suggests that most cosmetologists do not receive training in skin care sufficient to address the risk to the public of bad skin reactions to the processes of waxing and tweezing.

Agency Response: The 2002 General Assembly passed HB337 that enact the licensure of Wax Technician. At the June 3, 2002 board for Barbers and Cosmetology Meeting, the Board established qualifications pertaining to the requirements for waiver of the examination as stated in Section 54.1-703.1. Waiver of examination; wax technicians. Code of Virginia. The Board will begin promulgation of regulation pertaining to licensure of wax technicians at the September 9, 2002 Board for Barbers and Cosmetology Meeting. Specific information to training time dedicated to skin care will be requested for research of this issue.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Board submits that the proposed regulations are clearly written and understandable for both the regulants and the public.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The regulations will be reviewed during the Board's normal course of regulatory review that shall in no case exceed three years from the effective date of these regulations. Fees are evaluated at the end of every biennium. If fee adjustments are necessary, the regulatory review process is initiated. Otherwise, within 24 to 36 months of the effective date of these regulations, this matter will be placed on the Board's agenda for consideration.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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 actions are not anticipated to have any significant impact on Virginia's families.