



## Virginia Department of Planning and Budget **Economic Impact Analysis**

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**18 VAC 160-40 Onsite Sewage System Professionals Licensing Regulations**  
**Department of Professional and Occupational Regulation**  
**Town Hall Action/Stage: 5684 / 9704**  
September 9, 2022

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of these economic impacts.<sup>1</sup>

### **Summary of the Proposed Amendments to Regulation**

The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (Board) proposes to adjust three of its licensing fees for onsite sewage system operators/installers/evaluators in order to increase revenues.

### **Background**

The General Assembly has charged the Board with regulating those who install or operate onsite sewage systems, and those who perform the duties of an onsite soil evaluator through licensing. In § 54.1-2300 of the Code of Virginia, “[o]nsite sewage system” means a conventional onsite sewage system or alternative onsite sewage system as defined in § 32.1-163. In that referenced section, a “conventional onsite sewage system” defined as “a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield” and “alternative onsite sewage system” or “alternative onsite system” is defined as “a treatment works that is not a conventional onsite sewage system and

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

*does not result in a point source discharge.” Moreover, the same statute defines a "licensed onsite soil evaluator" as “a person who is licensed under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as an onsite soil evaluator. A licensed onsite soil evaluator is authorized to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for onsite sewage systems.”*

According to the Department of Professional and Occupational Regulation (DPOR), 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. The licensure regulation for onsite sewage system professionals helps ensure that those who receive a license from the Board meet minimum requirements for education and experience in order to engage in these occupations.

DPOR receives no general fund money, and is funded almost entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees. As a result, the Board must establish fees adequate to support the costs of the Board’s operations and a proportionate share of DPOR’s overall operations. The Board has no other source of revenue from which to fund its operations.

At current fee levels, DPOR projects that the Board will not have sufficient revenue to meet its expenditures. DPOR’s Financial Services Director reports that at current fee levels, the Board’s expenditures are projected to exceed revenues by approximately 19 percent by the close of the 2022-2024 biennium.

Code of Virginia § 54.1-201 states in part that:

*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***

In accordance with this statute, the Board proposes to raise the annual renewal fee from \$80 to \$105, and the reinstatement fee from \$105 to \$140. However, the Board also proposes to reduce the initial application fee from \$100 to \$85 in order to reduce costs for entry into the profession, because applicants for initial licensure as onsite sewage system operators/installers/evaluators assume costs for taking the licensure examination.

In short, the goal of the regulatory change is 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 § 54.1-201.

**Estimated Benefits and Costs**

The proposed adjustments to the three fees are expected to generate approximately \$13,410 in additional annual revenue for the Board that would be collected from regulants starting in fiscal year 2025.<sup>2</sup> More specifically, based on the renewal fee change from \$80 to \$105, licensees will be charged an additional \$25 at the time of renewal, which occurs every two years. There are on average 640 renewals annually, for a total cost of \$16,000. Similarly, based on the reinstatement fee change from \$25 to \$35, licensees will be charged an additional \$10 at the time of reinstatement. There are on average two reinstatements annually, for a total cost of \$20. On the other hand, due to the reduction of the application fee for an initial license from \$100 to \$85, DPOR will receive \$15 less per application, and based on 174 applications per year, this change costs the agency \$2,610 per year which would be a benefit to applicants. It is notable that the increase in renewal and reinstatement fees would be offset by the reduction in the application fee by some amount so as to lower the cost of entry into these occupations.

The primary benefit of this regulatory action is that the Board would be able to continue to administer the onsite sewage system operator/installer/evaluator licensing as mandated by the General Assembly and ensure their proper operation.

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<sup>2</sup> ORM Economic Impact Document.

## **Businesses and Other Entities Affected**

All onsite sewage system operators/installers/evaluators are affected by the proposed fee changes. Also, individuals seeking to become licensed in these occupations would be affected. According to DPOR, as of July 1, 2022, there are 1,590 licensed onsite sewage system professionals. Also, there are approximately 175 new onsite sewage system professional applicants per year.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, fees paid to renew or reinstate the license are increasing. Thus, an adverse impact on regulants is indicated.

### **Small Businesses<sup>4</sup> Affected:<sup>5</sup>**

#### Types and Estimated Number of Small Businesses Affected

According to DPOR, although licenses for onsite sewage systems are issued to individuals and not to business entities, many individuals who are licensed are likely to be owners or employees of owners or employees of business entities that meet the definition of “small business” in § 2.2-4007.1 of the Code of Virginia.

#### Costs and Other Effects

To the extent that small businesses with onsite sewage system professionals may pay the licensure renewal or reinstatement fee for the operator, such firms may encounter

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<sup>3</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>4</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

<sup>5</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

the increase in cost associated with the proposed higher fees. Thus, an adverse economic impact on small businesses would be indicated, however no information on this is available.

#### Alternative Method that Minimizes Adverse Impact

Based upon the available information, there are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

#### **Localities<sup>6</sup> Affected<sup>7</sup>**

Similar to businesses, localities may be affected if they pay the license fees for employees of the locality. The cost would be the amount of the higher license fee paid for those individuals. Accordingly, an adverse impact on localities would be indicated to the extent they pay higher license fees for their onsite sewage system professionals, however no information on this is available.

#### **Projected Impact on Employment**

The proposed fee adjustments are unlikely to substantively affect employment.

#### **Effects on the Use and Value of Private Property**

To the extent that some businesses with onsite sewage system professionals may pay the licensure renewal or reinstatement fee for the operator, such firms may encounter the increase in cost associated with the proposed higher fees. The potential increase in cost would not likely be large enough to substantively affect the actions and value of these firms. The proposed amendments do not affect real estate development costs.

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<sup>6</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>7</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.