



## Final Regulation Agency Background Document

<b>Agency name</b>	Board for Barbers and Cosmetology
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 41-60
<b>Regulation title</b>	Body Piercing Regulations
<b>Action title</b>	Amending Body Piercing Fees 2009
<b>Date this document prepared</b>	February 24, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The final regulations will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The Board's most recent fee increases became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The Board has incurred an increase in costs for enforcement activities, Information Systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the final fee increases, the Board's deficit will continue to increase and the Department will not collect adequate revenue to pay for operations.

All costs 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 agency operating costs. The Department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

**Statement of final agency action**

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

Current financial analysis indicates that proposed fee increases will not be sufficient to repay the current deficit and continue to support operating costs. The following issues have contributed to the need for additional increases:

- In accordance with statute, each board is charged a proportionate share of DPOR’s operating expenditures. The economic downturn in recent years impacted the boards for Real Estate and Contractors, significantly reducing volumes of applications and licensees. During the same period, volumes for Barbers/Cosmetology remained fairly stable, resulting in approximately 3% (\$600K annually) more than anticipated in costs allocated to the board.
- Fee increases were initially recommended early in 2008. The Board adopted fee increases in July 2008, and they were projected to become effective for FY11. However, new fees are now not expected to become effective until about January 2012. As of July 1, 2010, the Board went into a cash deficit, which is growing at the rate of about \$100,000 per month. Fees must now be established at rates high enough to repay the projected deficit, as well as to support ongoing operating costs.
- The agency has incurred unusual or increased costs that are allocated to each board based on number of licensees. Barber/Cosmetology pays about 24% of those costs:
  - During planning for the agency’s new licensing system (EAGLES) in FY08, system-related costs were estimated at about \$2.2M. As of FY11, total costs are expected to be \$5.1M.
  - The state transferred more than \$1M from agency nongeneral fund cash balances to the general fund in FY10.
  - VITA costs increased \$387,734 for FY11. VITA costs have increased almost 45% since FY07.

The Callahan Act requires DPOR to review each board’s expenditures at the close of each biennium, and to adjust fees if necessary. At the end of the 2008-10 biennium, the Board for Barbers and Cosmetology reached a deficit cash balance of (\$102,401) and Callahan Act percentage of -1.7%. By the end of the current 2010-12 biennium and under the current fees, the Board for Barbers and Cosmetology deficit cash balance is expected to reach (\$4,023,013) and a Callahan Act percentage of -46.7%. Under the final fees, by the end of the 2010-12 biennium, the deficit cash balance is projected to be (\$2,269,077) and a Callahan Act percentage of -26.3%.

**Financial Status and Projections – Current Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>
2008-10	1,069,569	4,922,139	6,094,109	-102,401	-1.7%
2010-12	-102,401	4,692,135	8,612,747	-4,023,013	-46.7%
2012-14	-4,023,013	4,790,162	10,020,736	-9,253,587	-92.3%
2014-16	-9,253,587	4,790,162	10,440,775	-14,904,200	-142.7%

**Financial Status and Projections – Final Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>
2008-10	1,069,569	4,922,139	6,094,109	-102,401	-1.7%
2010-12	-102,401	6,446,071	8,612,747	-2,269,077	-26.3%
2012-14	-2,269,077	11,922,117	10,020,736	-367,696	-3.7%
2014-16	-367,696	11,922,117	10,440,775	1,113,647	10.7%

Implementation of the final fees is necessary to avoid the continual growth of the deficit cash balance. The current fees and the previously proposed fees are inadequate to recover from the cash deficit balance. Without the final fees or with any delay, the Board will be required to initiate an additional increased fee proposal at higher fee levels.

On February 14, 2011, the Board for Barbers and Cosmetology voted to adopt these amendments to 18VAC41-60 as final.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The final regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board for Barbers and Cosmetology 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 or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505, shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 54.1-201.4 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 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.
- Reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles.
- Recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The intent of the final changes in regulations is to increase 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 close of the current biennium, fees will not provide adequate revenue for those costs.

The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive a barber, cosmetologist, nail technician, barber shop, cosmetology salon, nail salon, barber school, cosmetology school, or nail school license, or barber instructor, cosmetology instructor, or nail technician instructor certification, or temporary permit. The Board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the Board by citizens, could not be investigated and processed in a timely manner. This could provide an opportunity for a dishonest barber, cosmetologist, nail technician, barber shop, cosmetology salon, nail salon, barber school, cosmetology school, nail school, barber instructor, cosmetology instructor, nail technician instructor, or temporary permit holder, waiting for action to be taken by the Board, to continue to work, harming additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money, but instead, is funded almost entirely from revenue collected through applications for licensure, 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 revenues collected on behalf of the boards fund 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. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

The existing regulations are being amended to increase the fees applicable to several licensing items.

### **18VAC41-60-90. Fees.**

The fee for Body Piercer license is increased from \$55 to \$140.

The fee for Body Piercer Ear Only license is increased from \$55 to \$140.

The fee for Body Piercer license by endorsement is increased from \$55 to \$140.

The fee for Body Piercer Ear Only license by endorsement is increased from \$55 to \$140.

The fee for Body Piercer license renewal is increased from \$55 to \$140.

The fee for Body Piercer Ear Only license renewal is increased from \$55 to \$140.

The fee for Body Piercer license reinstatement is increased from \$55 to \$140.

The fee for Body Piercer Ear Only license reinstatement is increased from \$55 to \$140.

The fee for Body Piercing Salon license is increased from \$90 to \$225.

The fee for Body Piercing Ear Only Salon license is increased from \$90 to \$225.

The fee for Body Piercing Salon license renewal is increased from \$90 to \$225.

The fee for Body Piercing Ear Only Salon license renewal is increased from \$90 to \$225.

The fee for Body Piercing Salon license reinstatement is increased from \$90 to \$225.

The fee for Body Piercing Ear Only Salon license reinstatement is increased from \$90 to \$225.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
  - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
  - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary issue for the final fee increase is the Department's statutory requirement to comply with the Callahan Act.

Further issues to be addressed as regulations are developed include:

The Callahan Act required DPOR to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. At the end of the 2008-10 biennium, the Board for Barbers and Cosmetology reached a deficit cash balance of (\$102,401) and Callahan Act percentage of -1.7%. By the end of the current 2010-12 biennium and under the current fees, the Board for Barbers and Cosmetology deficit cash balance is expected to reach (\$4,023,013) and a Callahan Act percentage of -46.7%.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to the amount greater than previously anticipated. To avoid increasing the deficit the new fees will need to become effective early in the 2010-12 biennium. Otherwise, the Board's deficit will increase to the point that the new fees would 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.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

**Changes made since the proposed stage**

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

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
18 VAC 41-60-90	The fee for Body Piercer license - \$75	The fee for Body Piercer license - \$140	The fees were increased in order to meet modified Callahan projection.
	The fee for Body Piercer Ear Only license - \$75	The fee for Body Piercer Ear Only license - \$140	
	The fee for Body Piercer license by endorsement - \$75	The fee for Body Piercer license by endorsement - \$140	
	The fee for Body Piercer Ear Only license by endorsement - \$75	The fee for Body Piercer Ear Only license by endorsement - \$140	
	The fee for Body Piercer license renewal - \$75	The fee for Body Piercer license renewal - \$140	
	The fee for Body Piercer Ear Only license renewal - \$75	The fee for Body Piercer Ear Only license renewal - \$140	
	The fee for Body Piercer license reinstatement - \$75	The fee for Body Piercer license reinstatement - \$140	
	The fee for Body Piercer Ear Only license reinstatement - \$75	The fee for Body Piercer Ear Only license reinstatement - \$140	
	The fee for Body Piercing Salon license - \$115	The fee for Body Piercing Salon license - \$225	
	The fee for Body Piercing Ear Only Salon license - \$115	The fee for Body Piercing Ear Only Salon license - \$225	
	The fee for Body Piercing	The fee for Body Piercing Ear Only Salon license renewal - \$225	

Salon license renewal - \$115	The fee for Body Piercing Salon license reinstatement - \$225	
The fee for Body Piercing Ear Only Salon license renewal - \$115	The fee for Body Piercing Ear Only Salon license reinstatement - \$225	
The fee for Body Piercing Salon license reinstatement - \$115		
The fee for Body Piercing Ear Only Salon license reinstatement - \$115		

**Public comment**

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

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
William A. Barham—Owner of Skin Ink & Body Tattoo Studio (from Town Hall)	Instead of raising fees for licensees, the Board for a fee, should administer the training for blood borne disease, sterilization and aseptic techniques related to tattooing and first aid and CPR.	The training for blood borne disease, sterilization and aseptic techniques related to tattooing and first aid and CPR are currently provided by private industry. The Board is not designed or intended to compete with private industry. Additionally, the current method allows for licensees to have the flexibility of obtaining the training from various sources under a variety of instructional methods.

**All changes made in this regulatory action**

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

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
18 VAC 41-60-90		The fee for Body Piercer license - \$55	The fee for Body Piercer license is increased to \$140 to facilitate compliance with the Callahan Act.
		The fee for Body Piercer Ear Only license - \$55	The fee for Body Piercer Ear Only license is increased to \$140 to facilitate compliance with the Callahan Act.

		<p>The fee for Body Piercer license by endorsement - \$55</p> <p>The fee for Body Piercer Ear Only license by endorsement - \$55</p> <p>The fee for Body Piercer license renewal - \$55</p> <p>The fee for Body Piercer Ear Only license renewal - \$55</p> <p>The fee for Body Piercer license reinstatement - \$55</p> <p>The fee for Body Piercer Ear Only license reinstatement - \$55</p> <p>The fee for Body Piercing Salon license - \$90</p> <p>The fee for Body Piercing Ear Only Salon license - \$90</p> <p>The fee for Body Piercing Salon license renewal - \$90</p> <p>The fee for Body Piercing Ear Only Salon license renewal - \$90</p> <p>The fee for Body Piercing Salon license reinstatement - \$90</p> <p>The fee for Body Piercing Ear Only Salon license reinstatement - \$90</p>	<p>The fee for Body Piercer license by endorsement is increased to \$140 to facilitate compliance with the Callahan Act.</p> <p>The fee for Body Piercer Ear Only license by endorsement is increased to \$140 to facilitate compliance with the Callahan Act.</p> <p>The fee for Body Piercer license renewal is increased to \$140 to facilitate compliance with the Callahan Act.</p> <p>The fee for Body Piercer Ear Only license renewal is increased to \$140 to facilitate compliance with the Callahan Act.</p> <p>The fee for Body Piercer license reinstatement is increased to \$140 to facilitate compliance with the Callahan Act.</p> <p>The fee for Body Piercer Ear Only license reinstatement is increased to \$140 to facilitate compliance with the Callahan Act.</p> <p>The fee for Body Piercing Salon license is increased to \$225 to facilitate compliance with the Callahan Act.</p> <p>The fee for Body Piercing Ear Only Salon license is increased to \$225 to facilitate compliance with the Callahan Act.</p> <p>The fee for Body Piercing Salon license renewal is increased to \$225 to facilitate compliance with the Callahan Act.</p> <p>The fee for Body Piercing Ear Only Salon license renewal is increased to \$225 to facilitate compliance with the Callahan Act.</p> <p>The fee for Body Piercing Salon license reinstatement is increased to \$225 to facilitate compliance with the Callahan Act.</p> <p>The fee for Body Piercing Ear Only Salon license reinstatement is increased to \$225 to facilitate compliance with the Callahan Act.</p>
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### Regulatory flexibility analysis

*Please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.*

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The adjustment of fees is mandated by statute and subsequently there is no flexibility.

### Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.*

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These fee increases are not anticipated to have any significant impact on Virginia's families.