



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

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**12 VAC 5-620 Regulations Governing Fees of Onsite Sewage Disposal Systems, Alternative Discharge Systems, and Private Wells**  
**Virginia Department of Health**  
**Town Hall Action/Stage: 6210/9967**  
August 30, 2023

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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 the potential economic impacts as of the date of this analysis.<sup>1</sup>

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

As the result of 2018 legislation, including the *Appropriation Act*, the State Board of Health (Board) is proposing to amend the regulation governing fees for onsite sewage disposal systems, alternative discharge systems, and private wells to make certain mandatory changes to fees, eliminate a fee waiver, and allow a refund for rejected and withdrawn applications.<sup>2</sup>

### **Background**

This action implements two legislative mandates that have been in effect since 2019. First, Chapter 831 of the 2018 *Acts of Assembly* directs the Virginia Department of Health (VDH) to take steps to eliminate evaluation and design services provided by the local health departments for onsite sewage systems and private wells, effective July 1, 2019.<sup>3</sup> Second, the 2018 *Appropriation Act* required VDH to charge for certain onsite sewage system services that

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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.

<sup>2</sup> See <https://townhall.virginia.gov/L/viewmandate.cfm?mandateid=1305> and <https://townhall.virginia.gov/L/viewmandate.cfm?mandateid=1306>.

<sup>3</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=181&typ=bil&val=ch831>.

had previously been provided at no cost to the applicant.<sup>4</sup> Since 2018, these fees have remained in all subsequent Appropriation Acts.<sup>5</sup>

The most substantive changes are summarized as follows:

- Section 70 (*Establishing Fees*) would be amended to add fees for Repair Permits, Voluntary Upgrade permits, and Safe, Adequate, and Proper Evaluations, as required by the Appropriations Act.<sup>6</sup> These fees are listed in the table below.

<i>FEE TYPE</i>	<i>FEE</i>
Repair permit for a treatment works, < 1,000 gpd without OSE/PE documentation	\$425
Repair permit for a treatment works, < 1,000 gpd with OSE/PE documentation	\$225
Repair permit for a treatment works, > 1,000 gpd with OSE/PE documentation	\$1,400
Voluntary Upgrade for a treatment works, < 1,000 gpd with OSE/PE documentation	\$225
Voluntary Upgrade for a treatment works, > 1,000 gpd with OSE/PE documentation	\$1,400
Safe, adequate, and proper evaluation without OSE/PE/Installer/Operator documentation	\$150
Safe, adequate, and proper evaluation with OSE/PE/Installer/Operator documentation	\$100

- Section 80 (*Waiver of fees*) would be amended to add a fee waiver, as specified in the Appropriations Act, for applications for “a pit privy or for a repair of a failing onsite or alternative discharging sewage system” if the owner’s family income is “at or below 200

<sup>4</sup> See Item 292 of Chapter 2 of the 2018 *Acts of Assembly*, Special Session on page 283 at <https://budget.lis.virginia.gov/get/budget/3619/HB5002/>.

<sup>5</sup> Current budget language can be found in Item 294 of the 2022 *Appropriation Act* (Chapter 2 of the 2022 *Acts of Assembly*, Special Session I) at <https://budget.lis.virginia.gov/bill/2022/2/HB30/Chapter/>.

<sup>6</sup> “Repair” means the construction or replacement of all or parts of an onsite sewage system or alternative discharging system to correct a failing, damaged, or improperly functioning system when such construction or replacement is required by the Board of Health’s regulations. “Voluntary Upgrade” means an improvement to an existing onsite sewage disposal system or alternative discharging system that (i) is not required for compliance with any law or regulation and (ii) results in no net increase in the permitted volume or strength of sewage dispersed by the system. “Safe, Adequate, and Proper Evaluation” means request for written authorization from the State Health Commissioner or his agent pursuant to § 32.1-165 of the Code of Virginia. See the Agency Background Document, page 2: [https://townhall.virginia.gov/l/GetFile.cfm?File=58\6210\9967\AgencyStatement\\_VDH\\_9967\\_v1.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=58\6210\9967\AgencyStatement_VDH_9967_v1.pdf).

percent of the poverty guidelines, updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C 9902(2).” In addition, an application fee waiver that is also listed in section 90 (*Refunds of application fee*), and thus duplicative, would be removed.

- Section 90 (*Refunds of application fee*) would be amended to provide a refund of the fees that would be added in section 70 (for Repair Permits, Voluntary Upgrade permits, and Safe, Adequate, and Proper Evaluations) when the application is either withdrawn or denied. Code § 32.1-164 requires VDH to refund the fee for an onsite sewage system or an alternative discharging sewage system permit when the Department denies the application, if the construction was to occur on the principal place of residence.<sup>7</sup> Although the *Code of Virginia* and the *Appropriations Act* do not require a refund for withdrawals, the regulation currently provides a refund for permit withdrawals and the proposed change would extend this provision for the fees that would be added to section 70.

### **Estimated Benefits and Costs**

Property owners applying for Repair Permits, Voluntary Upgrade permits, and Safe, Adequate, and Proper Evaluations have been paying the new fees as required by the Appropriations Act since the requirements first became effective in July 2019. VDH reports that in fiscal year 2023, they issued 1,057 repair permits, 291 voluntary upgrade permits, and 1,570 Safe, Adequate, and Proper evaluations. In addition, 76 repair permits were denied, 9 voluntary upgrade permits were denied, and 82 Safe, Adequate, and Proper Evaluations were denied; fees for these permits were refunded as required by law. Since July 1, 2019, VDH has averaged 66 permit withdrawals per year for repair permits, voluntary upgrades, or Safe, Adequate, and Proper Evaluations. VDH assumes that the majority of applications that would result in a withdrawal would involve the \$225 fee, resulting in a cost to the agency of approximately \$14,850 from refunding these fees. VDH reports that any refunds issued for withdrawn applications can be absorbed by the agency.

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<sup>7</sup> See part C in <https://law.lis.virginia.gov/vacode/title32.1/chapter6/section32.1-164/>.

## **Businesses and Other Entities Affected**

The proposed amendments would directly create new fees for property owners applying for permits for repairs or voluntary upgrades, or requesting a Safe, Adequate, and Proper Evaluation; however, all new fees are required by the Appropriations Act. The proposed amendments would also add certain waivers for low-income households, as specified in the Appropriations Act, and current waivers in section 80 would remain.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>8</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. Although the proposed changes would add new fees for some property owners, these fees are mandated by the Appropriations Act and do not result from the regulation itself. Moreover, the proposed changes have already been implemented. Thus, an adverse impact is not indicated.

### **Small Businesses<sup>9</sup> Affected:<sup>10</sup>**

The proposed amendments could affect small businesses that have onsite sewage disposal systems or alternative discharge systems and seek a permit for repairs or voluntary upgrades or apply for a Safe, Adequate, and Proper Evaluation. Such businesses would have to pay the new fees to VDH; however, VDH does not collect information on the number of permit applicants that are small businesses.

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<sup>8</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>9</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>10</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.

**Localities<sup>11</sup> Affected<sup>12</sup>**

The proposed amendments do not appear to disproportionately affect any particular localities. Local governments may be affected if they have any onsite sewage systems or alternative discharge systems and seek a permit for repairs or voluntary upgrades or a Safe, Adequate and Proper Evaluation.

**Projected Impact on Employment**

The proposed amendments are not likely to have a substantive impact on total employment.

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

The proposed amendment may slightly reduce the value of private property that has an onsite sewage system or alternative discharge systems because some current and future owners of the property can expect to pay new fees for permits for repairs and voluntary upgrades that may previously have been provided at no cost. Applicants for repair permits for large (over 1,000 gpd) treatment systems and applicants for voluntary upgrade permits may also have to pay for documentation from appropriate licensed professionals. Some property owners may have already contracted with licensed professionals for these services prior to 2019 and thus may not incur new costs. As mentioned previously, the repair permit and voluntary upgrade permit fees would be waived for persons with income below 200 percent of the federal poverty line for certain types of repairs and upgrades. Similarly, the proposed amendments would affect real estate development costs for properties with onsite sewage systems or alternative discharge systems since they would have to pay for Safe, Adequate, and Proper Evaluations that VDH had previously been providing at no cost.

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<sup>11</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>12</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.