Virginia
Regulatory
Town Hall

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Proposed Regulation
Agency Background Document

Agency name	Board of Funeral Directors and Embalmers, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC 65-20-10 et seq. 18VAC65-40-20 et seq.
Regulation title	Regulations of the Board of Funeral Directors and Embalmers Regulations for the Funeral Service Intern Program
Action title	Increase in fees
Date this document prepared	November 8, 2010

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

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

Almost all fees charged to applicants, registrants and licensees will be increased as a result of this regulatory action. Renewal fees for funeral service licensee will increase from $175 to $225 and for funeral establishment licensees from $300 to $400. Application fees, reinstatement fees, late fees will increase accordingly. The fee for initial registration of a funeral service internship will increase from $100 to $150, and the renewal fee will increase from $100 to $125.

Beginning in 2014, there will be an increase of approximately 10% to meet the rising costs of information technology, health insurance, lease payments and other projected expenditures. Renewal fees for funeral service licensee will increase from $225 to $250 and for funeral establishment licensees from $400 to $440. Application fees, reinstatement fees, late fees will increase accordingly. The fee for initial registration of a funeral service internship will increase from $150 to $165, and the renewal fee will increase from $125 to $140.

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., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

18VAC65-20-10 et seq. Regulations of the Board of Funeral Directors and Embalmers and 18VAC65-40-10 et seq., Regulations for the Funeral Service Intern Program are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to **levy and collect fees** that are **sufficient to cover all expenses** for the administration of a regulatory program.

§ 54.1-2400. General powers and duties of health regulatory boards.--*The general powers and duties of health regulatory boards shall be:*

5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.
6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.

The **proposed regulation is mandated by § 54.1-113**; however the board must exercise some discretion in the amount and type of fees that will be increased in order to comply with the statute.

> ***§ 54.1-113. 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.*

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The issue to be addressed is the need of the Board of Funeral Directors and Embalmers to increase their fees to cover expenses for essential functions of licensing, investigation of

complaints against licensees and facilities, adjudication of disciplinary cases, and the inspections required for public safety and security in the Commonwealth.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures. By the close of the FY09 fiscal year, the Board of Funeral Directors and Embalmers had a surplus of $19,797 and was projected to have a deficit of ($84) by the end of FY10. Because the Board underspent its budget, it ended FY10 with a surplus of $40,298.

However, because of extraordinary increases in information technology services, increases in health care costs, building lease payments, anticipated cost-of-living increases, and other expenditures, current revenue is projected to be insufficient for expenditures. The Board will have deficits through the fiscal years going forward, beginning in FY11 with a deficit of ($42, 168) and culminating in a projected deficit of ($785,323) by FY16. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, consideration of a fee increase is essential. In order to have sufficient funding for the operation of the Board by fiscal year 2011-2012, it is necessary to promulgate amendments to regulations at the earliest possible date.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

Almost all fees charged to applicants, registrants and licensees will be increased as a result of this regulatory action. Renewal fees for funeral service licensee will increase from $175 to $225 and for funeral establishment licensees from $300 to $400. Application fees, reinstatement fees, late fees will increase accordingly. The fee for initial registration of a funeral service internship will increase from $100 to $150, and the renewal fee will increase from $100 to $125.

Beginning in 2014, there will be an increase of approximately 10% to meet the rising costs of information technology, health insurance, lease payments and other projected expenditures. Renewal fees for funeral service licensee will increase from $225 to $250 and for funeral establishment licensees from $400 to $440. Application fees, reinstatement fees, late fees will increase accordingly. The fee for initial registration of a funeral service internship will increase from $150 to $165, and the renewal fee will increase from $125 to $140.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

1) The primary advantage to the public would be that increased fees will produce adequate revenue to fund the licensing and disciplinary activities of the board. With the shortfall of ($432,195) projected in FY14, there could be significant delays in licensing, in inspections and in the investigation and adjudication of complaints against licensees. There are no disadvantages; increases in renewal fees of approximately $50 for a funeral service licensee and $100 for an establishment should not significantly impact the cost of funeral services for Virginians. If two establishments have fewer than 85 funeral calls per year, the Code allows them to share a manager who is a funeral service licensee, so the increase in fees would result in a very minimum increase in the cost per funeral call.
2) There are no disadvantages to the agency; the advantage would be that fees would be sufficient to cover expenditures, especially significant increases in IT services, which is a requirement of the Code of Virginia.
3) There are no additional issues.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and

other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or **elaine.yeatts@dhp.virginia.gov** or by fax to (804) 527-4434**.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than $500) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Notifications are typically given electronically to reduce the cost. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs to the agency.
Projected cost of the *new regulations or changes to existing regulations* on localities.	None
Description of the individuals, businesses or other entities likely to be affected by the *new regulations or changes to existing regulations*.	Funeral establishments, funeral service licensees, funeral directors, embalmers, funeral interns, crematories, courtesy card holders, surface transportation companies, and continuing education providers would be affected.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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	funeral establishments – 500 funeral service licensees – 1,450 funeral directors – 75 embalmers – 5 funeral interns – 145 crematories – 90 courtesy card holders – 85

of less than $6 million.	surface transportation companies – 50 continuing education providers - 25 There are 90 "stand-alone" crematories registered with the Board. They do business with funeral establishments but not with the general public. It is estimated that all would be small businesses. There are currently 500 licensed funeral establishments; of that number approximately 350 would be considered small businesses. The rest are establishments that are owned by large, national or international corporations. The courtesy card holders are out-of-state establishments and are likely large businesses; the surface transportation and removal companies are likely small businesses. The individual licensees and interns all work for an establishment.
All projected costs of the *new regulations or changes to existing regulations* for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	Projected costs of amended regulations are outlined in the section detailing the increase in fees.
Beneficial impact the regulation is designed to produce.	Sufficient revenue to pay for the Board's share of increases costs for IT services and other allocated and direct costs.

Alternatives

Please describe any viable 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

In 2005, the annual renewal fee was $150 for funeral service licensees; it was increased by $25 to $175 in the amended regulations that became effective January of 2007. *Prior to that action, fees had not been increased since 1998*. A funeral service establishment license was increased from $225 to $300, in part to help cover the cost of a routine inspection which is estimated to cost the board from $350 to $400. Unfortunately, approval for the 2007 increase was not given until after the renewal date for that year, so the revenue for FY08 was below projections by $62,000. That delay resulted in accelerating the current need for an additional increase in revenue.

Additionally, in FY05 when the contract for information technology services was signed, placing all IT hardware, software and services under a contract with Northrop-Grumman through the Virginia Information Technology Agency (VITA), DHP costs for IT services was $850,000. In FY11, the cost for those services was $3.6 million, and it is projected to be $4.4 in FY12. Since the Department and its boards are under the VITA contract, the agency has no other options for information technology.

Additionally, some of the Department's non-general funds were transferred, in accordance with the Budget Bill of 2010, to the General Fund to help close the gap between revenue and expenditures. The share of those cash transfer allocated to the Board of Funeral Directors and Embalmers was $20,270. There is a possibility that the General Assembly could opt to require another cash transfer in 2011 and beyond.

The Department of Health Professions could consider two possible solutions to the projected deficit of the Board of Funeral Directors and Embalmers; they are as follows:

1. Increase fees through the promulgation of regulations.

As required by law, the board is obligated to establish and collect fees that are necessary to fund operations of the board and the Department. An alternative is to seek the revenue from licensees and applicants to fully fund appropriated expenditures. Costs of services will be paid by consumers who use the services of providers, but licensure fees represent a miniscule percentage of the over-all costs of funeral services; the increase for funeral service licensees would amount to $50 per year and for a funeral establishment, it would be $100 per year. The cost of operation of regulatory boards does not significantly affect the cost or access to health care. However, failure to fully fund the licensing and disciplinary services through fees could have a detrimental effect on quality and availability of funeral services.

2. Reduce department/board operations and staff and remain at current fee level.

In order to prevent deficit spending, the department would need to lay off staff to reduce expenses associated with operations. The net result being a delay in the performance of or the elimination of the following responsibilities:

- **Investigations and discipline**
- **Inspections of funeral establishments and crematories**
- **License renewals**
- **Regulation**
- **Approval of new licenses and internships**

Delays in licensing and investigation could place consumers in Virginia at risk as funeral licensees and establishments, who are not providing safe and ethical delivery of preneed and funeral services, would be able continue to practice. Delays in licensing or approval of internships could also result in an insufficient number of funeral directors to provide services in communities. It is believed that these consequences would not be acceptable to the administration, the General Assembly, or to the general public.

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.

There are no alternatives to the promulgation of regulations; fees charged to applicants and licensees are set by regulation and cannot be increased without a regulatory process.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Barry Robinson Virginia Morticians Association	VMA supports the increase if it is necessary for the board to have sufficient funding	The Board appreciates the comment.

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.

The proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, or strengthen or erode the marital commitment. There could be a very modest decrease in disposable family income for licensees depending on the license held; for a licensed funeral service provider, the increase in renewal would equal $50 per year with another $25 per year beginning in 2014.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

Current section number	Current requirement	Proposed change, rationale, and consequences
70	Sets out fees charged to applicants and licensees	Subsection A sets out fees for initial licensure or registration: 1. License to practice funeral service or as a funeral director or an embalmer — $~~275~~ 325 2. Funeral service establishment license — $~~500~~ 600 3. Surface transportation and removal service registration — $~~300~~ 325 4. Courtesy card — $~~275~~ 325 5. Crematory — $~~200~~ 250 6. Waiver of full-time manager requirement — $150 Beginning July 1, 2014, the following fees shall apply for initial licensure or registration: 1. License to practice funeral service or as a funeral director or an embalmer — $360 2. Funeral service establishment license — $660 3. Surface transportation and removal service registration — $360 4. Courtesy card — $360 5. Crematory — $275 6. Waiver of full-time manager requirement — $150 Subsection B sets out fees for renewal of licensure or registration: 1. License to practice funeral service or as a funeral director or an embalmer — $~~175~~ 225 2. Funeral service establishment license — $~~300~~ 400 3. Surface transportation and removal service registration — $~~250~~ 300 4. Courtesy card — $~~275~~ 300 5. Crematory — $~~150~~ 200 6.Waiver of full-time manager requirement — $100 Beginning July 1, 2014, the following fees shall apply for renewal of licensure or registration: 1. License to practice funeral service or as a funeral director or an embalmer — $250 2. Funeral service establishment license — $440

		3. Surface transportation and removal service registration $330 4. Courtesy card $330 5. Crematory $220 6.Waiver of full-time manager requirement $100 *The Board considered two options for a fee increase. Option I would adopt the proposed increase for renewal in 2012, which would result in sufficient revenue to FY15, but expenditures in 2015 would exceed revenue. That would necessitate initiation of another regulatory action to increase fees again by 2014 to avoid accumulation of a deficit. By adopting a two-step fee increase, the Board can appropriately plan for sufficient revenue through 2016. If the actual expenditures are below projections and a surplus in excess of 10% results, the Board is able to adopt a one-time fee reduction as an exempt action without delay. A fee reduction always accrues to licensees who contributed to the surplus by a reduction in renewal fees rather than a reduction in application fees.* Subsection C sets fees for late renewal of licensure or registration up to one year following expiration: 1. License to practice funeral service or as a funeral director or an embalmer $~~60~~ 75 2. Funeral service establishment license $~~100~~ 135 3.Surface transportation and removal service registration $~~85~~ 100 4.Courtesy card $~~90~~ 100 5. Crematory $~~50~~ 75 6. Waiver of full-time manager requirement $35 Beginning July 1, 2014, the following fees shall apply for late renewal of licensure or registration up to one year following expiration: 1. License to practice funeral service or as a funeral director or an embalmer $85 2. Funeral service establishment license $150 3.Surface transportation and removal service registration $110 4.Courtesy card $110 5. Crematory $85 6. Waiver of full-time manager requirement $35 *Based on the Fee Principles established by the Department, fees for late renewal are approximately 1/3 the renewal fee and may be paid through one renewal cycle. After one renewal cycle, a person with a lapsed license must reinstate to an active license.* D. The following fees shall apply for reinstatement of licensure or registration: 1. License to practice funeral service or as a funeral $~~275~~ 400

		director or an embalmer 2. Establishment license $~~500~~ 635 3. Surface transportation and removal service registration $~~350~~ 425 4. Courtesy card $~~275~~ 425 5. Crematory $~~225~~ 275 6. Reinstatement following suspension $~~500~~ 1,000 7. Reinstatement following revocation $~~1,000~~ 2,000 Beginning July 1, 2014, the following fees shall apply for reinstatement of licensure or registration: 1. License to practice funeral service or as a funeral director or an embalmer $440 2. Establishment license $700 3. Surface transportation and removal service registration $470 4. Courtesy card $470 5. Crematory $300 6. Reinstatement following suspension $1,100 7. Reinstatement following revocation $2,200 *A reinstatement requires submission of a new application and review of information on competency or on a current inspection. It is typically constructed by adding the application fee to the late fee.* Subsection E sets out miscellaneous fees charged for administrative functions. 1. Change of manager or establishment name $~~75~~ 100 2. Verification of license or registration to another state $50 3. Duplicate license, registration, or courtesy card $~~15~~ 25 4. Duplicate wall certificates $60 5. Change of ownership $100 6. Nonroutine reinspection (i.e., structural change to preparation room, change of location or ownership) $~~300~~ 400 Beginning July 1, 2014, the following fees shall be charged by the board 1. Change of manager or establishment name $110 2. Verification of license or registration to another state $55 3. Duplicate license, registration, or courtesy card $30 4. Duplicate wall certificates $70 5. Change of ownership $110 6. Nonroutine reinspection (i.e., structural change to $440

		preparation room, change of location or ownership) Subsection F sets fees for approval of continuing education providers. 1. Application or renewal for continuing education provider — $~~300~~ 400 2. Late renewal of continuing education provider approval — $100 3. Review of additional courses not included on initial or renewal application — $300 Beginning July 1, 2014, the following fees shall be charged for approval of continuing education providers. 1. Application or renewal for continuing education provider — $440 2. Late renewal of continuing education provider approval — $110 3. Review of additional courses not included on initial or renewal application — $330
110	Provides for additional fees	Subsection A is amended to indicate that beginning July 1, 2014, there shall be a fee of $50 for returned checks. *Since the Board has proposed a two-step process, it is anticipating that costs for handling returned checks will increase in the next 4 years.*
154	Provides the requirements and fees for inactive licenses	Subsection A is amended to increase the renewal fee for an inactive license from $90 to $115. The fee for late renewal up to one year following expiration of an inactive license would be $40. Beginning July 1, 2014, the required renewal fee for an inactive license would be $130, and the fee for late renewal up to one year following expiration of an inactive license would be $45. *According to fee principles, an active license is typically ½ the cost of an active license.*
Regulations for Resident Trainee Program – 18VAC65-40		
40	Sets fees for registration	Subsection A is amended to establish the following fees for registration: 1. Funeral service intern registration~~, reinstatement or renewal~~ — $~~100~~150 2. Funeral service intern renewal — $125 ~~2.~~3. Late fee for renewal up to one year after expiration — $~~35~~45 ~~3.~~4. Duplicate copy of intern registration — $25 ~~4.~~5. Returned check — $35 ~~5.~~6. Registration of supervisor — $~~25~~35 ~~6.~~7. Change of supervisor — $~~25~~35 ~~7.~~8. Reinstatement fee — $~~170~~195 *Currently, the fee for initial registration is the same as the renewal fee without any amount allocated for the review of an application, checking on the licensure of the supervisor, etc. In the proposed fees, there is a*

		$25 difference to account for costs of application processing. Other fees are increased or remain the same for consistency with other administrative fees charged by the Board. Beginning July 1, 2014, the following fees shall be paid as applicable for registration: 1. Funeral service intern registration $165 2. Funeral service intern renewal $140 3. Late fee for renewal up to one year after expiration $50 4. Duplicate copy of intern registration $30 5. Returned check $50 6. Registration of supervisor $40 7. Change of supervisor $40 8. Reinstatement fee $215