



State of Vermont
Office of the Secretary of State

[phone] 802-828-1505
[fax] 802-828-2465
www.sec.state.vt.us

James C. Condos, Secretary of State
Brian H. Leven, Deputy Secretary

Office of Professional Regulation
National Life Bldg., North FL2
Montpelier, VT 05620-3402

Christopher D. Winters, Director

MEMORANDUM

December 13, 2013

TO: Representative Janet Ancel
Chair, House Ways and Means Committee

Senator Tim Ashe
Chair, Senate Finance Committee

FR: Christopher Winters, Esq.
Director of Professional Regulation

RE: Proposed Changes to Professional Licensing Fees - 2014

Statutory Background

The Office of Professional Regulation (OPR) was established within the Office of the Secretary of State in 1990 and charged with providing administrative, secretarial, financial, investigatory, inspection, and legal services to the boards and professions attached to the Office. There are currently 45 professions and occupations attached to the Office of the Secretary of State and administered by OPR.

At the same time the Professional Regulatory Fee Fund was created. All revenue received by OPR is deposited into this fund, credited to the appropriate board or to the professions regulated by the director as a group. Revenue is used to offset up to two years of the costs incurred by that board or that group and shall not be used for any purpose other than professional regulation. The cost of regulating a profession is borne by the profession with no profession subsidizing the cost of regulating another profession. However, the approximately two dozen "advisor" professions regulated by the OPR Director in consultation with advisor appointees share fees and costs.

To ensure that revenues derived by the office are adequate to offset the cost of regulation, the law requires the Secretary of State to review fees from time to time, and present proposed fee changes to the General Assembly.

Mission of Office of Professional Regulation

The mission of the Office of Professional Regulation is to protect the public from unethical, incompetent or otherwise unprofessional behavior by licensed practitioners in the professions



and occupations that are regulated through the Office; to protect the public from practitioners in these fields who are unauthorized to practice; and to ensure equity in licensing, regulation and discipline by fairly and responsibly administering the rules and statutes pertaining to these professions and occupations.

Administrative and Financial Background

The Office of Professional Regulation licenses over 55,000 individuals and establishments. Licenses are generally issued for a two year period, with all members of a profession renewing at the same time. A renewal schedule distributes the work effectively over the two year cycle, with about one-half of the professions renewing per year. OPR employs thirty-two staff and includes 150 appointed board members and professional advisors.

The proposed fiscal year 2014 budget is \$4.1 Million. The budget includes direct costs of professional regulation and the OPR share of allocated overhead in the Office of the Secretary of State. The entire budget is funded through an appropriation from the Professional Regulatory Fee Fund.

Fee Receipts

All fee receipts are deposited in the Professional Regulatory Fee Fund, and are credited to the appropriate board. Receipts for advisor professions are pooled. Most OPR revenue is from biennial license fees. Although most receipts are in the form of biennial payments, the renewal schedule is distributed fairly evenly and total receipts do not vary significantly from year to year. Total annual receipts for the fund are about \$3.6 Million in the even fiscal years and \$4.4 Million on the odd fiscal years due to the staggered renewal cycles.

Expense Allocation

All expenses of the Office of Professional Regulation are paid from the Professional Regulatory Fee Fund. Expenses are charged to the individual professions either directly or through a four part cost allocation method.

Cost Allocation Components:

1. Board/Advisor expense allocation. Based on the personal services cost of providing support for board activities. This cost does not vary by the number of licensees. **19 Boards at approximately \$10,000 each, 23 advisor professions treated as the equivalent of 4 boards for a \$40,000 charge to allocate 10% of total OPR budget minus investigations, prosecutions and inspections.**
2. Licensing cost allocation. Based on the personal services and operating costs in support of OPR licensing activities, divided by the total number of licensees. Each profession then has costs allocated based on the number of licensees. **Approximately 55,000 licensees at a per capita rate of \$39 to allocate 90% of total OPR budget minus investigations, prosecutions and inspections.**
3. Investigation cost allocation. Based on the personal services and operating costs of the OPR investigation unit, divided by the number of complaints received in the prior fiscal year to yield an average cost per complaint. This cost is allocated to each

profession based on number of complaints received in the prior year. **Total costs of investigation unit (\$705,000) / 739 investigations for a per investigation charge of \$954.**

4. Prosecution cost allocation. Based on the personal services and operating costs of the OPR prosecutors, divided by the number of cases filed in the prior fiscal year to yield an average cost per case. This cost is allocated to each profession based on the number of cases charged in the prior year. **Total costs of prosecution unit (\$327,000) / 219 prosecutions for a per prosecution charge of \$1492.**
5. Inspection allocation. For those professions with inspection mandates or random inspection authority performed by the OPR field inspector, the cost of the inspector is divided by the number inspections performs, with some weight given for more intensive inspections. **Total costs of field inspections (93,000) divided by a weighted inspection formula depending on the type of inspection for a variable per inspection charge for pharmacy, funeral, electrology and tattoo/body piercing.**

Board Budgets

Separate budgets are maintained for the boards and for the advisory professions as a group. Estimates of direct and allocated expenses are prepared at the beginning of each fiscal year, quarterly reports are provided, and a year end report of actual expenses is completed.

All budgeting is through annual budgets conforming to the state fiscal year. The majority of the board receipts are credited in the year in which biennial license renewal occurs. This means that a board will generally have an operating budget surplus in a renewal year and an operating budget deficit in the following year.

To account for this, a “fund balance” is maintained for each board. When biennial receipts are sufficient to cover two years’ operating expenses, the board will have a positive fund balance. If receipts are insufficient to cover expenses, the board will have a fund deficit. Once a fund deficit is incurred, it will remain until biennial receipts and expenses are adjusted to provide an operating surplus to retire the fund deficit.

The goal of the budgeting process is have each board’s operating budget balanced over the biennial license cycle; and to do so without adjusting license fees every two years.

Budget Deficits and OPR Fund Cash Flow

Although board receipts and expenses are accounted for separately, all receipts and expenses are administered through a single special fund. This means that as long as total revenue and total spending is in balance, individual board deficits don’t result in cash shortfalls.

Review of Fees

To ensure that licensing revenue is adequate to offset the cost of regulation, the law requires the Office of the Secretary of State to review fees from time to time, and present proposed fee changes to the General Assembly. Each year the office reviews fees for each profession set to renew in the next fiscal year.

For each board, the Office determines:

- Whether the board's operating budget is in balance on a biennial basis;
- Whether the board has a positive or negative balance in the Regulatory Fee Fund; and
- Whether fee revenue is sufficient to cover projected operating costs for the next two license cycles.

Results of Review of Fees for Fiscal Year 2014

The Office of the Secretary of State reviewed the budgets for all boards. The Office is recommending fee reductions for two boards, fee increases for three boards, and moving one board to the advisor model of regulation due to a large deficit and ongoing decrease in the number of licensees. A brief summary of the review for each board with a proposed fee change follows.

Board of Chiropractic: Fees were last raised in 2005 to retire a deficit over 4-6 years. That has occurred and revenue continues to outpace expenses. The board's operating budget is in surplus for each of the next two renewal cycles (4 years). The board approved a recommendation to lower renewal fees from \$365 to \$265 which should approximately level fund their budget over the next two renewal cycles while preserving their healthy fund balance surplus.

Board of Professional Engineering: The board's operating budget is in deficit. This was intentional because in 2009 fees were decreased to account for a surplus in the board's fund balance. After two cycles of decreased fees, the operating budget is projected to be in deficit over the next two renewal cycles and the fund balance will be in deficit in 2018 without a fee increase. The board approved a recommendation to raise renewal fees from \$80 to \$100 to cover projected operating costs and keep from descending into a deficit.

Board of Funeral Service: The board's operating budget is in deficit. The board has a fund deficit that has existed for several years. A few years ago the board approved a fee increase that was not as aggressive as was recommended by the Office and it has not eliminated the deficit. Revenue continues to be insufficient to cover projected operating expenses. Expenses are consistently and relatively high in this profession due to a mandatory inspection program that is critical to public protection. Every funeral home must be personally inspected at least once every two years. The OPR has a full-time inspector who spends approximately half of his time inspecting funeral homes across the state for compliance with state law.

The Board did discuss moving to the advisor model of regulation, which may have allowed fees to remain stable, but would change the regulatory structure. The Board deemed this change an unacceptable option and has approved significant fee increases of approximately 50% to all license types to address the existing deficit and operate in the black once again.

Board of Nursing: This is the largest of the professions supported by OPR. The board's operating budget is currently in significant deficit. For nursing, there are other complicating factors leading to this deficit and the need for an approximately 50% fee increase for all license types. Over the last several years, the Board of Nursing became one of the top three "ports of entry" for nurses licensed in other countries seeking to work in the United States. This was due

to our excellent customer service, relatively quick turnaround times, and our lack of a requirement for a social security number for an initial application for licensure. This put a tremendous amount of pressure on the Office and the Board over the last ten years as more and more applicants came through Vermont. It also had the effect of padding the OPR Nursing Board budget with application fees from applicants who rarely set foot in the United States.

In the past few years, the Board of Nursing decided that due to the workload and the stress placed upon nursing board staff, it was not able to adequately perform its mandate of ensuring each applicant was qualified to practice nursing in the United States, particularly when it came to evaluating foreign nursing programs and experience. Other states had been coming to the same conclusion and were not accepting these applications forcing more and more international nurse applicants to Vermont. Therefore, the Board decided it would require a SSN for all applicants and for license renewals in 2015, effectively reducing those applicants by 90% and dropping the nursing roles by some 3,500 licensed RNs who are still out of country and have not yet obtained a SSN.

The Board did this knowing full well it would have financial implications. While the Board has been able to reduce staff, and the budgeting per capita charge for Nursing will be reduced as fewer licensees renew and fewer applications are received, expenses will still significantly outpace revenue unless there is a significant fee increase. Fees were last raised in 2005 and have remained at a reasonable rate as compared to other states for quite some time. The Board has approved a fee increase of approximately 50% across all license types (APRN, RN, LPN, LNA).

Board of Optometry: Similar to Chiropractic, this board last raised its fees in 2005 to retire a deficit. Revenue continues to outpace expenses even after the deficit has been retired. The board's operating budget is in surplus for each of the next two renewal cycles. The board approved a recommendation to lower renewal fees from \$525 to \$425 which will still allow the board to operate with a slight surplus over the next two renewal cycles.

Real Estate Commission: Fees for this profession were last changed in 1995. The Commission's operating budget is in deficit. The Commission has a shrinking fund balance that will be near zero by FY18. Revenue is insufficient to cover projected operating expenses. The Commission approved a modest increase in renewal applications for individual brokers and salespeople (\$175 to \$200) and a more significant increase for real estate offices (\$75 to \$200). The Commission believes offices and individual fees should at least be comparable given the costs of the random inspections of offices and the OPR resources needed to provide services to offices as often as individuals. These fee increases will cover projected operating expenses and rebuild a modest surplus over the next 4-6 years.

The Commission also voted to eliminate the "sole proprietor" office renewal fee exemption. This exemption was originally designed with the public policy purpose of giving smaller, one person real estate offices a break. For the reasons stated above, the Commission believes real estate offices should share a proportional burden of licensing fees commensurate to the amount of work generated through supporting and regulating these businesses.