



**State of Vermont
Office of the Secretary of State**

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**James C. Condos, Secretary of State
Christopher D. Winters, Deputy Secretary**

MEMORANDUM

January 21, 2015

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

Senator Tim Ashe
Chair, Senate Finance Committee

FR: Colin Benjamin, Esq.
Director of Professional Regulation

RE: Proposed Changes to Professional Licensing Fees - 2015

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 46 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 approximately 60,000 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 2016 budget is \$4.2 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, advisor professions treated as 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 60,000 licensees at a per capita rate of \$38 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 (\$839,000) / 802 investigations for a per investigation charge of \$1,047.**
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 (\$440,000) / 260 prosecutions for a per prosecution charge of \$1,693.**
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 (102,000) 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 2016

The Office of the Secretary of State reviewed the budgets for all boards. The Office is recommending fee reductions for four 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 Osteopathic Physicians: Fees were raised significantly in 2005 to retire a comparatively large deficit for this small profession over the next several years. Fees were lowered some in 2011 and revenue continues to outpace expenses necessitating another adjustment. 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 \$500 to \$350 which should approximately bring revenue in line with expenses over the next two renewal cycles while preserving a healthy fund balance.

Board of Veterinarians: Fees were last raised in 2005 to retire a deficit. 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 \$250 to \$200 which should result in an approximately equal revenue to expense budget over the next two renewal cycles.

Board of Land Surveyors: Fees were raised in 2005 to retire a significant deficit. 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 \$400 to \$300 which should bring revenue in line with actual expenses over the next two renewal cycles while preserving a healthy fund balance.

Board of Real Estate Appraisers: 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 \$315 to \$200 for individuals and \$500 to \$400 for appraisal management companies which should bring their revenue much more closely aligned with expenses over the next two renewal cycles while preserving their healthy fund balance surplus.

Real Estate Commission: Add an education course review fee of \$100 for the time consuming processing of course provider applications to be pre-approved by the real Estate Commission for their educational courses. Providers pay this fee in every other state in which they operate and expect it.