

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Labor, Licensing, and Regulation
(DLS Control No. 14-337)**

Overview and Legal and Fiscal Impact

This regulation establishes a permit fee, application fee, and reinstatement fee that a professional engineer must pay in order to obtain a firm permit to practice engineering through a corporation, partnership, or limited liability company.

The regulation presents no legal issues of concern.

Special fund revenues for the State Occupational and Professional Design Boards' Fund increase by \$100,000 in fiscal 2016 and by \$50,000 biennially beginning in fiscal 2018.

Regulation of COMAR Affected

Department of Labor, Licensing, and Regulation:

Board for Professional Engineers: Fees: COMAR 09.23.04.03

Legal Analysis

Background

Chapter 613 of 2013 requires, effective October 1, 2015, a corporation, partnership, or limited liability company to hold a firm permit issued by the State Board for Professional Engineers before the person may operate a business through which engineering is practiced in the State. A corporation, partnership, or limited liability company may provide engineering services for itself or its affiliate without a firm permit. Prior to the enactment of Chapter 613, the board regulated nearly 23,000 individual professional engineers, but lacked the authority to issue firm permits. The Department of Labor, Licensing, and Regulation (department) indicates that firm permit applications will become available in early 2015.

Summary of Action

The regulation establishes fees to apply for, obtain, and reinstate a firm permit to provide engineering services.

Legal Issue

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 2-106, 2-106.1, and 2-106.2 of the Business Regulation Article and §§ 14-101, 14-208, 14-209, 14-101, 14-405, 14-407, 14-314, and 14-414 of the Business Occupations and Professions Article as authority for the regulation.

Specifically, in the Business Regulation Article, § 2-106.1 establishes the State Occupational and Professional Licensing Design Boards' Fund. Section 2-106.2 authorizes each of the five design boards to establish fees based on the Secretary of Labor, Licensing, and Regulation's calculation of each board's direct and indirect costs.

In the Business Occupations and Professions Article, § 14-208(a)(1) authorizes the board to adopt regulations to carry out Title 14, so long as they do not restrict or otherwise affect competitive bidding for engineering services. Section 14-209, in part, authorizes the board to set reasonable fees for its services that must be published by regulation. Sections 14-404(a)(2), 14-407(c)(2), and 14-413(b)(2) specifically require an applicant to pay an application fee, permit fee, or reinstatement fee, in order to apply for, obtain, or reinstate a firm permit. Although the regulations do not specify a renewal fee, under § 14-407(c), the permit fee functions as the renewal fee.

The cited authority is complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

Special fund revenues for the State Occupational and Professional Design Boards' Fund increase by \$100,000 in fiscal 2016 and by \$50,000 biennially beginning in fiscal 2018.

Agency Estimate of Projected Fiscal Impact

The department advises that special fund revenues for the State Occupational and Professional Design Boards' Fund increase by \$150,000 in fiscal 2016 and by \$100,000 biennially beginning in fiscal 2018. The department anticipates 500 engineering firms will apply for an initial permit in fiscal 2016. The permit fee is \$200 and the initial application fee is \$100. The permit must be renewed every two years, resulting in an ongoing biennial revenue stream of \$100,000 beginning in fiscal 2018. A small number of new firm applications are also anticipated in each year beginning in fiscal 2016, which will further increase revenues from initial and renewal applications.

The Department of Legislative Services disagrees with this assessment, as the regulations merely implement Chapter 613 of 2013 (HB 347), and any fiscal impact is a result of that legislation and not the regulations. The department's assessment is generally consistent with the fiscal and policy note for HB 347: the timing of the permit issuances and the number of anticipated firms is the same. However, the fiscal and policy note estimated revenues based on a \$100 firm permit fee – the amount at which the department anticipated setting the fee at the time. The fiscal and policy note also did not include an initial application fee in its revenue estimate. Therefore, special fund revenues were estimated to increase by \$50,000 biennially beginning in fiscal 2016 from 500 firms paying a \$100 fee.

The change to \$200 from an originally anticipated fee of \$100, combined with an initial permitting fee of \$100, increases special fund revenues for the State Occupational and Professional Design Boards' Fund, *net of the revenue estimates in the fiscal and policy note*, by \$100,000 in fiscal 2016 and by \$50,000 biennially beginning in fiscal 2018.

Impact on Budget

Special fund revenues for the State Occupational and Professional Design Boards' Fund increase due to application and permit fees that are higher than those anticipated by the Fiscal and Policy Note for HB 347. The Board for Professional Engineers can implement the permitting program with existing staff. There is no impact on the State capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has a meaningful economic impact on small businesses in the State. Small businesses offering engineering services will be impacted by a new requirement to obtain a firm permit. The initial cost for the permit is \$300, followed by a \$200 renewal fee every two years. The Department of Legislative Services disagrees with this assessment, as the regulations merely implement Chapter 613 of 2013, and any fiscal impact is a result of that legislation and not the regulations. The department's assessment is also inconsistent with the fiscal and policy note for HB 347, in which the department advised that the legislation had minimal or no economic impact on Maryland small businesses. The Department of Legislative Services concurred with the department's assessment in the fiscal and policy note.

Additional Comments

The department advises that it anticipates raising the firm permit fee for the other design boards to \$200 in the future, which is consistent with fees charged by other states for this type of permit. The individual licensing fee for professional engineers (\$76.50 biennially) is one of the lowest in the nation.

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