

PROPOSED RULEMAKINGS

NAVIGATION COMMISSION FOR THE DELAWARE RIVER AND ITS NAVIGABLE TRIBUTARIES

[4 PA. CODE CH. 405]

General Revisions

The Navigation Commission for the Delaware River and Its Navigable Tributaries (Commission) proposes to amend §§ 405.7, 405.8 and 405.12 (relating to qualifications for license; physical examination qualifications; and renewal of license) and add § 405.36 (relating to Federal license) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

The Commission has authority to promulgate regulations under section 4 of the act of March 29, 1803 (act) (P.L. 542, 4 Sm.L. 67) (55 P.S. § 31) and section 2504-B(4) of The Administrative Code of 1929 (71 P.S. § 670.2(4)).

Background and Purpose

In the United States, there is a concurrent system of licensing for pilots established by Federal and state law. The history of pilot regulation in the United States dates back to when the colonies had exclusive power over pilot regulation, including when vessels entering their waters were required to employ a pilot. With the expansion of the maritime industry in the United States, the Federal government eventually adopted uniform regulations to promote safe passage of vessels along the coast and through bays, rivers, harbors and ports.

In promulgating the Federal regulations, however, the Federal government essentially determined that the existing state regulations efficiently served this purpose for inland waterways (rivers, bays, harbors and ports). Under the current Federal and state regulations, registered vessels engaged in foreign trade under foreign flags shall employ a state-licensed pilot and enrolled domestic vessels under the United States flag engaged in coastal trade shall employ a Federally-licensed pilot. If a pilot has both a state and Federal license, that pilot can then pilot either type of vessel, although there are significantly fewer United States flag vessels. Federal pilot licensing law essentially permits the states to adopt their own regulations concerning the licensing of pilots. Federal law concerning pilotage preempts a conflicting state law under the Supremacy Clause of the U.S. Constitution (U.S. Const. art. VI, cl. 2).

One of the major purposes of this proposed rulemaking is to bring consistency to different sections of the Commission's regulations. Currently, § 405.7(c)(3) requires an apprentice to acquire a Federal pilot's license before obtaining a sixth-class license in this Commonwealth. The proposed rulemaking would require licensed pilots in this Commonwealth to maintain a Federal pilot's license, thereby making it consistent with this current requirement.

When a pilot is initially licensed in this Commonwealth, he becomes a pilot of the sixth-class and works his way up through the various classes of licensure each year to become a first-class pilot. Under section 17(a) of the act (55 P.S. § 42(a)), a sixth-class pilot may pilot smaller vessels that draw only 25 feet of water or less, while pilots of the fifth-class through the first-class may pilot increasingly larger vessels. There is not a limit on the depth of water for a vessel that a first-class pilot may command.

Currently, licensed pilots in this Commonwealth also hold Federal pilot's licenses due not only to the regulation for sixth-class pilots but also due to the past custom and practice of the Pilots' Association for the Bay and River Delaware, to which Pennsylvania and Delaware licensed pilots belong as members. Therefore, this proposed rulemaking also recognizes the current practice of pilots in this Commonwealth. In addition, when pilots in this Commonwealth renew their licenses annually, they submit a copy of their Federal pilot's licenses to the Commission because § 405.12(a)(1) currently requires an applicant for renewal of a State license to have satisfied the requirements of § 405.7(a)(1)—(6) and (8). One of the qualifications for license in § 405.7(a)(5) is to have been qualified as a radar observer as evidenced by either a radar observer endorsement on a current Federal pilot's license or a certificate issued by a United States Coast Guard-approved authority reflecting that the certificate-holder satisfactorily completed a course of instruction for radar observers within 5 years of the date of application. Because pilots in this Commonwealth also hold Federal pilot's licenses, these pilots submit a copy of their Federal pilot's licenses (with a radar observer endorsement) to satisfy the requirements of §§ 405.7(a)(5) and 405.12(a)(1).

The proposed rulemaking is also needed to update obsolete provisions of the regulations. The United States Coast Guard has changed the names of its reports and the proposed amendments refer to the new names of the reports as well as provide for possible future name changes by referring to successor forms of the reports. Furthermore, current requirement in § 405.7(b)(2) for an interview for a first-time applicant for a first-class pilot's license requires the applicant to appear before the Commission for a personal interview. An interview is no longer necessary due to an initial interview when an individual applies to be an apprentice, as well as due to the training and examinations that occur while an individual is an apprentice. Once an apprentice becomes a sixth-class pilot, he obtains practical experience on increasingly larger vessels as he moves progressively each year through the six classes of licensure in this Commonwealth.

Finally, the proposed rulemaking is needed to make the regulations consistent with the regulations of the United States Coast Guard, Delaware (whose pilots are also licensed to pilot vessels on the Delaware River) and other states with similar state commissions (including Connecticut, Maine, Massachusetts, New Hampshire, New Jersey and New York). In fact, the 24 coastal states require state-licensed pilots to hold a Federal pilot's license, either by state statute, state regulation or local

pilot association rule or practice. For a discussion of the history and requirements of both Federal and state pilotage regulation, see Paul G. Kirchner and Clayton L. Diamond (2010-11), "Unique Institutions, Indispensable Cogs, and Hoary Figures: Understanding Pilotage Regulation in the United States," *U.S.F. Maritime Law Journal*, 23 (1), 168, 199.

Description of Proposed Rulemaking

§ 405.7. Qualifications for license

The Commission proposes to amend § 405.7(a)(3) to enhance public safety and to bring consistency with the regulations in Delaware, whose pilots are also licensed to pilot vessels on the Delaware River. The proposed amendment to § 405.7(a)(3) will require apprentices and renewing pilots (under § 405.12(a)(1)) to have a physical exam within 120 days (4 months) of the date of application or renewal. The Commission proposes this change from 6 months to 4 months to be consistent with regulations of the Delaware Board of Pilot Commissioners, which requires a physical exam within 120 days (24 Del.C. § 1000-6.0), and to provide for increased public safety.

Proposed amendments to § 405.7(a)(3) would require apprentices and pilots to use the current United States Coast Guard's Merchant Mariner Credential Medical Evaluation Report (medical report), which is nine pages of detailed medical questions, requirements and examination procedures in contrast to the current one-page form required by the Commonwealth. The increasing scrutiny provided in the United States Coast Guard's medical report will promote public health and safety by requiring pilots to undergo more rigorous health screening. This amendment also brings the regulation into conformity with Delaware, which already requires pilots who renew their licenses to use the Coast Guard's medical report. Because licensed pilots in this Commonwealth also hold active Federal pilot's licenses, most pilots already submit the United States Coast Guard's medical report with their license renewal information. Finally, § 405.7(a)(3) would be amended to update the name of the United States Coast Guard's medical report to its current name. The Commission proposes to retain the reference to the "current or successor form" in the event of further changes to the name of the United States Coast Guard's medical report.

The Commission also proposes to amend § 405.7(a)(6) to change the time frame for the completion of a Commission-approved course in bridge resource management (BRM) from 3 to 5 years of the date of application or renewal to correspond to the Delaware regulations (24 Del.C. § 1000-5.7). According to the American Pilots' Association (APA), this subject matter does not change often enough to require a new course every 3 years. The APA recommends that the renewal courses focus on developments in the BRM field over the preceding 5 years as a result of accidents, research, developments in technology and information resources and regulatory changes. Furthermore, this change is consistent with the requirement in § 405.7(a)(5) requiring a licensee to have been qualified as a radar observer by completing a course of instruction for radar observers within 5 years of the date of application or renewal. The current BRM course approved by the Commission is a 2-day course and includes the following topics: an overview of BRM; situational awareness; communications; risk management; regulatory

requirements; best practices in specific areas; an examination of recent accidents; new practices and technology; and studies dealing with BRM.

Proposed amendments to § 405.7(a)(10) require a pilot in this Commonwealth to hold an active Federal license before initially acquiring a Pennsylvania license and before renewing a Pennsylvania pilot's license, as Delaware requires. As previously noted, the United States Coast Guard's requirements for its current medical report are much more detailed and stricter than the current medical examination in this Commonwealth. As stated in section 4(c) and (d) of the United States Coast Guard's Navigation and Vessel Inspection Circular (NVIC) (No. 04-08, 2008), the specific requirements in the medical report reduce the subjectivity of the physical and medical evaluation process and promote more consistent evaluations, thereby resulting in a fairer process for pilots. As stated in section 5(b) of the NVIC, the United States Coast Guard believes that its detailed and stricter medical standards are necessary because "service on vessels may be arduous and impose unique physical and medical demands on mariners. The public safety risks associated with the medical and physical conditions of mariners on vessels are important considerations for the safe operation of vessels." Because the United States Coast Guard Federal medical requirements for a physical examination are stricter and more detailed than the current state requirements, the proposed rulemaking protects the public health, safety and the environment by ensuring that pilots are medically fit for duty. Licensed pilots in this Commonwealth steer oil tankers up and down the Delaware River. Pilots medically fit for duty protect the environment in and along the Delaware River and the beaches along the coast of the Atlantic Ocean.

Currently, § 405.7(b)(2) requires a first time applicant for a first-class pilot's license to appear before the Commission for a personal interview. The Commission proposes to delete this requirement. When applicants for apprenticeships are selected, they appear before the Apprentice Committee of the Commission, comprised of three members of the Commission. Apprentices receive extensive training and pass an intensive examination to become a sixth-class pilot. Individual pilots also obtain practical experience on smaller vessels as they move from sixth-class pilots up through the pilotage classes each year from sixth-class to first-class pilots. Pilots are required to pilot at least 52 vessels a year to renew a license. Therefore, the Commission determined that an interview for a first-time applicant for a first-class license is no longer necessary and should be removed.

The remaining proposed amendments in § 405.7(b) are editorial. Also, because the date of July 6, 2004, referenced in § 405.7(b)(1) has already passed it is proposed to be deleted from § 405.7(b).

§ 405.8. Physical examination qualifications

The Commission proposes to amend § 405.8 to change the name of the United States Coast Guard's medical report to its current name, or the successor form, if the name changes in the future. The Commission is also proposing a requirement that each pilot report to the Commission a pilot's request for waiver from the United States Coast Guard for any medical condition and report in 5 business days to the Commission the United States Coast Guard's decision on a waiver. The new language is

consistent with Delaware's regulation in 24 Del.C. § 1000-6.0. This requirement would keep the Commission apprised of changes in the medical status of a pilot licensed in this Commonwealth.

§ 405.12. *Renewal of license*

Proposed amendments to § 405.12(a)(1) update the cross reference to § 405.7(a)(1)—(6), (8) and (10), thereby requiring that these requirements for apprentices who seek a Pennsylvania license for the first time also apply to licensed pilots seeking license renewal, including the new requirement to hold and maintain an active Federal license.

The Commission proposes to add subsection (c) to provide notice that failure to satisfy the requirements of § 405.7(a)(1)—(6), (8) and (10) may result in the pilot's Pennsylvania license not being renewed until receipt of documentation necessary to assure compliance with the requirement in question. The necessary documentation will vary depending on which requirement has not been satisfied. This amendment is necessary to clarify that a Pennsylvania pilot's license may result in the license not being renewed, at the Commission's discretion, if the pilot does not hold an active Federal license at the time of license renewal.

§ 405.36. *Federal license*

The Commission proposes to add this section for requirements pertaining to a Federal license. In subsection (a), the Commission requires disclosure within 14 calendar days if the United States Coast Guard suspends, revokes or accepts the voluntary deposit or voluntary surrender of a pilot's Federal license. Under 46 CFR 5.201 (relating to voluntary deposits in event of mental or physical incompetence), a pilot may voluntarily deposit a Federal license in the event of a physical or mental condition or impairment under a "voluntary deposit agreement." Under a voluntary deposit agreement, a pilot places his Federal license in inactive status and may not perform duties on a merchant vessel of the United States during the time that the Federal license is inactive. A pilot may request the return of a voluntarily deposited license at any time provided he can demonstrate a satisfactory rehabilitation or cure of the condition that led to the voluntary deposit. A pilot may elect to voluntarily surrender a Federal license under 46 CFR 5.203 (relating to voluntary surrender to avoid hearing) instead of appearing at a disciplinary hearing. However, a voluntary surrender is the equivalent of a revocation and the pilot shall apply for issuance of a new credential under 46 CFR 5.901—5.905 (relating to issuance of new credential or endorsement after revocation or surrender).

The new disclosure requirements will keep the Commission apprised of changes in the status of a pilot's Federal license. This language is also consistent with practices among the other professional and occupational licensing boards within the Department of State. Eighteen of the 29 licensing boards and commissions in the Bureau of Professional and Occupational Affairs have some form of self-reporting in their licensing statutes for licenses that are inactive or disciplinary action taken against licensees in other states.

Proposed § 405.36(b) makes it clear that the Commission will provide a state pilot with notice and an opportunity for a hearing if the pilot's Federal license is suspended, revoked, voluntarily surrendered or voluntarily deposited. This proposed subsection is based on section 31(c) of the act (55 P. S. § 72(c)), which requires notice and an opportunity to be heard before a pilot's state license is restricted, suspended or revoked.

Fiscal Impact

The proposed rulemaking should not have fiscal impact on the Commonwealth, the general public or political subdivisions. There is a cost savings to the Commission's licensees. Although Pennsylvania licensed pilots have a Federal license by current practice, the cost of a Federal license is \$95 every 5 years for a cost of \$760 per year for the 40 licensed pilots of the first-class through fifth-class. This cost is more than offset by the cost savings to Pennsylvania licensed pilots, who will be required to take the course in BRM every 5 years instead of every 3 years. The cost of this 2-day course is \$960 per pilot. The estimated annual cost savings to the regulated community resulting from reducing the frequency of the required course is \$5,248. Subtracting the costs of \$760 from the savings of \$5,248, this will result in a net cost savings of \$4,488 every year for the regulated community of Pennsylvania licensed pilots.

Paperwork Requirements

The proposed rulemaking does not create additional paperwork for the Commission, its licensees or the general public. The proposed rulemaking confirms the present practices of the Commission's licensees.

Sunset Date

The Commission continuously monitors its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 21, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons should submit written comments, suggestions or objections regarding this proposed rulemaking to Barbara Dupler, Commission Administrator, Navigation Commission for the Delaware River and Its Navigable Tributaries, 302 North Office Building, Harrisburg, PA 17120, bdupler@pa.gov within 30 days of publication in the *Pennsylvania Bulletin*. When submitting comments, reference No. 16A-663, Navigation Commission General Revisions.

CAROL AICHELE,
Secretary of the Commonwealth
Chairperson, Navigation Commission for the Delaware
River and Its Navigable Tributaries

Fiscal Note: 16A-663. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART XIII. NAVIGATION COMMISSION FOR THE DELAWARE RIVER AND ITS NAVIGABLE TRIBUTARIES

CHAPTER 405. PILOTS AND PILOTAGE

§ 405.7. Qualifications for license.

(a) An applicant for the initial issuance of a pilot's license in any class shall:

* * * * *

(3) Have passed a physical examination within [6 months] 120 days of the date of application based on the requirements of § 405.8 (relating to physical qualifications), as evidenced by a physician's statement. As proof of a physical examination, [pilots may] apprentices and pilots shall submit the current or successor form of the "Merchant [Marine Personnel Physical Examination] Mariner Credential Medical Evaluation Report" of the United States Coast Guard. Physical examinations may also be ordered by the Commission for any pilot or applicant at any time that there is cause to believe that the physical condition of the pilot or applicant may be so impaired as to impact the pilot or applicant's ability to discharge his duties.

* * * * *

(6) Have completed a Commission-approved course in bridge resource management within [3] 5 years of the date of application or renewal.

* * * * *

(9) Pay the required license fee, as specified in § 405.15 (relating to initial license and license renewal fee).

(10) Hold and maintain an active Federal first-class pilot's license and endorsement for the routes to be traversed, unless waived by the Commission.

(b) In addition to meeting the requirements of subsection (a), a first-time applicant for a first-class pilot's license shall[] :

(1) Have] have completed 40 hours of Commission-approved continuing education in navigation, ship handling or related topics within the preceding 5 years. Courses in the required areas of radar observer, ARPA and bridge resource management may count towards the 40-hour total. The Commission will approve the education facilities that qualify to provide this education. [This continuing education requirement becomes effective July 6, 2004.

(2) Have appeared before the Commission for a personal interview.]

* * * * *

§ 405.8. Physical examination qualifications.

The physical qualifications for a pilot or apprentice are as follows:

* * * * *

(3) The absence of any medical condition that may directly affect one's ability to pilot a ship safely, as noted on the current or successor form of the "Merchant

[Marine Personnel Physical Examination] Mariner Credential Medical Evaluation Report" of the United States Coast Guard. A pilot shall report to the Commission concerning the pilot's request for a waiver under 46 CFR 10.215(g) (relating to medical and physical requirements) from the United States Coast Guard for any medical condition, as well as the results of a waiver request. The initial report to the Commission shall be made at the same time that the waiver request is made to the United States Coast Guard. A copy of the United States Coast Guard's decision on the waiver request shall be provided to the Commission within 5 business days of the pilot's receipt of the waiver decision.

§ 405.12. Renewal of license.

(a) An applicant for renewal of a pilot's license in any class shall:

(1) Have satisfied the requirements of § 405.7(a)(1)—(6) [and], (8) and (10) (relating to qualifications for license).

(2) Pay the required renewal fee, as specified in § 405.15 (relating to initial license and license renewal fee).

(b) In addition to meeting the requirements of subsection (a), an applicant for renewal of a first class pilot's license shall have completed 40 hours of Commission-approved continuing education in navigation, ship handling or related topics within the preceding 5 years. Courses in the required areas of radar observer, automatic radar plotting aids (ARPA) and bridge resource management may count towards the 40-hour total. The Commission will approve the education facilities that qualify to provide this education. This continuing education requirement shall become effective July 6, 2004.

(c) Failure to satisfy any of the requirements of § 405.7(a)(1)—(6), (8) and (10) may result in the license not being renewed by the Commission until receipt of documentation to assure compliance with the requirement in question.

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 405.36. Federal license.

(a) A pilot shall notify the Commission within 14 calendar days if the United States Coast Guard suspends or revokes a pilot's Federal license or when a pilot voluntarily deposits or voluntarily surrenders his Federal license with the United States Coast Guard under 46 CFR 5.201—5.205 (relating to deposit or surrender of Coast Guard credential or endorsement), thereby making the pilot's Federal license inactive.

(b) If the United States Coast Guard suspends, revokes or accepts the voluntary deposit or voluntary surrender of the license of a Federal pilot, the Commission may, after notice and an opportunity for a hearing in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law), revoke, suspend, limit or otherwise restrict the pilot's state license.

[Pa.B. Doc. No. 13-610. Filed for public inspection April 5, 2013, 9:00 a.m.]

STATE BOARD OF BARBER EXAMINERS

[49 PA. CODE CH. 3]

Fees

The State Board of Barber Examiners (Board) proposes to amend § 3.103 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would provide for increases to the biennial license renewal fees for licensees of the Board and would also adjust certain application fees to cover the costs of processing applications.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The new application fees will be implemented immediately upon publication of the final-form rulemaking. The new biennial renewal fees will take effect for the biennial period beginning May 1, 2014.

Statutory Authority

Section 14(b) of the act of June 19, 1931 (P. L. 589, No. 202) (63 P. S. § 564(b)), known as the Barbers' License Law (act), requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

Background and Need for proposed Rulemaking

Under section 14 of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the vast majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from application fees and civil penalties.

The biennial renewal fees have not been increased since 1988. Biennial renewal fees support the general operations of the Board. Licensees are charged the biennial renewal fees when they renew their licenses which expire on April 30 of even-numbered years. Application fees, on the other hand, are intended to offset the costs associated with the processing of the various applications and related inspections. The last time application fees were adjusted was in 2001.

At the June 25, 2012, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2009-2010 and 2010-2011 and projected revenue and expenses through FY 2014-2015. The BFO pointed out that as of June 2012, in spite of it being a renewal year, the Board incurred a deficit of \$46,816.71. Projected revenues for FY 2012-2013, a nonrenewal year, were estimated at approximately \$85,000. However, the Board's projected expenditures for the current fiscal year are in the area of \$640,000, resulting in a projected deficit as of June 2013 of \$601,816.71. The BFO projected that, without an increase to the biennial renewal fees, the Board will incur additional deficits totaling approximately \$686,816.71 in FY 2013-2014 and \$1,281,816.71 in FY 2014-2015. At that time, the BFO recommended that the Board consider increasing the biennial renewal fees by 205% to recoup the existing deficits and provide adequate revenues to

meet the Board's operational needs. The Board voted to table the matter until the August 2012 meeting and asked the BFO to provide them with some options.

Thereafter, representatives from the BFO returned to the August 20, 2012, Board meeting. At that time, they presented the Board with four options. The first option was to consider not increasing fees, which would result in a continually growing deficit projected to reach \$5 million by FY 2022-2023. The next option proposed was a one-time 200% increase in biennial renewal fees effective in April 2014. This option eliminates all deficits by the end of FY 2017-2018 and provides a positive, albeit declining, balance in the Board's account through FY 2023-2024. The third option proposed would break the 200% increase down into two increments, one taking effect in April 2014 and the second taking effect in April 2018. This proposal results in continued deficits through FY 2023-2024. Finally, the BFO presented as a fourth option, the fee increase that the Board had previously considered, which included an increase of 125% to take place in FY 2013-2014, followed by an increase of an additional \$15 for all license categories to take place in FY 2015-2016. This option also fails to eliminate the deficits into the foreseeable future.

Thus, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures in compliance with section 14 of the act. As a result, the Board voted to increase the biennial renewal fees by 200% to be effective with the April 30, 2014, renewal. The Board finds this to be the only viable option that will eliminate the deficits and place the Board on firm financial ground so that the Board can continue to carry out its legislative mandate in the interests of the public health, safety and welfare. In addition, the Board previously voted to adjust certain application fees to more appropriately reflect the current costs of processing the applications. These adjustments are also included in this proposed rulemaking.

Description of Proposed Amendments

Based upon the expense and revenue estimates provided to the Board, the Board proposes to amend § 3.103 to increase the biennial renewal fees for all classes of licensees. The biennial renewal fees will increase in 2014 by 200%: from \$42 to \$126 for barbers; from \$62 to \$186 for barber shop managers; from \$67 to \$201 for barber teachers; from \$72 to \$216 for barber shops; and from \$112 to \$336 for barber schools.

In addition, as a result of the review of the application fees conducted by the BFO, the Board proposes to increase the fee for initial licensure by reciprocity from \$20 to \$55, as the existing fee is no longer adequate to cover the costs associated with processing the application. Likewise, the application fee for initial licensure of a barber shop, currently set at \$55, is insufficient to cover the costs associated with processing the application and conducting the required inspection. Therefore, the Board voted to increase the fee to \$110. Conversely, the current fee for initial licensure of a barber school, which was increased in 2001 from \$100 to \$280, has proven to be excessive when compared to the actual costs associated with processing an application for licensure of a barber school, along with the required inspection. Therefore, the Board proposes a reduction in this fee from \$280 to \$140. There are two fees the Board charges when a barber shop proposes a change depending on whether the proposed

change requires an inspection. The Board is proposing to increase the fee when an inspection is required from \$55 to \$90 and when an inspection is not required from \$15 to \$40. Similarly, the fee to reinspect a shop or school after a failed inspection is proposed to increase from \$40 to \$90. Again, these increases are needed to cover actual costs associated with processing the applications and conducting the inspections.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fees for licensees of the Board. There are currently approximately 9,344 licensees that will be required to pay more to renew their licenses when they expire on April 30, 2014. In addition, applicants for various licenses will incur greater costs associated with processing applications and conducting inspections. The proposed rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions of this Commonwealth.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fees. However, the proposed amendment will not create additional paperwork for the regulated community or for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 25, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons should submit written comments, suggestions or objections regarding this proposed rulemaking to Cynthia Montgomery, Regulatory Counsel, State Board of Barber Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

JOHN E. PAYNE, Jr.,
Chairperson

Fiscal Note: 16A-428. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 3. STATE BOARD OF BARBER EXAMINERS
SCHOOLS OF BARBERING

§ 3.103. Fees.

The schedule of fees charged by the Board is as follows:

* * * * *	
Licensure of barber by reciprocity	[\$20] \$55
Licensure of barber shop	[\$55] \$110
Licensure of barber school	[\$280] \$140
Biennial renewal of barber license	[\$42] \$126
Biennial renewal of barber shop manager license	[\$62] \$186
Biennial renewal of barber teacher license	[\$67] \$201
Biennial renewal of barber shop license	[\$72] \$216
Biennial renewal of barber school license	[\$112] \$336
Change in barber shop—inspection required	[\$55] \$90
Change in barber shop—no inspection required	[\$15] \$40
Reinspection after first fail—new or change (shop or school)	[\$40] \$90
* * * * *	

[Pa.B. Doc. No. 13-611. Filed for public inspection April 5, 2013, 9:00 a.m.]

STATE BOARD OF COSMETOLOGY

[49 PA. CODE CH. 7]
Fees—Cosmetology

The State Board of Cosmetology (Board) proposes to amend § 7.2 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would provide for an increase to the biennial license renewal fees for all licensees and would also increase certain application fees to cover the costs of processing applications.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The new application fees will be implemented immediately upon publication of the final-form rulemaking. It is anticipated that the new biennial renewal fees will be implemented with the license renewals that are due by January 31, 2015.

Statutory Authority

Section 16(d) of the act of May 3, 1933 (P. L. 242, No. 36) (63 P. S. § 522(d)), known as the Cosmetology Law (act), requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

Background and Need for Amendment

Under section 16(d) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the vast majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from application fees.

In 2009, the Board voted to increase biennial renewal fees by 75% and to increase various application fees to cover the costs associated with processing the applications. However, due to circumstances beyond the Board's control, the regulations to implement those increases were not promulgated since that time.

Subsequently, at the July 9, 2012, Board meeting, representatives of the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2009-2010 through 2010-2011 and projected revenue and expenses through FY 2014-2015. As of the end of FY 2011-2012, the Board had incurred a deficit of over \$2 million. The BFO projected that, without an increase to the biennial renewal fee, the Board would incur a deficit of \$2,958,537 by the end of FY 2012-2013, a deficit of \$3,928,537.56 by the end of FY 2013-2014 and a deficit of \$4,968,537 by the end of FY 2014-2015, with no end in sight to the mounting deficits. Therefore, the BFO recommended that the Board raise fees to meet or exceed projected expenditures in compliance with section 16(d) of the act.

At the present fee level, the Board produces approximately \$6.15 million in revenue over a 2-year period. Conversely, the Board is budgeted to spend \$3.9 million in the current fiscal year and an estimated \$4.02 million in FY 2013-2014, or a deficit of over \$1.77 million during the biennial cycle. The disparity in the amount of revenue capable of being produced over a 2-year period and the amount that is being expended requires the Board to now implement a 90% fee increase to sustain the required level of operations and eliminate the projected deficits. As a result, the Board voted to increase the biennial renewal fees in this proposed rulemaking. The BFO anticipates that the proposed fees will enable the Board to recoup the existing deficits by the end of FY 2017-2018, avoid future deficits and place the Board back on solid financial ground.

Description of Proposed Amendments

Based upon the expense and revenue estimates provided to the Board, the Board proposes to amend § 7.2 to increase the biennial renewal fees for all classes of licensees. The biennial renewal fee for cosmetologists, nail technicians, estheticians and natural hair braiders will increase from \$35 to \$67. The biennial renewal fee for cosmetology and limited practice teachers will increase from \$55 to \$105. The biennial renewal fee for cosmetology and limited practice salons will incur an increase in from \$60 to \$114. Finally, biennial renewal of cosmetology school licenses will increase from \$150 to \$285. Approxi-

mately half of the licenses renew as of February 1 of even-numbered years (nail technicians, nail technology teachers, half of cosmetologists, cosmetology teachers and cosmetology schools) and half renew as of February 1 of odd-numbered years (estheticians, esthetics teachers, esthetician salons, nail technician salons, cosmetology salons, natural hair braiders, natural hair braiding teachers, natural hair braiding salons and half of cosmetologists). The Board anticipates that the regulations needed to implement the proposed increases in biennial renewal fees will be in place in time to go into effect for the 2015 renewals.

In addition, as a result of the review of the application fees conducted by the BFO, the Board proposes increases to the fees for the processing of applications for initial licensure of cosmetology and limited practice salons from the current level of \$55 to \$100. The proposed fee schedule would increase the fee for cosmetology schools from \$160 to \$180. Initial licensure of a salon or school requires an inspection by a Regulatory Enforcement Inspector, in addition to the time spent processing the application by Board staff. The existing fees are inadequate to cover the costs of processing the application and performing the inspection. In addition, the Board is proposing to increase the fees required to process a change in a salon license when an inspection is required from \$55 to \$85 and for reinspection of a salon or school from \$40 to \$85. Again, the existing fees are inadequate to cover the costs involved in processing the applications and performing the required inspections. In addition, it has been determined that the fee for processing a change to a salon license when an inspection is not required is also inadequate to cover the cost of processing the change application. Therefore, the Board is proposing an increase from \$15 to \$30. Finally, the Board is proposing to increase the fees for processing an application for licensure by reciprocity from \$20 to \$60. Initial licensure by reciprocity is significantly more involved than licensure by examination and requires more staff time to process.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fees for all licensee classifications. There are currently about 131,335 licensees expected to renew their licenses during the 2015 and 2016 renewal cycles. In addition, applicants for various licenses will incur greater costs associated with processing applications and conducting inspections. The proposed rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fees. However, the proposed rulemaking will not create additional paperwork for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 25, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate

Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons should submit written comments, suggestions or objections regarding this proposed rulemaking to Cynthia Montgomery, Regulatory Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication in the Pennsylvania Bulletin.

MARY LOU ENOCHES, Chairperson

Fiscal Note: 16A-4515. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 7. STATE BOARD OF COSMETOLOGY GENERAL PROVISIONS

§ 7.2. Fees.

Fees charged by the Board are as follows:

Table with 2 columns: Description of fee and Amount. Includes items like 'Licensure of cosmetology salon or limited practice salon', 'Biennial renewal of nail technician license', and 'Change in cosmetology salon or limited practice salon (inspection required)'. Amounts range from \$60 to \$285.

Change in cosmetology salon or limited practice salon (no inspection required) ... [\$15] \$30

* * * * *

Reinspection of cosmetology salon or limited practice salon or cosmetology school. [\$40] \$85

* * * * *

[Pa.B. Doc. No. 13-612. Filed for public inspection April 5, 2013, 9:00 a.m.]

STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

Fees

The State Board of Dentistry (Board) proposes to amend §§ 33.3 and 33.339 (relating to fees; and fees for issuance of permits) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the Pennsylvania Bulletin. While the increased application fees will be implemented immediately thereafter, it is anticipated that the increased biennial renewal fees will be implemented with the March 31, 2015, biennial renewal.

Statutory Authority

Section 4(b) of The Dental Law (act) (63 P. S. § 123(b)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

Background and Need for the Proposed Rulemaking

Under section 4(b) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from application fees and civil penalties.

Of the biennial renewal fees targeted for increase in this proposed rulemaking, the local anesthesia permit and public health dental hygiene practitioner certification renewal fees were established in 2009 and this is the first proposed increase. The last time biennial renewal fees were increased was in 2005 when only the dental license and Restricted II anesthesia permit renewal fees were increased. Dentist biennial renewal fees were increased from \$100 to \$250 and Restricted II anesthesia permits were increased from \$25 to \$50 at that time. Prior to that, the biennial renewal fees for expanded function dental assistants (EFDA) were adopted in 1998 and have never been increased. Dental hygienist biennial renewal fees have not been raised since 1995 when they increased from \$25 to \$40. The remaining anesthesia permit renewal fees were adopted in 2005 and have not been increased.

As to application fees, in 1998, the application fees for dentists and dental hygienists were increased from \$15 to

\$20 and the EFDA application fee was established at \$20 at that time. These fees have not been increased in the last 14 years. The dental radiology, dental faculty notification and postgraduate training notification fees were established in 2004 and have never been increased.

At the December 16, 2011, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2009-2010 and 2010-2011 and projected revenue and expenses through FY 2014-2015. At the current fee levels, the Board receives revenue of approximately \$3,231,560 over a 2-year period, while budgeted expenditures for the next 2 fiscal years (FYs 2012-2013 and 2013-2014) are projected at \$3.512 million or which is a deficit of \$280,440. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures, in compliance with section 4(b) of the act. When the BFO first alerted the Board that fee increases were necessary, the Board was looking at increases in biennial renewal fees in the range of 25 to 35%. Later, the Board asked the BFO to provide some alternatives that would not only address biennial renewal fees but also look at application fees because the Board's application fees seemed unusually low compared to other states and many had not been increased since the 1990s. At the April 27, 2012, Board meeting, the BFO presented numerous scenarios with various combinations of biennial renewal fee increases and application fee increases. It was determined that by raising application fees to be more realistic and consistent with surrounding states, the percentage increase to biennial renewal fees, borne by all licensees, could be lower.

As a result, the Board voted at its July 27, 2012, meeting to increase the various application fees to more realistically cover the costs associated with processing those applications and to be consistent with other states and also approved a modest 5% increase in biennial renewal fees as set forth in Annex A. The proposed new biennial renewal and application fees will enable the Board to avoid the projected deficits and meet its estimated expenditures for a number of years to come.

Description of Proposed Amendments

The proposed rulemaking would amend §§ 33.3 and 33.339 to increase application fees to more realistically reflect the current costs associated with processing the applications and to increase biennial renewal fees for various licenses, certificates and permits issued by the Board by 5% to produce adequate revenue to meet projected expenditures as required under section 4(b) of the act.

Specifically, the application fees for initial licensure as a dentist will increase to \$200. For dental hygienists and EFDAs, the application fees will increase to \$75. In addition, the application fee for dental radiology authorization will increase to \$75, as will the notification application for postgraduate trainees and faculty members. Biennial renewal fees for dentists will increase to \$263, for dental hygienists to \$42 and for EFDAs to \$26. Biennial renewal fees for public health dental hygiene practitioners will likewise increase to \$42, as will the biennial renewal fee for local anesthesia permits for dental hygienists. Finally, the biennial renewal fee for unrestricted and Restricted I anesthesia permits will increase to \$210 and for Restricted II anesthesia permits to \$53.

Finally, the temporary EFDA permit fee is proposed to be deleted because the Board no longer issues temporary

permits. Temporary permits were established in 1995 under section 11.7 of the act (63 P.S. § 130h) as a temporary measure until a certification examination became available and temporary permits were valid only until the results of the first certification examination.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fees for licensees of the Board. There are currently approximately 25,300 licensees that will be required to pay more to renew their licenses when they expire in 2015 and thereafter. In addition, increased application fees will impact individuals who apply for initial licenses. Small businesses will be impacted to the extent that they elect to pay the fees on behalf of their licensed employees. Because three out of four dentists are self-employed and 95% of licensees work in dental offices, the vast majority of the Board's licensees work in small businesses. The Board processes an average of approximately 2,000 applications each year. The proposed rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions of this Commonwealth.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fees. However, the proposed rulemaking will not create additional paperwork for the regulated community or for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 25, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons should submit written comments, suggestions or objections regarding this proposed rulemaking to Cynthia Montgomery, Regulatory Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication in the *Pennsylvania Bulletin*. On comments, reference Regulation No. 16A-4627—Fees.

PHILIP T. SIEGEL, D.D.S.,
Chairperson

Fiscal Note: 16A-4627. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 33. STATE BOARD OF DENTISTRY

Subchapter A. GENERAL PROVISIONS

§ 33.3. Fees.

(a) Following is the schedule of fees charged by the Board:

Table listing various dental fees such as 'Application fee—dentists', 'Criteria approval application fee', and 'Biennial renewal fee' with associated amounts.

§ 33.339. Fees for issuance of permits.

The following fees are charged for the issuance of permits under this subchapter:

Table listing permit fees: (1) Unrestricted permit, (2) Restricted permit I, (3) Restricted permit II, with renewal amounts like [\$200] \$210.

[Pa.B. Doc. No. 13-613. Filed for public inspection April 5, 2013, 9:00 a.m.]

STATE BOARD OF LANDSCAPE ARCHITECTS

[49 PA. CODE CH. 15]

Continuing Education and Elimination of Registration without Examination

The State Board of Landscape Architects (Board) proposes to rescind § 15.56 (relating to registration without examination) and amend §§ 15.72 and 15.80 (relating to requirement for biennial renewal; and retention of records) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final publication in the Pennsylvania Bulletin.

Statutory Authority

The proposed amendments to §§ 15.56 and 15.72 are mandated by the Act 24 amendments to sections 6(c) and 9.1(b) of the act (63 P. S. §§ 906(c) and 909.1(b)).

Background and Purpose

In 2009, the General Assembly amended the act to eliminate licensure through an outdated "grandfathering" provision, which previously authorized the Board to register applicants who had practiced landscape architecture for at least 10 or 15 years.

Board. After the enactment of Act 24, the Board sent two newsletters in 2010 to its licensees telling them of the increased continuing education requirement and also published a notice on its web site. Although the Board initially anticipated that the increased continuing education requirement would be implemented during the 2011-2013 biennium, to give sufficient notice to licensees at this time, the Board proposes to designate the 2013-2015 licensure period (from June 1, 2013, through May 31, 2015) as the licensure period in which licensees will first be required to complete the increased number of 24 hours in continuing education as a condition of renewal in 2015. The Board plans to continue informing its licensees of the increased continuing education requirement through future newsletter articles and a notice on the Board's web site. To that end, on November 21, 2012, the Board posted a notice on its web site of the increased continuing education requirement to take 14 additional credit hours of continuing education by May 31, 2015, to renew a license. In the notice, the Board informed licensees that this is what the Board is proposing by this proposed rulemaking and that the Board will keep its licensees apprised when this proposed rulemaking becomes effective.

Description of the Proposed Rulemaking

The Board proposes to rescind § 15.56 because Act 24 deleted the provisions in section 6(c)(ii) of the act that permitted a "grandfathering" provision for two types of applicants. First, an applicant with 10 years of active experience as a landscape architect who also was a graduate of an approved institution could have become licensed. Second, an applicant with 15 years of active experience who was not a graduate of an approved institution could have become licensed. The Board implemented these provisions in § 15.56(a)(1) and (2). They are no longer needed due to Act 24. Also included in § 15.56(a)(3) is a provision which provides for individuals who have passed the examination in another state. Although not affected by Act 24, the Board is also proposing to delete this provision because it is already covered in § 15.57(a) (relating to registration by endorsement). Subsection (b) is also no longer necessary because it deals with the procedure to implement the requirements in subsection (a)(1) and (2). Therefore, it is appropriate to rescind this section.

Act 24 also made two changes in section 9.1(b) of the act that are incorporated in the proposed amendments to § 15.72(a). The first change is that Act 24 increased the continuing education hours for landscape architects from 10 to 24 during each biennial renewal period. The Board proposes to amend § 15.72(a) to incorporate this change and clarify the continuing education requirement for the current 2011-2013 biennium. The second change is that Act 24 gave the Board the authority to designate when the increased continuing education requirements will be implemented. Although the Board initially anticipated that the increased continuing education requirement would be implemented for the 2011-2013 biennium, these proposed amendments would now provide that the increased continuing education hours will be required to be completed for the first time during the 2013-2015 biennium (from June 1, 2013, through May 31, 2015) and will continue thereafter. The practical effect of this requirement is that a licensed landscape architect will have to take 14 additional credit hours of continuing education by May 31, 2015, to renew a license. As it has done since 2010, the Board will continue to inform its licensees of

the increased continuing education requirements through the Board's newsletters and through a notice on the Board's web site.

The Board also proposes to amend § 15.72(c) to make it consistent with subsection (a) for licensees who reactivate a lapsed license. Finally, the Board proposes to add § 15.72(d) to allow a licensee to carry over a maximum of 12 continuing education credits (half of the newly required 24 credits) into the subsequent renewal period. A carry-forward provision would encourage licensees to maximize the continuing education they take and not be deterred from taking continuing education if they do not need it for credit during the current biennial cycle. In other words, if a licensee has already taken the required continuing education credits and then sees an excellent course to take in the final months of the continuing education renewal period, the licensee will receive future credit for taking this course. A positive consequence of the carry-forward provision is also that licensees who took additional continuing education courses during the 2011-2013 biennium in anticipation of the Board's implementation of Act 24 will now be able to carry forward up to 12 of those credits. For example, if a licensee obtained 22 continuing education credits during the 2011-13 biennial from June 1, 2011, through May 31, 2013, that licensee can carry over the extra 12 continuing education credits into the next renewal period of 2013-2015. In this example, that licensee would only need to obtain 12 additional continuing education credits from June 1, 2013, through May 31, 2015, to renew a license.

In § 15.80(a) and (c), the Board proposes to increase from 4 to 6 years the time licensees and course providers are required to retain continuing education documentation. Because the Board audits continuing education after the close of a biennial renewal period, providing this extra time assists the Board in conducting a thorough audit of courses taken in the past. Furthermore, with § 15.72(d) allowing a licensee to carry forward 12 continuing education credits into the subsequent renewal period, a licensee will be better able to document credits that are carried forward.

Fiscal Impact

The proposed rulemaking should not have a major fiscal impact on the Commonwealth, the general public or political subdivisions. Due to the requirement in Act 24, the Board's 1,006 active licensees will have to pay for 14 additional continuing education hours of instruction. The Board estimates that the cost to a licensee for the additional continuing education hours is approximately \$434 per biennium (or \$217 per year).

Paperwork Requirements

The proposed rulemaking will require the Board to change the number of continuing education credits on biennial renewal forms. However, the proposed rulemaking does not increase paperwork for the general public. The Board's licensees shall maintain records of their additional continuing education credits. However, they are not required to complete additional reports.

Sunset Date

The Board continuously monitors its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 21, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory

Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons should submit written comments, suggestions or objections regarding this proposed rulemaking to Louis Lawrence Boyle, Regulatory Unit Counsel, State Board of Landscape Architects, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication in the *Pennsylvania Bulletin*. When submitting comments, reference No. 16A-6110 Landscape Architecture Continuing Education and Elimination of Registration without Examination.

DANIEL S. DIMUCCI, L.A.,
Chairperson

Fiscal Note: 16A-6110. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 15. STATE BOARD OF LANDSCAPE ARCHITECTS EXAMINATIONS

§ 15.56. [Registration without examination] (Reserved).

[(a) *Requirements.* An applicant who meets one or more of the following requirements is eligible for registration without examination:

(1) An individual who possesses 10 years of practical experience in landscape architecture, of a grade and character satisfactory to the Board, and who has graduated from an approved institution.

(2) An individual who possesses 15 years of practical experience in landscape architecture of a grade and character satisfactory to the Board.

(3) An individual who has passed the examination in another state with a score required by the Board and who has met the education experience requirements of the act.

(b) *Procedure.*

(1) Prior to issuing a license without examination, the Board will require the applicant to appear before representatives of the Board for an interview. The applicant will be required to submit the following work samples to the representatives during the interview:

- (i) Site and development plans.
- (ii) Specifications and drawings.
- (iii) Grading and drainage plans.
- (iv) Layout plans.
- (v) Planting plans.
- (vi) Stormwater management plans and calculations.
- (vii) Site construction details and specifications.
- (viii) Photographs of completed projects.
- (ix) Evidence of cost estimating and supervision of construction.
- (x) A variety of project types including experience with residential subdivision, commercial land developments, environmental projects and park and recreation projects.

(2) Submission of work samples.

(i) The applicant shall submit original work samples in support of an application for registration without examination, unless the Board agrees to accept photocopies for good cause shown by the applicant.

(ii) The work samples will be returned to the applicant at the conclusion of all proceedings related to the application.

(3) Prior to issuing a license without examination, the Board will review the applicant's qualifications, and by a majority vote approve or disapprove the application.

(4) If an application has been disapproved, the Board may vote to allow the applicant to take the written examination.]

CONTINUING EDUCATION

§ 15.72. Requirement for biennial renewal.

(a) [As a condition of biennial renewal commencing with the 2003 biennium and continuing thereafter, licensees shall have completed during the preceding biennium 10 clock hours of continuing education in acceptable courses approved under this subchapter.] During each biennial period from the 2001-2003 biennium (from June 1, 2001, through May 31, 2003) and continuing through the 2011-2013 biennium (from June 1, 2011, through May 31, 2013), a licensee shall complete 10 clock hours of continuing education in accordance with this subchapter as a condition of biennial renewal. During each renewal period beginning with the 2013-2015 biennium (from June 1, 2013, through May 31, 2015) and continuing thereafter, a licensee shall complete 24 clock hours of continuing education in accordance with this subchapter as a condition of biennial renewal.

* * * * *

(c) A licensee who wishes to reactivate a lapsed license or who has been on inactive status shall have completed [10] the required number of clock hours of continuing education in subsection (a) in the 2-year period immediately prior to reactivation.

(d) If a licensee exceeds the required number of clock hours of continuing education in a renewal period, the licensee may carry forward a maximum of 12 continuing education clock hours into the subsequent renewal period.

§ 15.80. Retention of records.

(a) The licensee shall retain copies of licensure renewal forms and the certificates, transcripts or other acceptable documentation of completion of the prescribed number of clock hours for [4] 6 years following completion of the course. Records and documentation shall be produced upon demand by the Board or its auditing agents. The

Board will utilize a random audit of renewals to determine compliance with the continuing education requirement.

* * * * *

(c) A provider shall retain records for [4] 6 years following the presentation of a course which shall document the successful completion of a course and the number of clock hours granted to every licensee. Copies of transcripts, certificates or other documentation shall be made available to a licensee upon request.

[Pa.B. Doc. No. 13-614. Filed for public inspection April 5, 2013, 9:00 a.m.]
