

# North Carolina Board of Barber Examiners Fiscal Analysis of Proposed Rule Predetermination Requests

## Rule information

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Below is information about the proposed rule, including citation, authority, and statements of the rule impact.

### Citation and authority

Rule citation .....21 NCAC 06C .0913 (see Appendix 1)  
Authorizing statutes.....G.S. § 93B-8.1, as amended by S.L. 2019-91 (HB 770) § 4

### Statements of the rule impact

State government..... Yes  
Local government.....No  
Private sector ..... Yes  
Substantial impact.....No

## Contact information

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For additional information about this analysis, please contact:

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## Issue

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In 2019, the North Carolina General Assembly passed House Bill (HB) 770 (see S.L. 2019-91), which included a section amending G.S. § 93B-8.1. The law establishes a process for individuals with criminal records to request a predetermination and requires occupational licensing agencies to adopt rules. These predeterminations allow individuals to find out whether their criminal histories will prevent them from being licensed, even before they've applied.

## Response to issue

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The board has authorized a rule that would establish the requirements for a predetermination request and delegate authority to the executive director to make the predetermination. The rule also establishes a petition fee of \$45.00 so that the board can partially recoup its expenses.

## Anticipated factors affecting costs and benefits

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The spreadsheet attached to this summary outlines the expected costs and benefits to the board and the applicants. The descriptions below offer more detail so that it's clear what the costs and benefits involve. This section also explains why certain factors haven't been included in the analysis.

### **Costs to agency**

There are three areas of costs that the board anticipates with this proposed rule, as indicated in Table 1 of the attached spreadsheet. The total estimated cost per case is \$278.71.

#### *Executive director—\$81.36 per case*

HB 770 requires the agency to designate a committee or the executive director to make predeterminations, and the board has delegated authority to its executive director. Although the executive director is salaried, the rule will cause an offset of productivity. Based on his 19 years of experience with reviewing criminal history records, the current executive director estimates that about two hours will be necessary for review of petitions and preparation of responses.

#### *Legal staff—\$190.50 per case*

The board must issue a formal decision in response to predetermination petitions, and the staff will rely on the assistance of the private firm that represents the agency. The formal decision is comparable to a Final Agency Decision (FAD), which the law firm routinely prepares for the board. Based on the standard time spent working on FADs and the executive director's estimate of the time needed for predetermination responses, the board believes that the firm will spend 0.7 attorney hours (at \$225.00 per hour) and 0.3 paralegal hours (at \$110.00 per hour) on the responses. (The hourly rates are based on the existing contract with the law firm. Though a change in the fee schedule is possible in future contracts, the board doesn't anticipate a change in the next fiscal year.)

#### *Mailing costs—\$6.85 per case*

The certified mailing cost is based on the United States Postal Service's current costs.

## Revenues for agency

The board has proposed a fee of \$45.00 to partially offset the costs, as indicated in Table 2 of the attached spreadsheet. This fee is the maximum allowed under HB 770.

## Costs to applicant

If an individual submits a predetermination request, he or she will incur certain costs, as listed in Table 4a of the attached spreadsheet. This section explains the costs and how the board estimated them.

### *Fee for criminal history record*

The proposed rule requires the individual to submit a copy of his or her FBI identity history summary, which is often called a criminal history record. The individual can acquire the record in one of two ways.

- Directly from the FBI. An individual can submit request the record directly from the FBI. Under this approach, the requester will pay \$18.00 for the FBI fee, according to the FBI's website. He or she must also pay a service provider to take the fingerprints, either electronically or by ink; according to the board's current executive director—who used to be the executive director of the Arizona Board of Fingerprint and thus has experience with fingerprinting processes—the cost of this service ranges from \$15.00 to \$50.00, and Table 4a assumes an average cost of \$32.50.
- From an FBI-approved channeler. The FBI has authorized various companies to serve as channelers for criminal history records. Individuals who use these channelers are able to get their records back quickly—sometimes immediately in electronic form—rather than the standard three-week wait for the FBI to respond. The records that the channelers provide are identical to the ones that the FBI provides directly, since they have access to Criminal Justice Information Services records. The FBI's website has a list of approved channelers.<sup>1</sup> Table 4b lists the fees for any approved channelers who list their fees on their websites.

### *Notary fee*

The proposed rule requires the predetermination request to be notarized. Although notary fees vary by provider, the board staff believes that \$5.00 is a reasonable estimate.

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<sup>1</sup> <https://www.fbi.gov/services/cjis/identity-history-summary-checks/list-of-fbi-approved-channelers-for-departmental-order-submissions>

### *Court records*

A person who submits a predetermination request must include copies of court records for each offense. These records would show whether the sentence was completed. The actual cost to an individual will depend on two factors: (1) the extent of the criminal record, and (2) the fees for a jurisdiction. Since each court system through the United States will have varying fee schedules, Table 4a shows sample costs based on North Carolina's schedule. The fee for the relevant court records is established by G.S. § 7A-308(a)(12) and currently consists of \$2.00 for the first page and \$0.25 for each additional page. This fiscal note assumes an average of five pages, based on the executive director's experience with reviewing court records.<sup>2</sup>

### *Mailing costs*

Applicants should expect to pay about \$4.00 in mailing costs, based on USPS's current fees for large envelopes. These costs include submission of the predetermination request to the board and submission of fingerprint data to channelers or the FBI.

### *Estimated number of hours*

The board staff estimates that individuals will spend about six hours preparing the predetermination request.

### **Benefits to applicant**

In a small number of cases, an applicant may file a predetermination request and find out that he or she wouldn't be able to get licensed by the board. If the applicant submits the request before attempting to get licensed, the individual might avoid certain costs. Table 5 lists the exam fees and licensing costs, which are based on the current schedule in 21 NCAC 06N .0101(a). In addition, for individuals who submit the request before attending barber school, Table 5 shows the range of costs to receive barber training; these costs are based on the school handbooks that schools must submit to us under 21 NCAC 06F .0125.

In a small number of cases, Vocational Rehabilitation Services at the Department of Health and Human Services will pay for barber training and exam and permit fees for qualifying individuals. The benefits to the applicant listed above would also apply to DHHS.

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<sup>2</sup> A PDF of the schedule as of December 2019 is available at: [https://www.nccourts.gov/assets/documents/publications/2019\\_Misc\\_court\\_costs\\_chart.pdf?eHgFrE.94ppgkvYJroA8oa2Gr\\_XzcC8R](https://www.nccourts.gov/assets/documents/publications/2019_Misc_court_costs_chart.pdf?eHgFrE.94ppgkvYJroA8oa2Gr_XzcC8R).

## Factors not included

The board hasn't included database upgrades in this analysis because there's a system already in place in our licensing software that would allow us to track these predeterminations.

## Sensitivity analysis

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Since HB 770 is establishing a new process for occupational licensing agencies, the board had to make estimates of the number of petitions it will receive. Based on the board's familiarity with the population it regulates, the board doesn't expect a significant number of petitions. The table below, which appears as Table 4 in the attached spreadsheet, identifies the impact of various numbers of petitions on the board's total annual costs. The board expects to receive about five petitions each year, resulting in a total cost to the board of \$1,168.55.

Sensitivity analysis for number of petitions	
Number of petitions	Total cost
2	\$467.42
5	\$1,168.55
10	\$2,337.10
15	\$3,505.64
20	\$4,674.19

← Estimated number of cases the board will receive

## Availability of funds

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The board currently estimates that it will end fiscal year 2020 with a fund balance of \$868,397. The board doesn't anticipate significant events that would imperil a substantial end-of-fiscal-year fund balance sufficient to cover the agency's costs.

There is an RFP currently open to vendors for barber-examination services, but it shouldn't affect the availability of funds. The board's intention is to outsource this function so that it can reduce office-space costs. The board hopes for an end result that will save enough in expenditures that it can hire an additional staff member, but only if the board avoids deficit spending.

The financial statements for the fiscal year ending June 30, 2019, as well as several previous fiscal years, are available at [www.ncbarbers.com](http://www.ncbarbers.com) under the About section.

1 21 NCAC 06C .0913 is proposed for adoption as follows:

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3 **21 NCAC 06C .0913      PREDETERMINATIONS FOR INDIVIDUALS WITH CRIMINAL RECORDS**

4 (a) An individual who wishes to request a predetermination under G.S. 93B-8.1(b6) shall submit a petition with the  
5 following:

6       (1) The person's full name;

7       (2) The person's social security number;

8       (3) The person's date of birth;

9       (4) The person's current address;

10       (5) A complete and accurate criminal history record from the Federal Bureau of Investigation;

11       (6) Three character references from individuals chosen by the petitioner;

12       (7) A notarized affirmation under oath that the information in the petition is accurate and true to the  
13 best of the petitioner's knowledge; and

14       (8) For each offense in the criminal history record, the following information:

15           (A) Whether the crime was a felony or misdemeanor;

16           (B) The date that the person was convicted of the offense;

17           (C) The sentence imposed for the crime;

18           (D) If the petitioner has completed the sentence, documentation from the appropriate court  
19 showing that the petitioner has met all court-imposed sentencing conditions or that records  
20 pertaining to the applicant either do not exist or have been purged;

21           (E) If the petitioner has not completed the sentence, either a statement written by the petitioner  
22 describing, or documentation from the sentencing court, showing the status of the  
23 petitioner's efforts toward meeting the sentencing requirements, including the expected  
24 date of completion;

25           (F) If applicable, evidence of a Certificate of Relief granted under G.S. 15A-173.2;

26           (G) If applicable, evidence of completion of or active participation in rehabilitative measures,  
27 such as drug or alcohol treatment, domestic-violence or anger-management counseling, or  
28 Drug Court programs; and

29           (H) A statement by petitioner that describes the circumstances surrounding the commission of  
30 the crime.

31 (b) The petition shall be accompanied by a non-refundable petition fee of forty-five dollars (\$45.00).

32 (c) The Board delegates authority to make predeterminations to the Executive Director, who shall issue a response as  
33 required by G.S. 93B-8.1(b6).

34  
35 *Authority G.S. 93B-8.1*

**TABLE 1: Costs to agency**

Research findings/assumptions	
Personnel costs per case	\$271.86
Hourly rate - executive director (see note 1)	\$40.68
Estimated staff hours - executive director (see Table 3)	2.00
Hourly rate paralegal	\$110.00
Estimated staff hours - paralegal (see Table 3)	0.30
Hourly rate - attorney	\$225.00
Estimated staff hours - attorney (see Table 3)	0.70
Certified mailing cost per case	\$6.85
<b>TOTAL COST PER CASE</b>	<b>\$278.71</b>

**TABLE 2: Revenues for agency**

Research findings/assumptions	
Petition fee per case	\$45.00
<b>TOTAL REVENUES PER CASE</b>	<b>\$45.00</b>

**TABLE 3: Estimated staff hours per case**

Activity description	Personnel	Est. # of hours
Decision review	Attorney	0.20
Determination meeting	Attorney	0.25
Document review	Attorney	0.25
Administrative	Executive director	0.50
Decision drafting and finalization	Executive director	1.00
Determination meeting	Executive director	0.25
Document review	Executive director	0.25
Administrative	Paralegal	0.30

**TABLE 4a: Costs to applicant**

Research findings/assumptions	
Fee for criminal history record (one of the following two):	
FBI fee for identity history summary	\$50.50
FBI-approved channeler fee (average from Table 4b)	\$53.71
Notary fee	\$5.00
Court records per offense (assumption of 5 pages)	\$3.00
Mailing costs	\$4.00
Est. # of hours to prepare petition (incl. acquiring records)	6.00

**TABLE 5: Benefits to applicant (see note 2 above)**

Research findings/assumptions	
Avoided costs:	
Exam fees	\$170.00
Student permit fee	\$25.00
Apprentice barber permit fee	\$50.00
Reciprocity fee	\$120.00
Registered barber fee	\$50.00
Potential avoided cost:	
Barber school	\$1,600.00 - \$17,000.00

**TABLE 6. Sensitivity analysis for number of petitions**

Number of petitions	Total agency cost
2	\$467.42
5	\$1,168.55
10	\$2,337.10
15	\$3,505.64
20	\$4,674.19

← Estimated number of cases the board will receive

**Issue:** G.S. § 93B-8.1, as amended by S.L. 2019-91 (HB 770) § 4, requires occupational licensing agencies to establish rules for predeterminations.

**Reason for fiscal note:** The proposed rule requires the expenditure of funds subject to the Executive Budget Act. See G.S. § 150B-21.4(a).

**Note 1:** The cost for the executive director will be a productivity offset rather than additional expenditures, since the executive director is salaried

**Note 2:** Though listed as a benefit to the applicant, this benefit also applies in a very few cases to the Department of Health and Human Services, Vocational Rehabilitation Services, which sometimes pays for students' barber training. DHHS would avoid the same costs as the applicant.

**TABLE 4b: FBI-approved channeler fees**

Research findings/assumptions	
ApplicantServices.com	\$47.00
Fieldprint, Inc.	\$50.00
IDVetting	\$80.00
National Background Check, Inc.	\$50.00
National Background Information	\$39.95
Sterling Identity	\$49.00
VetConnex	\$60.00
<b>AVERAGE COST PER CASE</b>	<b>\$53.71</b>