

Department of Legislative Services
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FISCAL AND POLICY NOTE
Revised

House Bill 68

(The Speaker)(By Request - Department of Legislative
Services)

Economic Matters

Education, Health, and Environmental Affairs

**State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration
Contractors - Sunset Extension and Program Evaluation**

This bill extends the termination date for the State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration (HVACR) Contractors by 10 years to July 1, 2023, and requires an evaluation of the board by July 1, 2022. The bill includes a related reporting requirement.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: General fund revenues and expenditures for the board are maintained beyond FY 2013. The Governor's proposed FY 2012 budget includes \$156,160 for board operations. The bill's reporting requirements can be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Uncodified language requires the board to submit a report by October 1, 2012, to specified committees of the General Assembly that addresses the following:

- the feasibility of requiring counties to enforce the State mechanical code;
- whether the board has adopted a regulation exempting individuals who install thermostats or switches under a public service company's demand response program from licensing requirements;
- issues arising from allowing unlicensed individuals to perform work related to a public service company's demand response program, if the board has adopted such an exemption;
- whether the board has identified additional ways of resolving consumer complaints after consulting with other State agencies; and
- the board's success at filling vacant positions and maintaining geographic representation among board members.

Current Law/Background:

Maryland Program Evaluation Act

The State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors is 1 of approximately 70 regulatory entities and activities currently subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as "sunset review" as most entities evaluated are also subject to termination, including the board, which is scheduled to terminate July 1, 2013. The sunset review process begins with a preliminary evaluation conducted by the Department of Legislative Services (DLS) on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an entity from further (or full) evaluation. If waived, legislation to reauthorize the entity typically is enacted. Otherwise, a full evaluation usually is undertaken the following year.

Regulation of Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors

In Maryland, providing heating, ventilation, air-conditioning, or refrigeration services means installing or maintaining heating systems, cooling systems, refrigeration systems, ventilation systems, or hydronic systems. The State Board of HVACR Contractors was established by Chapter 649 of 1992 to license individuals who offer heating, ventilation, air-conditioning, and refrigeration services to protect the public, maintain efficient and safe systems, and promote high professional standards in the industry. The board is also the sole determiner of the State mechanical code; directs continuing education courses; and administers other minimum standards for State, county, and local government

HVACR inspectors. The board is housed within the Department of Labor, Licensing, and Regulation's (DLLR) Division of Occupational and Professional Licensing.

When the board was established, Prince George's County and Anne Arundel County were the only counties with active HVACR licensing programs. Proponents of a statewide board agreed to allow local licensing in Anne Arundel and Prince George's counties to continue in exchange for a ban on local licensing in other jurisdictions. Anne Arundel County still licenses HVACR contractors, but Prince George's County no longer does.

Although the board approves a mechanical code for the State, the board was not designed to proactively enforce the mechanical code. Moreover, unlike the statute authorizing the State Board of Plumbing that requires counties to enforce the plumbing code, the HVACR statute does not require local governments to enforce the mechanical code. The board must instead enter into cooperative enforcement agreements under which counties agree to enforce the mechanical code; counties, however, are under no obligation to enter into such an agreement with the board.

Revenues Approximate the Cost of Regulation: The General Assembly has a policy that regulatory bodies should, to the extent feasible, be self-supporting; however, boards should not charge licensees significantly more than necessary to maintain operations and cover the costs associated with regulation. The board is general funded, and all revenue collected by the board is paid into the State's general fund. The board's primary source of revenue is fees paid by individuals obtaining a license or renewing an existing license.

With an increase in revenues from licensing fees over the past fiscal year, the board now covers the costs of its work after operating with relatively small funding gaps in fiscal 2007, 2008, and 2009. Partly due to cost containment within the Division of Occupational and Professional Licensing, a large biennial gap in fiscal 2008 and 2009 is projected to be almost entirely eliminated by the end of fiscal 2011. Continued increases in the number of licensees should ensure that future gaps are either minimal or avoided due to higher revenues.

Board Oversees Robust Licensing Activity: The primary purpose of the board is to license individuals who provide or assist in providing HVACR services. The board issues the following types of licenses: master; master restricted; limited; journeyman; journeyman restricted; and apprentice. The board also licenses HVACR inspectors. As of June 2010, 17,932 individuals were licensed by the board, which is about a 17% increase from the number of licenses issued by the board in June 2006. Additionally, the number of licensed HVACR apprentices who are also enrolled in formal programs approved by the Apprenticeship and Training Council increased from 1,596 in fiscal 2006 to 1,813 in fiscal 2010.

Staffing Shortages Reduce Number of Resolved Complaints: The board's complaint activity was stable between fiscal 2007 and 2009 but increased in fiscal 2010. **Exhibit 1** displays the number of complaints received and closed between fiscal 2007 and 2010.

Exhibit 1
Complaints Received and Closed
Fiscal 2007-2010

| | <u>FY 2007</u> | <u>FY 2008</u> | <u>FY 2009</u> | <u>FY 2010</u> |
|---------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Complaints Received | 138 | 133 | 142 | 197 |
| Complaints Closed | 128 | 107 | 76 | 53 |

Source: State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors

DLLR advises that the decline in closed cases dovetails with a period during which the board operated without the services of a full-time executive director. DLLR further advises that the board also lost consistent access to investigatory resources during this time. The board has since regained access to investigatory resources with the hiring of a full-time inspector by the Division of Occupational and Professional Licensing.

Industry Groups Express Concern About PeakRewards Device Installation: Several industry groups have expressed significant concerns about the board's actions concerning the installation of certain thermostats and switches by individuals who are not licensed by the board. Most of these individuals are employed by Honeywell International, Inc., which has contracted with the Baltimore Gas & Electric Company (BGE) under the BGE PeakRewards program – a public service company's demand response program. The trade groups claim that there is a serious question about the competency of unlicensed individuals who are being allowed to perform the work.

Sunset Evaluation Findings and Recommendations

The State Board of HVACR Contractors last underwent a preliminary evaluation as part of sunset review in 2000. The evaluation found that the board was successfully fulfilling its statutory responsibilities and recommended a waiver from full evaluation. Chapter 73 of 2001 extended the board's termination date to July 1, 2013.

During the 2010 interim, DLS conducted a preliminary evaluation of the board, which found that the board performs its statutory and regulatory functions in an effective and efficient manner. Thus, DLS recommended that LPC waive the board from full

evaluation and legislation be enacted to extend its termination date by 10 years. Even so, the preliminary evaluation determined that several issues pertaining the board's activities and operations required further consideration by both the board and DLLR. As a result, DLS also recommended that DLLR submit a follow-up report to specified committees of the General Assembly by October 1, 2012, addressing the issues identified in the preliminary evaluation.

The bill generally implements DLS' recommendations, as adopted by LPC at its December 21, 2010 meeting.

Additional Information

Prior Introductions: None.

Cross File: SB 92 (The President)(By Request - Department of Legislative Services) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

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