

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 347

(Chair, Economic Matters Committee)(By Request -
 Departmental - Labor, Licensing and Regulation)

Economic Matters

Education, Health, and Environmental Affairs

Professional Engineers - Firm Permits

This departmental bill establishes a permitting framework for professional engineering firms and generally requires that, beginning on October 1, 2015, a corporation, partnership, or limited liability company (LLC) must hold a permit issued by the State Board for Professional Engineers before the firm may operate a business through which engineering is practiced.

Fiscal Summary

State Effect: Special fund expenditures for the Department of Labor, Licensing, and Regulation (DLLR) increase by \$3,800 in FY 2014 for costs associated with printing, reproduction, banking fees, postage, and other processing costs. Special fund expenditures increase by \$15,100 in FY 2015 and by \$15,100 in FY 2016 for the development of an electronic permitting system for professional engineering firms and for ongoing administrative costs. Out-year expenditures reflect inflation, annualization, and the elimination of one-time costs. Special fund revenues for DLLR increase by \$50,000 in FY 2016 from initial firm permit fees and biennially thereafter from firm permit renewal fees. The board can implement the bill with existing staff. The fines authorized by the bill are not expected to materially affect general fund revenues.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	\$0	\$0	\$50,000	\$0	\$50,000
SF Expenditure	\$3,800	\$15,100	\$15,100	\$5,200	\$5,200
Net Effect	(\$3,800)	(\$15,100)	\$34,900	(\$5,200)	\$44,800

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: DLLR advises that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: Beginning on October 1, 2015, a corporation, partnership, or LLC must hold a permit issued by the State Board for Professional Engineers before the firm may operate a business through which engineering is practiced, except for specified circumstances relating to providing engineering services for itself or affiliated firms. A corporation, partnership, or LLC must submit specified forms, an application fee, and additional information to the board and designate a person as a “managing agent,” as discussed below. The board must issue a permit to each applicant who meets the bill’s requirements and pays the permit fee set by the board.

The permit authorizes the holder to (1) operate a business through which one or more professional engineers or individuals authorized to practice professional engineering practice or offer to practice engineering and (2) represent to the public that the business provides or offers to provide professional engineering services. A permit authorizes the holder to provide a service that constitutes the practice of engineering only if the service is performed by an individual who is licensed or otherwise authorized to practice engineering.

A permit expires on the first June 30 that comes after the effective date of the permit in an even-numbered year. Subject to notification requirements about the expiration of the permit, the permit holder may renew the permit periodically for an additional two-year term if the holder is otherwise entitled to a permit, pays a permit fee set by the board, and submits a renewal application containing specified information to the board. The Secretary of Labor, Licensing, and Regulation is authorized to stagger permits issued under the bill.

Under current law, an individual who practices engineering through a corporation, partnership, or LLC is not, by reason of the individual’s employment or other relationship with the firm, relieved of any individual responsibility regarding that practice. The bill specifies that an individual is not relieved of any *professional* (rather than personal) responsibility regarding the practice of engineering through a firm.

Managing Agent

To qualify for a professional engineering firm permit, a corporation, partnership, or LLC must designate one (licensed) Maryland professional engineer in good standing to be the

managing agent for the firm. An applicant must include information relating to the managing agent in a permit application and renewal. The managing agent must be (1) in a position to act on behalf of the firm in matters related to the practice of engineering and (2) an employee, an owner, a director, an officer, a member, or a partner, as applicable, of the entity seeking the permit. A licensee may not be designated the managing agent of more than one firm unless the firms are affiliated. Firms must also notify the board within 60 days when specified information relating to the managing agent changes.

Firm Permit Enforcement

Except for a licensee who operates a business as a sole practitioner, a person may not operate a business through which professional engineering services are performed or offered to be performed unless the business is a corporation, partnership, or LLC and holds a permit from the board.

The board is authorized, subject to hearing and notification provisions, to deny a permit to any applicant, reprimand a permit holder, or suspend or revoke a permit if (1) the applicant or permit holder fraudulently or deceptively obtains or attempts to obtain a permit or (2) the permit holder fraudulently or deceptively uses a permit.

The board may also impose a penalty of up to \$5,000 for each (1) violation for which a denial, reprimand, suspension, or revocation was imposed under the bill and (2) failure to meet or continue to meet specified qualifications or requirements.

The board must determine the penalty based on the seriousness and harm caused by the violation, the good faith of the permit holder, and any history of previous violations by the permit holder. Penalties collected by the board are paid into the general fund of the State. A permit remains in effect for the duration of an investigation and associated disciplinary process by the board, but it is effective only for the purpose of retaining the jurisdiction of the board.

A firm whose permit has been suspended or revoked by the board may not offer or provide the services authorized by the permit until the suspension is lifted or the permit is reinstated. The board may reinstate a firm permit under specified conditions. A permit holder with a reinstated permit must comply with all applicable requirements for holding an original permit.

Current Law/Background:

State Board for Professional Engineers

The board issues new or original professional engineer licenses, renewal licenses, and engineering-in-training certificates. Professional engineer licenses in the State have a

two-year term and are not discipline specific. There is only one designation: professional engineer. However, candidates are examined in the disciplines in which their education and/or experience were gained (*e.g.*, chemical, civil, environmental, or industrial engineering). To qualify for a professional engineer license, an applicant must be of good character and reputation and meet specific education, experience, and examination requirements. The general process for obtaining a professional engineer license in the State varies according to whether the individual is seeking an original, reciprocal, or renewal license. The board currently regulates nearly 23,000 individuals, but it does not have the authority to issue firm permits to companies that offer or provide engineering services.

DLLR advises that the board has been made aware of companies that claim to provide engineering services when in reality the companies did not have a licensed professional engineer on staff and/or the services offered were not engineering services. The bill is intended to prevent both occurrences by requiring companies that provide engineering services to obtain a firm permit from the board and to designate a licensed Maryland professional engineer to be a managing agent in charge of engineering matters.

The Design Boards

The five design boards include the State Board of Architects, State Board of Examiners of Landscape Architects, State Board for Professional Engineers, State Board for Professional Land Surveyors, and State Board of Certified Interior Designers. The State Board of Architects, State Board of Examiners of Landscape Architects, and the State Board for Professional Land Surveyors are each authorized to issue firm permits.

Chapter 227 of 2003 (SB 267) established the State Occupational and Professional Licensing Design Boards' Fund as a special, nonlapsing fund in DLLR. One of the major goals of Chapter 227 was to cluster the design boards, since they regulate similar types of professions, in order to equalize the licensing fees among the design boards. Through this clustering approach, the design boards are required to work more cooperatively together through a Joint Chairs Committee. With consent of the boards, DLLR is authorized to average the direct and indirect costs among the boards to establish fees that distribute the costs associated with the operation of each board across all five boards. With these calculations in mind, the boards are all charged with setting reasonable fees for their services by regulation. Recent sunset reviews of all five design boards conducted by the Department of Legislative Services have confirmed that the design boards' special fund has been operating as intended, allowing the boards to equalize and stabilize fees among the five professions.

State Fiscal Effect: Special fund expenditures for DLLR increase by \$3,750 in fiscal 2014 for costs associated with printing, reproduction, banking fees, postage, and

other processing costs. Special fund expenditures increase by approximately \$15,050 in each of fiscal 2015 and 2016 for the department to implement an electronic permitting system (at \$10,000 in each year) and for ongoing administrative costs. These expenditures are assumed to be made from the Design Boards' Fund. Out-year special fund expenditures reflect inflation, annualization, and the elimination of one-time costs.

Special fund revenues for DLLR increase by \$50,000 in fiscal 2016 from initial firm permit fees. Professional engineering firms must obtain a permit to operate in the State by October 1, 2015. DLLR anticipates that the initial permitting fee and the renewal fee will each be set by the board at \$100, which is the same level as the permit fee for the other design boards with firm permitting authority. DLLR expects approximately 500 professional engineering firms will ultimately apply for permits. Therefore, special fund revenues for DLLR increase by \$50,000 in fiscal 2016 from initial permit fees and by \$50,000 in fiscal 2018 and biennially thereafter from firm permit renewal fees. Additional general fund revenues from fines authorized by the bill are expected to be minimal.

Additional Comments: DLLR advises that, while the bill is similar to HB 659 of 2012, it only includes a new firm permitting structure for the State Board for Professional Engineers. HB 659 also included firm permit *enforcement* authority for three design boards that already have the statutory authority to issue firm permits. Between April 2012 and August 2012, the board sought input from and engaged in negotiations with a number of engineering professional associations, including the American Society of Civil Engineers, the Maryland Consulting Engineers Council, and the Society for Professional Engineers. DLLR advises that the bill represents a compromise agreed to by all stakeholders involved in that process.

Additional Information

Prior Introductions: A similar bill, HB 659 of 2012, incorporated the provisions of this bill. It received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

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

Fiscal Note History: First Reader - February 15, 2013
mlm/mcr Revised - House Third Reader - March 19, 2013
Revised - Enrolled Bill - April 25, 2013

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Professional Engineers – Firm Permits

BILL NUMBER: HB 347

PREPARED BY: Department of Labor, Licensing and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.