

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
Third Reader

Senate Bill 74

(Chair, Education, Health, and Environmental Affairs  
Committee)(By Request - Departmental - Environment)

Education, Health, and Environmental Affairs

Environment and Transportation

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Environment - Marine Contractors Licensing Board - Authority, Program  
Evaluation, and Termination

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This departmental bill (1) explicitly establishes the Marine Contractors Licensing Board as a unit in the Maryland Department of the Environment (MDE); (2) amends the definition of “marine contractor services” to exclude specified activities located *over* State or private tidal wetlands; (3) authorizes the board to establish, by regulation, separate license categories that specify the marine contractor services that each license authorizes a licensee to perform; and (4) subjects the board to termination pursuant to the Maryland Program Evaluation Act (MPEA) after July 1, 2031.

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Fiscal Summary

**State Effect:** Costs associated with any increase in board actions requiring MDE review as a result of establishing the board as an official unit in MDE are anticipated to be absorbable with existing resources. Revenues are not materially affected.

**Local Effect:** None.

**Small Business Effect:** MDE has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) disagrees with this assessment, as discussed below.

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## Analysis

### **Current Law/Background:**

#### *Marine Contractors Licensing Board*

Chapter 286 of 2010 established the Marine Contractors Licensing Board within MDE, but did not explicitly establish the board as a “unit” in MDE. The board is responsible for the licensing and regulation of individuals and entities that provide marine contractor services in the State. The board is not subject to review or termination pursuant to MPEA.

“Marine contractor services” means construction, demolition, installation, alteration, repair, or salvage activities located in, on, over, or under State or private tidal wetlands. Furthermore, “marine contractor services” includes (1) dredging and filling; (2) the construction, demolition, installation, alteration, repair, or salvage of structures, including boathouses, boat or other personal watercraft lifts or ramps, slips, docks, floating platforms, moorings, piers, pier access structures, pilings, wetland observation platforms, wetland walkways, and wharfs; and (3) the construction, demolition, installation, alteration, repair, or salvage of stabilization and erosion control measures, including revetments, breakwaters, bulkheads, groins, jetties, stone sills, marsh establishments, and beach nourishment or other similar projects.

Individuals, or the entities they work for, must have a license prior to performing or soliciting marine contractor services in the State. To qualify for a license, applicants must meet specified requirements, including having at least two years of experience as a full-time marine contractor or demonstrating similar contractor experience, having a federal tax identification number, passing a written marine contractor test, and having specified insurance. Applicants must provide specified information, complete a specified application form, and pay a license application fee set by the board. The board only issues one license, regardless of the type of experience a contractor possesses.

#### *Maryland Program Evaluation Act*

Approximately 70 regulatory entities and activities are subject to evaluation under MPEA, including the State Board of Waterworks and Waste Systems Operators and the State Board of Well Drillers within MDE. Entities subject to MPEA may be evaluated by DLS only as directed by specified entities or by legislation. Most such entities are subject to termination. Accordingly, the evaluation process is better known as sunset review.

## *North Carolina Board of Dental Examiners Ruling*

In 2015, the U.S. Supreme Court issued a decision in *N.C. Board of Dental Examiners v. Federal Trade Commission*, which held that in order to invoke state action immunity from federal antitrust liability, a state board on which a controlling number of decision makers are active market participants must satisfy the two-pronged test established in *California Retail Liquor Dealers Assn. v. Midcal Aluminum Inc* (1) clear articulation of state policy and (2) active supervision by the state.

Chapters 614 and 615 of 2017 addressed this Supreme Court decision by generally requiring the Secretary of each principal department to supervise each unit of State government within the Secretary's jurisdiction that is composed, in whole or in part, of individuals participating in the occupation or profession regulated by the unit in order to (1) prevent unreasonable anticompetitive actions by the unit and (2) determine whether the decisions and actions of the unit further a clearly articulated State policy to displace competition in the regulated market.

MDE has three licensing boards: the State Board of Waterworks and Waste Systems Operators; the State Board of Well Drillers; and the Marine Contractors Licensing Board. MDE notes that clearly establishing the Marine Contractors Licensing Board as a unit in the department ensures adequate State supervision of board actions (as required by Chapters 614 and 615), protects the board from antitrust liability, and brings the board into statutory alignment with MDE's other boards.

**Small Business Effect:** The bill authorizes the board, by regulation, to establish license categories that specify the marine contractor services each license authorizes a licensee to perform. Thus, the implementing regulations may change how and whether a licensee qualifies for a specified type of license. The fiscal impact, if any, on marine contractors depends on the content and scope of the regulations developed pursuant to the bill and cannot be reliably estimated at this time. A tiered licensing system and any potential training or testing requirements established by regulations could benefit qualified licensees, but could also result in higher costs for other licensees. Thus, for any marine contractors that are small businesses, the bill has a potential meaningful impact.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Department of the Environment; Department of Legislative Services

**Fiscal Note History:** First Reader - January 14, 2020  
mr/lgc Third Reader - February 6, 2020

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**ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

TITLE OF BILL: Marine Contractors Licensing Board - Unit of State Government

BILL NUMBER: SB 74

PREPARED BY: Maryland Department of the Environment

**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**