

**Department of Legislative Services**

Maryland General Assembly

2004 Session

**FISCAL AND POLICY NOTE**

Senate Bill 110 (Senator Hollinger)

(Chairman, Education, Health, and Environmental Affairs Committee)

Education, Health, and Environmental Affairs

Health and Government Operations

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**State Board of Dietetic Practice - Sunset Extension and Program Evaluation**

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This bill: (1) extends the termination date for the State Board of Dietetic Practice (the board) from July 1, 2005 to July 1, 2015; (2) creates a single dietitian-nutritionist license for the practice of dietetics and phases out the existing licenses; (3) limits use of “nutritionist” and “dietitian-nutritionist” to individuals who are licensed to practice dietetics; (4) allows current board members to serve the remainder of their term and changes the process for filling a licensed dietician-nutritionist vacancy on the board; (5) requires the board and the Department of Health and Mental Hygiene to report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee by October 1, 2004 on implementing other recommendations; and (6) requires another sunset evaluation on or before July 1, 2014.

The bill takes effect July 1, 2004.

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**Fiscal Summary**

**State Effect:** Special fund expenditures and revenues would be maintained for the board beyond FY 2005. The board’s FY 2005 budget allowance is \$133,506. The board’s average annual revenues for the last five years were \$119,930, while its average annual expenditures over the same period were \$120,591. Out-year revenues and expenditures are expected to remain relatively constant.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Current Law:** The State Board of Dietetic Practice will terminate July 1, 2005. The Board of Dietetic Practice was established by Chapter 773 of 1985.

The board's primary responsibility is to license dietitians and nutritionists in Maryland. Licensure makes third-party reimbursement available to practitioners who otherwise would not be eligible to bill insurers for providing medical nutrition therapy. Currently, Maryland issues two separate licenses for dietitians and nutritionists although the requirements for licensure are identical. Licenses must be renewed every two years.

Despite recommendations in the last sunset report to develop separate scopes of practice, statute still does not differentiate between nutritionists and dietitians. Statute requires that an individual be licensed by the board before the individual may practice dietetics in the State. Statute defines the practice of dietetics as the means to apply the principles derived from integrating knowledge of food, biochemistry, physiology, management science, behavioral science, and social science to human nutrition. Statute does not define a scope of practice for nutrition sciences or any other practice that could be construed to imply that dietitians should practice one scope while nutritionists should practice another. Nor does statute clarify how dietitians and nutritionists should practice dietetics differently. Further, the board has not made a distinction between the two professions in its regulations, either in scope of practice or in licensure requirements.

**Background:** Prior to State licensure, the professional associations were the *de facto* regulators of dietetic practitioners, as the standards for registration with the American Dietetic Association or the American College of Nutrition closely resemble State requirements for licensure. Licensure was pursued for several reasons, among them to increase the visibility of qualified dietetic professionals.

During the 2003 interim, the Department of Legislative Services (DLS) conducted a full evaluation of the State Board of Dietetic Practice under the Maryland Program Evaluation Act (sunset review). This bill embodies the statutory recommendations developed by DLS during the interim.

There are an estimated 1,247 licensed dietitians and 92 licensed nutritionists in Maryland in fiscal 2004; 46 of these licensees are dual license holders. Over the last five years, while the number of licensed nutritionists has declined somewhat, there has been little in the way of remarkable change in the number of licensed dietitians in Maryland.

Funds to cover the board's expenses are entirely generated by the fees collected by the board. The initial cost of licensure, independent of professional testing expenses, is

\$300; the cost of biennial license renewal begins at \$175, with additional expenses for dual licenses or late renewal. All licensing revenue accrues to the board with the exception of an additional \$34 biennial fee levied by the Maryland Health Care Commission. The user fee, assessed on health practitioners meeting minimum income requirements, supports the commission's operations.

Special funding of the health occupations boards, including the Board of Dietetic Practice, was established by Chapter 272 of 1992 in order to improve the boards' performance and make them entirely self-supporting. Board expenses exceeded revenues prior to fiscal 2002. The board relied on its fund balance to support operations and reduced its direct costs to offset the resulting deficits.

In addition, the board borrowed \$12,000 in fiscal 2001 from the Board of Audiologists, Speech-Language Pathologists, and Hearing Aid Dispensers to end the fiscal year with a \$305 fund balance. Borrowing among health occupations boards, including the Board of Dietetic Practice, was cited in an October 2002 audit of the boards by the DLS Office of Legislative Audits. In accordance with the boards' special fund status, fees collected by a given board must be used solely to fund that board's operating expenses to the exclusion of other sources of State money. According to the audit, borrowing violates this provision of the boards' titles. The audit also disclosed that such loans were recorded as revenue, providing a misleading accounting of the boards' fund balances.

The board also substantially raised its fees in 2001, allowing the board to fully repay the loan from the Board of Audiologists, Speech-Language Pathologists, and Hearing Aid Dispensers in fiscal 2003. The combination of the loan and increased licensing revenue allowed the board to end recent fiscal years with a positive fund balance. Once the loan repayment is accounted for, however, the Board of Dietetic Practice fiscal 2003 ending fund balance was \$2,870.

The board's target fund balance is 30% of annual expenditures – an estimated \$37,000 – a figure established to allow the board to absorb unexpected costs or reductions in revenue. In recent years, the board has been sufficiently managing its resources to require a fund balance smaller than recommended. With recent transfers of many boards' fund balances to the general fund and the potential burden on licensees, it may not be reasonable for the board to increase its balance to \$37,000; however, a moderate increase may be required to insulate the board from revenue fluctuations.

Currently, 44 states and the District of Columbia regulate dietitians, nutritionists, or both professions. Only 10 of these 45 jurisdictions, including Maryland, regulate dietitians and nutritionists separately even if the scope of practice for dietitians and nutritionists is similar or identical. Today 35 states regulate a single practice, generally classifying all

individuals who practice dietetics as either dietitians or nutritionists. Twenty-one states regulate only dietitians or nutritionists. Thirteen states recognize a single dietitian-nutritionist practice in which the terms dietitian and nutritionist may be used interchangeably, and one state issues a license to dietitians and nutritionists under the title “medical nutrition therapist.”

**State Fiscal Effect:** Special fund revenues for the board will be maintained beyond fiscal 2005 because the bill proposes to continue the board. The board’s annual revenues averaged \$119,930 for the last five years while its annual special fund expenditures averaged \$120,591. Although expenditures exceeded revenues prior to fiscal 2002, the board was able to end its fiscal difficulties by borrowing funds from another health board (which it has repaid), dipping into its fund balance, reducing its direct costs, and raising its fees. In fiscal 2004, board revenues outpaced expenditures by \$2,391. The board estimates fiscal 2005 revenues at \$132,550. Special fund revenues to the board from assessments on licensees are dependent on the number of practicing professionals.

Special fund expenditures will be maintained beyond fiscal 2005 because the bill proposes to continue the board. The fiscal 2005 budget allowance for the board is \$133,506.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 353 (Delegate Hurson) (Chairman, Health and Government Operations Committee) – Health and Government Operations.

**Information Source(s):** Department of Health and Mental Hygiene; “*Sunset Review: Evaluation of the State Board of Dietetic Practice*,” October 2003, Department of Legislative Services

**Fiscal Note History:** First Reader - February 2, 2004  
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