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FISCAL AND POLICY NOTE
Revised

House Bill 511

(Chair, Environmental Matters Committee and Delegate
Hubbard)

Health and Government Operations and Education, Health, and Environmental Affairs
Environmental Matters

State Board of Environmental Health Specialists - Transfer of Responsibilities

This bill transfers the State Board of Environmental Sanitarians (BES) from the Maryland Department of the Environment (MDE) to the Department of Health and Mental Hygiene (DHMH) and changes the name of the board to the State Board of Environmental Health Specialists. Correspondingly, environmental sanitarians are renamed environmental health specialists, and environmental sanitarians-in-training are renamed environmental health specialists-in-training. The bill extends the termination date of the board by four years to July 1, 2017, and requires a direct full evaluation of the board be conducted by July 1, 2016. The bill also changes the funding source for the board by creating a special fund.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: General fund revenues decline by \$68,500 in FY 2013 as licensing revenues are no longer paid to the general fund. General fund expenditures for MDE also decline by \$7,600 in FY 2013 due to a reduction in administrative costs resulting from transfer of the board to DHMH effective July 1, 2012. Special fund revenues and expenditures for DHMH increase by \$123,800 and \$67,800, respectively, in FY 2013 due to the creation of a special fund for licensing revenues and to cover the expenses of administering the board. Future years primarily reflect the biennial licensing pattern and inflation.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
GF Revenue	(\$68,500)	(\$16,600)	(\$69,500)	(\$16,800)	(\$70,900)
SF Revenue	\$123,800	\$16,600	\$125,000	\$16,800	\$126,300
GF Expenditure	(\$7,600)	(\$7,700)	(\$7,800)	(\$7,800)	(\$7,900)
SF Expenditure	\$67,800	\$64,000	\$66,900	\$69,000	\$71,300
Net Effect	(\$4,900)	(\$56,300)	(\$3,600)	(\$61,200)	(\$8,000)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: The bill authorizes the board to (1) with the support of an applicant's employer, allow an applicant to sit for the qualifying exam after only one year in an environmental health specialist-in-training program; and (2) make substitutions for equivalent coursework on a case-by-case basis.

The bill establishes the State Board of Environmental Health Specialists Fund to cover the direct and indirect costs of the board. Fees must be set to approximate the cost of maintaining the board. No other State funds may be used to support the fund. The Legislative Auditor must audit the fund.

The bill also expands the individuals who are exempt from the board's licensure requirements to include persons employed by MDE or related county health departments who perform duties and responsibilities for sewage sludge, water pollution control, or drinking water as well as persons employed by MDE as either a regulatory and compliance engineer or architect or an environmental compliance specialist.

Uncodified language states that DHMH must ensure adequate funding for the board in fiscal 2013 and may transfer funds from another board with adequate reserve funds to be repaid in full during fiscal 2014. BES is required to implement the measures outlined by the Department of Legislative Services (DLS) in the November 2011 sunset evaluation of the board relating to the transfer of the board to DHMH.

Exhibit 1 provides a summary of other major changes proposed under the bill compared with the relevant current law.

Exhibit 1
Proposed Changes under SB 450/HB 511
Compared to Relevant Current Law

Current Law

Changes Under SB 450/HB 511

Board Membership and Powers

Two at-large members must bring geographical balance to the board and may not represent a jurisdiction of the State that is already represented on the board.

At-large members must reasonably reflect the geographic diversity of the State. No two current members of the board may represent the same geographic jurisdiction.

Members serve five-year terms and may not serve more than one consecutive term.

Members serve four-year terms and may not serve more than two consecutive terms.

None.

For each vacancy of a licensee, the board must solicit nominations from all licensed environmental health specialists and submit a list of at least three names for each vacancy to the Secretary of Health and Mental Hygiene.

The Governor may remove a board member for incompetence, misconduct, neglect of duty, or other sufficient cause.

The Governor may remove a member for the same reasons but on the recommendation of the Secretary.

Special meetings must be called at the written request of two board members, five sanitarians, or the Secretary of the Environment.

Repealed.

None.

The board is authorized to sue and issue subpoenas, summon witnesses, administer oaths, take affidavits, and take testimony about matters relating to the board.

Application for a License

To apply for a license, an applicant must submit an application, submit verification that he or she has satisfied the sanitarian-in-training requirement or has equivalent experience, and pay application and examination fees.

The qualifications for applying for licensure are expanded to include that an applicant must be of good moral character and at least age 18.

License Renewal

At least one month before a license expires, the board must send a renewal notice to the licensee by first-class mail.

The board is authorized to use email to notify licensees that their license is coming up for renewal.

Current Law

Changes Under SB 450/HB 511

Disciplinary Authority

There are 15 grounds for disciplinary action or denial of an applicant for a licensure.

The disciplinary grounds of the board are expanded to include failure to cooperate with a lawful investigation conducted by the board.

None.

The board must keep a record of all disciplinary matters, including specified details, and maintain a searchable electronic database of all disciplinary matters considered by the board.

At least 30 days prior to a hearing regarding a disciplinary matter against a licensee, the board must provide notice of the hearing to the licensee.

Repealed.

A violation of the Maryland Environmental Sanitarian Act is a misdemeanor subject to a fine of up to \$100 and/or imprisonment of up to 60 days.

The maximum fine is increased to \$5,000 and the maximum length of imprisonment to two years.

BES, in consultation with the Maryland Association of County Health Officers (MACHO) and the Maryland Conference of Local Environmental Health Directors (MCLEHD) must develop recommendations about revising existing statutory exemptions from the licensure requirement based on job duties and report such recommendations to the General Assembly by October 1, 2013. BES must adopt regulations to (1) align the minimum score required to pass the qualifying exam offered by the National Environmental Health Association (NEHA) with the passing score set by NEHA; (2) repeal the requirement that applicants for licensure submit a study plan after three attempts to pass the qualifying exam; and (3) set forth board requirements relating to continuing education.

Background: Environmental sanitarians perform inspections and investigations to secure compliance with environmental and health laws and regulations to ensure that people do not become sick because of their environments. Environmental sanitarians' comprehensive responsibilities include inspections, collection and analysis of data, risk assessment, nuisance complaint investigations, education, and emergency response. The diverse practice areas of the profession include food safety; air quality; disease investigation and prevention; animal, insect, and rodent control; and lead, well, septic system, swimming pool, and campground inspections. Most environmental sanitarians work for local health departments and State agencies.

The State Board of Environmental Sanitarians

BES was created in 1969 to ensure that individuals practicing as environmental sanitarians in Maryland meet minimum professional standards. BES is one of three environmental licensing boards currently operating within MDE. BES licenses individuals as “registered environmental sanitarians,” regulates “sanitarians-in-training” (individuals who meet the educational requirements for licensure but are obtaining relevant supervised experience), approves continuing education courses, and imposes disciplinary sanctions. As of March 2012, there are 619 active environmental sanitarians and 68 active environmental sanitarians-in-training.

BES is budgeted through MDE. Although general funded, the board also has fee-setting authority. Likewise, fee revenue is deposited in the general fund. BES is staffed by a part-time administrator and a part-time administrative specialist, both of whom are shared with the State Board of Waterworks and Waste Systems Operators. The administrator and administrative specialist also often assist the State Board of Well Drillers.

Maryland Program Evaluation Act

The State Board of Environmental Sanitarians 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 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.

In 2011, DLS conducted a full sunset evaluation of BES. (A copy of the DLS sunset report on the board can be found at <http://dls.state.md.us/Content.aspx?page=104>). DLS found that, at its current location at MDE, BES is not able to provide the level of services sought by board members, licensees, and employers, including exam preparation, recordkeeping, continuing education resources, and enforcement support. Thus, retention of the board at MDE is not a viable option. DLS recommended that, if a State-run licensing program for environmental sanitarians is maintained, the board should be transferred to DHMH.

DLS noted that, if the board is transferred, (1) the transfer should take effect July 1, 2012, to facilitate the improvement of services as soon as possible; (2) general funding of the board should be maintained; (3) the termination date of the board should be extended by only four years to allow DLS to review the activity of the board in its new location on an

expedited basis to determine whether the transfer has brought the anticipated benefits; and (4) the board should be renamed the State Board of Environmental Health Specialists. Among other things, the DLS report also recommended that, if the board is transferred, the following measures should be taken:

- authorize the board to (1) with the support of an applicant's employer, allow all applicants to sit for the qualifying exam after only one year in a sanitarian-in-training program; and (2) make substitutions for equivalent coursework on a case-by-case basis;
- require the board to adopt regulations that repeal the requirement for applicants to submit a study plan after three attempts to pass the qualifying exam and encourage the board to instead provide uniform exam preparation resources to applicants;
- require the board to adopt regulations that lower the required exam pass rate to 68% for the NEHA exam to conform to the national standard for that exam (rather than retaining a single higher standard associated with an alternative qualifying exam);
- require the board to adopt regulations incorporating its continuing education policies and update its regulations so that licensees are given proper notice of board policies and processes;
- require the board to keep, at a minimum, for each charge, a record of the date the charge was received, the specific allegations, any written evidence reviewed by the board in evaluating the charge, the action of the board, an explanation of the basis for the board's action, and the date the board took the action;
- require the board to keep an electronic record of which licensees have faced disciplinary charges so that it is possible to determine which licensees have had charges brought without pulling the hard copy files of every licensee;
- revisit a mandatory reporting requirement for employers that complements the new disciplinary policy as part of the next sunset evaluation of the board; and
- require the board, before the next sunset evaluation, to work with MACHO and MCLEHD to develop a new framework for the statutory exemptions, based on job duties rather than job titles, to ensure that individuals performing similar duties related to protecting public health are regulated uniformly.

The bill implements most of these recommendations. Notably, the DLS sunset evaluation recommended that the board continue to be general funded given that most environmental sanitarians work in the public sector for modest salaries, sanitarians must meet stringent education and experience requirements in order to qualify to take a difficult licensing examination, and the board regulates a relatively small number of individuals. Nevertheless, the bill makes the board a special funded entity.

State Fiscal Impact: **Exhibit 2** displays anticipated general fund revenues and expenditures for BES under current law compared with the impact of SB 450/HB 511. Additional details are included below.

Exhibit 2 BES Revenues and Expenditures: Current Law vs. SB 450/HB 511 Fiscal 2013-2017					
	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
<u>BES Under Current Law</u>					
General Fund Revenues	\$68,475	\$14,250	\$69,500	\$14,250	\$70,890
General Fund Expenditures	77,337	80,342	83,471	86,729	90,121
<u>SB 450/HB 511</u>					
Revenues					
General Fund	(68,475)	(16,628)	(69,500)	(16,794)	(70,890)
Special Fund – Transferred Board ¹	123,800	16,628	125,038	16,794	126,288
Expenditures					
General Fund – Continuing ²	69,739	72,668	75,720	78,900	82,214
General Fund Savings ³	(7,598)	(7,674)	(7,751)	(7,829)	(7,907)
Special Fund – Transferred Board	67,812	64,008	66,874	69,044	71,307

Note: Fiscal 2013 figures reflect the bill's July 1, 2012 effective date.

¹Reflects a necessary fee increase under the transferred board.

²Reflects salaries and benefits associated with the two positions that currently provide part-time staff to BES and will remain at MDE.

³Reflects administrative costs associated with BES.

Revenues

Environmental sanitarians currently renew their licenses on a biennial basis. All licensees renew at the end of odd-numbered fiscal years. Therefore, BES revenues are much higher in odd-numbered fiscal years.

Beginning in fiscal 2013, general fund revenues associated with BES are eliminated to reflect special funding of the transferred board. General fund revenues decline by an estimated \$68,475 in fiscal 2013, which reflects the bill's July 1, 2012 effective date. Future years reflect revenues that would have accrued to the general fund in the absence of the bill.

Conversely, special fund revenues for the transferred board increase by an estimated \$123,800 in fiscal 2013, which reflects the bill's July 1, 2012 effective date. This figure is based on the number of licensees in March 2012 and historical licensing patterns under BES. To support all costs on a biennial basis as required, it assumes fees must double for a certificate of employment, initial license, and renewal license. Future year revenues reflect the biennial renewal pattern and 1% growth.

DLS notes that revenue attainment for the board is very sensitive to small changes in the number of licensees. It is unclear how the additional exemptions will impact the number of licensees (and related revenues). *For illustrative purposes only*, in August 2011, 50 environmental sanitarians were employed by MDE and another 413 were employed in county health departments, although not necessarily in functions exempted under the bill. Some portion of these individuals will likely no longer be required to be licensed; even so, many of them may *choose* to retain their licensure. To the extent they do not, the remaining licensees will need to be assessed even higher fees to ensure sufficient revenue to cover costs.

Expenditures

Although the Governor's proposed fiscal 2013 budget includes a \$77,337 general fund appropriation for BES under MDE, general fund expenditures decline by only \$7,598 in fiscal 2013, which reflects the bill's July 1, 2012 effective date. This figure represents a reduction in administrative costs associated with BES. An estimated \$69,739 in general fund expenditures continue as they are associated with two personnel who provide part-time staff support to BES but will remain at MDE and continue other functions.

Special fund expenditures for the transferred board increase by an estimated \$67,812 in fiscal 2013, which accounts for the bill's July 1, 2012 effective date. This estimate reflects the cost of hiring one part-time (50%) program manager to administer the board. It includes a salary and fringe benefits, the board's share of support staff (*i.e.*, legal, fiscal, and information technology support), ongoing operating expenses, contractual examination services, and one-time start-up costs. Historically, BES received significantly less than half-time support from MDE; however, BES members assumed many administrative duties, including creating executive summaries of BES meeting minutes, occasionally responding to correspondence, and updating the board's website.

Position	0.5
Salary and Fringe Benefits	\$37,412
Shared Support Staff	12,793
Other Operating Expenses	13,122
One-time Start-up Costs	<u>4,485</u>
Total FY 2013 DHMH Expenditures	\$67,812

Future year expenditures reflect a part-time salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. DHMH indicates that, under similar board transfers in the past, an executive director from an existing health occupations board has provided staffing during the first year of the “new” board under a shared-cost agreement, with services provided billable at an hourly rate. If staffing is provided to the board under this scenario, personnel expenditures could be significantly reduced in fiscal 2013. Furthermore, the bill authorizes DHMH to transfer funds from another health occupations board to support the expenditures of the transferred board in fiscal 2013, with funds to be repaid in fiscal 2014.

Additional Information

Prior Introductions: None.

Cross File: SB 450 (Chair, Education, Health, and Environmental Affairs Committee) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of the Environment, Department of Health and Mental Hygiene, Baltimore City, Montgomery and Worcester counties, Department of Legislative Services

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