

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 106

(Chair, Education, Health, and Environmental Affairs
Committee)(By Request - Departmental - Labor,
Licensing and Regulation)

Education, Health, and Environmental Affairs

Economic Matters

Department of Labor, Licensing, and Regulation - State Board of Heating,
Ventilation, Air-Conditioning, and Refrigeration Contractors - Authority of the
Secretary

This departmental bill establishes that the State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration (HVACR) Contractors exercises its powers, duties, and functions subject to the authority of the Secretary of Labor, Licensing, and Regulation.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: The Department of Labor, Licensing, and Regulation (DLLR) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Current Law/Background: DLLR regulates many of the State's nonhealth professions that require a State license or similar professional credential through various professional licensing boards, offices, commissions, units, and other licensing structures. **Exhibit 1** lists the licensing boards and commissions and whether or not similar language to that of the bill is effective for each. In general, boards and commissions administer tests, issue

licenses, investigate complaints, and have disciplinary authority over licensees to protect both the consuming public and the integrity of the profession.

Exhibit 1
Secretary Authority Over Licensing Boards and Commissions in DLLR

	<u>Explicitly Operates Under Authority of Secretary</u>
Architects	Yes
Athletics	Yes
Barbers	Yes
Cemeteries	Yes
Certified Interior Designers	Yes
Collection Agencies	No
Cosmetologists	Yes
Elevator Safety	Yes
Foresters	Yes
Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors	No
Home Improvement	Yes
Individual Tax Preparers	Yes
Landscape Architects	Yes
Master Electricians	Yes
Pilots	Yes
Plumbing	Yes
Professional Engineers	Yes
Professional Land Surveyors	Yes
Public Accountancy	Yes
Racing	Yes
Real Estate	Yes
Real Estate Appraisers, Appraisal Management Companies, and Home Inspectors	Yes
Stationary Engineers	Yes

Note: Some licenses issued directly by the Secretary of Labor, Licensing, and Regulation are excluded from the exhibit because the licensees are not regulated by a board or commission; for example, locksmiths and secondhand precious metal object dealers.

Source: Department of Legislative Services

DLLR advises that the bill is being proposed in response to the Supreme Court's 2015 decision in *N.C. Board of Dental Examiners v. Federal Trade Commission*. The decision 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.

In an October 1, 2015 memorandum, the Office of the Attorney General addressed both prongs of the *Midcal* test as they relate to State licensing boards and commissions. First, the memorandum indicated that the General Assembly has clearly articulated a State policy that a variety of occupations and professions are best regulated by market participants by establishing boards and authorizing them to establish requirements for licensure, issue licenses, and discipline licensees.

Regarding active supervision, the memorandum noted several instances where the adequacy of the State's supervision of boards and commissions could be considered insufficient in light of the *N.C. Dental* decision. As one option in response to the decision, the memorandum suggested that oversight could be provided by the Secretary, or the Secretary's designee, of each agency in which licensing boards reside. To that end, the bill establishes that the Secretary of Labor, Licensing, and Regulation supervises the activities of the State Board of HVACR Contractors.

State Board of HVACR Contractors

The State Board of HVACR Contractors licenses individuals who offer HVACR services to protect the public, maintain efficient and safe systems, and promote high professional standards in the industry. "Providing heating, ventilation, air-conditioning, or refrigeration services" means installing or maintaining heating, cooling, refrigeration, ventilation, or hydronic systems. The board issues the following types of licenses: master, master restricted, limited, journeyman, journeyman restricted, and apprentice. In general, an individual must be licensed by the board prior to providing or offering to provide HVACR services in the State. The board has nine members, two of whom are consumer members.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - January 20, 2016
min/mcr

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: State Board of Heating, Ventilation, Air-conditioning and Refrigeration Contractors – Authority of the Secretary

BILL NUMBER: SB 106

PREPARED BY: DLLR, Occupational & Professional Licensing Division

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 is not expected to have any fiscal impact, any negative impact on the business community, nor require finds for implementation.