

Preliminary Evaluation of the State Board of Foresters

Recommendations: Waive from Full Evaluation

Extend Termination Date by 10 Years to July 1, 2025

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee. Based on the preliminary evaluation, the Legislative Policy Committee decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Foresters last underwent a preliminary evaluation as part of sunset review in 2001. At that time, the board was fully constituted and had recently been given expanded regulatory authority. Thus, the preliminary evaluation recommended that the board be waived from further evaluation and that the board submit a follow-up report to address certain educational and administrative issues. Ensuing legislation, Chapter 212 of 2002, extended the board’s termination date by 11 years to July 1, 2015. However, full evaluations conducted in 1982 and 1992 recommended that the board be terminated because, the evaluations concluded, the practice of forestry does not pose a threat to public health, safety, and welfare and thus does not need to be regulated. Those recommendations were not adopted by the General Assembly.

In conducting this preliminary evaluation, DLS staff reviewed applicable State law and regulations; recent legislative and regulatory actions; board minutes; prior sunset reviews; and other information provided by the board regarding revenues, expenditures, licensing, and complaints. In addition, DLS staff interviewed or corresponded with current members of the board, the executive director, licensees, the Society of American Foresters, the Maryland Forest Service, and the Maryland Forests Association.

The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 2**. Appropriate factual corrections and clarifications have been made throughout the document. Therefore, references in board comments may not reflect the final version of the report.

The State Board of Foresters

The General Assembly established the State Board of Foresters in 1972 to oversee the practices and licensing of foresters in the State. The State Board of Foresters is one of 24 boards currently housed within the Division of Occupational and Professional Licensing within the Department of Labor, Licensing, and Regulation (DLLR). DLLR and the Department of Natural Resources (DNR) could not recall why the board was placed within DLLR instead of DNR. Although DLLR is the agency responsible for overseeing the licensing of various professions, DNR is responsible for managing forests, currently licenses tree experts and forest product operators, and employs about one-quarter of the foresters that the board licenses.

The State Board of Foresters licenses and regulates individuals who practice forestry in the State of Maryland. Section 7-101 of the Business Occupations and Professions Article defines forestry as “the application, for compensation, of scientific techniques to the planting, conservation, protection, and management of trees and related resources for their continuing use, whether found in large numbers and areas commonly known as forests, woodlands, and woodlots or in small groupings and individual trees in suburban and urban settings.” Thus, forestry differs from the activities of an arborist or tree expert, who generally focus on the health and physical condition of individual trees and not the whole forest.

Licensed foresters are trained to assist landowners in making informed decisions about the management of their forests, complying with restrictions on tree harvesting, and blending tree harvesting and tree removal goals with the environmental and economic values that a woodland is capable of producing. For example, the Maryland Forest Conservation Act requires that a person making application for subdivision or for grading or sediment control permits on areas greater than 40,000 square feet submit a forest conservation plan for the site. This document must be prepared by a licensed forester, licensed landscape architect, or other qualified professional as approved by the State or local authority.

The purpose of regulating a profession is generally to protect public health, safety, and welfare. As shown in **Appendix 1**, only 15 states regulate the practice of forestry. Thus, the vast majority of states are able to protect the public and their forests without regulating the practice of forestry.

Membership and Operation of the Board

The board consists of seven members: five licensed foresters and two consumers. Each member of the board is required to be a resident of Maryland for at least three years and a citizen of the United States. The licensed forester members are required to have practiced forestry for at least 10 years. The consumer members must be members of the general public and may not be licensed or regulated by the board. Additionally, consumer members may not have a financial interest in or receive compensation from a person regulated by the board within the year before

appointment and while serving as a member. Although board members do not receive compensation, they are eligible for reimbursement of expenses.

Board members serve five-year staggered terms that begin on July 1. Board members continue to serve after their term has ended until a successor is appointed. All members of the board are appointed by the Governor with the advice and consent of the Senate. The Governor appoints each licensed forester member from a list of at least three names of licensed foresters submitted to the Governor by the Maryland members of the Maryland-Delaware Division of the Alleghany Society of American Foresters (SAF). The Governor may remove a member for incompetence, misconduct, or habitual or willful neglect of duty.

There are currently three vacancies on the board: one licensed forester member and both consumer members. There has not been a fully appointed board since 2005, and there has not been a consumer member on the board since 2010. Additionally, two of the four current board members are serving beyond the expiration of their terms. One of these two members has entered a new profession and is continuing to serve for the sole purpose of retaining a quorum for the board to conduct its statutory obligations.

The most critical problem related to the board vacancies is the board's difficulty in attaining a quorum to conduct business. Section 7-204 of the Business Occupations and Professions Article defines a quorum as a "majority of the authorized membership of the Board." As the board is composed of seven members, at least four members must be present to conduct business. This means that the board must have all four of its current members in attendance to draw a quorum, which can be difficult if one of the members has a schedule conflict, is ill, or has an emergency. Thus, the current vacancies often limit the board's ability to conduct business when even a single member is absent. To avoid any delay in approving a license application, board members often sign off on a license approval and then ratify the approval at a later date when there is a quorum.

It is not clear why seven years have passed since the board has had full membership. The board indicated that the Governor's Appointments Office is aware of the vacancies, and the board has solicited applications for the consumer positions and has asked SAF for names to replace the vacant forester positions. The board acknowledges that it is a challenge to find candidates to fill vacant board positions due to the time commitment and absence of compensation. Additionally, filling the consumer positions is particularly challenging for this board because there are a limited number of consumers of forest services. Furthermore, the Alleghany SAF only makes nominations for the forester positions once a year, which compounds the difficulties associated with filling the vacant board positions.

The board is required by law to meet twice per year, but it typically meets four times each year to review license applications, complaints, and conduct its other business. As noted above, it is sometimes difficult for the board to meet when scheduled due to the inability to establish a quorum, but the board does maintain good records of its meetings, licensing activity, and complaint activity.

Legislative Changes Affecting the Board Since the 2001 Preliminary Sunset Review

As shown in **Exhibit 1**, two legislative changes have affected the board since the last preliminary sunset review in 2001. Chapter 212 of 2002 extended the board's termination date by 11 years to July 1, 2015. Chapter 175 of 2009 does not directly affect the board but does potentially create more employment opportunities for foresters by encouraging forestry practices to be included in local comprehensive plans and promoting sustainable forestry management.

Exhibit 1 Major Legislative Changes Since the 2001 Preliminary Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	212	Extends the board's termination date by 11 years to July 1, 2015. Requires DLS to conduct a sunset review of the board by July 1, 2014.
2009	175	Excludes the definition of "forestry" as used in § 5-101 of the Natural Resources Article from the definition of "forestry" in § 7-101 of the Business Occupations and Professions Article. Encourages forestry practices to be included in local comprehensive plans, and that they be developed in accordance with existing State law. Modifies right-to-farm provisions in existing law to include "silvicultural operations." Promotes sustainable forestry management consistent with current law, and establishes a Sustainable Forestry Council within the Department of Natural Resources.

Source: Laws of Maryland

Shared Staffing Sufficient for Board Needs

The board does not have any full-time employees. The board's executive director and administrative officer work for the board in addition to other boards within the Division of Occupational and Professional Licensing. The executive director and administrative officer each devote approximately 10% of their time to the State Board of Foresters. In addition, the board shares an investigator with several other boards. Nevertheless, the board reports that its current staffing is sufficient to meet the board's limited responsibilities.

Licensing of Foresters

Before obtaining a license to practice forestry, an applicant for a forestry license must (1) complete a four-year curriculum in forestry from a college or university that is either approved by the board or accredited by SAF; and (2) complete two years of experience in forestry to indicate competency. When applying for a license, an applicant is required to furnish a list of at least five references, including at least three foresters who have personal or professional knowledge of the applicant's experience in practicing forestry. The application fee for a new forestry license is \$45. Depending on how complete an application is upon receipt, the board generally processes a license application within one to three months. Once the application is approved, the applicant is required to pay a \$55 fee for a license that lasts two years.

SAF has established a national Certified Forester credential to address the inconsistent approaches that states use to credential foresters.¹ Qualifications for obtaining a Certified Forester credential are similar to the requirements for State licensure. The main differences are that SAF credentialing accepts a wider range of educational backgrounds, and more experience is required to obtain the SAF credential than the State license. Additionally, renewal of a Certified Forester credential requires 60 hours of continuing education every three years, compared to 8 hours, or credits, every two years for renewal of State licensure. It is also important to note that an applicant does not need to be a SAF member to become a Certified Forester, and that achieving Certified Forester status does not provide the legal standing of licensure.

Accreditation of University of Maryland Urban Forestry Program

Currently no college or university in Maryland offers an SAF-accredited forestry curriculum. Therefore, applicants for a license in Maryland generally receive their education from colleges or universities in other states, such as Pennsylvania, West Virginia, and New York. DLS noted in the 2001 preliminary evaluation that the University of Maryland began offering a forestry curriculum in the fall of 2001. The University of Maryland urban forestry program focuses on landscape architecture, horticulture, and arboriculture. SAF is evaluating the program for accreditation, which is currently in "candidate" status for an urban forestry accreditation.

A member of the board has acknowledged that if the University of Maryland's program receives SAF accreditation, the university's graduates would meet the statutory educational requirements for licensing. However, the member is concerned about the absence of key forest management courses from the program's curriculum. The member determined that these concerns would likely be addressed on a case-by-case basis once a graduate from the program applies for a license.

License Renewals and Continuing Education

Licenses must be renewed on a biennial basis for a renewal fee of \$100. The board began staggering new licensees' renewals in 2001. Thus, there are significantly more renewals in

¹ For more information see <http://www.eforester.org/certifiedforester/index.cfm>.

odd-numbered years than in even-numbered years. The majority of renewals are done electronically through the DLLR website.

When applying for a license renewal, an applicant is required to demonstrate that he or she has successfully completed at least eight hours of board-approved continuing education programs over the course of the two-year license period. As shown in **Appendix 1**, the continuing education requirement in Maryland is slightly below average when compared with other states' requirements, which range from no credit requirement in three states to approximately 10 credits per year required in five states. While documentation in support of a licensee's completed continuing education hours is not required, the board has begun auditing licensees at random to verify the satisfactory completion of the continuing education hours stated on the licensee's renewal application. Additionally, if a forester fails to renew his or her license in a timely manner and attempts to renew the license beyond the subsequent licensing period, the forester must produce proper documentation confirming the number of hours of continuing education necessary to warrant the renewal of the forester license.

Inactive Licensees

Chapter 314 of 1999 required the board to grant inactive status to a licensee under specified conditions. The board currently offers an inactive status for \$25. However, no forester has requested inactive status to date. The board believes this could be because foresters do not know what it means to be inactive or that foresters are not interested in losing their title of "forester." Regardless of the rationale, the board does not believe it is necessary to offer inactive status for \$25 when the license renewal fee is \$100.

Due to the lack of interest in inactive status, the board has not put inactive status application forms on the board's website. The lack of information about this licensing option on the board's website may be a contributing factor to low interest in the program.

Nonresident Foresters

An individual may practice forestry in Maryland without a license if (1) the individual is licensed to practice forestry in another state or country; (2) the state or country that the individual is licensed in waives the license requirements for Maryland licensees; (3) the individual submits evidence to the board that the individual is licensed in the other state or country; and (4) the individual either is not a resident of Maryland and does not maintain a place of business in Maryland or has become a resident of Maryland within the preceding six months.

Licensing Activity Has Remained Relatively Stable

There are approximately 196 foresters currently licensed by the board to practice forestry in Maryland, a number that has remained stable since 1996. **Exhibit 2** shows licensing activity for fiscal 2008 through 2012, and estimates for fiscal 2013. As stated above, the board began

staggering license renewals in 2001, and thus there are more renewals in odd-numbered years than in even-numbered years.

Exhibit 2
Forester Licenses Awarded
Fiscal 2008-2013

<u>License</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013*</u>
Original	6	9	8	8	9	8
Renewal	26	154	36	164	35	165
Total	32	163	44	172	44	173

*Fiscal 2013 figures are estimates.
Source: State Board of Foresters

Complaint Volume Is Low

The board has the right to fine, reprimand, suspend, or revoke the license of a forester who (1) attempts to obtain, obtains, or uses a license fraudulently or deceptively; (2) is guilty of gross negligence, incompetence, or misconduct in practicing forestry; (3) is convicted, under the laws of the United States or of any state, of a felony or misdemeanor directly related to the fitness and qualification of the certified forester to practice forestry; (4) has had a license to practice forestry in another state revoked or suspended by the other state for a reason that would justify revocation or suspension in Maryland, except for the failure to pay a license or registration renewal fee; (5) knowingly violates any provision of the code of ethics adopted by the board; or (6) knowingly violates any provision of Title 7 of the Business Occupations and Professions Article. As of October 1, 2001, the board also has the right to fine a person who engages in the unlicensed practice of forestry. This broader authority has not increased the number of complaints filed with the board.

The process for handling complaints begins with the receipt of a written complaint, usually from a consumer or DNR. The complaint is logged into a complaint management system and is referred for investigation to an investigator employed by DLLR. If the investigator determines that the facts of the investigation appear to be violations of the forester law, the complaint is referred to the department's Office of the Attorney General. If the Office of the Attorney General determines that sufficient evidence exists to charge the individual, the board either schedules a hearing or refers the case to the Office of Administrative Hearings. If the Office of the Attorney General recommends against filing charges, the case is closed. If, after a hearing, the board determines an individual violated the law or regulations, the board may reprimand or fine the individual, or suspend or revoke the license.

The board received three complaints between fiscal 2008 and 2012. Two were filed in 2007 arising from the same event involving an alleged violation of the Forester Act. Both complaints were closed within six months with no formal action taken. The third complaint was filed in 2011 and also involved an alleged violation of the Forester Act. The complainant sought legal action, but the subject matter of the complaint was not sustained in civil litigation. The complaint was closed within four months.

Available Financial Resources Cover Board Operations

As shown in **Exhibit 3**, revenues do not cover direct costs in each fiscal year but do cover direct costs when considered over biennial licensing cycles. This is because, as mentioned above, prior to 2000 all licenses were renewed at the same two-year interval rather than being staggered as they are now. Revenues should begin covering direct costs on an annual basis rather than over a two-year fiscal period as more new licensees' renewals are staggered. However, it is important to note that, because the board is general funded, it never actually operates with a deficit.

Despite low revenues in even-numbered years, the board is still taking in considerably more revenues over two-year fiscal periods than is necessary to cover direct costs. Direct costs were higher in fiscal 2008 than other fiscal years shown in **Exhibit 3**. DLLR believes this is due to a \$3,852 personnel expenditure that was allocated to direct costs. Legal costs were also much higher in fiscal 2008 and 2012 due to complaints being addressed in those years and an increased need for legal services (*e.g.*, potential regulations and legislation being discussed). DLLR was unable to provide an explanation before the completion of this evaluation regarding why revenues in fiscal 2010 were higher than normal for an even-numbered year.

Exhibit 3 State Board of Foresters Fiscal History Fiscal 2008-2013

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY2013*</u>
Total Revenues	\$3,455	\$16,335	\$9,900	\$17,000	\$4,010	\$18,000
Total Costs	11,140	4,080	2,751	3,245	5,395	4,066
Direct Costs	6,636	3,029	2,299	2,531	1,904	2,146
Direct Legal Costs	3,919	1,051	452	714	3,491	1,920
Indirect Costs	585	**	**	**	**	**
Revenue Excess/(Gap)	(\$7,685)	\$12,255	\$7,149	\$13,755	(\$1,385)	\$13,934

*Fiscal 2013 figures are estimates.

**Indirect costs were below reportable levels in fiscal 2009 through 2012 and are projected to be below reportable levels for fiscal 2013.

Source: Department of Legislative Services and Department of Labor, Licensing, and Regulation

Recommendations

The board appears to be operating within its statutory authority and meeting its mandated duties. However, evaluations conducted in 1982 and 1992 both recommended that the board be terminated because, the evaluations concluded, it is not necessary to license the practice of forestry to protect public health, safety, and welfare. In both instances the General Assembly chose to extend the board despite the recommendation to terminate. The 2001 evaluation waived the board from full evaluation, and thus a possible recommendation for termination, because the board had been given greater disciplinary authority and it was unclear how the greater authority would impact the practice of forestry. This preliminary evaluation concludes that the broader disciplinary authority granted to the board has had little effect on the board's operation. Thus, the same concern remains today that has been consistent throughout the board's history: that the board may not be necessary to protect public health, safety, and welfare. The board's difficulty in securing a quorum for its meetings, the virtually nonexistent number of consumer complaints filed against foresters, and the availability of a national professional certificate lend further credence to the notion that the board may not be necessary. DLS does not believe, however, that a full evaluation would add substantively to the General Assembly's understanding of the board or assist in determining its necessity, particularly in light of the fact that the General Assembly has twice previously rejected DLS recommendations to terminate the board.

Therefore, the Department of Legislative Services recommends that the Legislative Policy Committee waive the State Board of Foresters from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2025. However, in deciding whether to reauthorize the board for 10 more years, the General Assembly may wish to consider this report's findings, as well as the previous two recommendations to terminate the board. Assuming the board is continued, DLS further recommends that DLLR either work with the Governor's Appointments Office to resolve the persistent vacancies on the board or introduce departmental legislation to alter the board's membership to enable it to maintain a quorum at its meetings.

Appendix 1. States that Register/License Foresters

<u>State</u>	<u>Type</u>	<u>Mandatory</u>	<u>Continuing Education</u>
Alabama	registration	yes	10 credits/1 yr.
Arkansas	registration	yes	6 credits/1 yr.
California	license	yes	none
Connecticut	license	yes	6 credits/2 yrs. (forester) 4 credits/2 yrs. (supervising forest products harvester) 3 credits/2 yrs. (forest products harvester)
Georgia	license	yes	12 credits/2 yrs.
Maine	license	yes	12 credits/2 yrs.
Maryland	license	yes	8 credits/2 yrs.
Massachusetts	license	yes	20 credits/1 yr. (averaged over 3 yr. license period)
Michigan	registration	no	none
Mississippi	license	yes	16 credits/2 yrs.
New Hampshire	license	yes	20 credits/2 yrs.
North Carolina	registration	yes	10 credits/1 yr.
Oklahoma	registration	no	none
South Carolina	license	yes	20 credits/2 yrs.
West Virginia	license	yes	10 credits/1 yr.

Source: Society of American Foresters; Alabama State Board of Registration for Foresters; Arkansas Board of Registration for Foresters; California Board of Forestry and Fire Protection; Connecticut Department of Energy and Environmental Protection; Georgia Board of Foresters; Maine Board of Licensure of Foresters; Maryland State Board of Foresters; Massachusetts Forester Licensing Board; Michigan Department of Licensing and Regulatory Affairs; Mississippi Board of Registration for Foresters; New Hampshire Board of Foresters; North Carolina State Board of Registration for Foresters; Oklahoma State Board of Registration for Foresters; South Carolina Board of Registration for Foresters; and West Virginia Board of Registration for Foresters.

Appendix 2. Written Comments of the State Board of Foresters

November 9, 2012

Michael Rubenstein
Principal Policy Analyst
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, MD 21401-1991

Dear Mr. Rubenstein:

The Department of Labor, Licensing and Regulation and the State Board of Foresters have received the draft of the preliminary evaluation of the Board conducted by the Department of Legislative Services pursuant to the Maryland Program Evaluation Act. We appreciate the time and attention that was spent reviewing the Board's operations.

We are pleased that the Report found that the Board is fulfilling its statutory duties and recommended that the Legislative Policy Committee waive the Board from full evaluation. Further, the Department acknowledges the recommendation related to the Board's persistent vacancies. The Board will work with Departmental staff responsible for appointments and the Governor's Appointment Office to reduce the number of vacancies.

After review of the report, we have found the following factual discrepancies and/or request the following changes:

- on page five, in the second paragraph, the report states: "The main differences are that SAF credentialing accepts a wider range of educational backgrounds, and more experience is required to obtain the SAF credential than the State license." In fact, there are two other differences. The first is that 60 hours of continuing education is required every three years to become a Certified Forester and achieving Certified Forester status does not provide the legal standing of licensure. The later point is referenced in the Recommendations section.
- on page five, in the second paragraph, the report states: "However, it is important to note that an individual must be an SAF member to obtain a Certified Forester credential, which means that the individual must pay at least \$95 per year in SAF membership fees in addition to the costs associated with obtaining the credential." It should be noted that non-SAF members may also become Certified Foresters.

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- on page five of the report, in the fourth paragraph, the report states: “However, the member is concerned about the absence of dendrology from the program’s curriculum and whether the graduates from an urban forestry program will pursue a path to provide them with the expertise necessary to conduct a timber sale contract.” The Board has more curriculum concerns than simply the absence of dendrology. A more appropriate statement would be: “However, the member is concerned about the absence of key forest management courses from the program’s curriculum.”
- On page nine, in the first paragraph, the report states that the number of consumer complaints is “the virtually nonexistent.” The Board receives a low number of complaints but would prefer that the report not indicate that there are essentially no complaints.
- On page nine, in the first paragraph, the report states “the availability of a national professional certificate lend[s] further credence to the notion that the board may not be necessary.” The Board believes that enforcement of the Certified Forester credential by the SAF Certification Review Board does not carry the same force as a licensing law enforced by a State agency.

The Department and the Board would like to express appreciation for the professionalism provided by your staff members, in particular Ms. Crystal Heide, while conducting this review. We look forward to working with the legislative staff addressing issues that were raised in the Report as well as future issues that may arise. If your office should require additional information, please do not hesitate to contact me at (410) 230-6225.

Sincerely,



Michael Vorgetts
Deputy Commissioner

Cc: Secretary Leonard Howie III
Commissioner Harry Loleas
Dennis Gring, Executive Director
Wade Dorsey, Jr., Chair