

# **Preliminary Evaluation of the State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors**

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**Recommendations:      Waive from Full Evaluation**

**Extend Termination Date by 10 Years to July 1, 2023**

**Require Follow-up Report by October 1, 2012**

## **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 (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If further evaluation is waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration (HVACR) Contractors last underwent a preliminary evaluation as part of sunset review in 2000. The 2000 preliminary evaluation determined that the board operated efficiently and effectively and recommended that the board be waived from full evaluation. Various concerns, however, led DLS to recommend that the board submit a follow-up report to LPC by October 1, 2001, addressing the following: (1) whether the board had addressed problems concerning its procedures for the restoration of expired licenses; (2) the board’s efforts to enter into cooperative enforcement agreements with more counties; and (3) more closely matching its expenditures to revenues. Chapter 73 of 2001 extended the board’s termination date to July 1, 2013.

In conducting this preliminary evaluation, DLS staff interviewed board members and staff, licensees, and representatives of industry groups; reviewed State statutes and regulations pertaining to the State HVACR industry; attended a board meeting; reviewed board meeting minutes; and visited the board’s office. In addition, DLS staff analyzed data relating to the board’s administration of licenses, complaints, and finances.

The State Board of HVACR Contractors 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.

## **Increasing Demand for Skilled Workers in the HVACR Industry**

According to the U.S. Department of Labor, Bureau of Labor Statistics (BLS), heating and cooling systems control the temperature, humidity, and air quality of residential and commercial buildings. Refrigeration systems facilitate the safekeeping and transport of food, medicine, and other perishable goods. Heating, air-conditioning, and refrigeration mechanics and installers – also referred to as “technicians” and “contractors” – install, maintain, and repair these systems. The systems are often referred to as “HVACR” or “HVAC” systems.

J.P. Morgan reports that the global HVAC industry hit a collective bottom in 2009. Industry observers, however, predict increasing levels of demand for services in the residential and commercial sectors in the future. Meanwhile, BLS describes prospects for contractors, especially those with formal school or apprenticeship training, as excellent. Employment growth is projected to be 28% from 2008 to 2018, much faster than the average for all occupations.

An increasing number of HVACR contractor retirements is expected to generate many new openings. Concern for the environment and the need to reduce energy consumption, increased need for work on increasingly complex HVACR systems, a growing focus on improving indoor air quality, and increased use of refrigeration equipment are also expected to boost job prospects for HVACR contractors. Many contractors already report difficulties with finding the workers needed to meet the demand for HVACR system service and installation. Future shortages of well-qualified workers appear inevitable.

## **The State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors**

### **Establishment of the Board**

The State Board of HVACR Contractors was established in 1992 to create “a licensing program for individuals who provide or assist in providing heating, ventilation, air-conditioning, and refrigeration services to (1) protect the public; (2) provide and maintain efficient and safe systems; (3) promote high professional standards; and (4) ensure that qualified individuals carry out [provisions (1), (2) and (3)].” Under statute, “[p]rovide heating, ventilation, air-conditioning, or refrigeration services’ means to install, maintain, alter, remodel, or repair heating systems, cooling systems, refrigeration systems, ventilation systems, or hydronic systems.” The board is

also the sole determiner of the State mechanical code, and directs continuing education courses and administers other minimum standards for State, county, and local government HVACR inspectors.

Prior to 1994, when HVACR licensing was enacted, there was no uniform statewide licensing requirement. Under previous State law, an HVACR contractor did not need a license to work in new homes, but a contractor did have to hold a home improvement license from the Maryland Home Improvement Commission to work in existing homes. A home improvement license, however, did not specifically test the skills that an HVACR contractor would need to install, repair, or service HVACR equipment.

When the board was established, Prince George's County and Anne Arundel County were the only counties with active HVACR licensing programs. Proponents of a statewide board agreed to allow local licensing in Anne Arundel and Prince George's counties to continue in exchange for a ban on local licensing in other jurisdictions. Anne Arundel County's program remains today,<sup>1</sup> but Prince George's County no longer licenses HVACR contractors.

Although the board approves a mechanical code for the State, the board was not designed to proactively enforce the mechanical code. Moreover, unlike the statute authorizing the State Board of Plumbing that requires counties to enforce the plumbing code, the HVACR statute does not require local governments to enforce the mechanical code. The board must instead enter into cooperative enforcement agreements under which counties will agree to enforce the mechanical code; counties, however, are under no obligation to enter into such an agreement with the board. As discussed later in this evaluation, this structure has proven problematic.

## **Board Membership**

The board is located within the Department of Labor, Licensing, and Regulation's (DLLR) Division of Occupational and Professional Licensing. It consists of nine members, including five licensed master HVACR contractors, a master electrician, a master plumber, and two consumers. The professional members must be active contractors and have provided services as contractors within their respective fields for at least five consecutive years. Five of the professional members must be from a separate geographic region within the State, including one from the Eastern Shore; one from Baltimore City or Baltimore, Cecil, or Harford counties; one from Anne Arundel, Calvert, Charles, or St. Mary's counties; one from Howard, Montgomery, or Prince George's counties; and one from Western Maryland. The two consumer members may not hold an HVACR license, or otherwise be subject to regulation by the board,

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<sup>1</sup>While Anne Arundel County still requires a local license for HVACR services rendered within its boundaries, a State license is also required to perform HVACR services in Anne Arundel County. Anne Arundel County must issue a local license to an individual licensed by the State board on receipt of the application and fee required by the county; Anne Arundel County may not require an individual licensed by the State board to take a local examination.

and may not have received compensation from a person regulated by the board within one year prior to appointment. Members are appointed to three-year staggered terms. Members receive no salary but are reimbursed for travel expenses to and from the board's monthly meetings.

As appointed, the board consists of six members. The board includes four licensed master HVACR contractors, a consumer member, a master electrician, and a master plumber; the master plumber is also a licensed master HVACR contractor. The board's membership is relatively new for an established board. All but two of the professional members were appointed at the beginning of 2010, when a new chair was appointed, and the terms of four former board members were allowed to expire without reappointment. The consumer member was appointed to the board in September 2010. The board is missing a consumer member and an HVACR contractor member and does not have a member from the Eastern Shore region.

### **Statutory and Other Changes Affecting the Board Since the 2000 Preliminary Evaluation**

Several substantive statutory changes have affected board operations since the last preliminary evaluation in 2000. In 2001, the same year the board was extended under Chapter 73, the General Assembly made a significant change to the board's powers – along with several other boards – by expanding authority to impose civil penalties on both licensees and nonlicensees who violate the licensing law under Chapter 187 of 2001. Chapter 187 also expanded the grounds for taking disciplinary action against a licensee to include when a licensee performs services or knowingly allows another licensee to perform services outside the scope of that license.

In 2006, the General Assembly adopted Chapter 67, which allowed continuing education courses for HVACR inspectors to be conducted by a local government, with approval by the State board. Previously, the State board conducted a full-day seminar once each year for inspectors and advised that it did not have adequate resources to provide the course at various times throughout the year. Various local governments requested that they be able to offer the training to their inspectors on a staggered basis to provide greater flexibility.

In 2010, Chapter 126 increased the board's membership by two members, who must be licensed HVACR contractors and Maryland residents. The Act also established that only five of the seven professional board members must be appointed to represent particular geographic regions of the State. According to DLLR, increasing the board's HVACR contractor membership enhances its ability to respond to increasingly technical inquiries, process applications, and address consumer complaints.

**Exhibit 1** summarizes legislative changes affecting the board since the 2000 evaluation.

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**Exhibit 1**  
**Major Legislative Changes Since the 2000 Preliminary Sunset Evaluation**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2001	43	<p>Defines a “self-contained appliance” that may be installed by a nonlicensed individual as an HVACR device that has all its component parts contained within a single chassis, uses a standard electrical cord, requires no additional fuel source, and needs no independent air distribution system.</p> <p>Allows a resident of Baltimore City to be a member of the State board.</p> <p>Increases the penalty for practicing or hiring someone without a license or misrepresenting one’s qualifications to perform HVACR work to a fine of up to \$1,000 and/or up to six months in prison for a first offense, and a fine of up to \$5,000 and/or up to two years in prison for a second or subsequent offense.</p>
2001	73	<p>Extends the board’s termination date by 10 years to July 1, 2013.</p>
2001	187	<p>Expands the State board’s grounds for taking disciplinary actions against a licensee. Action may be taken if a licensee performs services or knowingly allows another licensee to perform services outside the scope of that license.</p> <p>Grants the State board the authority to impose civil penalties of up to \$5,000 for violating any provision of the HVACR licensing law.</p>
2006	67	<p>Allows continuing education courses for HVACR inspectors to be conducted by a local government, with approval of the State board.</p>
2009	731	<p>Exempts licensed Virginia HVACR contractors from State examination requirements if they have relocated to the State due to a family member’s reassignment under the Base Realignment and Closure (BRAC) process.</p>
2010	445	<p>Except for Anne Arundel County, prohibits a county or municipal corporation from requiring an HVACR contractor to display a county or municipal corporation certificate number on each vehicle used on a job providing HVACR services.</p>
2010	126	<p>Increases membership of State board by two members, who must be licensed HVACR contractors and Maryland residents.</p> <p>Establishes that only five of the seven professional board members must be appointed to represent particular geographic regions of the State.</p>

Source: Laws of Maryland

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## **The Board Oversees Robust Licensing Activity**

The primary purpose of the board is to license individuals who provide or assist in providing HVACR services. Under statute, “[p]rovide heating, ventilation, air-conditioning, or refrigeration services” means to install, maintain, alter, remodel, or repair heating systems, cooling systems, refrigeration systems, ventilation systems, or hydronic systems.” The board issues licenses to contractors who are allowed to supervise other contractors as well as licenses to contractors who must operate under the direction and control of other contractors. The board issues the following types of licenses to contractors who may supervise the work of other contractors:

- **Master License:** Authorizes an individual to provide all HVACR services.
- **Master Restricted License:** Authorizes an individual to provide HVACR services in one of the following categories: (1) heating – forced air systems; (2) heating – hydronic systems; (3) ventilation; (4) air-conditioning; or (5) refrigeration. An individual may hold restricted licenses in up to four categories.<sup>2</sup>
- **Limited License:** Authorizes an individual to maintain or repair one or more of the following: (1) heating systems; (2) cooling systems; (3) refrigeration systems; (4) ventilation systems; or (5) hydronic systems.

The board also issues the following types of licenses to contractors who must operate under the direction and control of a licensed master, master restricted, or limited HVACR contractor:

- **Journeyman License:** Authorizes an individual to provide HVACR services while under supervision.
- **Journeyman Restricted License:** Authorizes an individual to provide HVACR services while under supervision, but only in one of the following areas: (1) heating – forced air systems; (2) heating – hydronic systems; (3) ventilation; (4) air-conditioning; or (5) refrigeration.
- **Apprentice License:** Authorizes an individual to assist in providing HVACR services only while under supervision, and in training to become a journeyman.

The board also sets qualifications for HVACR inspectors hired after March 1, 1995, by the State, a county, or another local government. Inspectors must meet one of three sets of

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<sup>2</sup>A holder of a restricted license receives a single printed license that indicates the categories in which the individual may practice.

qualifications. One set requires inspectors to be licensed by the State as a master, master restricted, or journeyman HVACR contractor. The second set requires inspectors to hold a current Building Officials and Code Administrators International, Inc. certification as a mechanical inspector, mechanical plans examiner, plumbing inspector, plumbing plans examiner, one- and two-family dwelling combination inspector, one- and two-family dwelling mechanical inspector, or one- and two-family dwelling plumbing inspector. The third set of qualifications requires inspectors to have at least four years experience as an inspector or mechanic in the mechanical building and construction trade including HVACR and pass a written examination approved by the State board. All inspectors must also attend at least one refresher course approved by the State board each year.

As **Exhibit 2** demonstrates, the application and renewal fees associated with each class of license range from a low of \$25 for apprentices to a high of \$225 for master and limited licenses.

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**Exhibit 2  
Schedule of Fees**

<b><u>Type of License</u></b>	<b><u>Application and Renewal Fee</u></b>	<b><u>Examination Fee</u></b>
Master License	\$225	\$150
Master Restricted License	\$75 per area*	\$50 for all but restricted heating, which is \$100
Limited License	\$225	\$150
Journeyman License	\$50	\$150
Journeyman Restricted License	\$50	\$50 for all but restricted heating, which is \$100
Apprentice License	\$25	N/A
Inspector	N/A	\$44

\* A fee is charged only for the first three restricted areas in which an individual is licensed to work.

Source: COMAR; State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors

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An applicant for a master, master restricted, or limited license must take and pass an examination prior to being granted the license. An applicant for a journeyman or journeyman restricted license must take and pass an examination or successfully complete an apprentice HVACR program approved by DLLR's Apprenticeship and Training Council. The examination requirement for any license may be waived under certain conditions if the license applicant holds an active HVACR license in good standing in another state and otherwise meets Maryland's licensing requirements. Waiver conditions are less stringent for Virginia HVACR contractors who relocate to the State due to a family member's reassignment under BRAC.

Examinations are limited to the subject matter applicable to the specific license. The board decides on the appropriate subject matter for the examination but may contract with an outside testing service to administer the examination. Currently, the board contracts with PSI Examination Services, which offers examinations at five locations in the State. Depending on the location, examinations are given on a daily or weekly basis.

An applicant for any license except an apprentice license must meet certain work experience requirements. An applicant for a master, master restricted, or limited HVACR license must also submit proof of insurance in the amount of at least \$300,000 in general liability insurance and at least \$100,000 in property damage insurance.

As mentioned above, in addition to State licensing requirements, Anne Arundel County has its own HVACR licensing requirements.

State licenses are issued for two years and may be renewed. An applicant for an HVACR license or a licensee seeking to renew an HVACR license may submit the application or renewal form online at DLLR's website. At the time of renewal, the holder of a master license, master restricted license, or limited license may apply for inactive status. Inactive status allows a contractor to reactivate by complying with the standard renewal provision regardless of how long the contractor has been inactive. If a contractor allows a license to lapse, the contractor must seek board approval to reactivate after 90 days, must pass an examination, and must pay all back renewal fees.

In April 2000, before the previous preliminary evaluation began, the board filed amended regulations that instituted a new procedure to accelerate the processing of HVACR licensees whose licenses had expired for more than 90 days. DLS subsequently recommended that the board submit a follow-up report to LPC by October 1, 2001, on whether the board addressed problems concerning its procedures for the restoration of expired licenses. The new procedure authorizes the board to review written explanations from licensees with expired licenses rather than require a personal appearance before the board. The amended regulation has allowed the vast majority of expired licenses to be reinstated in a timely manner.

As **Exhibit 3** shows, approximately 18,000 individuals had licenses in June 2010.



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**Exhibit 3**  
**Total Licenses**  
**State Board of HVACR Contractors**  
**Fiscal 2006-2010**

<u>Type of License</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Master	1,762	1,809	1,838	1,873	1,927
Master Restricted	1,278	1,335	1,303	1,343	1,287
Inspector	104	103	100	107	98
Limited	375	361	342	332	319
Journeyman	4,128	4,048	4,081	4,165	4,225
Journeyman Restricted	163	202	220	285	324
Apprentice	7,154	7,706	8,577	8,798	9,397
Inactive Master	189	187	189	186	200
Inactive Master Restricted	98	100	102	107	101
Inactive Limited	54	50	51	49	54
<b>Total</b>	<b>15,305</b>	<b>15,901</b>	<b>16,803</b>	<b>17,245</b>	<b>17,932</b>

Note: License numbers reflect totals pulled by DLLR's Division of Occupational and Professional Licensing in May or June of each year.

Note: The record counts for individuals with a master restricted license show the number of people who hold one or more restricted licenses.

Source: Department of Labor, Licensing, and Regulation; Division of Occupational and Professional Licensing

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As shown in Exhibit 3, licensing data reflects an expansion in the population of those who are competent to provide HVACR services in Maryland. In spite of the national recession, there were 17.8% more total Maryland HVACR contractor licensees in June 2010 than in June 2005. Additionally, the number of licensed HVACR apprentices who are also enrolled in formal programs approved by the Apprenticeship and Training Council increased from 1,596 in

fiscal 2006 to 1,813 in fiscal 2010.<sup>3</sup> The rise in the number of individuals engaged in formal apprenticeships, however, may not keep pace with 28% employment growth, as is expected.

## **Complaints and Penalties: Complaint Resolution Could Be More Efficient**

Other than licensing, the primary function of the board is to investigate violations of the HVACR licensing code. Upon completion of an investigation, if the board concludes that any conduct alleged to be in violation of the HVACR provisions will result in harm to a citizen of the State, the board may seek a permanent or temporary injunction from a circuit court and assess administrative penalties.

Additionally, any five members of the board, or a hearing officer designated by the board, may administer oaths, hold hearings, and take testimony about all matters within the jurisdiction of the board. The board may also take depositions and issue subpoenas.

### **Penalties**

Subject to certain exceptions, the board may impose a civil penalty of up to \$5,000 for any violation of the HVACR licensing law. The board may also, for certain civil violations, deny a license application or renewal, reprimand a licensee, or suspend or revoke a license. Certain violations of the HVACR licensing provisions constitute criminal violations, and the board can recommend these cases for criminal prosecution.

The following offenses are misdemeanors and carry a penalty of a fine not exceeding \$50 for each day or part of each day that the violation continues:

- subject to certain exceptions, providing or assisting in the provision of HVACR services without a license or maintaining or repairing HVACR systems without a license;
- employing unlicensed individuals to provide HVACR services where the employer is in the business of providing HVACR services;
- knowingly employing unlicensed individuals to provide HVACR services; or
- representing that a person is licensed to provide HVACR services when that person is not licensed.

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<sup>3</sup> Apprenticeships approved by the Apprenticeship and Training Council require 8,000 hours of on-the-job training with not less than 144 hours per year of related technical instruction. Approved apprenticeships are typically completed in four years. The number of apprentices shown in Exhibit 3 includes those participating in more informal apprenticeship training.

A person who knowingly and willfully violates the HVACR insurance requirements is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000, imprisonment for up to six months, or both.

Over the past five years, the board has issued six fines, two reprimands and fines, and three suspensions and fines. Fines assessed ranged from \$250 to \$15,000, and the board has collected \$6,900 in fines. The largest fines have not been collected, usually due to inability or refusal to pay.

## **Complaints**

As noted earlier, unlike the statute authorizing the State Board of Plumbing that requires counties to enforce the plumbing code, the HVACR statute does not require local governments to enforce the mechanical code. The statute instead requires the board to enter into cooperative enforcement agreements under which counties will enforce the mechanical code, typically through permitting and inspections. The cooperative enforcement agreements serve as an official declaration that a county will oversee HVACR work using the standards established under the State mechanical code; they also establish a framework for enforcement. The agreements also facilitate the State board's post-complaint enforcement function by granting the board better access to county research and investigatory resources. Counties, however, are under no obligation to enter into such an agreement with the board.<sup>4</sup> Without an enforcement agreement, a county may still enforce the State mechanical code, but it has made no commitment to do so. The board has cooperative enforcement agreements with Cecil, Harford, Howard, Montgomery, Queen Anne's, and Somerset counties and Baltimore City.<sup>5</sup>

Regardless of whether a cooperative enforcement agreement is in place, the board possesses enforcement authority in all counties of the State; the State has not, however, played or contemplated playing a proactive enforcement role. The State concentrates its efforts in post-complaint enforcement, as most complaints come to the State because it controls the licenses of almost all HVACR contractors.

When the board receives a complaint, it first determines if it has jurisdiction.<sup>6</sup> The administrative aide then sends acknowledgment letters to the complainant and the respondent. If possible, staff attempts to work out a mutually agreeable solution informally; the ability to reach informal resolutions has declined since the loss of the executive director position, however.

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<sup>4</sup>The board is not required to enter into cooperative enforcement agreements with Anne Arundel County because Anne Arundel County had its own HVACR laws in existence prior to the enactment of the statewide HVACR licensing law.

<sup>5</sup>The board also has a cooperative enforcement agreement with the City of Crisfield. The Division of Occupational and Professional Licensing notes that it is common for a county to defer to a municipality for permitting and inspection activities.

<sup>6</sup>Complaints are typically only referred to local jurisdictions when there is an issue with a local permitting process.

If a complaint is not resolved, staff presents the complaint to the board's complaint committee and provides the committee with an opinion on how to proceed. The committee consists of three members of the board and meets after the full board meeting each month. If further investigation of a complaint is required, a Division of Occupational and Professional Licensing investigator conducts an investigation. Ultimately, the committee may recommend that the board pursue further action or close a complaint based on actions already taken. If the board accepts a close-out recommendation, the administrative aide sends a letter to the complainant with a copy to the respondent. An assistant Attorney General and senior official from the division also attend all board meetings to assist in the analysis of complaints and the rendering of board decisions.

A record of complaints received and closed<sup>7</sup> in fiscal 2006 through 2010 appears in **Exhibit 4**. Complaint activity stabilized from fiscal 2007 to 2009 but increased again in fiscal 2010; 149 complaints were open as of November 12, 2010. The Division of Occupational and Professional Licensing observes that the decline in closed cases dovetails with a period during which the board first operated without the full services of an executive director, and then lost those services completely. The division also notes the board almost simultaneously lost consistent access to investigatory resources. In 2009, the board regained consistent access to investigatory resources with the hiring of a full-time division inspector.

Another factor in the development of an increased backlog in complaints may be the fact that there was no complaint committee for a few months during the winter of 2009-2010, as several members left the board and several new members were appointed. The committee has since been reestablished.

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**Exhibit 4**  
**Complaints Received and Closed**  
**Fiscal 2006-2010**

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Complaints Received	176	138	133	142	197
Complaints Closed	118	128	107	76	53

Source: State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors

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DLS recommended in the previous preliminary evaluation that the board submit a follow-up report to LPC by October 1, 2001, addressing the board's efforts to enter into cooperative enforcement agreements with more counties. The State board responded by noting

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<sup>7</sup>Cases closed include any case closed during the fiscal year, regardless of when it was opened.

that, in 1996 “the vast majority of counties speaking individually and through the Maryland Association of Counties took the position that the enforcement of HVACR codes locally constituted an unfunded mandate,” and that it was not confident it would be able to obtain any positive results. The board also noted that “[b]oard members [felt] that the absence of a meaningful permit and inspection process around the [S]tate significantly hamper[ed] their ability to assure the health, safety and welfare of Maryland citizens as contemplated by the statute.” Although the current board did not raise cooperative enforcement agreements as an issue during interviews conducted for this evaluation, this may be due to the fact that only one is a long-standing member of the board.

The board has established cooperative enforcement agreements with four additional jurisdictions – Harford County, Queen Anne’s County, Somerset County, and the City of Crisfield – over the past 10 years. Nevertheless, a great portion of the State remains without a substantive agreement to enforce the mechanical code adopted by the State board. The Division of Occupational and Professional Licensing reports that, while enforcement expands and improves over time, inconsistent enforcement throughout the State remains an issue.

It should also be noted that, in certain jurisdictions, some HVACR components are covered by plumbing or electrical inspections. These types of local enforcement may reduce the number of complaint investigations handled by the State board.

## **Budget and Personnel**

The board operates with direct assistance from five DLLR staff persons, only one of whom works exclusively for the board. One deputy commissioner provides policy direction and management for all boards and commissions within the division. He has oversight over operational support services such as personnel services, information technology, budget and procurement, and legislative affairs. Until two years ago, an executive director responsible for a total of four boards and commissions oversaw and assisted with board operations. The executive director had access to division investigators to collect information about complaints. The executive director position, however, became vacant in February 2009 and remained vacant until it was eliminated as part of cost containment measures.

DLLR subsequently created the Office of Home and Mechanical Services within the Division of Occupational and Professional Licensing, with an assistant commissioner who directly oversees board operations while also providing oversight for certain other occupational and professional licensing boards. An assistant Attorney General provides legal counsel for the State Board of HVACR Contractors as well as four other boards and commissions within the division. The board also has a full-time administrative secretary to support its day-to-day functions. The division hired a full-time investigator to support its boards in 2009; for an extended period prior to the hiring, the division had been forced to rely on the assistance of other DLLR investigators when available. The Division of Occupational and Professional Licensing

advises that, since losing the executive director position due to cost containment, support for board operations has been strained.

### **Revenues Approximate the Cost of Regulation**

The General Assembly has a policy that regulatory bodies should, to the extent feasible, be self-supporting; however, boards should not charge licensees significantly more than necessary to maintain operations and cover the costs associated with regulation. As previously discussed, DLS recommended in the 2000 preliminary evaluation that the board submit a follow-up report to LPC by October 1, 2001, addressing how the board planned to match its expenditures to revenues more closely.

**Exhibit 5** shows much less volatile revenue and expenditure trends from fiscal 2006 through projected fiscal 2011. With an increase in revenues from licensing fees over the past fiscal year, the board now covers the costs of its work after operating with relatively small funding gaps in fiscal 2007, 2008, and 2009. Partly due to cost containment within the Division of Occupational and Professional Licensing, a large biennial gap in fiscal 2008 and 2009 is projected to be almost entirely eliminated by the end of fiscal 2011. Even so, revenues have consistently covered direct costs, and continued increases in the number of licensees should ensure that future gaps are either minimal or avoided due to higher revenues.

As mentioned above, the division has expressed concerns about constraints on support for board operations. This shortage of resources is evident in the moderate but growing complaint backlog discussed above. The shortage is most likely, in part, attributable to recent efforts at cost containment due to the recession, which included the elimination of the board's executive director position. Continued increases in licensing revenues, the recent hiring of a full-time division inspector, and the recent reformation of the complaint committee, are likely to ameliorate the board's operational issues in the future.

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**Exhibit 5**  
**Fiscal History of State Board of Heating, Ventilation, Air-Conditioning, and  
Refrigeration Contractors**  
**Fiscal 2006-2011**

	<u><b>FY 2006</b></u>	<u><b>FY 2007</b></u>	<u><b>FY2008</b></u>	<u><b>FY 2009</b></u>	<u><b>FY 2010</b></u>	<u><b>Projected FY 2011</b></u>
<b>Total Revenues</b>	<b>\$246,157</b>	<b>\$190,854</b>	<b>\$252,148</b>	<b>\$207,111</b>	<b>\$266,483</b>	<b>\$265,000</b>
<b>Total Costs</b>	<b>\$158,590</b>	<b>\$250,954</b>	<b>\$311,757</b>	<b>\$284,301</b>	<b>\$223,614</b>	<b>\$310,055</b>
Direct Costs	91,119	159,802	168,796	203,769	152,594	220,055
O&P Allocation*	67,471	91,152	70,618	--	--	--
Legal Costs			51,038	61,332	61,584	75,000
DLLR Indirect	--	--	21,305	19,200	9,436	15,000
Annual Surplus/(Gap)	87,567	(60,100)	(59,609)	(77,190)	42,869	(45,055)
Biennial Surplus (Gap)		27,467		(136,799)		(2,186)

O&P: Occupational and Professional Licensing

\* DLLR no longer makes this allocation for general funded boards as of 2009.

Source: Department of Labor, Licensing, and Regulation, Division of Occupational and Professional Licensing

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## **The HVACR Industry Trade Groups' Lawsuit and Other Concerns**

Major industry trade groups like the Central Maryland and National Capital Chapters Air Conditioning Contractors of America and the Maryland Alliance for Fair Competition, Inc. expressed to the research team concerns about the operation of the State board. The most significant concern of the trade groups appears to involve the board's actions concerning the installation of certain thermostats and switches by individuals who do not have a journeyman or master HVACR license. Most of these individuals are employed by Honeywell International, Inc. ("Honeywell"), which has contracted with the Baltimore Gas & Electric Company ("BGE") under the BGE PeakRewards program. The trade groups claim that there is a serious question about the competency of unlicensed individuals who are being allowed to perform the work. The trade groups further allege that the board has failed to address repeated objections to the installation of the thermostats and switches by unlicensed contractors. The trade groups also object to the board's decision at an October 2009 meeting to reverse a decision made in the prior September 2009 meeting that would have asked BGE and Honeywell to stop thermostat and switch installation until the board could consider BGE and Honeywell's presentation on the issues.

The board is planning to hold a public hearing on December 8, 2010, on a proposed regulation to exempt utility company employees who install thermostats and switches from the HVACR licensing law.<sup>8</sup> The trade groups oppose this proposal and have filed suit in the Circuit Court for Baltimore City to enjoin the HVACR Board from promulgating the regulation. The lawsuit also seeks to require the State board to both file an injunction and issue a cease and desist order to stop installations by Honeywell and others known to be installing thermostats and switches for heating, ventilation, and air-conditioning systems without proper licenses issued by the board.

The groups also expressed other concerns that the State board was not operating effectively. Specifically, the trade groups' concerns included the backlog in consumer complaints, not scheduling testing in a timely fashion, the lack of a State board complaint committee for a period of time, an awkward transition to the board's new membership, and a lack of adequate resources for the board to function properly. It is difficult to determine the extent to which the trade groups' concerns are colored by the pending controversy. The trade groups did not, however, have any objection to the design of the HVACR licensing law, which they helped establish.

## **Recommendations**

The State Board of HVACR Contractors and all associated regulations and provisions will terminate as of July 1, 2013, unless reauthorized. The board serves a vital role in protecting the citizens of Maryland from poorly performed HVACR services and unsafe HVACR systems, and by facilitating the licensing of competent contractors in a rapidly expanding and increasingly specialized industry.

As demonstrated above, however, the board faces challenges. Although the board's revenues approximate its expenditures, the board has struggled recently to meet its responsibilities. The board has two vacant seats and has accumulated a modest complaint backlog. Meanwhile, although their concerns may be enhanced by their objection to the

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<sup>8</sup>The proposed regulation declares that an individual who is working on behalf of a public utility company in the implementation of a residential energy efficiency program as part of a program approved by the Public Service Commission is considered to be an employee of the utility and is, therefore, exempt from the licensing requirements of the Maryland Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors Act. The public utility or a designee of the utility is required to provide training and oversight to ensure that all work is performed in a safe manner. The exemption only applies to individuals who are installing remote-controlled thermostats or remote-controlled switches where the installations are completed by January 1, 2013. The regulation also specifies that residential installations include installations at single-family dwellings or at multi-family dwellings where the occupants (1) own the unit or have prior approval of the owner to participate in the energy efficiency program; (2) have energy usage that is individually metered; and (3) have control over the equipment conditioning the occupants' living space.



installation of certain thermostats and switches by individuals who do not have a journeyman or master HVACR license, industry trade groups have questioned the board's decisionmaking and ability to function in an effective manner. Also, although it has been mitigated, another problem remains from the last preliminary evaluation; in portions of the State, there is no assurance that the State mechanical code is being enforced.

On the other hand, industry groups remain satisfied with the general design of the board's regulatory powers. On the board, one of the consumer vacancies was filled in September and new members are becoming better acclimated to their responsibilities. The board has also reestablished the complaint committee to address the complaint backlog and the addition of other new members will enhance the board's ability to address complaints. The hiring of a full-time Division of Occupational and Professional Licensing investigator will also help. The division has also succeeded in establishing four new cooperative enforcement agreements since the last preliminary evaluation occurred; this development has made enforcement of the mechanical code more consistent statewide. Finally, the board is already covering most of its costs in spite of the challenges of cost containment. In sum, it appears that the State board has resumed functioning as effectively as possible given its current constraints. **Therefore, the Department of Legislative Services recommends that the board be continued without undergoing further evaluation and that legislation be passed extending the board's termination date by 10 years to July 1, 2023.**

This evaluation has, however, identified evolving developments and areas for potential improvement that merit follow up. **The Department of Legislative Services, therefore, recommends that DLLR submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2012, which focuses on:**

- **the feasibility of requiring counties to enforce the State mechanical code;**
- **the board's ultimate decision whether to promulgate a regulation exempting individuals who install certain thermostats and switches under the PeakRewards program from certain licensing requirements;**
- **if the board decides to take final action to publish the proposed regulation, whether the board has verified that a public utility company or a designee of the utility has provided training and oversight to ensure that all exempt work is performed in a safe manner. The report should also summarize any complaints received by the board related to the improper installation of thermostats or switches under the PeakRewards program and the board's efforts to address the complaints and any underlying problems;**

- **whether, after consulting with the Department of Budget and Management, DLLR is able to identify additional ways of enhancing the efficient resolution of consumer complaints; and**
- **whether the board has been successful in filling the final vacant consumer and industry member seats and providing full geographic representation on the board.**

# **Appendix 1. Members of the State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors**

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## **Industry Representatives**

James Johnson, Chair (Master Electrician)

Robert B. Gawne (Master HVACR Contractor), Prince George's County

Allen B. Clinedinst, III (Master HVACR Contractor), Carroll County

Frederick L. Matusky (Master Plumber and Master HVACR Contractor)

George Warren (Master HVACR Contractor), Anne Arundel County

## **Consumer Members<sup>9</sup>**

Rasheed Kerriem, Baltimore City

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<sup>9</sup>There are two seats on the board for consumer members; one is currently vacant.



**Appendix 2. Written Comments of the  
State Board of Heating, Ventilation, Air-Conditioning, and  
Refrigeration Contractors**

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December 3, 2010

Mr. Michael C. Rubenstein  
Senior Policy Analyst  
Office of Policy Analysis  
Department of Legislative Services  
90 State Circle  
Annapolis, Maryland 21401-1991

Dear Mr. Rubenstein,

The Department of Labor, Licensing and Regulation (DLLR) and the Board of Heating, Ventilation, Air-Conditioning and Refrigeration Contractors (Board) 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 evaluation found that the Board is serving an important role in protecting the public and has recommended that the Legislative Policy Committee waive the Board from full evaluation. It further recommends that legislation be enacted to extend the Board's termination date by ten years to July 1, 2023.

The report requires a follow up report by DLLR and the Board regarding several significant issues. Requiring local governments to enforce the State Mechanical Code raises intergovernmental concerns, but such enforcement is central to achieving the Board's public protection mandate. Second, the issues surrounding the Board's pending regulation on certain thermostat and switch installations are complex and are tied to the State's ability to achieve critical energy use reduction goals by 2015. Third, cost containment has affected the Board's ability to investigate, resolve, or adjudicate matters arising from consumer complaints in an effective and timely manner. This impact disadvantages consumers and licensees alike. The evaluation requests follow-up and appropriate consultation with the Department of Budget and Management. Finally, balanced representation and timely appointments are noted for report.

Each of the items that is recommended for a follow-up report by October 1, 2012 involve matters of active concern, that are on the Board's issue agenda during the next two years. We will be pleased to report on our findings and any actions that the Board or DLLR take in addressing these items.

TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE  
INTERNET: [WWW.DLLR.STATE.MD.US](http://WWW.DLLR.STATE.MD.US) • E-MAIL: [OP@DLLR.STATE.MD.US](mailto:OP@DLLR.STATE.MD.US)

Mr. Michael C. Rubenstein  
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December 3, 2010

As requested we have advised legislative staff of any factual corrections. We would like to express our appreciation for the thoroughness and professionalism of Andrew Johnston in his conduct of the evaluation. We look forward to working with the General Assembly and legislative staff in addressing issues that were raised in the report as well as future issue which may arise. If your office should require additional information, please do not hesitate to contact me (410-230-6226) or Assistant Commissioner Steven Smitson (410-230-6269).

Sincerely,



Harry Lofas  
Deputy Commissioner

cc: Alexander M. Sanchez, Secretary  
Stanley J. Botts, Commissioner  
Steve Smitson, Assistant Commissioner  
Chairman and Members of the Board of HVACR Contractors