

# **Preliminary Evaluation of the State Board of Law Examiners**

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- Recommendations:**
- Waive from Full Evaluation**
  - Extend Termination Date to July 1, 2020**
  - Increase Examination Fee Cap to \$400**
  - Require Follow-up Report by October 1, 2008**

## **Sunset Review Process**

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-400 *et seq.* of the State Government Article), which establishes a process known as sunset review. Enacted in 1978, the Maryland Program Evaluation Act requires the Department of Legislative Services (DLS) to periodically evaluate certain State agencies according to a statutory schedule. The agencies subject to review are usually subject to termination unless legislative action is taken to reauthorize them. The State Board of Law Examiners is one of about 70 entities currently subject to evaluation. The board last underwent a full evaluation as part of sunset review during 1998. The board also underwent a preliminary evaluation in 2001. Following preliminary evaluation, the Legislative Policy Committee decides whether to waive an agency from further evaluation. If waived, legislation to reauthorize the agency typically must be enacted. Otherwise, a full evaluation is undertaken the following year.

The 2001 preliminary evaluation concluded that the board was well run and had satisfactorily addressed the recommendations from the prior full evaluation. Thus, the preliminary evaluation recommended that the board be waived from further evaluation at that time and that the termination date of the board be extended to July 1, 2016. The General Assembly ultimately extended the board's termination date to July 1, 2010.

In conducting this preliminary evaluation, DLS staff reviewed annual reports and minutes from board meetings from the past three years, Title 10 of the Business Occupations and Professions Article, the Rules Governing Admission to the Bar of Maryland and associated regulations, prior full and preliminary sunset evaluations of the board, the operating budget of the board, and the regulatory structure in other states. In addition, DLS staff conducted interviews with the chairman and secretary of the board and reviewed various files and data provided by the board. The board received a draft of this evaluation and provided the written

comments included as **Appendix 1**. Appropriate factual corrections have been made to the document based on the board's comments.

## **The State Board of Law Examiners**

The State Board of Law Examiners is charged with regulating admissions to the Bar of Maryland, subject to the ultimate authority of the Court of Appeals for regulating the practice of law and the conduct and admission of attorneys. The board was created in 1898. Prior to that time, the various county courts handled bar admissions on an individual basis. The board operates pursuant to § 10-101 *et seq.* of the Business Occupations and Professions Article; the Rules Governing Admission to the Bar of Maryland, as adopted by the Court of Appeals; and the Rules Governing the Board, as adopted by the board.

The board consists of seven attorneys who are appointed by the Court of Appeals to serve five-year staggered terms. Board members are typically full-time practicing attorneys who perform their duties for the board in addition to the duties of their full-time law practices and receive modest compensation for board service. The board is supported by a full-time, salaried administrative staff headed by the secretary of the board. The staff also includes a director of character and fitness and five other administrative employees.

Board members and grading assistants prepare and grade essay questions for the bar examination, which is administered twice annually. (The bar exam also contains a multiple choice component known as the Multistate Bar Examination or MBE, which is graded by computer.) The board meets several times annually to discuss bar examination questions, hold character hearings, and deal with policy matters. The board also holds an annual weekend retreat at which policy issues are discussed and strategic planning is conducted.

The board is assisted by eight character committees, which conduct investigations and are appointed by the Court of Appeals. The number of members of each character committee ranges from 9 to 32. Character committee members receive no compensation and are typically practicing attorneys who perform their duties for the character committees in addition to the duties of their law practices.

## **Legislative Action in Response to Recent Sunset Evaluations**

Since the 1998 full evaluation, legislative action related to the Board of Law Examiners has been limited to modifying the board's termination date and its ability to increase the bar examination fee. Chapter 389 of 1999 increased the statutory cap on the bar examination fee from \$100 to \$150, while extending the termination date for the board from July 1, 1999 to July 1, 2004. Chapter 211 of 2002 extended the termination date for the board from July 1, 2004 to July 1, 2010.

House Bill 56/Senate Bill 142 of 2003 proposed an increase in the statutory cap on the examination fee from \$150 to \$325 – following the board’s report on the need to raise fees to generate additional revenues in response to the 2001 preliminary evaluation. The proposal received an unfavorable report from both the House Judiciary Committee and the Senate Judicial Proceedings Committee.

## Number of Candidates and Pass Rate for Bar Examination

**Exhibit 1** shows the number of candidates taking the bar examination and the associated pass rates since 2002. Both the number of examinees and the pass rate of the exam have increased slightly in the last couple of years. As the passing score has remained fixed since the July 2000 exam, the variation in pass rates reflects the ability of the candidates taking the exam rather than any change in the difficulty of the exam.

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**Exhibit 1**  
**Number of Candidates Taking and Passing the Bar Exam in Maryland**  
**February 2002 through February 2007**

<u>Date of Exam</u>	<u>Number Taking</u>	<u>Number Passing</u>	<u>Pass Rate</u>
February 2002	575	255	44%
July 2002	1,488	1,011	68%
February 2003	575	298	52%
July 2003	1,426	935	66%
February 2004	638	346	54%
July 2004	1,458	938	64%
February 2005	650	378	58%
July 2005	1,604	1,082	67%
February 2006	650	363	56%
July 2006	1,470	1,035	70%
February 2007	533	282	53%
2002 Total	2,063	1,266	61%
2003 Total	2,001	1,233	62%
2004 Total	2,096	1,284	61%
2005 Total	2,254	1,460	65%
2006 Total	2,120	1,398	66%

Source: State Board of Law Examiners

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## **Examination Process Has Improved**

The board has improved the examination process to incorporate a performance testing component and to allow candidates to use laptops during the exam.

### **Performance Testing Component Has Been Incorporated in the Examination**

In the 1998 full evaluation, DLS recommended that the board investigate and consider use of a performance testing component for the bar examination, taking into consideration such factors as length of the current exam, board member responsibilities, costs of implementation, the resulting need to increase fees, and the potential impact on pass/fail rates. When the 2001 preliminary evaluation was undertaken, the board had investigated the use of a performance test but had not yet decided if implementation was practical.

In November 2004, the board recommended adopting the Multistate Performance Test (MPT) as part of the bar examination. This recommendation was implemented for the first time in the February 2007 examination. Starting with the February 2007 exam, 2 of the 12 Maryland essay questions were replaced by one 90-minute MPT essay question. The MPT is produced by the National Conference of Bar Examiners and is designed to test a candidate's ability to use fundamental lawyering skills in a realistic situation. Examinees are required to perform a task such as drafting a brief or a letter to a client with the aid of a file containing documents such as news articles, deposition transcripts, and legal opinions. This MPT essay is graded by members of the board on a rotating basis along with the traditional Maryland essays.

### **Laptops Can Now Be Used During the Examination**

Additionally, the board recently approved a procedure to allow the use of laptop computers to write the bar examination. This pilot program was also implemented for the first time in February 2007 and was continued for the July 2007 exam. The board expects this program to improve the efficiency of its grading process but does not expect the program to have a significant impact on its budget.

The laptop program requires candidates to provide their own laptops equipped with software from a third-party vendor designed to prevent candidates from accessing the Internet, notes, or other programs on their computer while taking the examination. Candidates wishing to use a laptop in writing their exam pay the additional fee directly to the third-party vendor by credit card when they register this software online. This fee must be paid in addition to existing examination and application fees. The fee for the pilot program in February 2007 was \$130, while the fee for the July test was reduced to \$110, accounting for a lower cost to set up electrical circuits at the July testing location. The program has immediately proved popular, with about 350 candidates using laptops during the 2007 exams.

## Complaint Activity

Complaints received by the board relate exclusively to the bar application and examination process; the board does not have jurisdiction over attorney discipline, which is handled by the Attorney Grievance Commission. As shown in **Exhibit 2**, the board receives only a handful of written complaints each year. The time frame for resolving a complaint depends on the nature of the complaint and when it is received. Approximately one-half of complaints are about grading particular responses to exam questions – such complaints are received after bar exam results are released and are generally addressed within a week. Other typical complaints include missing exam pages, disturbances while taking the exam, and requests for an exam requirement to be waived. Over the seven-year period reviewed, there has been one complaint of racial bias and one complaint of failure to accommodate a disability.

In the 1998 full evaluation, DLS recommended that the board create and maintain an organized, comprehensive complaint file in which every written complaint be placed, with a clear indication of how and when the complaint was responded to or resolved. In 1999, the board implemented a chronological filing system containing complaints, responses, and related documentation. Since then, little has changed in the complaint process. Any remedy associated with complaints is left to the sole discretion of the board.

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### Exhibit 2 Complaint History 2000 through 2006

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Number of Complaints Received	9	8	13	13	11	10	12
<b>Complaint Type</b>							
Exam Grading	5	5	7	5	5	6	5
Disturbance During Exam		2	1		2		
Defective Exam Materials		1	2	1			3
Denial of Score Review			1	1		2	
Mistiming of Exam				3		1	
Racial Bias					1		
Request Filed as Complaint					2		2
Other	4		2	3	1	1	2

Source: State Board of Law Examiners

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## **Board Costs Continue to Outpace Revenues Generated by Fees**

The board is funded with State general funds through the Court Related Agencies budget within the Judiciary. Board revenues, primarily from bar application and examination fees, are likewise credited to the general fund. The various fees collected by the board are set by the Court of Appeals; however, the maximum examination fee the court may set is capped by statute. The 1998 full evaluation recommended doubling the examination fee (then limited to \$90), but the General Assembly raised the fee cap to its current maximum of \$150. In October 1999, the Court of Appeals raised all fees, including the examination fee, to their current levels – as shown in **Exhibit 3**.

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### **Exhibit 3 State Board of Law Examiners Current Fee Schedule**

Application Fee for Admission to Bar	\$175 (if timely) \$225 (if late)
Examination Fee	\$150
Out-of-state Attorney Registration Fee	\$600
Application Update Fee	\$45

Source: Rules Governing the State Board of Law Examiners

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Even though there is no requirement that the revenues generated by the board cover its expenditures, the General Assembly has a policy of regulatory boards and commissions being self-supporting to the extent possible. However, as shown in **Exhibit 4**, the board's expenditures have been outpacing the revenues attributed to it – with revenues covering from 60 to 89 percent of expenditures in recent years. In the 1998 and 2001 evaluations of the board, concerns were also raised about the board's ability to cover its costs with the revenues it generates. As noted earlier, the examination fee cap was raised following the 1998 full evaluation but not to the level recommended. In response to the 2001 preliminary evaluation, the board proposed increasing the statutory cap to \$325 – noting that the \$175 increase was the amount necessary to cover the costs associated with administering the exam, but the 2003 implementing legislation did not receive favorable consideration. Even though the examination fee has been set at the maximum allowed since 1999, other fees have not been increased further by the Court of Appeals.

**Exhibit 4**  
**Fiscal History of the State Board of Law Examiners**  
**Fiscal 2001 through 2007**

	<u>2001</u> <u>Actual</u>	<u>2002</u> <u>Actual</u>	<u>2003</u> <u>Actual</u>	<u>2004</u> <u>Actual</u>	<u>2005</u> <u>Actual</u>	<u>2006</u> <u>Actual</u>	<u>2007</u> <u>Actual</u>
<b><u>General Fund Expenditures</u></b>							
Salaries and Wages	\$389,729	\$470,604	\$387,955	\$407,628	\$371,805	\$348,173	\$479,427
Special and Technical	305,097	267,333	303,335	335,354	321,945	341,480	358,555
Communications	19,284	13,337	21,283	13,701	14,471	12,741	10,888
Travel	12,627	5,799	7,538	2,477	6,642	13,764	12,516
Utilities				1,638	6,702		
Vehicles			306				
Contractual Services	212,211	169,656	230,116	229,014	234,155	286,744	274,805
Supplies and Materials	17,150	6,097	8,027	8,097	6,770	15,889	20,274
Equipment Replacement	146			2,930	35,387	8,492	
Equipment Additional		1,302					
Fixed Charges	51,811	39,853	28,903	72,069	74,088	91,707	79,611
<b>Total Expenditures</b>	<b>\$1,008,055</b>	<b>\$973,981</b>	<b>\$987,463</b>	<b>\$1,072,908</b>	<b>\$1,071,965</b>	<b>\$1,118,990</b>	<b>\$1,236,076</b>
<b><u>General Fund Revenues</u></b>							
Examination Fees	\$255,300	\$252,950	\$293,730	\$500,350	\$358,800	\$337,200	\$311,250
Character Update Fees	440	585	45,225	930	570	495	540
Out-of-state Attorney Fees	93,300	94,550	97,550	80,250	108,150	110,250	103,050
Application (Registration) Fees	288,825	363,175	305,000	362,100	357,675	326,775	322,775
Miscellaneous Fees	10,059	10,124	9,527	6,699	7,493	7,538	5,755
<b>Total Revenues</b>	<b>\$647,924</b>	<b>\$721,384</b>	<b>\$751,032</b>	<b>\$950,329</b>	<b>\$832,688</b>	<b>\$782,258</b>	<b>\$743,370</b>
<b><u>Comparison: Revenues vs. Expenditures</u></b>							
Revenues	\$647,924	\$721,384	\$751,032	\$950,329	\$832,688	\$782,258	\$743,370
Expenditures	1,008,055	973,981	987,463	1,072,908	1,071,965	1,118,990	1,236,076
<b>Revenue Excess / (Deficit)</b>	<b>(\$360,131)</b>	<b>(\$252,597)</b>	<b>(\$236,431)</b>	<b>(\$122,579)</b>	<b>(\$239,277)</b>	<b>(\$336,732)</b>	<b>(\$492,706)</b>
<b>% Expenditures Covered</b>	<b>64.3%</b>	<b>74.1%</b>	<b>76.1%</b>	<b>88.6%</b>	<b>77.7%</b>	<b>69.9%</b>	<b>60.1%</b>

Source: State Board of Law Examiners

In Exhibit 4, expenditures for “Salary and Wages” represent compensation for board members and assistants and reimbursement to character committees for administrative expenses of performing character investigations. Expenditures for “Special and Technical” include table and chair rentals for bar examinations, proctor payments, test materials payments (MBE and MPT), transportation of materials to test sites, transcripts of hearings, printing bar examination questions and answer booklets, office equipment leasing and maintenance, payment for expert consultants, and miscellaneous other examination expenses.

Board expenditures appear to be reasonable and can be expected to continue to increase in the future. First, even though the number of staff has not increased, personnel costs increase each year. Second, implementation of the laptop program and the MPT in the past year has lengthened the exam and increased the need for exam proctor time. Third, the cost to purchase the MBE has increased in recent years. For example, it was \$40 per examinee from 1996 through February 1998. It increased to \$42 in July 1998, \$45 in February 2003, and \$48 in July 2006. The board has been notified that the cost per examinee will increase again to \$50 in July 2008.

### **Fees Should Again Be Increased to Bring the Board’s Budget into Balance with the Revenues Generated**

The Court of Appeals has the authority to increase the current application fees but cannot further increase the examination fee unless the statutory cap is raised or lifted. Though the revenues raised from exam and application fees are generally comparable (depending on the number of applicants assessed a late fee, which cannot be accurately predicted from one year to the next), the number of applicants each year is much lower (ranging from about 1,450 to about 1,650) than the number of candidates taking the bar exam (ranging from about 2,000 to about 2,250). The revenue generated from each source is consistent with the current fee schedule and the pass rates associated with the exam.

As noted above, the increase in board costs is not only associated with the exam itself. Thus, the Court of Appeals could take action to raise the application fee independent of any change in the examination fee. Nevertheless, the examination fee cap should also be raised. For example, a combined increase in fees of about \$275 (\$100 more for the application and \$175 more for the exam) would be sufficient to cover board costs in the near future. Alternatively, a higher fee for the examination alone (an increase of between \$225 and \$250 to \$375 or \$400) could raise sufficient revenue to cover costs. Such an approach, however, would require a much higher fee cap to be set and would not reflect the increased costs associated with processing applications. Conversely, if only the application fee were raised, the increase would have to be even greater (about \$325 to \$350 more).

A combined \$275 increase in the examination and application fees would bring the total cost of bar application to \$600 (\$650 for late filers). As shown in **Exhibit 5**, the total cost of the



bar application is currently lower in Maryland than in all other states in the region with the exception of New York and the District of Columbia. Increasing the examination fee and application fee would place Maryland at the higher end among states in the region in terms of total application cost but not significantly higher than the regional average.

**Exhibit 5**  
**Bar Application Fees in the Mid-Atlantic Region**  
**(Excluding out-of-state attorney application fees)**

<u>Jurisdiction</u>	<u>Examination Fee</u>	<u>Separate Registration/ Application Fee</u>	<u>Total Fee</u>
Maryland	\$150	\$175-\$225	\$325-\$375
Connecticut	450		450
Delaware	500-600		500-600
District of Columbia	88*	100-300	188-388*
New Jersey	475-675		475-675
New York	250		250
North Carolina	600-850		600-850
Pennsylvania	500-1,350		500-1,350
Virginia	275	175-325	450-600
West Virginia	375-525	40	415-565

Notes: Examination fee may be the only fee charged by some states; fees can vary based on timeliness of application. Fees do not include miscellaneous fees or additional fees for computer-based testing or repeat examinations.

\*Additional fees may be charged for background investigations.

Source: *Comprehensive Guide to Bar Admission Requirements 2007*, National Conference of Bar Examiners; jurisdiction web sites

**Recommendations**

There is a continued need for regulation of admissions to the bar. DLS is satisfied that the board is appropriately vested with this authority and that it fulfills this function in a fair and efficient manner. **Therefore, DLS recommends that the Legislative Policy Committee waive the State Board of Law Examiners from full evaluation and that legislation be enacted to extend the board’s termination date by 10 years to July 1, 2020.** Thus, another preliminary evaluation would be conducted in 2017.

However, the board does not generate sufficient revenues to cover its expenditures. This is largely due to the statutory cap placed on bar examination fees. **Consequently, DLS recommends that statute be amended to increase the statutory ceiling on the examination fee from \$150 to \$400, an amount comparable to or below that in effect in most states in the region. Uncodified language should be adopted limiting the initial increase in this fee to a**

lower amount and requiring the Court of Appeals to set the examination fee at a level that would allow the board to cover its expenses of administering the bar examination. The Court of Appeals should also increase fees which may be raised through rules (such as the application fee) to the appropriate level to cover associated costs. Uncodified language should also be considered to direct the Court of Appeals to phase in the increase in examination fees and other fees (like application fees) established by the court in a manner such that revenues of the board recover at least 90 percent of its operating costs in fiscal 2014. The Court of Appeals should report, by October 1, 2008, to the Senate Judicial Proceedings Committee and the House Judiciary Committee on its plans to increase fees and its ability to generate sufficient fee revenue for the general fund to cover its expenditures.

**Appendix 1. Written Comments of the  
State Board of Law Examiners**

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MEMBERS OF THE BOARD

JONATHAN A. AZRAEL, CHAIRMAN  
JOHN F. MUDD  
ROBERT H. REINHART  
CHRISTOPHER B. KEHOE  
MAURENE EPPS WEBB  
LINDA D. SCHWARTZ  
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SECRETARY  
BEDFORD T. BENTLEY, JR.

DIRECTOR, CHARACTER & FITNESS  
BARBARA L. GAVIN

CLERK TO THE BOARD  
ROSE E. BERG

**STATE BOARD OF LAW EXAMINERS**

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January 4, 2008

Warren G. Deschenaux  
Director, Office of Policy Analysis  
Department of Legislative Analysis  
Legislative Services Building  
90 State Circle  
Annapolis, MD 21401-1991

Dear Mr. Deschenaux:

The State Board of Law Examiners has completed its factual review of the draft copy of the preliminary Sunset evaluation and concurs with the draft with one exception. In paragraph 4 on page 2 of the report, the following statement appears: "The exam had become slightly more difficult to pass than it was 10 to 15 years ago, when pass rates ranged from 65 to 73 percent." This assertion is inaccurate in the Board's view.

Beginning with the July 2000 bar examination, the Board adopted the procedure of scaling written test scores to the Multistate Bar Examination scale in order to ensure that the passing score on each examination remains fixed. The "scaling" procedure is generally accepted as a "best practice" by test measurement specialists and is employed by all but a few states in the United States.

When the Court of Appeals of Maryland adopted the Board's recommendation to scale the written test, the passing score which was selected was the average of the scores over the prior ten bar examinations. Subsequent to July 2000, the variations in pass rates which have occurred have reflected variations in the ability of the groups of examinees, rather than variations in the difficulty



Warren G. Deschenaux  
January 4, 2008  
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of the examination. The Board's view is that the adoption of "scaling" is a significant improvement over past practices.

The Board otherwise concurs with the factual findings in the report and has no other comments.

Sincerely yours,

A handwritten signature in blue ink that reads "Bedford T. Bentley, Jr." with a stylized flourish at the end.

Bedford T. Bentley, Jr.  
Secretary

cc: Chief Judge Robert M. Bell  
Jonathan A. Azrael, Esq.  
Karl S. Aro  
Laura McCarty