

Preliminary Evaluation of the State Board of Cosmetologists

Recommendation: Full Evaluation

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 statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). LPC 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 Cosmetologists last underwent a preliminary evaluation as part of sunset review in 1998, having undergone a full evaluation in 1989 and a limited “mid-cycle” review in 1995. Based on the DLS recommendation in 1998 to waive a full evaluation, the General Assembly extended the termination date of this board to July 1, 2011.

In conducting its preliminary evaluation, DLS staff reviewed previous evaluations of the board; minutes of the board’s meetings for the last five years; licensing, exam, inspection, fiscal, and complaint data; as well as related laws and regulations. DLS also examined data on national industry trends, attended a board meeting, and conducted interviews with board staff and board members.

The State Board of Cosmetologists reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document.

The State Board of Cosmetologists

The State Board of Cosmetologists was created by Chapter 282 of 1935 and, under current law, its functions include:

- establishing qualifications for and providing approval of apprenticeships, licenses, and permits for services under the board's authority;
- regulating the examination process;
- disciplining licensees who have violated laws or regulations;
- establishing fees to recover the cost of the board's services; and
- regulating sanitary conditions in schools and salons.

The board derives its authority from Title 5 of the Business Occupations and Professions Article. Its primary focus is to protect the public by licensing individuals practicing cosmetology, with the intent of preventing harm caused by tools and chemicals and ensuring the sanitary condition of shops, salons, and schools. (The Maryland State Department of Education oversees the licensing for cosmetology and barber schools.) As defined by statute, the practice of cosmetology includes:

- arranging, bleaching, cleansing, coloring, curling, cutting, dressing, singeing, permanent waving, waving, or other procedures intended to beautify, clean, or embellish hair;
- arching or dyeing eyebrows;
- dyeing eyelashes;
- providing esthetic services, which means cleansing, exercising, massaging, or stimulating skin with electrical, mechanical, or other means; applying to the face an alcohol, cream, lotion, astringent, or cosmetic preparation; and removing superfluous hair by use of a depilatory, tweezers, or wax; or
- nail technician services, including manicures, pedicures, and application or maintenance of artificial nail enhancement products.

The board does not regulate certain services such as shampooing or braiding of hair. Licensed cosmetologists can provide all of the services listed above, while estheticians and manicurists practice under a limited license that restricts the scope of services to esthetic and nail services, respectively.

The board consists of seven members, four of whom must be licensed cosmetologists who have actively practiced for at least five years prior to the appointment. The remaining three

members have to be two consumers and a private cosmetology school owner or teacher. All board positions are unpaid. Board members serve three-year terms and cannot serve more than two consecutive terms. However, board members serve until they are replaced; for example, the current chairman has served two terms, with her last term ending in 2004. One of the consumer member positions is currently vacant.

The board is housed within the Department of Labor, Licensing, and Regulation's (DLLR) Division of Occupational and Professional Licensing. DLLR provides staff for the board, which consists of an executive director (who must be a licensed senior cosmetologist or master barber), an assistant executive director, administrative personnel, and 12 authorized inspector positions (some of these positions are not filled). All of these individuals support both this board and the State Board of Barbers.

Statutory and Regulatory Changes

Since the preliminary evaluation in 1998, the Maryland General Assembly has adopted several laws that affect licensees, including certain safety restrictions, license and exam changes, and modifications of the disciplinary process. **Exhibit 1** provides an overview of those changes. Proposals have surfaced in recent years to require continuing education as a condition of renewing a cosmetology license (House Bill 405 of 2004 and House Bill 1296 of 2005); however, they have failed. (Only 12 states currently require continuing education for nail technicians and cosmetologists.)

Chapter 392 of 2005 authorizes inspectors for both the Board of Barbers and Board of Cosmetologists to issue citations and impose civil penalties. Chapter 392, proposed by DLLR, replaces a system in which a licensee was notified of observed violations. If the board determined that the violation did not warrant a formal hearing, no penalty was imposed. Even so, an informal conference occasionally has been required. (As discussed later in this report, Chapter 392 has not yet been implemented.)

In addition to these legislative changes, the board has undertaken regulatory changes under its own authority; most of the regulations promulgated since the last sunset evaluation have altered fees or established new fines, while a few have addressed operational practices. Major changes are listed in **Exhibit 2**. Significant changes included the establishment of a schedule of citation fines that board inspectors may issue to violators (salons or individual licensees) and the expansion of allowable practices to include medical spa services such as chemical peels and microdermabrasion, but only if the practitioner holds a valid health occupations license. A chemical peel uses a chemical solution to improve and smooth the texture of facial skin by removing its damaged outer layers. Microdermabrasion is a nonsurgical procedure that involves removing the top surface layer of skin with crystals to reduce the

appearance of aging or pigmentation. Training requirements have also been expanded since the previous sunset review.

Exhibit 1
Major Legislative Changes Since 1998 Evaluation
State Board of Cosmetologists

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
1999	388	Prohibits the use of methyl methacrylate liquid monomer as a nail acrylic in beauty salons.
	405	Extends the termination date of the board by 10 years to July 1, 2011.
	441	Expands the settings for the practice of cosmetology to include hospitals, nursing facilities, and hospices.
	455	Increases the hours of instruction required to obtain a nail technician and esthetician license.
	487	Allows the board to ban the use of lasers in beauty salons.
2001	187	Authorizes the board to impose civil penalties against nonlicensees for practicing without a license.
	264	Creates a temporary license for a person to practice cosmetology under supervision of a senior cosmetologist for two years only.
2003	125	Alters the examination requirements for a cosmetology license.
2005	392	Authorizes board inspectors to issue citations to, and impose civil penalties on, licensees and permit holders for violations of laws and regulations.
2006	306	Authorizes the board to reinstate an expired salon permit, subject to a fee and satisfaction of renewal requirements.
2007	470	Allows licensed estheticians and nail technicians to provide services in specified medical facilities.
2008	18	Eliminates the regulation and licensing of makeup artist services.

Source: Laws of Maryland

Exhibit 2
Major Regulatory Changes Since 1998 Evaluation
State Board of Cosmetologists

Year **Change**

Fee or Citations

- 2000 Repealing the proration of license fees.
- 2003 Increasing fees for seven examinations and reducing the cost of one exam.
- 2006 Establishing a citation schedule, pursuant to Chapter 392 of 2005.
- 2008 Authorizing the board to reinstate an expired shop permit, subject to a fee and satisfaction of renewal requirements, pursuant to Chapter 306 of 2006.

Operational

- 2000 Increasing the total number of apprenticeship training hours required to qualify for an examination for esthetician and nail technician licenses.
- 2002 Clarifying requirements for supervision of apprentices and lowering the number of weekly training hours for apprentices from 30 to 20.
- 2002 Establishing sanitation standards for certain procedures and implements used in beauty schools.
- Requiring a minimal passing score of 75 percent for the examination.
- 2003 Increasing examination fees.
- 2005 Prohibiting use or possession of a Credo blade, laser, microdermabrasion equipment, or other devices used to remove skin; also prohibiting procedures or chemicals that cause tissue destruction or penetrate the blood fluid barrier.
- 2008 Reversing in part the 2005 regulation to allow possession and use of the above devices or procedures by individuals who hold a valid health occupations license.

Note: Exhibit does not include nonsubstantive regulations, such as terminology changes.

Source: Code of Maryland Regulations

National Trends in the Cosmetology Industry

Increased Employment Demand

Cosmetology is a thriving industry, according to the projections of the U.S. Department of Labor's Bureau of Labor Statistics (BLS). In the *Occupational Outlook Handbook*, BLS estimates that the number of personal appearance workers (including barbers and cosmetologists) in the United States will increase by 14 percent (on average) between 2006 and 2016, from 825,000 to 942,000. Employment growth will vary considerably by service. BLS estimates that employment of nail technicians will grow by 28 percent by 2016, compared to a 12 percent growth rate predicted for hairdressers and cosmetologists. The largest expansion within the industry is expected for makeup artists (40 percent), followed by estheticians and other skin care specialists (34 percent). The lower growth rate anticipated for hair stylists stems from the decline in barbering as more shops offer unisex services. Higher demand for estheticians follows the increased popularity of day spas that offer skin care services such as chemical peels and microdermabrasion.

BLS observes that, while the employment picture is positive, applicants for jobs at higher paying salons can expect competition from experienced licensees, particularly those able to perform a broad range of services. This observation is consistent with job demand surveys conducted by the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS). Its 2007 survey of Maryland salons found that almost 80 percent of salon owners who attempted to hire new employees in 2006 were unable to find properly trained applicants.

The average annual salary for a salon professional in Maryland is approximately \$38,600, without tips, according to the NACCAS survey. However, that survey does not distinguish salaries for various services. The median national hourly wage for hairstylists and cosmetologists, according to BLS, is \$10.25, excluding tips; skin care specialists earn slightly more, \$12.58 per hour; while manicurists and pedicurists earn slightly less, \$9.23 per hour.

Though industry growth was observed in the last evaluation, one employment trend – frequent turnover – has begun to subside. The results of the NACCAS national survey shows a 15 percent decline in new hires since 2003, as well as a 13 percent decline in the number of employees who leave their positions.

Practice and Services

One of the most significant industry trends is the move away from haircutting salons toward full-service salons or day spas that provide massages, wraps, and other specialized body treatments, in addition to nail and hair care. According to the NACCAS survey, 67 percent of salon owners in Maryland describe their business as full service. The *2008 Trend Watch*, produced by the International Spa Association, notes that salons are focusing more on overall wellness, either by expanding services, serving healthy food, or selling environmentally friendly

products. They also offer technological amenities such as Wi-Fi and are beginning to cater to teenagers, who are a growing part of spa clientele.

Licensing Activity – Shortage on the Horizon?

Consistent with national trends, the cosmetology industry in Maryland has experienced considerable growth. Between fiscal 2003 and 2008, the number of new licenses issued to senior cosmetologists doubled and new licenses for cosmetologists rose by approximately 70 percent as shown in **Exhibit 3**. The board now licenses over 23,000 cosmetologists and approximately 7,500 senior cosmetologists. Nail technician licensing has remained fairly steady; however, esthetician licensing has increased, which corresponds to the rise in full-service salons that provide skin treatments.

New licenses for full-service salons grew by 25 percent during the last five years, to a total of 4,220 in fiscal 2008, while fewer limited-service salons opened, which also reflects a national trend. Despite these increases, the overall number of new apprentice registrations has declined by over 30 percent between fiscal 2003 and 2008. The decline is highest among esthetician registrations (40 percent). Maryland salon owners may have greater difficulty obtaining new hires and/or expanding their businesses if this decline continues.

Cosmetology Education

An individual who wants to become a licensed cosmetologist, esthetician, or nail technician has two options for learning the trade – enrolling in an approved cosmetology school or training as an apprentice in a salon under a senior cosmetologist, an esthetician with two years of experience, or a nail technician with two years of experience, depending on the license that the individual seeks. An apprentice must train at least 20 hours per week and receives credit for hours served if the supervisor submits a monthly report to the board. An apprentice can renew a registration for one year; only two renewals are permitted.

The qualifications required for a license vary according to profession:

- ***cosmetologist***: two years as a registered apprentice or at least 1,500 hours of instruction;
- ***senior cosmetologist***: two years as a licensed cosmetologist and passage of a written exam;
- ***nail technician (limited license)***: eight months as a registered apprentice or at least 250 hours of instruction; and
- ***esthetician (limited license)***: 12 months as a registered apprentice or at least 600 hours of instruction.

Exhibit 3
Cosmetology Licenses, Permits, and Registrations – New and Renewal
Fiscal 2003-2008

Type	2003	2004	2005	2006	2007	2008
Owner – Full-service Salon						
New	599	683	627	716	687	751
Renewal	1,192	1,388	1,240	1,377	1,245	1,537
Owner – Limited-practice Salon						
New	179	205	182	153	140	119
Renewal	174	228	213	238	234	252
Senior Cosmetologist						
New	79	123	110	123	120	161
Renewal	3,841	3,731	3,687	3,630	3,590	3,676
Cosmetologist						
New	1,049	1,331	1,475	1,495	1,603	1,809
Renewal	8,400	8,931	8,710	9,682	9,354	10,525
Esthetician						
New	175	236	234	294	315	349
Renewal	697	730	816	861	996	1,093
Nail Technician						
New	438	575	529	463	156	457
Renewal	3,410	3,523	3,439	3,695	3,460	3,734
Apprentice Registration						
New	686	703	618	579	454	522
Renewal	221	232	238	243	245	223
Total	21,140	22,619	22,118	23,549	22,599	25,208

Note: Apprentice figures includes all apprentices – beauty culture, nail technicians, and estheticians.

Source: State Board of Cosmetologists

Currently, 58 private and public cosmetology schools operate in Maryland. Oversight of the schools is divided. The Maryland State Board of Education is responsible for reviewing applications for new schools and issuing a certificate of approval for a school to operate, add new locations or programs, or change ownership. (The Maryland Higher Education Commission has delegated the authority to approve private career schools to the Secretary of Education.) The board retains authority over sanitation inspections of the schools, as well as the contract with the exam vendor, including the content of the examinations.

Exam Passage Rate

Applicants for a license or limited license must pass an examination, which consists of a theory and practical portion; however, an applicant for a senior cosmetologist license is only required to take the theory portion. An applicant can take the written (theory) portion after completing 1,380 of the 1,500 hours of training required.

As **Exhibit 4** demonstrates, in 2003, the passage rates for nail technicians and cosmetologists were particularly low, at 35 and 36 percent, respectively. The passage rate for the theory portion of all the exams has increased considerably since then. However, half of the cosmetologist and senior cosmetologist applicants and 40 percent of the nail technician applicants are failing the theory portion of the exam. Difficulty with the English language is considered a major factor behind this failure rate – applicants are permitted the use of a bilingual dictionary but, under a departmental policy, interpreters are not permitted. Furthermore, according to DLLR, some applicants are enrolled in cosmetology schools in other states where instruction in other languages is provided. DLS notes that comprehension of manufacturer’s instructions for the handling of chemicals is important for the consumer’s health and safety.

However, the failure rate of senior cosmetologist applicants could lead to a shortage of experienced individuals who are eligible to supervise apprentices. Esthetician applicants have consistently higher passage rates on the written exam than the other license applicants; 70 percent passed in 2008.

Exhibit 4
Passage Rate for Cosmetology Licensing Exams
Calendar 2003-2008

<u>Type</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Cosmetologist						
Practical	89%	92%	93%	92%	90%	88%
Theory	36%	43%	47%	48%	47%	48%
Senior Cosmetologist						
Theory	46%	52%	56%	51%	57%	51%
Esthetician						
Practical	98%	100%	97%	99%	99%	98%
Theory	51%	69%	68%	68%	72%	70%
Nail Technician						
Practical	92%	96%	94%	95%	92%	91%
Theory	35%	49%	47%	51%	61%	58%

Source: Thomas Prometric (exam vendor)

Exam Vendor

The board has periodically experienced problems with the third-party vendor that administers the exams. Some of these problems have been significant. For example, the previous contractor, Experior Assessments, required applicants at one time to take the test in Alexandria, Virginia; no legal remedies were available as the contract allowed for testing in the Washington metropolitan area and did not specify Maryland. Experior also did not have enough seats to schedule applicants in a timely manner and was not responsive to board complaints. The current contractor, Thomson Prometric, has been more efficient and responsive; however, the board has expressed concern with the delay in testing results and other operational issues. The board appears to be closely monitoring the vendor's performance.

Disciplinary Action

The board has the statutory authority to deny, reprimand, or revoke a license under several circumstances that pertain to violations of regulations or law or the licensee's character or fitness to perform the service.

Citation Program Delayed

In 2005 the General Assembly authorized the board's inspectors to issue citations to licensees for certain violations. The licensee has the option of sending a payment or requesting a hearing before the board. Failure to pay or contest the penalty associated with the citation within 60 days results in doubling of the penalty and potential license suspension or revocation. The maximum fine for all violations cited against an establishment is \$300 a day. The board has developed a schedule of penalties to implement the law, as shown in **Exhibit 5**.

However, this citation program, which applies to both cosmetology and barber licensees, has yet to be implemented. The program is intended to relieve the board and staff of the workload associated with scheduling informal conferences or hearings and executing orders for minor violations. The department initially decided to implement an electronic citation system, which accounted for some of the delay. Due to problems with implementation, DLLR has since decided to use a mail-in citation program instead and anticipates that it will be in place by May 1, 2009.

In the absence of an active citation program, the board generally holds an informal conference with the licensee for less serious violations to educate the licensee. Given the board's limited schedule, these informal conferences may not involve the entire board. More serious violations require a formal hearing before the full board; the board routinely holds two formal hearings each month. (The board only assesses a penalty if a formal hearing is held.) Over the last six fiscal years, the board has denied 2 license applications, suspended 7 licenses, and revoked 48 licenses. Most of the 48 revocations were related to one large-scale fraud operation involving

reciprocal licenses issued to individuals from Pennsylvania who submitted fraudulent documents regarding their eligibility for a license.

Exhibit 5
Citation Schedule for Cosmetology Violations

\$50 Penalty

- Failure to meet various, specified sanitary or cleanliness standards (failure to wash hands, absence of hot or cold running water, etc.)

\$100 - \$150 Penalty

- Presence of an animal
- Improper storage or disinfection of implements
- No photo on license

\$300 Penalty

- Operating without a license/permit or beyond the scope of a license
- Improper removal of corns, calluses
- Sale of used hairpieces

Formal Hearing

- Unauthorized services or performance of services by operator with infectious disease
- Interference with inspector
- Improper procedure for cut or blood-related incidents
- Use of certain prohibited devices

Note: The statute also authorizes the board to impose a civil penalty of \$1,000 for any violation of the title. A criminal penalty of up to \$100 or 30 days imprisonment or both is also authorized but rarely imposed.

Source: Code of Maryland Regulations 09.22.01.16

Interpreter Availability Hampers Process

Chapter 141 of 2002 requires certain State agencies to provide equal access to public services for people with limited English proficiency, including interpreter services and translation of vital documents. However, the board has experienced difficulty with obtaining an interpreter to translate for licensees at disciplinary hearings who speak limited or no English, which forces the board to cancel the hearing, often on the same day it was scheduled. For example, two hearings were postponed in January 2008, and one was postponed in August 2008. The board relies on services from Lionbridge Global Solutions, which was awarded a five-year contract in 2007 to provide interpretation services for the State. Under the terms of the contract, if an on-site interpreter is not available from either the primary or secondary contractor, a telephone interpreter will be provided through another contractor; however, this has not been feasible to implement for a disciplinary hearing.

Disciplinary Actions Publicized

The board will begin posting (on its web site) disciplinary actions taken against licensees that resulted in a formal order against the licensee. The posting will include actions taken during the last four calendar years and only the more serious violations, such as providing unauthorized services, that require a formal hearing. The posting is intended to educate consumers and act as a deterrent and is similar to ones provided by boards such as the State Real Estate Commission. The State Board of Barbers has agreed to adopt an identical procedure.

Complaint Volume Is Low

State law requires that a complaint regarding a salon or licensee be submitted in writing and mailed or personally delivered and that the board notify the licensee of the complaint, who then has 10 days to correct the problem. The board now docket anonymous complaints but cannot take action on them. If the complaint relates to a potential violation related to sanitation or unlicensed activity, the board assigns an inspector to investigate. Other types of complaints, such as dissatisfaction with services, are directly assigned to a complaint panel consisting of one or two board members and an assistant Attorney General. The complaint panel may dismiss the complaint, request a reinspection, recommend an informal conference, or recommend that formal charges be brought by the Attorney General's Office.

As shown in **Exhibit 6**, the number of complaints submitted to the board has steadily increased over the past six fiscal years but is still low compared to the number of businesses and licensees. Exhibit 6 does not include anonymous complaints, which the board began tracking in 2007, or routine violations that are cited by a board inspector, including any board action taken on routine violations.

Exhibit 6
Cosmetology Consumer Complaint History
Fiscal 2003-2008

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Complaints Received	48	63	91	119	188	181
<u>Type of Complaint</u>						
Operating without a License	19	25	42	41	88	65
Operating outside Scope of License	3	11	6	18	18	13
Sanitation	20	14	42	44	56	66
Dissatisfaction with Service	3	6	7	17	32	29
Fraud/Monetary	3	1	1	2	5	7
Beyond the Board's Jurisdiction	0	0	0	2	9	3
Not Identified	0	6	0	0	0	0
<u>Board Action</u>						
Dismissed	45	60	89	93	125	55
No Disposition/Still Under Investigation	0	0	1	21	54	116
Formal Hearing	0	1	0	5	2	2
Informal Hearing	0	0	0	0	2	5
Consent Order	3	2	1	0	5	3

Notes: A complaint may include more than one type or data regarding the type of complaint may be missing; therefore, the total number of complaints in a fiscal year may not correspond to the numbers listed below the total. Dismissed complaints include those that were not within the board's jurisdiction.

Source: State Board of Cosmetologists

Significant Drop in Inspections – Some Turnaround Expected

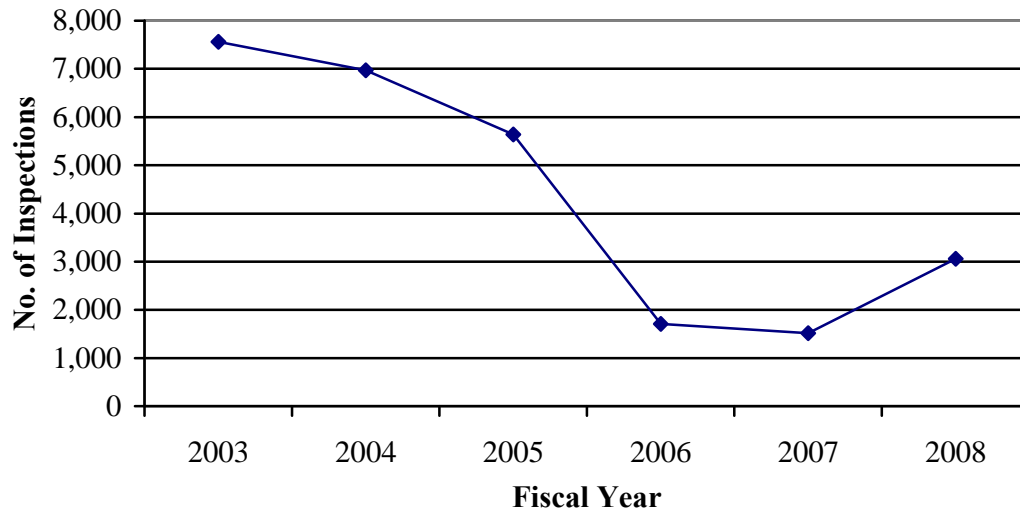
As shown in **Exhibit 7**, the number of inspections declined dramatically between fiscal 2003 (7,563 inspections) and 2008 (3,061), a 40 percent drop. This decline corresponds to a drop in the number of inspectors on staff from 11 at the end of fiscal 2003 to just 2 in fiscal 2007. This drop is even greater compared to the number of inspectors (20) employed when the 1998 preliminary evaluation was conducted.

Inspection activity began an upswing in fiscal 2008 and will likely continue to increase as DLLR has recently filled vacancies and has funding available to fill additional positions, for an authorized total of 12 inspectors. In fiscal 2008, eight inspectors worked for both the State Board of Barbers and the Board of Cosmetologists. The board altered the experience requirement for inspectors to allow substitution of industry experience for investigative

experience, which has been successful in attracting more applicants; however, turnover remains a problem. Most of these positions are now contractual (paid up to \$93 per diem), which may account for some of the turnover as some individuals prefer a more reliable source of income in the long term.

The fluctuation in the number of inspectors may translate to a significant level of violations that are not being detected, which raises consumer protection concerns, particularly if unlicensed or poorly trained individuals are providing services. (The majority of complaints to this board relate to operating without a license and sanitation.) As the cosmetology industry is expanding rapidly, a consistent level of inspection support will be needed.

Exhibit 7
State Board of Cosmetologists Inspection Activity
Fiscal 2003-2008



Source: State Board of Cosmetologists

Budget and Personnel

The State Board of Cosmetologists is funded by general fund appropriations. Board revenues generated through license, renewal, and inspection fees as well as fines are credited to the general fund. The board issues licenses for a two-year period. Examinations and inspections occur throughout every year. Current fees charged by the board are shown in **Exhibit 8**. The initial and renewal license fees have not changed since 1997; however, the board raised the exam fees in 2003, following the selection of a new exam vendor.

Exhibit 8
Licensing and Examination Fees

<u>License Type</u>	<u>Original Fee</u>	<u>Renewal Fee</u>	<u>Reinstatement Fee</u>	<u>Examination Fee</u>
Cosmetologist	\$25	\$25	\$25	\$75
Senior Cosmetologist	25	25	25	45
Esthetician	25	25	25	75
Nail Technician	25	25	25	75
Owner – Full-service Salon	50*	50	25	N/A
Owner – Limited-practice Salon	50*	50	25	N/A
Apprentice**	10	10	N/A	N/A

*Owners must also pay a \$150 pre-opening inspection fee.

**Cosmetologist, Esthetician, and Nail Technician

Notes: The board also charges a \$25 fee to certify the licensing, registration, or permit status and qualifications of licensees. Examination fees are paid directly by the applicant to the testing vendor. An examination fee is required to retake a portion of an examination.

Source: Code of Maryland Regulations 09.22.01.13

As shown in **Exhibit 9**, the board's revenues have outpaced the costs attributed to it, with excess revenues of 30 to 40 percent in recent years. The exception is fiscal 2005, when the revenue gap was almost \$205,000 because the department implemented electronic licensing and had higher information technology costs than usual.

In large part, the magnitude of excess revenues has been related to the lower staffing levels in recent years. Staff consists of 2 administrators, 3 clerical positions (including 1 supervisor), and 12 authorized inspectors; 10 of the 17 positions are contractual. The size of the administrative staff has not increased since the 1998 evaluation. The previous preliminary evaluation indicated a significant reduction in board staff from the last full sunset evaluation in 1989; that reduction corresponded with a lower workload due to the narrowing of the board's regulatory authority and the implementation of third-party testing. However, given the projected growth of the cosmetology industry, the staff is not sufficient to administer licensing and process disciplinary action for the number of licensees served.

Exhibit 9
Fiscal History of the State Board of Cosmetologists
Fiscal 2003-2008

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Total Attributable Costs	\$347,552	\$684,087	\$1,086,612	\$735,116	\$696,118	\$692,783
Direct Costs	347,552	513,274	726,149	462,951	399,459	405,246
Indirect Costs	N/A	170,363	360,463	272,165	296,659	287,537
Revenues	830,877	895,460	881,702	935,997	910,388	992,496
Excess Revenue/(Gap)	\$483,325	\$213,373	(\$204,910)	\$200,881	\$214,270	\$299,713

Notes: Indirect costs in fiscal 2004 only reflect cost allocation of services provided to the board by the Division of Occupational and Professional Licensing. Indirect costs from fiscal 2005 through 2008 reflect both divisional cost allocation and other departmental indirect costs.

Source: Department of Labor, Licensing, and Regulation

Recommendation

There is a continued need for regulation of the cosmetology industry in the State to protect the public. DLS also observes that, in the absence of an organized industry group for either this board or the Board of Barbers, a heavier burden is placed on these boards to monitor developments and pending problems in the industry and to educate consumers. For example, while this board should prevent any barriers to entry within its scope of regulatory or statutory authority, it is the industry's responsibility to monitor and address the potential shortage of professionals, evidenced by the decline in apprenticeships and exam failure rate.

The board is meeting its statutory obligations; however, the Department of Legislative Services recommends a full evaluation of the State Board of Cosmetologists to address the following issues:

- Finances and Staffing:** The level of administrative staff is not sufficient to handle licensing, complaints, and other issues for both the barber and cosmetology boards. For example, only one full-time position is handling both apprenticeships and reciprocal licensing. The excess revenues for this board could finance up to 2.5 additional administrative positions. The full evaluation would assess the need for additional staff and the most appropriate types of staff to address any gaps. Other options could be explored as well, such as dedicating a portion of an individual's time to examinations and consumer education. The board receives a fairly high volume of complaints outside its

jurisdiction. The law requiring translation of vital documents does not specify web sites; however, translation of web site information for the core languages would be helpful to licensees and possibly alleviate burden on the staff.

And, as noted in this report, the level of inspection staff for both boards has not been consistent. Due to the inherent risk of infection or skin or hair damage, particularly as cosmetology services become more advanced, a permanent viable approach is needed to ensure that public health is adequately protected. Additional ways to recruit and retain new inspectors need to be explored.

- ***Exam Oversight:*** DLS has concerns about the failure rate on the theory portion of the exam. Previous problems with the prior exam vendor suggest the need for additional oversight and/or contractual safeguards. An additional administrator could be useful in monitoring the exam results and the contract with the exam vendor and providing recommendations to the board.
- ***Disciplinary Actions and Hearings:*** The full evaluation would assess early implementation of the citation program in conjunction with the anticipated upswing in inspections. Additional review of consumer complaint data and related actions would also be undertaken. The unreliability of interpreter services for formal hearings creates unnecessary delay and imposes an undue hardship on licensees. The full evaluation should evaluate whether the penalties in the current contract could be assessed and what options are available to address this problem.
- ***Statutory Barriers and Inconsistencies:*** The full evaluation would also address whether statute should be amended in the following areas:
 - altering the requirements for an executive director to remove the qualification that the individual must be a licensed barber or cosmetologist as no other DLLR board has a similar requirement;
 - removing language requiring that a complaint be signed, which prohibits electronic transmission of complaints – the law for several other boards, including foresters, architects, and interior designers, does not require that a complaint be signed;
 - removing language that requires a \$25 fee for licensure or renewal of a license, which is not consistent with the board’s regulatory authority to set fees; and
 - updating the apprenticeship requirements to be consistent with the regulatory requirements.

**Appendix 1. Written Comments of the
State Board of Cosmetologists**

December 2, 2008

Laura J. McCarty
Legislative Manager
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401-1991

Dear Ms. McCarty:

On behalf of the Department of Labor Licensing and Regulations and the Board of Cosmetologists ("the Board") I wish to acknowledge receipt of your letter and the draft copy of the Preliminary Evaluation of the State Board of Cosmetologists.

My staff has provided your senior legislative analyst, Ann Marie Maloney with factual corrections of the report. My staff and I would like to express our appreciation for the candor and professionalism provided by Ms. Maloney and your office. We look forward to working with the Legislative staff addressing issues that were raised in the report as well as future issues which may arise.

If your office should require additional information or a clarification as to the corrections, please do not hesitate to contact my assistant, Brian Logan at (410)230-6194.

Sincerely,



Robert Wood
Executive Director
Maryland State Board of Cosmetologists

Cc: Secretary Thomas E. Perez
Commissioner Stan Botts
Deputy Commissioner Harry Loleas
Board of Cosmetologists Chairperson Marie Wallace