

Legislative Analysis



LICENSE SANITARIANS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 6205 (Substitute H-1)
Sponsor: Rep. Woodrow Stanley
Committee: Regulatory Reform

First Analysis (8-25-10)

BRIEF SUMMARY: The bill would license, instead of register, sanitarians; provide for licensing fees; create the Michigan Board of Sanitarians; define scope of practice; protect titles; establish minimum standards for licensure; and provide exemptions from licensure.

FISCAL IMPACT: The bill would have fiscal implications, as discussed in greater detail later.

THE APPARENT PROBLEM:

According to the Michigan Environmental Health Association (MEHA), sanitarians are health professionals who protect residents from toxins, pollutants, viruses and bacteria, radiation, and chemical or physical threats present in the environment (nature, homes, buildings, etc.). The MEHA says sanitarians work to ensure that the nation's air quality, food source, rivers and lakes, municipal water supplies, public swimming pools, campgrounds, and homes are safe. The job duties entail more than simple environmental monitoring or reporting; sanitarians assess health threats and develop solutions – with a focus on applying science to protect human health. Drawing from physics, chemistry, biology, geology, human physiology, microbiology, and other sciences, sanitarians address such issues as waste disposal; safety of day care centers; and the public health threat posed by E. Coli, Lyme Disease, MRSA, swine flu (H1N1), noroviruses, radon, West Nile virus, Hantaviruses, bioterrorism, and others. Currently, sanitarians may elect to register under the state health code, but do not need to do so to engage in the profession.

The U.S. Department of Health and Human Services, after completing a study of the public health system in 1988, concluded that the environmental health workforce lacked the capacity to adequately address current and emerging health risks. According to testimony offered by MEHA, the Centers for Disease Control and Prevention (CDC) and the American Public Health Association have also gone on record concurring that the present workforce does not have the competency to meet the current public health needs. Though the National Environmental Health Association (NEHA), whose members include state and local health departments, credentials individuals who complete stringent educational requirements and successfully pass an examination as Registered Environmental Health Specialists or Registered Sanitarians, the REHS/RS credential is voluntary for workers in Michigan. Of the approximately 2,000-3,000 individuals currently working in the state as sanitarians, only about 535 have obtained the REHS/RS credential and state registration.

Many believe that an effective and efficient way to increase the competency of sanitarians in the workplace is to require licensure that includes continuing education requirements. A system of licensure, unlike registration, would define the scope of practice of a sanitarian and require licensure before engaging in the practice. It is believed that this approach will result in workers who have the educational training and assessment ability to competently fulfill the duties of the profession. Currently, 17 other states have a system of licensure.

THE CONTENT OF THE BILL:

House Bill 6205 would amend existing provisions and add several new sections to the Public Health Code (MCL 333.16347 et al.) to require a sanitarian to be licensed (instead of registered), establish minimum standards for licensure as a sanitarian, set license fees, create a professional board, establish the scope of practice for sanitarians, and provide exemptions from licensure.

The definition of "sanitarian" would be revised to mean an individual who has specialized education and experience in the physical, biological, and sanitary sciences as applied to the educational, investigational, and technical duties and who is required to be licensed under Article 15 to engage in the practice of environmental health. (Underlining denotes changes.)

The term "environmental health" would be revised to mean a scientific discipline that addresses the interrelationships between humans and their natural or manmade environment that could adversely impact human health or the ecological balances essential to long-term human health and environmental quality.

Scope of practice

The term "practice of environmental health" would mean the determination of environmental health risk, including, but not limited to, the existence of substances or conditions that are or can be injurious to human health, through the performance of investigations, inspections, monitoring, consulting, or education; and the determination of actions to control, mitigate, or prevent adverse impact on human health by applying regulations, advising, designing, testing, or using any other means to control, mitigate, or prevent adverse impact on human health. The term would include these activities performed or offered to be performed by individuals serving in either or both of the following capacities:

**** The enforcement of the environmental health provisions of the act or any other state or local environmental health law, rule, ordinance, or regulation.**

**** The performance of environmental health work in three or more of the following areas: environmental epidemiology; food protection; wastewater; solid and hazardous waste; potable water (safe to drink); institutions and licensed establishments; vectors, pests, and poisonous plants; swimming pools and recreational facilities; housing;**

hazardous materials; radiation protections; occupational safety and health; air quality and noise; and disaster sanitation and emergency planning.

Licensure and fees

Under Section 18425 of the bill, an individual could not engage in the practice of environmental health without being licensed as a sanitarian. Except for the interim and limited licenses described below, an applicant for licensure would have to provide evidence of the successful completion of NEHA's examination for the credential of REHS/RS or successful completion of a successor examination as determined by the board.

Successful completion of a minimum of 24 hours of continuing education every two years in accordance with NEHA criteria or successor criteria would be necessary for license renewal.

The application processing fee for licensure would be \$25 (increased from \$20); the annual license fee would be \$55 (increased from \$50); the limited license fee would be \$10 per year; and the interim license fee would be \$15 per year. (The fee for a temporary license is not specified.)

Grandfather clause

Under an interim or limited license, Section 18425 of the bill would grandfather-in persons who currently work as sanitarians under the following schedules:

**** Registered individuals.** On or before the expiration of two years after the bill's effective date, the board would have to issue a license to an applicant who was registered under the code or who held the credential of Registered Environmental Health Specialist or Registered Sanitarian (REHS/RS) from the National Environmental Health Association (NEHA) on the day before the bill's effective date. Evidence of the credential of REHS/RS from NEHA would have to be provided.

**** Unregistered individuals.** On or before the expiration of one year after the bill's effective date, the board would have to issue a two-year interim license to an applicant who was not registered but who had performed activities within the practice of environmental health for at least five years as of the day before the bill's effective date.

An applicant who engaged in the practice of environmental health for less than five years prior to the bill's effective date would have to be issued a two-year limited license. An individual holding a limited license could only engage in the practice of environmental health under the supervision of a licensed sanitarian.

An applicant for an interim license or limited license would have to provide evidence of professional activities prior to the bill's effective date as required by the board. An interim or limited license would be valid for two years; either license could be renewed, but an interim or limited license issued under these provisions could not be held for more than a total of six years.

Temporary license and other interim or limited licenses

The board would be authorized to issue a temporary license under Section 16181 of the code. (Section 16181 allows a health board to issue a temporary license, valid for 18 months, to an applicant who has completed all requirements for licensure except examination or other required evaluation procedure. A temporary license must be voided if the licensee fails the examination and cannot be issued to an applicant who previously failed the examination.)

In addition to the interim and limited licenses offered to individuals currently working as sanitarians, Section 18426 would authorize the board to issue a two-year interim license to an applicant who did not meet the requirements of Section 18425 if the board determined the applicant to be competent due to education, training, or experience to safely engage in the practice of environmental health until the applicant can meet those requirements. Restrictions, limitations, or conditions deemed appropriate could be placed by the board on an interim license issued under this provision. The license could be renewed, but not for more than a total of six years.

Likewise, for an applicant who did not meet the requirements of Section 18425, the board could issue a two-year limited license if the applicant met any of the following requirements:

- The individual held a Bachelor's or graduate degree in environmental health from a university accredited by the National Health Science and Protection Accreditation Council.
- The individual successfully completed the requirements for a Bachelor's degree that included an algebra or higher math level course and thirty semester hours or 45 quarter hours in basic sciences.

The holder of a limited license under this provision could apply for a renewal, but the limited license could not be held for more than a total of six years. Further, the licensee could only engage in the practice of environmental health under the supervision of a licensed sanitarian.

Protected titles

Currently, the code reserves the use of the titles "sanitarian," "registered sanitarian," and "R.S.," or similar words, for those registered under Article 15. House Bill 6205 would instead reserve these titles for individuals licensed as sanitarians, and also similar words that indicate or imply licensure. The bill would also protect the titles of "licensed sanitarian," "L.S.," "environmental health specialist," "registered environmental health specialist," "environmental health officer," and "environmental health professional."

Michigan Board of Sanitarians

The bill would create an 11-member board with the responsibility for establishing qualifications for licensure, establishing education and training standards, and taking action regarding disciplinary proceedings. Members, appointed by the governor, would serve three-year terms. Six members would be sanitarians, one would hold a food service

establishment license under the Food Law of 2000, one member would be registered with the Department of Natural Resources and Environment as a water well driller, and three members would represent the general public. The initial terms would be staggered as provided in the bill.

References to the advisory committee, which was abolished by the governor by Executive Order No. 2009 – 12 in May 2009, would be deleted.

Exemptions from licensure as sanitarian

The bill would not prevent the following:

- An individual licensed under any other act or part of the health code from performing activities considered within the practice of environmental health if those activities are within the scope of practice of the individual's license and he or she does not use any of the titles protected by the bill.
- An individual who is not a licensed sanitarian from performing sampling, testing, controlling of vectors, reporting of observations, or other duties that do not require application of specialized knowledge and skills in environmental health if the unlicensed individual is under the supervision of a licensed sanitarian and he or she does not use any of the titles protected by the bill.
- An individual who is not a licensed sanitarian from performing administrative public health duties that do not require application of specialized knowledge and skills in environmental health.

FISCAL INFORMATION:

State Impact: House Bill 6205 (H-1) as reported by the House Committee on Regulatory Reform will have a modest fiscal impact on the Department of Community Health's Bureau of Health Professions to expand the existing sanitarian registration system to a tiered licensing system including a board, violations process, continuing education verification, revision of administrative rules, and other related regulatory functions.

The estimated costs and revenue are dependent upon the number of persons who seek licensure. It is estimated that 2,000-3,000 individuals may meet the licensing requirements of the bill, although currently about 500 persons are registered as sanitarians in the state. If there is little change in the number of licensees, increased revenue may be \$10,000 or less; if 2,000 persons seek full licensure within two years of the bill's effective date, the increased average annual revenue would be approximately \$110,000. Increased revenue will support administrative costs for the licensing process.

Local Impact: There may be cost implications for a local public health department if there is no person currently employed who qualifies for full licensure as a sanitarian.

ARGUMENTS:

For:

There are many threats to the health and safety of the public posed by hazardous materials, environmental toxins, bacterial and viral infections, bioterrorism, and food poisoning, among others. Sanitarians work in public and private agencies, as well as colleges and universities, to combat these threats and keep the public safe. Recent health threats like H1N1, West Nile Virus, and others underscore the need for sanitarians to have the education and training necessary to adequately respond to existing and emerging health threats.

Currently, regulation of sanitarians is by voluntary registration. There are no standards or minimum educational criteria required to practice environmental health in the state. Under the bill, the same national credential granted by the National Environmental Health Association (NEHA) that is required for the voluntary registration would be required for licensure. Anyone whose job duties fell within the sanitarian scope of practice as defined by the bill would have to be licensed. The education, work experience, and examination needed for the national credential will ensure that anyone working as a sanitarian will have the skills and knowledge to perform duties competently. The continuing education requirement, necessary for license renewal, is needed to keep those skills and knowledge current.

Because licensure for sanitarians represents a big step forward for the profession, the bill contains a generous grandfather clause that would enable current members of the workforce to be automatically licensed if they already are registered with the Department of Community Health. Unregistered workers, based on their years of experience, will be eligible for either an interim or limited license. These two-year licenses can be renewed at least twice, thus providing time for licensing requirements to be met. New workers in the field would also be eligible to apply for an 18-month temporary license or a two-year limited or interim license while they work towards the credentialing necessary for full licensure. The bill also exempts a number of activities for which licensure would not be required.

Seventeen other states have acknowledged that sanitarian licensure is good for public health. According to the Michigan Environmental Health Association (MEHA), "professionals who have demonstrated competency in their field are much more likely to practice it at a higher level of quality." Licensure would also provide a level of regulatory oversight and accountability that is lacking under the present system of voluntary registration, as well as protect the profession and the title of sanitarian. Michigan residents deserve no less.

Against:

The bill could result in many individuals losing their employment. As written, registered sanitarians would be grandfathered in (automatic licensure) as long as they applied for a full license within two years of the bill's effective date. However, only about 500 of the approximate 2,000-3,000 individuals working as sanitarians who would fall within the

bill's proposed scope of practice are currently registered. The rest, who initially could continue working under an interim or limited license, would have to successfully pass the credentialing examination offered by the National Environmental Health Association before applying for full licensure – and do so before exhausting the allowable number of renewals for the interim and limited licenses.

This could be problematic because before a person is eligible to apply to take the required examination, he or she must have either a Bachelor's or graduate degree in an accredited environmental health program or a combination of a Bachelor's Degree (with a significant amount of courses in basic sciences and higher math) and two years of work experience. Any current worker who does not already have the degree and experience necessary to sit for the examination would need to return to college, complete a four-year degree with the required course credits, and successfully pass the examination before running out of the allowable renewals for the limited or interim license (a total of six years plus the one-year grace period to apply for the initial license).

All this assumes proximity to an appropriate degree-granting institution and acceptance into the degree program. It also presumes that these employees can continue to work full time and keep up with coursework and family concerns, and can afford the tuition. Plus, it is not clear what happens if a person cannot complete the degree program and pass the credentialing exam before running out of allowable interim or limited license renewals.

The bill does not provide an alternate means for current workers to be grandfathered in, for instance, by demonstrating competency and/or having a prescribed number of years of experience in the field. Instead, with the potential to affect 2,500 workers, the bill could result in a shortage of experienced sanitarians, as many may not complete the credentialing requirements in time to avoid a work interruption or, in light of the difficulties and expenses involved in returning to college, may choose to leave the field.

Against:

Before enactment of a licensure bill for sanitarians, the scope of practice needs to be focused so to capture only those persons whose duties are such that licensure is needed to protect the public. In its current form, the bill simply is too broad. It has the potential to affect around 2,500 unregistered workers, maybe more, whose current job duties would fall within the bill's scope of practice and thus require licensure as a sanitarian. The bill therefore currently assumes that a public health risk exists if these workers are not licensed. However, according to the Department of Community Health, there is no documentation or evidence (such as complaints) that a risk to public safety has occurred or is looming as a result of these persons being unregulated. The fact that over three-quarters of those currently employed in positions that would be captured by the bill are able to do their jobs without posing a health risk to the public, despite lacking the national credential, seems to speak to the lack of a need for the bill at this time.

That is not to say licensing sanitarians is without merit. But – licensure always entails defining a scope of practice, meaning that anyone engaging in activities included in the

scope of practice would have to be licensed. Before that happens, it is imperative that the types of activities that should be limited to licensed sanitarians be identified.

For instance, there may be some functions that currently fall within the bill's scope of practice for which licensure would not be appropriate or needed. Some job duties could be safely performed by unlicensed individuals working under the supervision of a licensed sanitarian. Though the bill creates a limited license category that requires such supervision, the limited license still requires a Bachelor's degree and can only be renewed for a total of six years, after which time full licensure would be required. A scope of practice that is too broad or vague will unfairly impinge on some workers and require a level of training and education beyond what is needed to perform the duties safely and competently.

Further, many state agencies (i.e., the Department of Community Health; Department of Agriculture; Department of Energy, Labor, and Economic Growth; and the Department of Natural Resources and Environment) employ people who would be captured within the bill's scope of practice. These agencies could face significant staff disruptions if employees quit, struggled to work and go to school to obtain the credentials for full licensure, or were laid off because they did not obtain licensure within the bill's time frames. The agencies could also face increases in labor costs if licensing resulted in higher pay levels for those positions.

Against:

The licensing provisions in the bill are confusing and inadequate. For instance, the bill gives responsibility to the newly created board to establish education and training standards, but does not give the board, or the department, authority to promulgate rules necessary to fulfill these tasks. It is through departmental rules that licensing standards are detailed and licensing acts implemented. Also, rules must be in place before licenses can be issued. The rulemaking process is lengthy, as the board members must first be appointed, meetings to develop the new standards need to be held, public hearings on the proposed rules are required, and so on. Typically, this takes anywhere from two to four years to complete. Yet, the bill as written would give the board only one year to be appointed, decide on standards, and issue limited and interim licenses to current workers – well before the rule-making process can be completed.

In addition, the bill places a deadline under which the licenses for current workers must be issued. By comparison, most licensing bills that grandfather-in current workers instead provide a window during which time a current worker may apply for licensure without having to meet the new criteria. If they fail to apply during that window, they must meet the new licensing criteria established for that license.

Because the bill imposes a deadline on when the initial licenses are to be issued, what happens if the board receives an application on the last day? Would it be required to issue the license despite adequate time to investigate the qualifications of the applicant or to do the criminal background check required of all health professionals?

Moreover, the bill requires limited licenses – which require supervision by fully licensed sanitarians – to be issued before the full licenses are issued. Thus, individuals with full licenses would not be available to provide the required supervision.

Also confusing is that there appear to be two different types of interim and limited licenses. The first set (Section 18425) is for sanitarians working on the day before the bill takes effect. It is not as clear to whom the second set, described in Sections 18426 and 18427, pertain. For instance, it isn't clear if these provisions apply only to persons who enter the profession after the bill's effective date. Or, could Sections 18426 and 18427 allow a current worker eligible to obtain an interim or limited license under Section 18425 to then apply for an interim or limited license under either of these provisions, thus allowing the worker more years in which to work in the field without credentialing and full licensure?

In addition, the bill doesn't identify the period of time for which a full license is valid. Would it be renewed annually, or would it be renewed every two years to match the continuing education requirement and length of limited and interim licenses? Multi-year licenses are easier for the professional and less burdensome for departmental staff who must review and approve applications.

POSITIONS:

A representative of the Michigan Restaurant Association testified in support of the bill. (6-30-10)

A representative of the Michigan Environmental Health Association (MEHA) testified in support of the bill. (6-30-10)

A representative of the Michigan Association for Local Public Health testified in support of the bill. (6-30-10)

A representative of the Shiawassee County Board of Health and Friends of the Shiawassee River testified in support of the bill. (6-30-10)

A representative of the Michigan Association of Local Environmental Health Administrators testified in support of the bill. (6-30-10)

The Department of Community Health opposes the bill. (8-17-10)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Susan Frey

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.