
Sunset Review: Evaluation of the Maryland Home Improvement Commission

**Presentation to the
Senate Education, Health, and Environmental Affairs Committee**

**Department of Legislative Services
Office of Policy Analysis
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Sunset Evaluation – Process

- A full evaluation of the Maryland Home Improvement Commission (MHIC) was conducted during 2010 interim
 - The last full evaluation was conducted in 1999
 - Without legislative action, the commission will terminate on October 1, 2012
- Research activities included:
 - reviewing complaint and Guaranty Fund claim files, meeting minutes, budget and financial documents, and other documents from the commission
 - attending commission meetings and hearings
 - interviewing, and meeting extensively with, commission members and staff
 - interviewing Department of Labor, Licensing, and Regulation (DLLR) staff members, including a member of the Attorney General's Office representing the commission
 - accompanying a commission investigator on a site visit to follow up on a homeowner's complaint
 - reviewing State statutes and regulations regarding the home improvement industry
 - researching regulatory practices used in other jurisdictions and interviewing representatives from agencies similar to the commission in other states

Maryland Home Improvement Commission

- Established in 1962 to protect the public in home improvement transactions, the commission:
 - licenses home improvement practitioners
 - investigates complaints, files charges against unlicensed workers, and processes claims against licensed contractors
 - administers the Home Improvement Guaranty Fund for the purpose of providing limited restitution to consumers who file valid claims against home improvement contractors licensed with the commission

Maryland Home Improvement Commission (Cont.)

- Composed of seven members: three industry representatives, three consumer members, and one banking and finance representative
- Commission meetings are held on the first Thursday of each month; commissioners form three-member hearing panels each month to assist in the complaint and Guaranty Fund claim adjudication process

Regulatory Challenges

- Home improvements range in size and complexity
- More than 80 categories of work require licensure
- Testing for professional competency is not feasible
- Unlicensed practice is pervasive; MHIC investigators must follow up on complaints against both licensed and unlicensed contractors
- Lack of resources slows enforcement and adjudication processes

Summary of Findings

- Commission's enforcement ability is hampered by limited resources and the time-consuming nature of investigations
- Consumer protection and commission responsiveness would benefit if measures were in place to limit the number of complaints and Guaranty Fund claims filed
- Several states, including Virginia, have more complex licensing systems for home improvement contractors
- Mold remediation licensure program has been delayed
- Commission revenues do not cover expenditures
- Home Improvement Guaranty Fund balance is declining but is forecasted to stabilize
- More oversight of MHIC activities by the General Assembly may be warranted

Licensure Requirements

- The commission issues licenses to contractors, subcontractors, and salespersons on a staggered, two-year basis
- To obtain a contractor's license an individual must submit the required application, pass the licensing examination, pay the Guaranty Fund assessment and licensing fee, and provide proof of liability insurance
- Applicants must also provide proof of financial solvency based on the scope and size of their business in relation to total assets, liabilities, credit rating and net worth

License Categories

- Contractor
- Subcontractor
 - A subcontractor may only work for a licensed contractor
 - A subcontractor may not enter into contracts with homeowners
- Salespersons
 - A person may only be licensed to represent two licensed contractors in the selling of home improvements

Commission Regulates Nearly 20,000 Licensees

Licensees by Type of License Fiscal 2006-2010

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Contractor	14,219	14,526	14,814	15,979	16,016
Subcontractor	570	586	616	672	668
Salesperson	1,932	1,915	2,043	2,276	2,167
Inactive	562	619	625	723	819
Total	17,283	17,646	18,098	19,650	19,670

Complaints Have Declined Significantly in Recent Years

MHIC Complaint Activity Fiscal 2006-2010

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Unlicensed Contractors	1,353	1,294	856	778	638
Licensed Contractors	1,677	1,612	1,183	1,061	963
Total Complaints	3,030	2,906	2,039	1,839	1,601

Common Types of Complaints

- Poor workmanship
- Abandonment of project
- Unlicensed activity
- Misleading advertisements

Complaint Resolution Process

- Commission investigates complaints regarding both licensed and unlicensed home improvement activity
- Processes differ for investigations of licensed and unlicensed activity (see report, pp. 11 and 12)
- Complaints against unlicensed contractors are time consuming and often involve several court appearances
- Complaints against licensed contractors are often resolved through informal negotiation or the administrative hearing process (*i.e.*, Guaranty Fund claims)

Guaranty Fund: Restitution for a Homeowner's Loss

- The Home Improvement Guaranty Fund compensates homeowners for their “actual loss” due to the actions of home improvement contractors
- Restitution may not be awarded for actions of unlicensed individuals
- Awards from the fund are limited to \$20,000 per claim and \$100,000 total per contractor
- The Guaranty Fund is capitalized by assessments on contractors when licenses are issued and renewed (\$100 at initial licensing/\$150 when license is renewed)

Delays Common in Resolution of Guaranty Fund Claims

- Historically the process has averaged about two years from filing of complaint until an award from Guaranty Fund is made
- Cost containment measures reduced DLLR's funding for legal services, slowing adjudication of claims
 - Commission now refers only five cases per week to the Office of Administrative Hearings (OAH)
 - As of June 2010, there were 187 cases awaiting a hearing
 - MHIC cases delayed 30 to 40 weeks for OAH review

Lack of Funding for Expert Witnesses Also Slows Claim Resolution

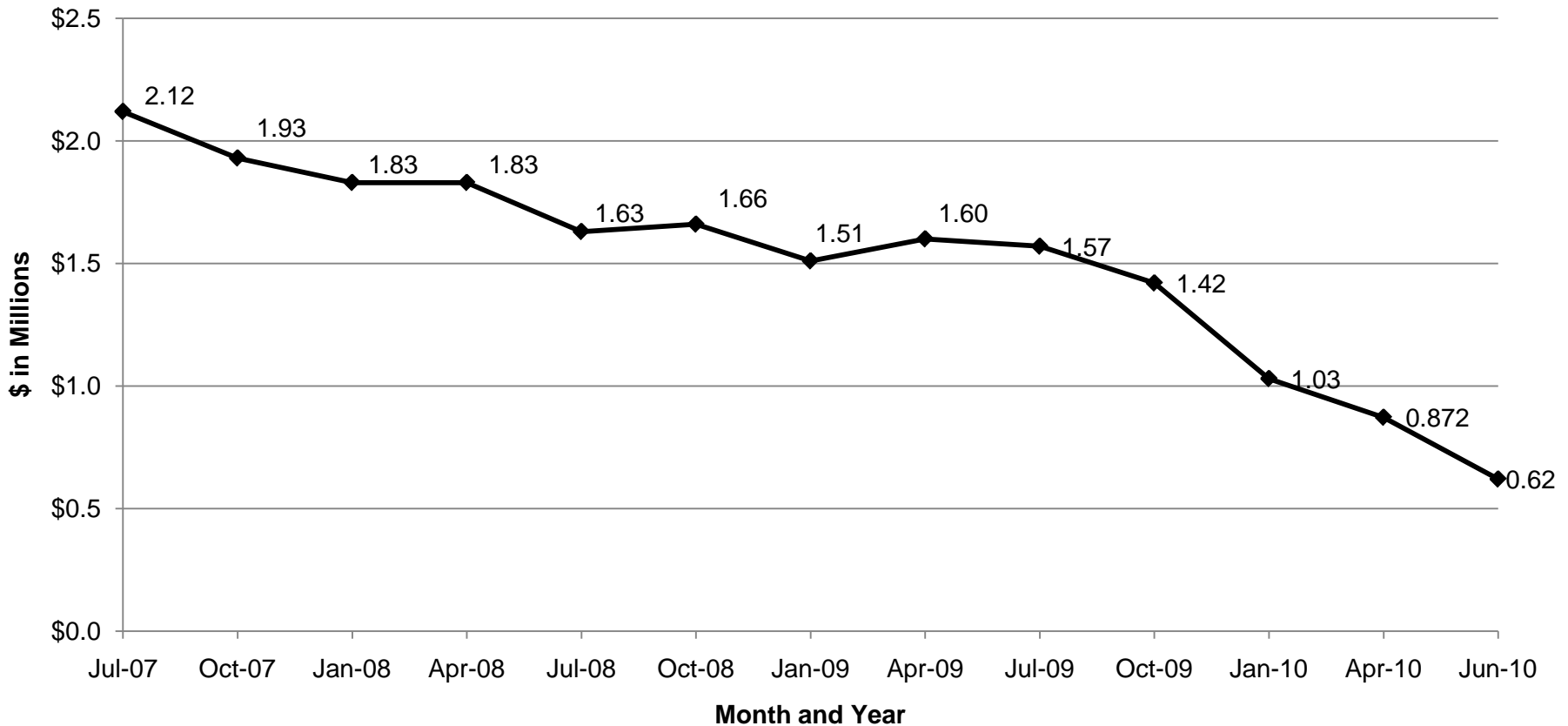
- The commission no longer has funding available to obtain expert witness reports and testimony
- Expert witnesses play a crucial role in the resolution of Guaranty Fund claims by providing an impartial analysis valued by both sides of a dispute

Commission Aims to Resolve More Cases through Mediation

- Many Guaranty Fund claims may be resolved through mediation, particularly in cases involving disputed workmanship or in contractual disputes
- MHIC received a \$50,000 grant to mediate between 100 and 150 pending Guaranty Fund claims within the next year

Guaranty Fund Balance Declining

Guaranty Fund Balances
July 2007 - June 2010



Guaranty Fund Reimbursements: Increased Success in 2010

- In fiscal 2010, the Guaranty Fund awarded about \$1.74 million in claims but received only \$113,495 in reimbursements from contractors
- The large amount of uncollected debt indicates that recovering monies owed by contractors is difficult
- Increased emphasis on debt recovery by MHIC staff netted the Guaranty Fund about \$86,700 between June and October 2010

Commission's Funding Gap Is Expected to Drop Significantly in 2011

MHIC Budget Overview

Fiscal 2008-2011

(\$ in Thousands)

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011*</u>
Revenues	\$1,907	\$2,244	\$1,938	\$2,100
Direct Costs	2,421	2,470	3,177	1,773
Legal Costs	0	444	361	361
O&P Costs	283	234	N/A	N/A
DLLR Indirect	156	161	160	160
Total Costs	2,861	3,309	3,698	2,294
Funding Gap	(\$954)	(\$1,065)	(\$1,760)	(\$194)

* Projected

OAH Expenditures Decrease Significantly in 2011

OAH Expenditures for Commission Cases Fiscal 2007-2011

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
OAH Costs	\$1,237,208	\$1,119,716	\$1,202,378	\$1,664,781	\$323,724

Commission Fees Unchanged Since 1991

Current Commission Licensing Fees

<u>Type</u>	<u>New License</u>	<u>Renewal License</u>
Contractor	\$225	\$225
Guaranty Fund Assessment	<u>100</u>	<u>150</u>
Total	\$325	\$375
Subcontractor	125	125
Salesperson	75	75

Note: Maximum Guaranty Fund assessment set at \$150 per year or \$300 per renewal

Staffing at Minimum Level to Maintain Current Activities

Declines in Commission Staffing Level Fiscal 1995-2010

	<u>FY 1995</u>	<u>FY 2000</u>	<u>FY 2005</u>	<u>FY 2010</u>
Authorized Positions	24	21	20	17

- DLLR advises that the commission can sustain its activities with current staff as long as the volume of complaints does not revert to pre-fiscal 2008 levels

Commission Continues to Serve Important Regulatory Purpose

- The commission:
 - licenses and regulates the home improvement industry to the benefit of both homeowners and contractors
 - helps contain poor industry practices by investigating complaints and assisting in the prosecution of cases brought against home improvement contractors
- **Recommendation 1 (pg. 29-30): Statute should be amended to extend the termination date of the Maryland Home Improvement Commission by 10 years to July 1, 2022. In addition, the commission should report by October 1, 2012, to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee regarding the nonstatutory recommendations contained in the report.**

Mold Remediation Licensing Program Delayed

- The commission has not yet received funding needed to implement mold remediation licensing program required by Chapter 537 of 2008 (Licensure required as of June 1, 2010)
- Mold remediation practitioners currently practice without a license in violation of State law
- **Recommendation 2 (pg. 30): Statute should be amended to allow mold remediation companies to continue to practice without a commission license until July 1, 2013. The program's evaluation and termination dates under the Maryland Program Evaluation Act should be changed to July 1, 2018, and July 1, 2019, respectively.**

Requirements for Home Improvement Contracts Should Be Amended

- State law establishes standards for home improvement contracts that contractors must follow when a contract is written and presented to a homeowner
- **Recommendation 3 (pg. 31): Statute should be amended to require that all home improvement contracts include a performance bond clause that would alert homeowners to the availability of additional protection against a contractor's poor workmanship or abandonment of a project. Statute should also be amended to require a "consumer protection" disclaimer, which would include the commission's website address, on all home improvement contracts.**

Civil Citation Authority May Reduce Minor Violations, Complaints

- MHIC's enforcement authority would benefit from an enhanced and more efficient means of sanctioning contractors who do not comply with home improvement laws or regulations
- Civil citation authority would allow MHIC to swiftly assess fines (likely in the range of \$50 to \$100) for violations in hopes of promoting best industry practices and reducing future complaints
- **Recommendation 4 (pg. 32): The commission should be given statutory authority to issue civil citations, with associated fines, to individuals found to be in violation of State home improvement laws and regulations. Statute should be amended to allow a portion of the civil citation revenue to be deposited in the Guaranty Fund to be used to obtain expert witness reports and testimony in Guaranty Fund cases.**

Inconsistent Criminal Penalties for Licensed and Unlicensed Contractors

- Those who operate *without* a license are subject to misdemeanor penalties, including imprisonment for up to 30 days and a fine of up to \$1,000 for a first offense, and up to a \$5,000 fine and two years imprisonment for a second offense
- Licensees who violate home improvement laws are subject to misdemeanor penalties for such violations, potential fines of up to \$1,000 and imprisonment for up to six months

Criminal Penalties Should Be More Consistent for Licensed and Unlicensed Contractors

Recommendation 5 (pg. 33): Statute should be amended to make the criminal penalties for acting as a home improvement contractor without a license at least as stringent as other penalties that may be assessed to members of the home improvement industry.

Commission Should Transition to a Tiered Licensing System

- Commission license does not distinguish between type or value of work
- There is no limit to the amount of work a home improvement contractor can undertake, regardless of qualifications
- **Recommendation 6 (pp. 33-34): The commission should develop a tiered licensing system to replace the State's current licensing structure. DLLR should propose an alternative licensing structure – including approximate fees and any bonding requirements – with requisite draft legislation to amend statute as necessary so that the new licensing system may be implemented by July 1, 2014.**

Small Increase in Fees Could Eliminate Commission's Funding Gap

- Funding gap will remain despite significant drop in commission costs
- A \$25 fee increase for each license category with a \$20 processing fee for new licensees would increase the commission's revenues to approximate the costs of regulating the industry
- **Recommendation 7 (pg. 35): Statute should be amended to raise the fees charged by the commission for the licensure of contractors, subcontractors, and salespersons by \$25. Statute should be further amended to require applicants for a new license, in each licensing category, to pay a \$20 processing fee when submitting an application for a new license.**

Low Guaranty Fund Balances Should Be Reported to the General Assembly

- The balance of the Home Improvement Guaranty Fund decreased from \$1.57 million in July 2009 to approximately \$620,000 in July 2010
- Continued declines are expected before stabilizing by the end of fiscal 2011; fund balance expected to stay above the statutorily established minimum allowable balance of \$250,000
- **Recommendation 8 (pg. 36): Statute should be amended to require the commission to report to specified committees of the General Assembly if the balance of the Home Improvement Guaranty Fund is projected to fall below \$250,000. The commission's report should include a summary of measures being taken to increase the fund balance and return the fund to a sustainable level.**

Commission Should Report Efforts to Reduce Claim Resolution Delays to the General Assembly

- Guaranty Fund claims are delayed significantly due to the slowed adjudication process
- The commission has undertaken initiatives to reduce the number of claims that must be referred to OAH
- **Recommendation 9 (pg. 36): The commission should report by October 1, 2012, to specified committees of the General Assembly regarding efforts taken to reduce delays in processing Guaranty Fund claims. The report should also include:**
 - an analysis of the effectiveness of initiatives to reduce the number of cases referred to OAH
 - data regarding the number of Guaranty Fund claims settled through mediation
 - an estimate of the impact these measures had on the commission's resources and workload
 - any changes in the number of Guaranty Fund claims filed, and whether or not the average time to resolve Guaranty Fund claims decreased