

October 1, 2012

The Honorable Joan Carter Conway, Chair
Senate Education, Health, and Environmental Affairs Committee
Miller Senate Office Building, 2 East Wing
11 Bladen St.
Annapolis, MD 21401

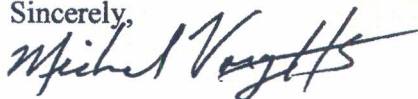
The Honorable Dereck E. Davis, Chairman
House Economic Matters Committee
House Office Building, Room 231
6 Bladen St.
Annapolis, MD 21401

Dear Chair Conway and Chairman Davis:

I herewith transmit on behalf of the Department of Labor, Licensing and Regulation and the Maryland Home Improvement Commission, the follow up report required by Chapter 333 of 2011 and specified in the 2010 *Sunset Review: Evaluation of the Maryland Home Improvement Commission* published October 29, 2010.

Should you or any of your committee members have follow-up questions or concerns regarding the report, please do not hesitate to contact me directly. I can be reached by telephone at (410) 230-6225 or by e-mail at mvorgetts@dllr.state.md.us.

Sincerely,



Michael Vorgetts, Deputy Commissioner

cc: Scott R. Jensen, Interim Secretary
Harry Loleas, Commissioner
John Borz, Chair
Steven Smitson, Executive Director
Jill Porter, Legislative Director
Laura McCarty, Senior Manager
Michael Rubenstein, Principal Policy Analyst
Sara Fidler, Committee Analyst
Laura Atas, Committee Analyst

**FOLLOW-UP REPORT TO THE SENATE EDUCATION, HEALTH, AND
ENVIRONMENTAL AFFAIRS COMMITTEE AND THE HOUSE ECONOMIC
MATTERS COMMITTEE**

Uncodified language included in Chapter 333 of 2011 requires the Maryland Home Improvement Commission, in conjunction with the Department of Labor, Licensing and Regulation (DLLR), to submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2012, to address several issues identified in the 2010 Sunset Evaluation of the Maryland Home Improvement Commission conducted by the Department of Legislative Services. Specifically, Chapter 333 required the Commission and DLLR to report on the following issues:

1. the implementation of multiple licensing levels, in order to (1) encourage ease of access into the industry; (2) facilitate upward mobility for licensees to accept larger projects based on experience and capital; (3) limit the size of projects that inexperienced contractors may accept; (4) reserve use of the Home Improvement Guaranty Fund for claims against new entry-level licensees; and (5) require surety bonds for licensees in the upper tiers;
2. a summary of efforts taken to reduce the investigation and processing times for claims referred to the Office of Administrative Hearings (OAH);
3. the advisability of a requirement for the posting of a performance bond for all licensees, and if advisable, in what amounts, and triggered by what price contracts;
4. a plan for facilitating better communication between licensees and consumers relating to contract performance completion dates;
5. data regarding the number of Guaranty Fund claims settled through mediation; and
6. any changes in the number of Guaranty Fund claims filed and whether or not the average time to resolve Guaranty Fund claims decreased after implementing certain measures.

DLLR and the Commission have submitted the following comments regarding the issues raised in the 2010 sunset evaluation.

1. Implementation of multiple licensing levels.

The Commission developed a proposal for a tiered licensing system in 2011, but took no formal action to implement it because the Commission believed additional time was necessary to study the effects of making such a change. After further consideration, Commission staff, in consultation with the staff of the Division of Occupational and Professional Licensing, determined that the Commission lacked the resources to convert

to a tiered licensing system. Although a tiered licensing system could benefit both licensees and consumers, the Commission concluded that the implementation of a more complex licensing system without adequate staff and financial resources would likely result in a less functional licensing structure than the current system. In addition, the Commission found it was difficult to determine an equitable fee structure that did not overly burden contractors at the lower volume end of the spectrum.

2. Efforts taken to reduce investigation and processing times for claims referred to OAH.

As shown in **Exhibit 1**, the Commission has reduced its median investigative times over the last four fiscal years. The Commission's goal is to complete each home improvement investigation within 90 days. In the last two years the Commission's director has increased his oversight of the investigative work to encourage more efficient investigations. The Commission advises that investigators occasionally delve into matters at the margins of, or outside scope of, a home improvement law violation. The director has encouraged the staff to focus on the primary issues of a complaint in order to resolve the investigation more quickly. Investigation times in fiscal 2011 and 2012 reflect the renewed focus of the investigative staff.

Exhibit 1
Median Home Improvement Commission Investigative Times
Fiscal 2009 – 2012

<u>Fiscal 2009</u>	<u>Fiscal 2010</u>	<u>Fiscal 2011</u>	<u>Fiscal 2012</u>
112	124	92	77

Source: Department of Labor, Licensing and Regulation

Recently the Commission revised its process for notifying a licensee against whom a complaint is filed and now issues a letter that includes complaint-specific information and a summary of disciplinary action available to the Commission should the licensee fail to respond in a timely manner. Formerly, the Commission sent a computer generated letter to the respondent of a complaint with very basic information about the nature of the dispute. The Commission reports that the policy to issue a more personalized message has resulted in greater, and timelier, participation of respondents.

The Commission continues to have a large backlog of Home Improvement Guaranty Fund claims awaiting adjudication at OAH as the Commission is limited to four administrative hearings per week. Commission staff, in consultation with Division and Departmental staff, has developed several proposals that, if implemented, could increase the number of complaints that are handled through alternative dispute resolution and, thus, reduce the backlog of claims awaiting a hearing at OAH.

3. Advisability of performance bond requirements.

The Commission advises that a performance bond requirement for contracts above a certain value could significantly increase overhead costs and raise prices charged to consumers. Thus, the Commission does not support such a requirement. However, the Commission recently adopted regulations that require contractors to inform homeowners of the option to purchase a bond.

4. Facilitation of communication between licensees and consumers.

The Commission has enhanced its website to better inform consumers and licensees of home improvement contract requirements. In addition, the Commission has promoted mediation among homeowners and contractors as a positive way to resolve contractual disputes.

5. Mediation of Guaranty Fund claims.

The Commission continues to strongly support mediation as an effective tool to resolve disputes between homeowners and contractors. **Exhibit 2** shows the number of home improvement complaints resolved through mediation between fiscal 2010 and 2012. In fiscal 2011 the Commission received access to low-cost mediation services and was able to increase the number of complaints resolved in this manner compared to the previous year. Unfortunately, the number of complaints resolved through mediation dropped significantly in fiscal 2012. The primary reason for this decrease is that the Commission lacks the staffing to dedicate time to contacting parties involved in a dispute in effort to convince them to resolve the complaint through mediation. In fiscal 2011 the Commission had more investigators and outside resources. Accordingly it was able to spend more staff time trying to convince complainants and respondents to utilize mediation services.

Exhibit 2
Number of Home Improvement Complaints Resolved Through Mediation
Fiscal 2010- 2012

<u>Fiscal 2010</u>	<u>Fiscal 2011</u>	<u>Fiscal 2012</u>
79	240	123

Source: Department of Labor, Licensing and Regulation

Nonetheless, complaint forms have been updated to include a box that homeowners may check if they are willing to use mediation as a means of complaint resolution. Complaint packages also have information about the benefits of mediation for consumers

and licensees. Due to the protracted backlog of claims awaiting adjudication at OAH, the Commission is in the process of developing a proposal to allow for more claims to be resolved outside of the administrative hearing process. The Commission intends to have the proposal formally implemented by the fall of 2013.

6. Volume of Guaranty Fund claims and efforts to reduce claim processing time.

There are between 200 and 250 claims awaiting adjudication at OAH. As mentioned above, the Commission is restricted to four claims hearing per week due to the Department's current general fund fiscal constraints. Thus, from the time the commission completes its investigation, it takes 18 to 24 months for a claim to be heard at OAH. OAH typically issues a recommended decision three months after the hearing concludes.

Absent increased funding for legal services, the Commission can do little to increase its workflow at OAH. The proposal currently being developed by the Commission is intended to reduce the number of claims that require a hearing at OAH. Nonetheless, there will be a continued need to hold a high volume of OAH hearings and additional funding to expedite claims through the adjudication process is not anticipated.