

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 78

(Chair, Education, Health, and Environmental Affairs
Committee)(By Request - Departmental - Labor,
Licensing and Regulation)

Education, Health, and Environmental Affairs

Economic Matters

Maryland Home Improvement Commission - Guaranty Fund - Claims

This departmental bill increases the maximum claim amount against the Home Improvement Guaranty Fund – from \$5,000 to \$15,000 – for which the Maryland Home Improvement Commission (MHIC) may issue a proposed order without a hearing.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: No effect on State funds. Potential acceleration of nonbudgeted expenditures from and revenues to the Home Improvement Guaranty Fund; however, the amounts are anticipated to be minimal.

Local Effect: None.

Small Business Effect: The Department of Labor, Licensing, and Regulation (DLLR) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: The maximum claim amount against the Home Improvement Guaranty Fund for which MHIC can issue a proposed order is \$5,000.

In general, a person must be licensed by MHIC before acting as a contractor, subcontractor, or salesperson in the State. In addition to other licensing and regulatory duties, the commission maintains the Home Improvement Guaranty Fund to reimburse homeowners from losses that result from an act or omission by a licensed contractor or that licensee's subcontractor, salesperson, or employee.

Awards from the Home Improvement Guaranty Fund are limited to \$20,000 for a single claimant for the acts or omissions of a single contractor. Awards are limited to \$100,000 to all claimants for acts or omissions of a single contractor, unless that contractor reimburses the fund for all or part of the payouts. After the commission pays a claim from the fund, it has a right to reimbursement by the contractor responsible for the act or omission. The contractor is responsible for the amount paid from the fund plus annual interest of at least 10%.

Applicants for a home improvement contractor license from MHIC are required to pay \$100 to the Home Improvement Guaranty Fund. If the commission finds that, because of pending claims, the amount of the fund may fall below \$250,000, the commission must additionally assess each contractor a fee of \$50. The commission may not assess a contractor more than \$150 in a calendar year.

On receipt of a claim against the fund, the commission may elect to (1) set the matter for hearing; (2) dismiss the claim; or (3) for small claims of less than \$5,000, issue a proposed order without a hearing. The claimant or contractor may request a hearing before the commission or a written exception to the proposed order within three weeks of receiving the proposed order – otherwise, a proposed order becomes a final order. Upon receipt of a timely exception, the commission may issue a revised proposed order, set a hearing on the claim, or dismiss the claim. Final decisions of the commission and commission-appointed hearing boards may be appealed to the Office of Administrative Hearings (OAH).

Background: Chapter 272 of 2008 (HB 409) increased – from \$2,500 to \$5,000 – the maximum claim amount against the Home Improvement Guaranty Fund for which MHIC may issue a proposed order without a hearing, which was the first increase in over 15 years.

The Home Improvement Guaranty Fund was established to compensate a homeowner for the “actual loss” created by a licensed home improvement contractor. MHIC investigates each guaranty fund claim it receives to determine its validity. Investigations typically take three to five months to complete. DLLR advises that, if the commission cannot settle the matter through informal means during the investigation, the claim most likely will require a hearing at OAH. Approximately 250 claims are awaiting adjudication at OAH; however, only four claims per week receive a hearing due to the commission's fiscal constraints. Thus, from the time the commission completes its investigation, it takes about two years for a claim to be heard at OAH.

The 2010 sunset review of MHIC by the Department of Legislative Services highlighted the backlog of guaranty fund claims awaiting adjudication and accompanying legislation (Chapter 333 of 2011, HB 362) required a follow-up report from the commission and DLLR by October 1, 2012, on specified factors relating to the backlog. The report notes that the commission continues to have a large backlog of complaints, despite the average investigation time falling from 112 days in fiscal 2009 to 77 days in fiscal 2012.

State Expenditures: To the extent that MHIC is able to review and process additional Home Improvement Guaranty Fund claims as a result of the bill, nonbudgeted expenditures from the fund may accelerate as the backlog of cases awaiting a hearing at OAH is reduced. Nonbudgeted revenues to the fund may also accelerate as the commission is reimbursed by contractors responsible for guaranty fund claims. The amounts are anticipated to be minimal.

The balance of the Home Improvement Guaranty Fund as of November 2012 was \$633,346. DLLR advises that it anticipates the bill likely allows MHIC to address three to five additional cases per month. DLLR advises that, although the bill increases the maximum claim amount for which MHIC may issue a proposed order to \$15,000, the commission does not anticipate resolving many cases for claims over \$10,000. Theoretically this reduces the number of guaranty fund cases heard at OAH; however, DLLR does not anticipate a reduction in claims adjudicated by OAH on a weekly basis because commission resources only allow for four claims to be heard per week. Thus, while the backlog of cases is reduced due to the bill, the current stream of four claim hearings per week at OAH is not affected.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - January 15, 2013
ncs/mcr Revised - Senate Third Reader - March 18, 2013

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Home Improvement Commission – Guaranty Fund Claims

BILL NUMBER: SB 78

PREPARED BY: Department of Labor, Licensing and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.