

Department of Legislative Services
 Maryland General Assembly
 2000 Session

FISCAL NOTE
Revised

Senate Bill 759 (Senator Astle)

Finance

Maryland Home Builders Act

The bill requires a person or firm engaging in the home building business to have a Home Builder's Registration Number which will be issued by the Consumer Protection Division of the Attorney General's Office. The bill establishes a Home Builder's Registration Fund (HBRF), criteria for obtaining and renewing a registration number, and reasons for having an application denied, or a license revoked or suspended.

The bill establishes a complaint process for a home buyer, and increases the blanket bond and letter of credit amounts a builder is required have in the event that the purchaser is entitled to a refund. The bill also details what information must be in a building contract.

The bill is effective January 1, 2001, and sunsets on October 1, 2004.

Fiscal Summary

State Effect: Special fund expenditures could increase by \$141,300 in FY 2001 and special fund revenues would increase by \$21,250. Out-year expenditures reflect a biennial cycle, 2% growth and renewals, and an October 1, 2004 sunset date.

(in dollars)	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
SF Revenues	\$21,250	\$86,700	\$900	\$90,200	\$900
SF Expenditures	141,300	230,400	240,400	250,900	261,900
Net Effect	(\$120,050)	(\$143,700)	(\$239,500)	(\$160,700)	(\$261,000)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: In order for a home builder to obtain a license, the individual or firm must submit a written application which must include:

- the applicant's name, the business' address, and contact information;
- the individual's Social Security number or the firm's federal identification number;
- the names, addresses, and Social Security numbers of all principals (if a firm);
- the dates and results of any previous applications;
- a list of all the states and jurisdictions in which the applicant currently has a license;
- a statement of any outstanding liens and judgements;
- the name and policy number of the firm's general liability insurer;
- the name and address of the firm's new home warranty provider (if applicable); and
- a \$100 non-refundable application fee.

A registration number is valid for two years and a renewal application, which also costs \$100, must be submitted at least 60 days before the current license expires.

All fees under the bill would be paid to a new special fund, the HBRF. The fund may only be used to comply and enforce the provisions of this bill, including hiring staff as needed. The HBRF will be audited by the Office of Legislative Audits.

A home builder is required to post the registration number at each work site. If a builder has multiple jobs at one location, such as a housing development, then the number only needs to be displayed in one central, prominent location. The one exception is if the builder will be the occupant of the home. A registration number would not be required in this case, provided that the builder and the county have a written agreement to this effect. All advertising that a builder does must state or display the home builder's registration number.

An application or renewal may be denied or a license revoked or suspended for the following reasons:

- the applicant or a "principal" has had an application denied before;
- the applicant has engaged in a pattern of poor workmanship as evidenced by:
 - repeated unresolved building code violations
 - repeated unresolved arbitration awards against the applicant
 - an unsatisfied final judgement
- has attempted to use someone else's registration number, provided false information to the Consumer Protection Agency, used an expired registration number, or engaged

- in home building without a registration number;
- the applicant has used or attempted to use a contract that did not contain all the legally required information; and
- if the firm or a principal of the firm has had a license revoked before.

An appeal process is available for those whose applications are denied or licenses are revoked or suspended.

A home buyer must submit a complaint to arbitration first and, if failing there, exhaust any remedies available under the new home warranty the builder may have before the complaint is brought to the Consumer Protection Agency. The exception to this process would be if the defect is unsafe and/or life threatening.

A home builder is required to provide proof that a home buyer's money can be repaid in the event a refund is necessary. This proof can take three different forms: all monies paid by the buyer can be kept in escrow until completion, the home builder can buy a bond, or provide a letter of credit (LOC). The bond or LOC needed is dependant on how much the buyer has deposited. The bill changes the bond and letter of credit amounts as follows:

<u>Amount of Deposit Held</u>	<u>Amount of Bond or LOC Required</u>
\$10,000 - \$100,000	Full amount of deposit
\$100,000 - \$200,000	\$100,000
\$200,000 - \$500,000	\$200,000
Over \$500,000	\$500,000

Under the bill, a building contract must contain the following information: (1) the builder's registration number; (2) a statement that all applicable building codes will be followed; (3) a provision detailing all performance standards to be followed; (4) the purchaser's rights; and (5) an explanation of the arbitration process. This does not apply, however, in Montgomery and Washington counties.

The Consumer Protection Division, in consultation with the building industry, will develop a pamphlet that details the consumer's rights. This pamphlet would be handed out at the time the contract is signed.

The bill requires the Consumer Protection Division of the Attorney General's Office to convene a study panel to review the feasibility of establishing a new home builder guaranty fund. The Attorney General shall submit a report from the panel to the Senate Finance and the House Economic Matters Committees on or by October 1, 2004.

Current Law: Home builders are not required to be registered with the State. Members of this industry are required to have certain licenses and certificates that all businesses are required but there are no provisions or regulatory requirements specific to the home building industry. The State may only bring action against a home builder for unfair or deceptive trade practices under the Consumer Protection Act.

Home buyers settle their complaints through the builders' insurance/new home warranties or through the court system. There are provisions for a home buyer's deposit to be returned. The current blanket bond and/or blanket LOC amounts are as follows:

<u>Amount of Deposit Held</u>	<u>Amount of Penalty Bond or Letter</u>
\$10,000 - \$75,000	Full amount of deposit
\$75,000 - \$200,000	\$75,000
\$200,000 - \$500,000	\$200,000
Over \$500,000	\$500,000

Background: Over the past three years the Consumer Protection Division has received approximately 680 complaints about home builders. Approximately 75% of these have been about construction defects, while the remaining 25% have been about finance practices and contract compliance. While about 40% were successfully mediated, the remainder required court action.

Thirty-eight states have some type of licensing requirements for contractors, remodelers, and specialty contractors. Generally, there are two broad regulatory schemes: (1) a simple registration process; and (2) a full licensing or certification procedure requiring the fulfilment of minimum criteria, determined by examination or proof of experience.

State Fiscal Effect: There are approximately 850 home builders in the State and the bill sets licensing and renewal fees at \$100. The industry estimates that the number of home builders is growing by about 2% a year. In fiscal 2001 the registration fees collected will be pro-rated for a six-month period and total \$21,250. All builders would begin a new two-year cycle in fiscal 2002, in which revenues are estimated to be \$86,700. With the two-year license period, there will be a biennial cycle with the bulk of revenue collected in the even years.

General fund expenditures could increase by an estimated \$141,300 in fiscal 2001, which accounts for the bill's January 1, 2001, effective date. This estimate reflects the cost of hiring an attorney general, an administrator, an investigator, and a secretary to administer the HBRF, handle the application process, and to investigate alleged violations. It includes

salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$100,900
Equipment	20,000
Operating Expenses	<u>20,400</u>
Total FY 2001 State Expenditures	\$141,300

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Small Business Effect: To the extent that a builder may be a small business, there will now be an additional \$100 registration fee every two years. The effect of the increase in the bond/LOC amount is estimated to be minimal.

Additional Information

Prior Introductions: Similar legislation was introduced during the 1999 session as SB 575 and HB 967. SB 575 was not reported from the Senate Finance Committee and HB 967 was not reported from the House Economic Matters Committee. Similar legislation was also introduced during the 1998 session as HB 1015 and received an unfavorable report from the Economic Matters Committee.

Cross File: HB 811 (Delegate Kach, *et al.*) - Economic Matters.

Information Source(s): Attorney General's Office (Consumer Protection Division), Kent County, Prince George's County, Department of Legislative Services (Office of Legislative Audits)

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