

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE

Senate Bill 671 (Senator Kelley)
 Finance

Business Regulation - Home Builders - Home Builder Guaranty Fund

This bill requires the Consumer Protection Division of the Office of the Attorney General to establish a Home Builder Guaranty Fund to be used to compensate consumers for the costs of restoration, repair, replacement, or completion due to unworkmanlike, inadequate, or incomplete construction of a new home. The division must maintain a balance of at least \$1 million in the fund. The bill creates new fees to finance the fund and doubles existing home builder registration and renewal fees. The bill also establishes requirements for filing claims against the fund; notice, mediation, hearings, judicial review, and appeals related to claims and decisions on awards; the limits and priorities for payment of claims; and reimbursement by a registered home builder who is found to be responsible for a claim that is paid.

Fiscal Summary

State Effect: Combined special fund (Home Builder Registration Fund and Home Builder Guaranty Fund) revenue increase of approximately \$1.5 million in FY 2006. Special fund expenditure increase of approximately \$230,500 in FY 2006. Future years reflect staggered fee collections as well as inflation and annualization.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
SF Revenue	\$1,464,100	\$1,982,900	\$1,924,600	\$2,078,200	\$2,055,400
SF Expenditure	230,500	297,100	313,500	331,100	349,900
Net Effect	\$1,233,600	\$1,685,800	\$1,611,100	\$1,747,100	\$1,705,500

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

Local Effect: Potential minimal local expenditure increase as a result of having to collect and remit the \$50 Home Builder Guaranty Fund fee for each permit issued.

Small Business Effect: Potential Meaningful.

Analysis

Bill Summary: The bill doubles the initial home builder registration fee and associated biennial renewal fees, restoring them to pre-July 1, 2004 levels, and uses monies from the existing Home Builder Registration Fund to pay the direct and indirect costs to administer and enforce the new guaranty fund. Accordingly, each initial registration will cost \$600. A builder issued 10 or fewer permits in the calendar year preceding renewal will pay \$300 for renewal registration, and a builder issued 11 or more permits will pay \$600.

A registered home builder must pay a guaranty fund fee of \$50 with each application for a building permit to the county building and permit department. The home builder may pass this fee on to the consumer. On a monthly basis, each county must remit the guaranty fund fees collected to the division. If the guaranty fund fee is not paid, the home builder's registration is suspended until the fee is paid.

A home builder who only holds a registration or license in Montgomery County must pay a \$150 administrative fee to the guaranty fund as well as the fee per permit. Although not subject to registration by the State, a home builder in Montgomery County is subject to all provisions related to the guaranty fund.

The bill limits the time period for bringing a claim to three years after discovery of the loss or damage. Awards from the fund are also limited as follows:

- \$30,000 to one claimant for the actual losses due to a single registered home builder;
- \$200,000 to all claimants for the actual losses due to a single registered home builder, except under specified conditions; and
- no attorney's fees, consequential damages, court costs, interest, personal injury damages, or punitive damages may be awarded.

In addition, claims may not be made by a home builder's spouse, immediate relative, employee or principal, or an immediate relative of an employee or principal.

The division may suspend a home builder's registration until any required reimbursement to the guaranty fund has been made. In Montgomery County, the county may suspend the license or registration of a home builder who has not reimbursed the fund.

Current Law: There is a Home Builder Registration Unit in the Consumer Protection Division of the Attorney General, supported by a special fund (the Home Builder Registration Fund). A home builder must register with the State in order to do business in Maryland. However, a person who erects or constructs new homes solely in Montgomery County is exempt from registration as a home builder with the Consumer Protection Division.

The initial home builder registration fee is \$300. A registration is valid for two years. The home builder registration renewal fee is \$150 for a builder issued 10 or fewer building permits in the calendar year preceding renewal and \$300 for a builder issued 11 or more building permits.

There is no Home Builder Guaranty Fund within the Consumer Protection Division of the Attorney General.

Background: Chapter 522 of 2000 established the Home Builder Registration Unit in the Consumer Protection Division of the Attorney General. Generally, Chapter 522: (1) required a person to register and obtain a home builder's registration number in order to act as a home builder; (2) established the Home Builder Registration Fund to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the unit; (3) established a consumer remedy procedure; (4) required a person who constructs new homes for sale to members of the public to maintain general liability insurance in an amount of at least \$100,000; (5) required that a home builder, that is reinstated after a license revocation, maintain a bond for the use of subcontractors for four years; (6) provided that the unit may deny, suspend, or revoke a registration to an applicant who has engaged in fraudulent and/or deceptive practices or has misused a home builder's registration number; (7) required the unit, in consultation with the home builder industry, to develop a consumer information pamphlet; (8) exempted mortgage lenders who have undertaken to finish a project the builder has abandoned from needing a registration number; (9) provided for the imposition of civil and criminal penalties; (10) detailed what information must be included in a purchase contract, but exempted Montgomery County from this provision; and (11) required the unit to maintain a list of all registrants.

Chapter 430 of 2004 transferred \$500,000 from the Home Builder Registration Fund to the general fund, dropping the fund balance to almost \$1.1 million but leaving sufficient funds to cover the cost of regulation (less than \$300,000 a year). Chapter 430 also halved the initial and renewal registration fees to keep the fund balance from becoming excessively high again.

State Revenues:

Home Builder Guaranty Fund

The bill creates a Home Builder Guaranty Fund that is primarily funded through a \$50 fee per building permit, charged to each home builder. In 2003, approximately 30,000 building permits were issued. Based on these data, the fund would collect approximately \$1.5 million annually, assuming a constant number of permits issued each year, beginning in fiscal 2007. It is assumed that for fiscal 2006, the additional amount of special fund revenue generated would be approximately \$1.125 million, or approximately 75% of the estimated annual total, to account for the bill's October 1 effective date.

In addition, the bill requires specified builders in Montgomery County to pay a \$150 fee into the fund when they register in the county. The Attorney General's Office indicates that there are 389 builders registered to build only in Montgomery County and that they register for a two-year period. As a result, special fund revenues could further increase by approximately \$21,900 in fiscal 2006 and by \$29,200 annually beginning in fiscal 2007.

Total funds for the Home Builder Guaranty Fund could increase by approximately \$1.15 million in fiscal 2006 and by \$1.5 million in fiscal 2007. Future year revenues reflect 3% growth.

Home Builder Registration Fund

The bill also doubles the current home builder registration and renewal fees so that they are set at the amount prior to enactment of Chapter 430 of 2004. These fees are paid into the Home Builder Registration Fund. The Attorney General's Office indicates that the majority of home builders register in odd-numbered years. Based on prior-year collections, it is estimated that special fund revenue would increase by approximately \$317,250 in fiscal 2006 and by approximately \$453,750 in fiscal 2007, as shown in **Exhibit 1**.

Exhibit 1
Projected Home Builder Registration Fund

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Revenue at Current Fee Levels	\$317,250	\$453,750	\$349,500	\$455,850	\$384,450
Revenue with Fee Increases	634,500	907,500	699,000	911,700	768,900
Projected Revenue Increase	\$317,250	\$453,750	\$349,500	\$455,850	\$384,450

Exhibit 2 shows the estimated revenues resulting from the new and increased fees pursuant to the bill.

Exhibit 2					
Projected Special Fund Revenue					
	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Home Builder Guaranty Fund	\$1,146,881	\$1,529,175	\$1,575,050	\$1,622,302	\$1,670,971
Home Builder Registration Fund	317,250	453,750	349,500	455,850	384,450
Total	\$1,464,131	\$1,982,925	\$1,924,550	\$2,078,152	\$2,055,421

State Expenditures: The bill provides that any direct and indirect costs associated with the administration and enforcement of the Home Builder Guaranty Fund is to be paid out of the Home Builder Registration Fund.

Therefore, special fund expenditures for the Consumer Protection Division could increase by an estimated \$230,493 in fiscal 2006, which accounts for the bill’s October 1, 2005 effective date. This estimate reflects the cost of hiring one Assistant Attorney General, one fraud investigator, one office administrator, and one administrative aide to administer the fund and investigate claims. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses

Salaries and Fringe Benefits	\$208,538
Operating Expenses	<u>21,955</u>
Total FY 2006 State Expenditures	\$230,493

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Although expenditures would also increase to compensate consumers for actual losses, claim activity and awards from the Home Builder Guaranty Fund cannot be reliably predicted at this time.

Small Business Effect: Small home builders would incur increased registration and renewal costs as well have to pay the \$50 per building permit fee. The 1997 Economic Census indicates that there are 14,168 construction firms in Maryland with fewer than 50

employees. These firms employ approximately 87,000 people and have a payroll of approximately \$3 million.

Additional Information

Prior Introductions: None.

Cross File: HB 752 (Delegates D. Davis and Love) – Economic Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division),
Office of the Attorney General, Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2005
ncs/ljm

Analysis by: Michael Sanelli

Direct Inquiries to:
(410) 946-5510
(301) 970-5510