

Department of Legislative Services
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FISCAL AND POLICY NOTE
Revised

Senate Bill 187

(Chair, Finance Committee)

Finance

Economic Matters

**State Commission of Real Estate Appraisers and Home Inspectors - Sunset
Extension and Program Evaluation**

This bill extends the termination date for the State Commission of Real Estate Appraisers and Home Inspectors by 10 years to July 1, 2023, and requires an evaluation of the commission by July 1, 2022. The commission is renamed to reflect its new regulatory authority over appraisal management companies (AMCs). The bill includes related reporting requirements.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: Special fund revenues and expenditures for the commission are maintained beyond FY 2013. The FY 2013 budget includes \$448,231 for commission operations. The bill's reporting requirements can be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill generally implements the recommendations developed by the Department of Legislative Services (DLS) during the 2011 sunset evaluation of the commission. An obsolete reporting requirement on the implementation of the home inspector licensing program is repealed. In accordance with the sunset report's recommendations, the commission must submit a report to the Senate Finance Committee

and the House Economic Matters Committee by October 1, 2012, and a second report to the committees by October 1, 2013.

The 2012 report must include a summary of reciprocal licensing agreements that the commission has established with other states, including an evaluation of the licensing standards of other jurisdictions with which Maryland used to share reciprocity, the extent to which those jurisdictions have enhanced licensing requirements, and the methods with which the commission will monitor future changes in other jurisdictions. Additionally, if reciprocity cannot currently be reestablished, the commission must report the reasons.

The 2013 report must be on the following:

- the extent to which a technical review panel has assisted in eliminating the backlog of real estate appraiser complaints, and other metrics relating to complaint resolution;
- an estimate of any additional funding necessary for the technical review panel to conduct reviews of any remaining complaints that have not been resolved in one year;
- the methodology used to develop the fee structure for each profession (real estate appraisers, home inspectors, and AMCs), including the direct and indirect costs attributable to each profession; and
- an evaluation of whether the fees established for each profession or industry have been set so as to minimize cross-subsidization.

Current Law/Background:

Maryland Program Evaluation Act

The State Commission of Real Estate Appraisers and Home Inspectors is 1 of approximately 70 regulatory entities and activities currently subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as “sunset review” as most entities evaluated are also subject to termination, including the commission, which is scheduled to terminate July 1, 2013. A copy of the DLS sunset report on the State Commission of Real Estate Appraisers and Home Inspectors can be found at <http://dls.state.md.us/Content.aspx?page=104>.

The sunset review process begins with a preliminary evaluation conducted by DLS on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation usually is undertaken the following year. The commission underwent a preliminary evaluation in 2009. A full evaluation

was initiated in 2010 but was put on hold due to new federal requirements; the full evaluation was completed in 2011.

State Commission of Real Estate Appraisers and Home Inspectors

Chapter 594 of 1990 established the commission (formerly the State Commission of Real Estate Appraisers) to implement and administer a real estate appraiser licensing and certification program that complies with the federal Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA). Title XI of FIRREA is the legal framework controlling national uniform appraisal standards and state appraiser licensing bodies. The commission is housed within the Department of Labor, Licensing, and Regulation (DLLR). In general, the commission:

- licenses and certifies real estate appraisers;
- licenses home inspectors and registers AMCs;
- enforces applicable professional or industry standards of practice;
- processes and investigates consumer complaints; and
- enforces disciplinary actions taken against real estate appraisers, home inspectors, and AMCs.

Chapter 470 expanded the commission's authority to include the licensing and regulation of home inspectors; however, home inspector licensing did not begin until fiscal 2007 due to lack of funding for the licensing program. Thus, the commission was renamed the State Commission of Real Estate Appraisers and Home Inspectors and tasked with implementing a mandatory licensing program for Maryland home inspectors.

In light of the significant differences between the real estate appraisal and home inspection industries, Chapter 470 required DLLR to study the appropriateness of incorporating oversight of home inspectors within the commission; however, due to the substantial delay in implementation of the home inspector licensing program, the study and report were also delayed. In the 2011 sunset review of the commission, DLS recommended that the General Assembly repeal the requirement for the report, given that the home inspector and real estate appraiser programs have been operating together effectively for several years.

Recent Federal Regulatory Reform and Commission Expansion to Include AMCs

As nationwide home valuations began to dramatically increase in the past decade coincident with a rise in mortgage fraud, federal financial agencies and outside entities with expertise in the residential real estate and mortgage industries began to question the effectiveness of FIRREA and the oversight of the appraisal industry. In May 2009, the Federal Housing Finance Agency instituted a new set of rules known as the Home

Valuation Code of Conduct (HVCC), which essentially established a buffer between real estate appraisers and loan officers by setting guidelines regarding conflicts of interest and the solicitation and selection of appraisers.

In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) of 2010 significantly amended Title XI of FIRREA. It also extended consumer protections under the Truth in Lending Act to cover the appraisal industry and enhanced federal regulatory oversight through existing and new federal agencies. During the 2011 regular session, the General Assembly responded to Dodd-Frank by enacting Chapters 269 and 270 (SB 658/HB 1181), which require AMCs to register with the commission as a condition to offering appraisal management services in Maryland.

Commission Special Fund Status, Fee-setting Authority Expanded

Although recommended for study in the 2009 preliminary evaluation, Chapters 269 and 270 of 2011 established the State Commission of Real Estate Appraisers and Home Inspectors Fund as a special, nonlapsing fund to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the commission. Historically, the commission has only had authority to establish and alter fees for the registration of home inspectors, whereas real estate appraiser fees were set in statute. By contrast, Chapters 269 and 270 provide the commission with the authority to set reasonable fees by regulation for all three of the industries it now oversees. The revenues of the real estate appraiser, home inspector, and AMC industries are credited to the fund beginning in fiscal 2012. Notably, as recommended for study by DLS in the preliminary evaluation, the fees established for each profession must approximate the costs of regulating each profession, rather than allowing one profession's fees to cross-subsidize the operating costs of another.

Current fees set in statute remain in effect until the commission establishes fees by regulation. The commission adopted a fee schedule on August 9, 2011, and is currently in the process of finalizing the regulations. DLS estimates fiscal 2012 revenues of \$160,000, \$130,000, and \$250,000 from appraiser, home inspector, and AMC registration, respectively. Overall, fees for appraisers will increase while fees for inspectors will decrease under the new fee structure.

AMC registration must be renewed annually, and the proposed fees established by the commission through regulation are a \$250 nonrefundable review fee, a \$2,250 original registration fee, and a \$2,500 annual registration renewal fee. DLS estimates 100 original and annually recurring AMC registrations beginning in fiscal 2012, with \$250,000 in annual fee revenue.

Appraisal Complaint Backlog Leads to Noncompliance with Federal Law

The preliminary evaluation revealed significant increases in the volume of appraisal complaints. The complaint volume, coupled with the high percentage of those requiring technical review and the lack of resources to conduct such reviews, raised concerns by the federal Appraisal Subcommittee (ASC) and DLS about substantial delays in the processing of complaints. ASC oversees the real estate appraisal process as it relates to federally related transactions, which includes monitoring and reviewing the state requirements for the certification and licensing of appraisers for FIRREA compliance. A technical review performed by a qualified appraiser is often necessary for complaints due to the complexity of the appraisal and the nature of the complaint. At the time of the preliminary evaluation, the commission did not employ an appraiser to conduct technical reviews. Instead, it relied on a single unpaid volunteer who was unable to provide the hours needed to conduct reviews in a timely manner.

The commission had a small budget of \$2,700 and \$3,800 during fiscal 2006 and 2007, respectively, for the purpose of maintaining a small panel of expert reviewers to provide technical reviews on a contractual basis. However, in fiscal 2008, the commission did not receive panel funding, and in fiscal 2009, the commission's panel appropriation of \$10,000 was eliminated for cost-containment purposes. An appropriation of \$30,000 for a technical review panel was made in fiscal 2012 to address the concern raised in the preliminary evaluation, and this bill's reporting requirements include an evaluation of the panel's effectiveness as recommended in the full evaluation.

Reciprocity Policy

The preliminary evaluation noted the lack of reciprocity as a potential issue for study, referencing findings by ASC compliance reviewers. In November 2010, the compliance review conducted by ASC did not find the commission out of compliance with relevant policy requirements, but it did state that the prolonged suspension of its reciprocity policy remained an area of concern. The commission has attempted to negotiate new reciprocal licensing agreements with the former partnering jurisdictions. However, these attempts have mostly failed due in large part to lower licensing standards for appraisers in neighboring states. Staff has acknowledged the concern of ASC and the issue raised by DLS in its evaluation and indicated that the effort to reinstate reciprocity will continue.

DLLR advises that federal law requires Maryland to recognize many other states' licenses by 2013, and all other states' licenses by 2015.

Additional Information

Prior Introductions: None.

Cross File: HB 341 (Chair, Economic Matters Committee) - Economic Matters.

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

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