

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 6 (Chair, Economic Matters Committee)(By Request -
Departmental - Labor, Licensing and Regulation)
Economic Matters Education, Health, and Environmental Affairs

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 \$7,500 – for which the Maryland Home Improvement Commission (MHIC) may issue a proposed order without a hearing. The bill also increases the length of time – from 30 days to 60 days – that a contractor has to reimburse the fund for claims paid by the fund on the contractor’s behalf.

The bill takes effect July 1, 2014.

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. Extending the reimbursement period from 30 to 60 days is not anticipated to materially affect revenues to the fund.

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 for 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 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%. If, within 30 days after MHIC gives notice, a contractor on whose account a claim was paid does not reimburse the fund in full, MHIC may sue the contractor in a court of competent jurisdiction for the unreimbursed amount.

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: 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. As of January 2014, the backlog of complaints awaiting initial action from the commission was approximately 30.

DLLR advises that, if the commission cannot settle the matter through informal means during its initial investigation, the claim most likely will require a hearing at OAH. Approximately 50 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 can take a substantial amount of time for a claim to be heard at OAH.

For small claims of less than \$5,000 MHIC may issue a proposed order without conducting a formal administrative hearing. Both the contractor and the claimant retain the right to request a formal hearing on the claim if they do not agree with the proposed order. Generally, if either party requests a hearing on the proposed order, then the claim is scheduled for a hearing at OAH. If neither party contests the order, then time and expense is saved for both parties by avoiding a hearing at OAH.

Legislative Action to Reduce Commission Complaint Backlog

Chapter 272 of 2008 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 formal administrative hearing, which was the first increase in more than 15 years.

Chapter 440 of 2013 increased the membership of the commission from seven to nine, thereby allowing the commission to form three hearing boards and to expedite complaint resolutions. However, DLLR advises that the commission has only recently reached full membership and has yet to see the full effect of this change.

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 even under the bill's extended pay-back period. The amounts are anticipated to be minimal.

The balance of the Home Improvement Guaranty Fund as of December 2013 was \$592,755. DLLR advises that it anticipates the bill likely allows MHIC to address three to five additional cases per month. 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, and a proposed order issued by the commission does not preclude a hearing at OAH. Thus, while the backlog of cases awaiting a hearing

with either the commission or with OAH is reduced due to the bill, the current stream of four claim hearings per week at OAH is not affected.

Additional Information

Prior Introductions: SB 78 of 2013, a similar bill, passed the Senate with amendments but received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

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

Fiscal Note History: First Reader - January 22, 2014
mm/mcr Revised - House Third Reader - March 17, 2014

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Home Improvement Commission – Guaranty Fund Claims

BILL NUMBER: HB 6

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