

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 429

(Senator Corderman)

Education, Energy, and the Environment

Economic Matters

**Business Regulation - Home Improvement Commission - Guaranty Fund and
Award Limits**

This bill increases, from \$250,000 to \$1,000,000, the minimum level at which the Maryland Home Improvement Commission (MHIC) must keep the Home Improvement Guaranty Fund. The bill also increases, from \$100,000 to \$250,000, the maximum possible amount that may be awarded by MHIC from the Home Improvement Guaranty Fund to all claimants for acts or omissions of one contractor unless, after MHIC has paid out the \$250,000, the contractor reimburses \$250,000 to the fund. Similar to current requirements, if MHIC finds that, because of pending claims, the amount of the fund may fall below \$1,000,000 (rather than \$250,000 under current statutory requirements), MHIC must assess each contractor a fee, as specified. The bill also makes other technical and conforming changes. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: MHIC can likely implement the bill with existing resources. Nonbudgeted revenues and expenditures for Home Improvement Guaranty Fund increase by an indeterminate, but likely significant, amount, as discussed below.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law:

Home Improvement Guaranty Fund

MHIC must establish a Home Improvement Guaranty Fund that must be kept at a minimum level of \$250,000 to compensate homeowners for an “actual loss” that results from an act or omission by a licensed home improvement contractor or other violations, as discussed in further detail below.

If the balance of the Home Improvement Guaranty Fund is projected to fall below \$250,000, the commission must (1) assess each licensed contractor a fee of \$50 and (2) submit a report to specified committees of the General Assembly. The report must be made within 30 days of any such projection and must detail actions that are being taking to restore the balance of the fund to a sustainable level.

One-half of the fine revenue collected through the commission’s civil citation program is deposited into the general fund of the State, and one-half of such revenue must be deposited into a separate account within the Home Improvement Guaranty Fund and earmarked for expenses related to the use of an expert witness to resolve a disputed Home Improvement Guaranty Fund claim between a homeowner and a contractor licensed by the commission.

Initial Fees and Assessments

A new home improvement licensee must pay \$100 to the Guaranty Fund, and each licensee must pay \$125 upon license renewal (every two years). Awards from the Guaranty Fund are capped at \$30,000 for one claimant or \$100,000 to all claimants for the acts or omissions of a single contractor (unless the contractor reimburses the fund). After MHIC pays a claim from the Guaranty Fund, the contractor against whom the claim was made must reimburse the fund for the full amount of the claim. Revenues and expenditures for the Guaranty Fund are nonbudgeted.

An owner may recover compensation from the Home Improvement Guaranty Fund for an actual loss that results from an act or omission by a licensed contractor or a violation of provisions of State law that require a specified written notice in a home improvement contract, as found by MHIC or a court of competent jurisdiction.

For purposes of recovery from the fund, the act or omission of a licensed contractor includes the act or omission of a subcontractor, salesperson, or employee of the licensed contractor, whether or not an express agency relationship exists.

A claimant must comply with a written agreement to submit a dispute to arbitration before seeking recovery from the fund.

MHIC may deny a claim if it finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim.

MHIC may not award from the fund:

- more than \$30,000 to one claimant for acts or omissions of one contractor (raised from \$20,000 by Chapter 647 of 2022);
- more than \$100,000 to all claimants for acts or omissions of one contractor unless, after MHIC has paid out \$100,000 on account of acts or omissions of the contractor, the contractor reimburses \$100,000 to the fund;
- an amount for attorney fees, consequential damages, court costs, interest, personal injury damages, or punitive damages;
- an amount as a result of a default judgment in court; or
- an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed.

Claims may not be made by specified persons (*e.g.*, a spouse or other immediate relative of the contractor), and an owner may make a claim only if the owner resides in the home or does not own more than three residences or dwelling places.

A claim must be brought against the fund within three years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage.

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 60 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.

Payments from the Fund

MHIC may order payment of a claim against the fund only if:

- the decision or order is final in accordance with specified provisions of State law and all rights of appeal are exhausted; or

- the claimant provides the commission with a certified copy of a final judgment of a court of competent jurisdiction or a final award in arbitration, with all rights of appeal exhausted, in which the court of arbitrator expressly has found on the merits that the claimant is entitled to recover, as specified, and has found the value of the actual loss.

Generally, the commission must pay approved claims in the order submitted. If approved claims against a contractor exceed \$100,000 (\$250,000 under the bill) less the amount of unreimbursed claim payments previously made for the contractor, the commission may pay the approved claims proportionately so that each claimant receives the same percentage payment of the claims. After the fund is reimbursed, the commission must pay unsatisfied approved claims.

If there is not enough money in the fund to pay an approved claim (wholly or partly), the commission must pay the unpaid claim (1) when enough money is deposited into the fund and (2) in the order that each claim was filed with a court of competent jurisdiction or submitted to the commission.

State Fiscal Effect: Although MHIC may have to process larger monetary awards, the operational staff requirements needed to process the larger awards are assumed to remain the same and additional staff and/or supplies are likely unnecessary.

MHIC did not respond to repeated requests for comment on the bill as amended, including for information about the current fund balance or assessments necessary to reach the \$1.0 million threshold. Thus, the Department of Legislative Services (DLS) is unable to provide a precise estimate regarding the fiscal impact of the bill on the Guaranty Fund or related assessments.

Under the bill, the minimum required balance of the Guaranty Fund quadruples; consequently, assessments may need to increase similarly to maintain the same fund reserve needed to meet future expenditures. For a new applicant, the guaranty assessment *may* total as much as \$400; similarly, for a renewal applicant, the assessment *may* total as much as \$500.

DLS advises that it is unclear how significantly the bill may impact the Guaranty Fund over time. Although the bill authorizes higher payouts, it does not require them, and payment amounts are dependent on the size of the claims submitted. Therefore, losses to the fund over time may be mitigated.

Small Business Effect: Small licensed home improvement businesses may be affected to the extent they have to repay greater amounts under the bill in order to compensate the fund for any additional losses resulting from acts or omissions of a contractor, particularly given

the higher minimum fund level required under the bill (*i.e.*, \$1.0 million rather than \$250,000) and the potential larger payouts with the higher fund balance. MHIC licensees may also have to pay higher Guaranty Fund assessments to enable the fund to reach and maintain the higher threshold required by the bill.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2023
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