

Preliminary Evaluation of the Maryland Home Improvement Commission

Recommendation: Full Evaluation

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, 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 typically is undertaken the following year.

The Maryland Home Improvement Commission (MHIC) last underwent a full evaluation as part of sunset review in 1999. The board was authorized for another 10 years, with a termination date of October 1, 2012.

In conducting this preliminary evaluation, DLS staff attended commission meetings and interviewed commission members, commission staff, and the executive director of the Maryland Home Improvement Contractors Association. Staff also reviewed relevant statutes, regulations, and meeting minutes; and analyzed licensing, complaint, and budgetary data.

MHIC reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 5**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in commission comments may not reflect the final version of the report.

The Home Improvement Industry in Maryland

Statute defines home improvement to be the addition to or alteration, repair, or replacement of a building used as a residence. The definition explicitly excludes the construction of a new home or activities that fall under other occupational licensing categories such as plumbing. The definition is also somewhat fluid as standards for homes and their amenities change over time. (The complete statutory definition of home improvement is

included in **Appendix 1.**) Home improvements range in size and complexity and are priced accordingly, with large projects costing in the hundreds of thousands of dollars. The quality of workmanship and overall performance of a home improvement worker can evoke strong emotions on the part of homeowners. Complaints may be aggravated by homeowners' high personal expectations, which may not coincide with minimum industry standards.

The home improvement industry is large and loosely organized, with more than 80 categories of work that require licensure (see Appendix 1). Many contractors do not specialize in specific home improvement trades; instead they provide multiple services. Because home improvement contractors are licensed by the State, these practitioners may be perceived as competent at performing the tasks for which they are hired; however, the required examination for licensure in Maryland does not include a skills-based assessment. Instead the examination tests the applicant's regulatory understanding and business management aptitude. Maryland home improvement law and regulations require at least two years of "trade experience." Related education or business management experience may be substituted for one year of trade experience. Maryland does not have a tiered licensing structure for home improvement contractors based on experience or the value of projects undertaken.

Some states, notably Virginia, take a different regulatory approach. Virginia offers three tiers of licenses, each based on the value of projects undertaken by a contractor. Virginia's Class A license is required for a contractor to take a project valued at \$70,000 or more, or if the total value of the work in a 12-month period is greater than \$500,000. Class B licenses are valid for contractor's that have a single project valued between \$7,500 and \$70,000, or if the total value of work in a 12-month period is between \$150,000 and \$500,000. Class C licenses are valid if a contractor's value of work is less than \$150,000 per year. For a contractor's license, MHIC requires proof of financial solvency and proof of general liability insurance but allows licensees to use their discretion regarding the type, value, and complexity of projects undertaken. Regulation of this industry is difficult because some licensees may contract only for small projects, and some licensees – who work for or own large home improvement businesses – may take on expensive projects like home remodeling or other major renovations. Regardless, a Maryland contractor's license allows an individual to undertake home improvement projects large and small.

The home improvement industry experienced explosive growth over the last decade, which can be attributed in part to the rise in home values. During this time, an "equity boom" prompted many homeowners to borrow heavily against their homes to finance home improvement projects. A result of this growth was many new entrants into the industry, both licensed and unlicensed, with some operating almost entirely out of their work trucks. Many home improvement contractors operate well-capitalized and managed businesses; other contractors, particularly during the current economic downturn, operate on the margins of solvency. Unlicensed contractors, in particular, can enter the home improvement industry with very little capital. For example, with a vehicle, paint brushes, and business cards printed on a home computer, an individual can work as a home improvement contractor. The commission's subcontractor and salesperson licenses do not have a financial solvency requirement.

The Maryland Home Improvement Commission

MHIC was created by Chapter 133 of 1962. The commission is responsible for protecting the public in home improvement transactions. Specifically, the commission:

- licenses home improvement contractors, subcontractors, and salespersons;
- requires an examination for original licensees to test their business acumen;
- processes complaints, files charges against unlicensed workers, and processes claims against licensed contractors; and
- administers the Home Improvement Guaranty Fund for the purpose of providing limited restitution – a maximum of \$20,000 per claim and \$100,000 total per contractor – to consumers who file valid claims against licensed home improvement contractors with the commission.

The commission was placed under the authority of the Department of Labor, Licensing, and Regulation (DLLR, formally the Department of Licensing and Regulation) in 1970. The commission currently operates under the provisions of Title 8 of the Business Regulation Article.

The Governor appoints all seven commission members, with the advice of the Secretary of Labor, Licensing, and Regulation. The Governor may remove a member for misconduct or incompetence. The chairman is appointed by the Governor and serves at the pleasure of the Secretary. The members of the commission include three industry representatives, three consumer representatives, and one banking and finance representative. Commission members serve staggered four-year terms. Current commission members are listed in **Appendix 2**.

The commission has 17 staff to support its operations. Staff responsibilities are divided into three areas: investigations, licensing, and complaint and claims processing. Most staff resources are concentrated in the investigation unit. An executive director and assistant executive director manage the staff. The executive director is appointed by the Secretary of Labor, Licensing, and Regulation and serves at the pleasure of the Secretary. The executive director position was instituted in 1978, and the current executive director has held this position since February 2008. In addition to the executive director and assistant executive director, a licensing supervisor and two clerical staff provide support to the commission's licensees. The commission also receives support from the division's Central Licensing Unit. Currently, the commission has seven full-time investigators; investigators must have knowledge of the laws and regulations governing the work of home improvement contractors, as well as a practical understanding of the work performed by licensees. One investigator is bilingual in English and Spanish.

The Guaranty Fund: Restitution for a Homeowner's Loss

The Home Improvement Guaranty Fund was established to compensate a homeowner for the "actual loss" created by a licensed home improvement contractor. Losses due to actions of

unlicensed individuals are not eligible for restitutions from the Guaranty Fund. “Actual loss” is defined as the costs of restoration, repair, replacement, or completion that arise from an unworkman-like, inadequate, or incomplete home improvement. A homeowner may receive up to \$20,000 in compensation from the Guaranty Fund per claim. If the total amount of awards on behalf of one contractor exceeds \$100,000, then the fund limits the total awards to \$100,000. When numerous claims are approved for the acts or omissions of a contractor and total more than \$100,000, the commission must divide the awards among injured homeowners. If the contractor later reimburses the fund, the commission pays additional amounts to the homeowners in the amount that the contractor has reimbursed the fund until each homeowner is reimbursed in full according to the awards.

Contractors must repay the fund for claims awarded against them within 30 days or their licenses are suspended until the debt is settled. Home improvement law prevents an individual with a suspended license from operating in the industry. However, the commission reports that some individuals continue to operate using the license of a friend or relative. Although this is unlawful, it is difficult to monitor. If the commission is unable to collect a repayment from a contractor, the debt is forwarded to the State’s Central Collection Unit. The commission advises that licensees often do not repay the Guaranty Fund and collection is often unsuccessful.

A claim may not be brought against the Guaranty Fund after three years from the date the homeowner discovered, or should have discovered, the loss or damage caused by the licensed contractor. Actual loss does not include attorney’s fees, personal injury, court costs, interest, consequential damages, or punitive damages. No action can be taken on a Guaranty Fund claim if there is (1) a pending civil lawsuit until there is a final judgment in the civil case or, (2) on a claim involving a contract that contains a mandatory arbitration clause until the dispute has been submitted to arbitration and there is a final arbitration award. The homeowner carries the burden of proof in all Guaranty Fund claims.

The Guaranty Fund is maintained through fees charged to licensed home improvement contractors at the time of their original licensure and when they renew their licenses (subcontractors and salespersons do not pay this fee). Currently, new licensees pay \$100; renewal licensees pay \$75 every two years. The commission may assess each contractor up to \$150 in a calendar year if the fund balance is likely to drop below the statutory minimum of \$250,000.

Major Legislative Changes Since Last Sunset Review

Since the 1999 evaluation numerous statutory changes affecting the commission have been enacted, two of which expanded the commission’s purview. Chapter 537 of 2008 required licensure of firms that provide mold remediation services at residential properties; Chapter 537 goes into effect on June 1, 2010. Chapter 119 of 2008 modified the definition of “home improvement” to include shore erosion control projects on residential property; this change strengthens oversight of qualifying residential projects by requiring that the commission be

notified of alleged violations of the State’s Critical Area Law. **Exhibit 1** summarizes legislative changes affecting the board since the 1999 full evaluation.

Exhibit 1
Major Legislative Changes Since the 1999 Sunset Review

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2000	144	Extends the termination date for the Maryland Home Improvement Commission to October 1, 2012. Increases the amount that an individual may claim from the Home Improvement Guaranty Fund for acts or omissions by one contractor from \$10,000 to \$15,000.
	616	Alters the amount of approved claims against a home improvement contractor that must be submitted before the commission may pay the approved claims proportionately from the Home Improvement Guaranty Fund. The amount is increased from \$50,000 to \$100,000.
2002	176	Requires licensed home improvement contractors to maintain at least \$50,000 of general liability insurance.
2004	244	Requires the commission to provide written notification to an applicant for a license on whether the application has been approved or denied within 30 days of the first meeting of the commission following submission of the completed application.
2006	90	Clarifies that an administrative hearing and adjudication by the commission is not a prerequisite to criminal prosecution of a home improvement contractor, subcontractor, or salesperson for acting without an appropriate license.
2008	119	Modifies the definition of “home improvement” to include a shore erosion control project for a residential property.
	272	Raises the threshold below which the commission may pay a claim against the Home Improvement Guaranty Fund without a hearing from \$2,500 to \$5,000. Raises the limit on an award to a single claimant for an act or omission of a contractor from \$15,000 to \$20,000.
	421	Requires an application form for a home improvement license to include the applicant’s Maryland Department of the Environment lead paint abatement accreditation number and expiration date, if appropriate.
	537	Establishes licensure of mold remediation companies and firms by the commission, effective June 1, 2010. These requirements do not apply to mold remediation on nonresidential property.

Source: Laws of Maryland

Number of Licensees at All-time High, but Recession Depresses Growth

To obtain a contractor's license an individual must submit the required application, pass the licensing examination, pay the \$100 Guaranty Fund assessment, and pay a \$225 licensing fee per place of business. Subcontractors and salespersons must submit applications, pass the licensing exam, and pay a \$125 or \$75 licensing fee, respectively; these individuals are not required to pay a Guarantee Fund assessment. Applicants for a contractor's license must also provide a credit report, proof of \$50,000 in liability insurance, and a personal financial statement. A licensed subcontractor may only work for a licensed contractor; a salesman may not work for more than two contractors at once. License fees were last raised in 1991; the fee for each type of license increased by \$50. Commission fees, when factoring in the Guaranty Fund assessment for a contractor's license, are among the highest of the division's boards and commissions.

Exhibit 2 shows the number of commission licensees for each year between fiscal 2005 and 2009. The number of licensees increased gradually between fiscal 2005 and 2008 but leveled off in fiscal 2009. The licensing trends reflect the growth in the home improvement industry that occurred prior to 2008 and the industry's decline, largely due to the economic recession. The general increase in the number of licensees in recent years may also be attributed, in some part, to the commission's public awareness efforts that encourage unlicensed practitioners to become licensed, and inform consumers of home improvement scams and the benefits of hiring a licensed contractor. A licensee may choose to place a license on inactive status if he or she discontinues home improvement work but plans to resume such work in the future. The commission charges a \$50 fee to shift a license to inactive status; the licensee must renew the license to keep it valid but avoids repeating the application process. The number of licensees on inactive status has increased by nearly 100 each year since 2007 after having remained fairly stable.

Exhibit 2 Number of Licensees by Type of License

	<u>June 2005</u>	<u>June 2006</u>	<u>June 2007</u>	<u>June 2008</u>	<u>June 2009</u>
Contractor	14,219	14,526	14,814	15,979	16,016
Subcontractor	570	586	616	672	668
Salesman	1,932	1,915	2,043	2,276	2,167
Inactive Licenses	562	619	625	723	819
Total Valid Licenses	17,283	17,646	18,098	19,650	19,670

Source: Maryland Home Improvement Commission

Enforcement Activity

Hearing Processes Vary for Complaints Against Licensed and Unlicensed Contractors

There are two distinct processes for complaints against home improvement contractors, one for complaints against licensed contractors and one for complaints against unlicensed contractors. In either instance, the commission investigates the complaint.

For a licensed contractor, if informal attempts at resolution are unsuccessful, attempts to engage the parties in alternative dispute resolution fail, and the contractor refuses to correct the problem, a Guaranty Fund hearing is scheduled. The commission refers all claims against the Guaranty Fund in excess of \$5,000 to the Office of Administrative Hearings (OAH), and an administrative law judge issues a recommended decision within 90 days of the hearing date. The commission panel, which consists of two commission members, meets monthly to review OAH's recommended decisions and small claims against the Guaranty Fund (less than \$5,000). The panel then issues the commission's proposed order. If neither party files an exception, the order becomes final. However, if an exception is filed, the panel conducts an argument hearing and makes a final recommendation, which may be appealed to the circuit court. Homeowners may instead take the case to District Court to seek a monetary award against the contractor, but they cannot file a claim simultaneously for repayment from the Guaranty Fund. The commission advises that its investigators' initial response to a complaint is to resolve the issue by meeting with the aggrieved parties and informally negotiating a resolution, thereby avoiding further commission involvement. Such a resolution is possible in many cases and, for various reasons, not feasible in others.

Complaints filed against unlicensed home improvement contractors also go through an investigative process. After the contractor is determined to be unlicensed, either criminal charges are filed in District Court, regulatory charges are sent to the Office of the Attorney General (OAG) for pre-charge review, or in the case of a first offense, the contractor is given the opportunity to make restitution. Once regulatory charges are reviewed by OAG, heard in OAH, and reviewed by the commission panel, the affected parties are advised of the decision. If an exception is filed, the panel conducts an argument hearing to make a final decision, which may be appealed to the circuit court. Home improvement workers who agree to make restitution are issued a cease and desist letter before the file is closed, pending their licensure.

State law establishes that a contractor, subcontractor, or salesperson who operates without a license is guilty of a misdemeanor and is subject to a fine of \$1,000, imprisonment up to 30 days, or both. On a subsequent conviction, unlicensed practitioners are subject to a fine of \$5,000, imprisonment up to two years, or both. The commission does not estimate the amount of unlicensed work being conducted but advises that unlicensed contractors are pervasive and present licensed contractors with unfair competition. Unlicensed contractors may not be bonded or insured, do not pay licensing or Guaranty Fund fees, and may not have properly classified employees. Because of these and other short cuts, unlicensed contractors have an unfair

advantage when bidding on projects. Meanwhile, licensed contractors pay the costs of the commission, which also investigates complaints against unlicensed contractors.

Under State law, counties and municipalities have limited authority to enforce the licensing requirement. However, local governments may regulate the character, performance, or quality of a home improvement by having a system of inspections and permits. Montgomery County's Office of Consumer Protection has adopted a policy to uphold the licensing requirement. If the county receives a complaint against an unlicensed contractor it can either issue a \$500 civil fine for a deceptive trade practice or work with the commission and local police to file criminal charges. The civil fine carries no jail time and, depending on the circumstances, the District Court judge may reduce or uphold the fine. The county also reviews home improvement advertisements in local papers to check for unlicensed contractors.

The commission advises that licensees often report misleading advertisements, work vehicles without a posted MHIC license number, or suspicious work sites. Often these individuals are disappointed because they expect the commission to be able to immediately arrest the violator and stop that individual from advertising or working without a license. The commission used to employ more investigators, which allowed at least one investigator to dedicate a portion of his or her time to review home improvement advertisements to identify unlicensed contractors or scams. Due to budget and operational constraints, the commission cannot assign investigators to that kind of work.

Complaints Have Declined for Three Consecutive Years

Complaint and claim data between fiscal 2004 and 2009 are provided in **Exhibit 3**. The exhibit also displays the number of contested cases and appeals that arose from those filings. The number decreased from 2,436 in fiscal 2008 to 1,838 in fiscal 2009 – a nearly 25% reduction. Although many factors can influence the number of complaints received by the commission, it is likely that the decline in complaints is related to the reduced activity in the industry due to the recession. Complaints were highest between fiscal 2004 and 2007, when home improvement activity in the State was booming. Complaints against unlicensed contractors also rose between fiscal 2004 and 2007. In fiscal 2005 the proportion of complaints regarding unlicensed practitioners increased to 41% from 36% in the previous year. By fiscal 2006 the proportion had increased to 45%. DLLR advises that during the 1990s, the proportion of complaints against unlicensed contractors was about 25%, but it is not clear why this change has occurred.

Exhibit 3
Complaint Data for the Maryland Home Improvement Commission
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Complaints Received	3,220	3,139	3,030	2,858	2,436	1,838
Complaints Against Unlicensed Contractors	1,171	1,297	1,353	1,248	1,013	778
Percentage of Total Complaints	36%	41%	45%	44%	42%	42%
Guaranty Fund Claims Received	507	518	465	494	402	351
Cases Sent to OAH	311	373	222	304	208	298
Appeals from MHIC to Circuit Court	14	21	22	11	12	17
Appeals from Circuit Court to Court of Special Appeals	1	1	2	2	0	1

Source: Department of Labor, Licensing, and Regulation

Commission Plans Expanded Online Services

Since the last review in 1999, the commission has taken steps to improve its online services. The commission's web page offers a variety of services to licensees, prospective licensees, consumers, and other interested parties. Information is available about the application process, requirements for licensure, fees, and laws and regulations. Consumers can search for active licensees by personal or trade name, city, or zip code; access the commission's complaint form; or review meeting minutes online. Licensees can access a variety of forms and renew their licenses online. In addition, the commission uses its web site to provide access to news stories about issues related to its work, such as home improvement scams, and links to other organizations of interest to consumers or practitioners.

In the coming years, the commission hopes to further improve its online services in several ways. The commission's database software is about 20 years old and will be upgraded in the next 12 to 24 months. Once this upgrade is complete, the commission expects to be able to allow consumers to file complaints online. Although the complaint form is currently available on the web site, complainants must print it, fill it out by hand, and mail it to the commission. The commission has two full-time staff members dedicated to entering complaint data. Online

complaint filing should conserve scarce administrative resources by having the complainants enter the names and contact information for both parties directly into the commission's database and automatically generating the acknowledgement letter to the complainant. This task is currently performed by two complaint secretaries, who also generate the commission's form letters. The commission also expects the upgrade to give complainants the ability to check the status of their complaints online. Currently, the commission receives a high volume of inquiries from individuals who want to know how their complaint is progressing. This requires a significant dedication of staff time that could be reduced with improved online services.

Funding

The Commission Operates with an Annual Funding Gap

The commission is general funded and all revenue collected by the commission is paid into the State's general fund. The commission's primary revenue source is fees paid by individuals obtaining a license or renewing an existing license. Licenses are issued for staggered two-year terms. License fees for the three types of licenses issued by the commission are set in statute: \$225 for a contractor's license (per place of business), \$125 for a subcontractor's license, and \$75 for a salesperson's license. Individuals obtaining or renewing a contractor's license also must pay a Guaranty Fund assessment to ensure the solvency of the fund; currently this assessment is \$100 for a new licensee and \$75 for a renewing licensee. As shown in **Exhibit 4**, the staggered system results in a relatively consistent level of revenue each year.

Commission expenditures are divided into four types: direct costs, indirect division costs, indirect departmental costs, and legal costs. Direct costs are largely staff salaries and contractual expenses necessary to carry out the commission's core functions. Indirect division costs include the costs for services provided to the commission by the Division of Occupational and Professional Licensing within DLLR, including the commission's telephone expenses, the use of the central licensing services, and the salaries of certain division staff, including the commissioner and deputy commissioner. Indirect departmental costs include expenses related to the commission incurred by the Office of the Secretary and the department's budget, personnel, and general services offices. Indirect division and departmental costs are allocated to each board or commission by a formula based on the agency's usage of these services. Finally, legal expenditures reflect the amount of time the department's Assistant Attorneys General devote to work for the commission. The commission incurs litigation costs and expenses related to the need for legal counsel.

DLLR advises that legal expenditures were not calculated for general fund boards and commissions prior to fiscal 2009. In past years, legal expenditures were calculated only for special fund boards in order to accurately account for their costs (as they must be self sufficient). These costs were included to more accurately depict the costs of each board or commission and make the expenditure reports consistent with those of the special fund boards.

Exhibit 4
Fiscal History of the Home Improvement Commission
Fiscal 2004-2009
(\$ in Thousands)

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Revenues	\$1,673	\$2,066	\$1,855	\$2,175	\$1,907	\$2,244
Direct Costs	\$2,606	\$2,493	\$2,155	\$2,701	\$2,421	\$2,470
Legal Expenditures	\$0	\$0	\$0	\$0	\$0	\$444
O&P Cost Allocation	\$187	\$321	\$216	\$314	\$283	\$234
DLLR Indirect Costs	\$0	\$213	\$203	\$166	\$156	\$161
Total Costs	\$2,793	\$3,027	\$2,575	\$3,181	\$2,861	\$3,309
Surplus/Gap	(\$934)	(\$961)	(\$720)	(\$1,006)	(\$954)	(\$1,065)

O&P = Occupational and Professional Licensing

Source: Department of Labor, Licensing, and Regulation, Maryland Home Improvement Commission

The fiscal 2010 budget includes 17 authorized positions for the commission. Over the last 18 months, however, the commission has lost two investigator positions and the complaint supervisor position due to cost containment measures.

As depicted in Exhibit 4, the commission operates with an annual funding gap. The amount of the gap fluctuates but is roughly \$1 million annually. While adding legal expenditures to the calculation gives a more complete accounting, it obscures the fact that, if expenditures were calculated for fiscal 2009 as they had been calculated for years prior, the commission's deficit would have been \$621,212, which is lower than any of the previous six years. At roughly \$444,000, the commission's legal expenditures are the highest of any of the division's boards and commissions.

The annual funding gap can largely be attributed to the commission's expenditures for cases heard by OAH and the associated legal expenditures. The commission's fiscal 2010 allocation for contested cases heard by OAH is about \$1.7 million. It is estimated that about 225 cases will be referred to OAH by the commission, resulting in about 5,400 OAH case hours and roughly 13% of OAH's hearing schedule. The commission advises that the limited resources it has to procure expert witness testimony in contested cases can result in more cases

being sent to OAH or prolonged OAH hearings. Without an expert witness's testimony, a defendant is less likely to settle out of court. Thus, more cases end up at OAH because an expert report is not available. A defendant may also fight a case more fervently if he or she knows no expert witness is involved. An increase in the allocation for expert witness reports could reduce commission costs by decreasing the number of contested cases at OAH or by reducing the time it takes to render a decision.

Home Improvement Guaranty Fund Balance Declining

Exhibit 5 depicts the number of approved Guaranty Fund claims, total damages reported in these claims, and the total amount of settlements annually from fiscal 2004 to 2009. The settlement figures represent the amount of money that homeowners have received directly from contractors through efforts of investigators to negotiate a settlement with the contractors, through informal settlements, or through formal mediation beginning in fiscal 2009, when the commission launched its formal mediation program. They do not include payments from the Guaranty Fund. The commission reports that 166 claims totaling \$1.1 million were paid from the Guaranty Fund in fiscal 2009. It could not provide payout figures for prior fiscal years.

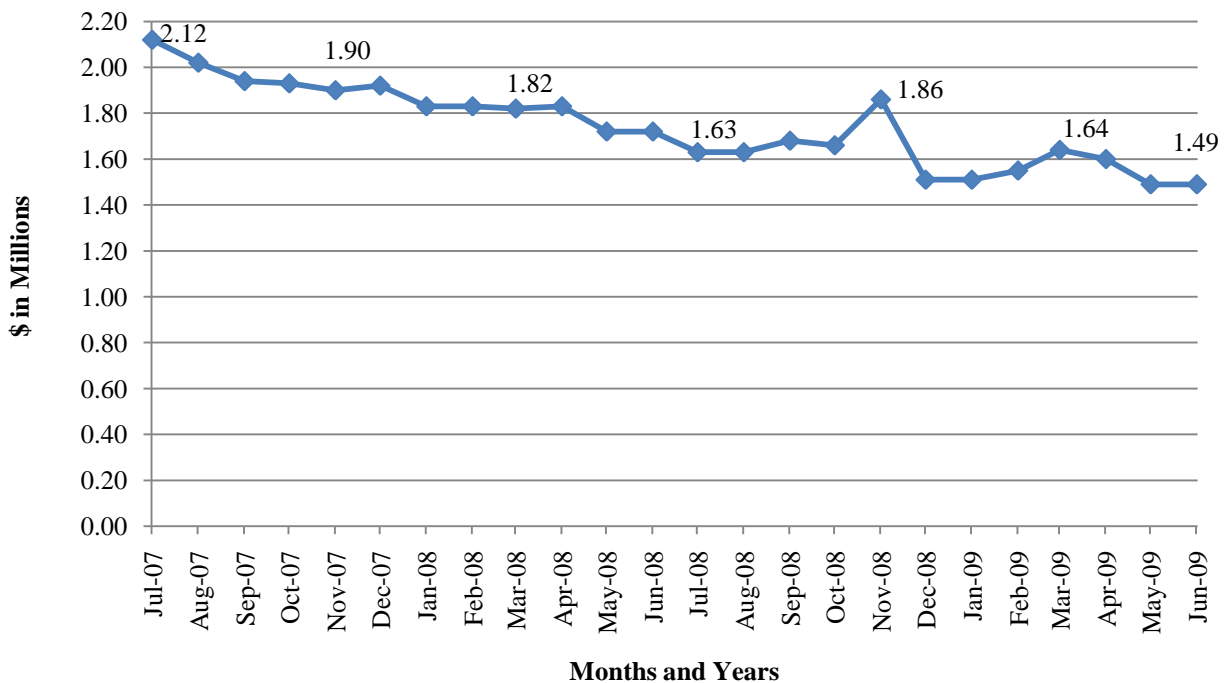
Exhibit 5 Guaranty Fund Claim Data Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Number of Claims	507	518	465	494	402	161
Cases Sent to OAH	311	373	222	304	208	298
Total Amount Included in Claims	\$2,958,595	\$4,621,826	\$4,184,445	\$4,831,618	\$6,027,963	\$5,520,821
Total Amount of Settlements	\$1,009,576	\$1,796,260	\$1,237,104	\$1,665,263	\$1,989,434	\$1,629,394

Source: Maryland Home Improvement Commission

Exhibit 6 displays the monthly Guaranty Fund balances from July 2007 to June 2009. In general, the fund balance has trended downward during this period from a balance of approximately \$2.1 million in July 2007 to approximately \$1.49 million in June 2009. The commission tries to keep the fund balance at a level that is high enough to maintain its solvency, while avoiding charging licensees an unnecessarily high assessment. The decline in the fund balance may be attributed to several factors, including increasing the maximum award from \$15,000 to \$20,000, and having more contractors going defunct, which tends to increase the number of claims and makes reimbursement of the fund more difficult. In 2006, with the balance above \$2 million, the commission lowered the assessment on renewal licensees. Therefore, the decline can also be attributed to a decrease in fund revenue due to the lower assessment on licensees.

Exhibit 6
Guaranty Fund Balances between 2007 and 2009



Source: Maryland Home Improvement Commission

The decline in home values resulting from the economic recession eliminated available credit for many home improvement projects. Similarly, the economic downturn reduced available credit extended to contractors from manufacturers or suppliers. The dearth of home improvement work resulted in some contractors severely underbidding projects, which they were forced to abandon. Ultimately many businesses went bankrupt. The commission advises that

most Guaranty Fund claims are related to abandonment, and roughly 75% of claims are awarded to consumers for companies that are no longer in business.

The commission is concerned that the economic downturn has forced many contractors into insolvency. Many homeowners may seek restitution from the Guaranty Fund, but it is unlikely that the contractors (if they can be located) will reimburse the fund. At the commission's September 2009 business meeting, the executive director advised that 11 claims for the maximum \$100,000 award against a contractor may be paid from the Guaranty Fund in the next two to four years.

The commission acknowledges that the number of impending maximum claims is higher than ever before, but because these claims are paid out incrementally over time, the commission anticipates that the Guaranty Fund will remain sound as long as the number of renewal licensees does not drop significantly. Given the depressed state of the home improvement industry, such a drop may occur.

Due to the industry's unstable condition it is possible that an influx of unexpected claims against the Guaranty Fund could arise. If this happens, the commission may be forced to increase the Guaranty Fund assessment on licensed contractors. Consumers, especially in the current economic climate, are inclined to choose a contractor primarily on price. Competition from unlicensed contractors may prompt legitimate contractors to underbid jobs and end up abandoning them because they are not profitable, resulting in complaints filed with the commission and, eventually, Guaranty Fund claims.

New Commission Initiatives May Increase Efficiency and Reduce Costs

Since February 2008, the commission's new executive director has developed numerous initiatives to reduce, directly or indirectly, the commission's costs and increase its efficiency. Several of these approaches are designed to reduce the commission's OAH expenditures either by reducing the number of cases that require an administrative hearing or by streamlining the hearing process to reduce the length of time a case is active at OAH (OAH fees are determined by the number of hours to resolve cases).

Use of Alternative Dispute Resolution

When a new complaint is filed with the commission, the investigator usually attempts to bring the parties together to resolve the issue without further commission involvement. In some cases, particularly with disputes over workmanship, the investigator may be able to negotiate a satisfactory agreement. Even if the investigator cannot close the case, commission staff may determine that the complaint could be resolved through formal alternative dispute resolution. Over the last 18 months, the commission has partnered with Community Mediation Maryland, which has dedicated five centers to handle commission complaints. These centers are located in Anne Arundel, Montgomery, Prince George's, and Talbot counties and Baltimore City.

Alternative dispute resolution can help the commission process its caseload faster and in a more cost-efficient manner by avoiding delays associated with administrative or civil court proceedings.

Commission Hearings

The commission attempts to adjudicate three to five cases per month on its own. The commission advises that the average OAH case lasts two to three days and costs the commission between \$5,000 and \$10,000. Taking a proactive role in case adjudication may save the commission between \$15,000 and \$50,000 per month in OAH costs.

Cooperation with Local Jurisdictions

The commission has prioritized relationships with local jurisdictions to improve home improvement regulation in the State. Particularly, the commission has worked with local building and permits departments and encouraged them to issue permits for home improvement work to licensed contractors only (licensure status can easily be determined on commission's web site). Unfortunately, unlicensed contractors often convince consumers to obtain permits themselves, which they are allowed to do if they intend to do the work themselves. **Appendix 3**, a press release from the Montgomery County Department of Permitting Services, exemplifies how a local jurisdiction can work with the commission to deter unlicensed activity. Some local governments, such as Montgomery and Howard counties, have consumer protection agencies that work in partnership with the commission to identify and prosecute unlicensed contractors.

The commission has worked with the District Court in jurisdictions that hear many commission cases in an effort to have them bundle home improvement cases, which could significantly reduce the amount of time an investigator spends in court. Currently, an investigator may spend hours in court waiting for one case to be heard. If a docket includes several of an investigator's cases in one day, he or she could spend less time in court and more time working in the field.

Community Interactions and Public Awareness

The commission attempts to inform consumers about the importance of hiring reputable, licensed contractors through press releases to the news media and by posting information on its web site. Through public awareness campaigns the commission can inform the public of home improvement scams and instruct homeowners about the work of the commission, the protection of the Guaranty Fund, and how to ensure a contractor is legitimate (*e.g.*, contacting his or her references, making a copy of his or her license, etc.). Local news outlets occasionally, and usually at their own initiative, report on homeowners who have been taken advantage of by unscrupulous contractors. The commission also sponsors workshops for prospective licensees to help them with the application process and inform them about the commission's work.

To the extent that this information reaches the public, it may reduce the number of complaints the commission receives. While the efforts are useful and should be continued, it is unlikely – given the limited resources the commission has to dedicate to this purpose – that public awareness campaigns would result in a meaningful reduction in the commission’s workload. **Appendix 4** is an example of a public awareness notification released by the commission.

Recommendation

MHIC is responsible for oversight of the home improvement industry in the State to protect consumers from unscrupulous activity and to provide a restitution process for alleged misconduct by a licensee. The commission’s regulatory obligation is significant and staff and commission members work efficiently to execute the agency’s mission. The commission has demonstrated its effectiveness at protecting consumers by investigating thousands of complaints each year, identifying home improvement scams, providing restitution from the Guaranty Fund for poor or inadequate work by licensees, and working with various stakeholders to generally improve the industry in Maryland. The commission’s leadership has developed numerous ideas to improve the agency’s functionality and effectiveness. Nonetheless, the commission is faced with various administrative, statutory, and industry challenges that inhibit its work.

This evaluation has identified issues that should be studied further to ensure that effective regulation continues into the future. **As a result, the Department of Legislative Services recommends that the Maryland Home Improvement Commission undergo a full evaluation.** The full evaluation should evaluate the needs of the commission to effectively regulate the home improvement industry. In particular, the full evaluation should examine:

- the factors contributing to the commission’s persistent annual funding gap;
- the solvency of the Guaranty Fund;
- the impact of changing the commission’s licensing fees, which have not been raised since 1991;
- the commission’s annual OAH costs and measures that could reduce its legal expenses, such as greater funding for expert witness testimony;
- the advantages and disadvantages of instituting a statutory change to require that contractor’s licenses be issued using a tiered format, based on a contractor’s workload volume or size of projects undertaken;

- the pervasiveness of unlicensed contractors, and possible strategies to reduce their activity, such as increasing criminal penalties for unlicensed practice;
- the number and types of complaints and claims processed by the commission and the efficiency of complaint and claim resolution;
- the effectiveness of collection efforts by the State's Central Collection Unit;
- the effect of allowing commission investigators to issue civil citations against licensees for minor regulatory violations; and
- the implementation of the licensure program for individuals in the mold remediation industry, as this is outside of the current purview of the commission.

Appendix 1. Definition of Home Improvement in Maryland

According to § 8-101 (g) of the Business Regulation Article:

“Home Improvement” means: (i) the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence or a structure adjacent to that building; or (ii) an improvement to land adjacent to the building.

(2) “Home improvement” includes: (i) construction, improvement, or replacement, on land adjacent to the building, of a driveway, fall-out shelter, fence, garage, landscaping, deck, pier, porch, or swimming pool; (ii) a shore erosion control project, as defined under § 8-1001 of the Natural Resources Article, for a residential property; (iii) connection, installation, or replacement, in the building or structure, of a dishwasher, disposal, or refrigerator with an icemaker to existing exposed household plumbing lines; (iv) installation, in the building or structure, of an awning, fire alarm, or storm window; and (v) work done on individual condominium units.

(3) “Home improvement” does not include: (i) construction of a new home; (ii) work done to comply with a guarantee of completion for a new building project; (iii) connection, installation, or replacement of an appliance to existing exposed plumbing lines that requires alteration of the plumbing lines; (iv) sale of materials, if the seller does not arrange to perform or does not perform directly or indirectly any work in connection with the installation or application of the materials; (v) work done on apartment buildings that contain four or more single-family units; or (vi) work done on the commonly owned areas of condominiums.

Classifications Usually Required to Be Licensed by MHIC (Not All Inclusive)

1. Acid Cleaning
2. Acoustical Treatment
3. Awnings
4. Bathrooms
5. Bricklaying
6. Bulkheads
7. Cabinet Installation
8. Carpentry
9. Carports
10. Caulking
11. Ceilings
12. Chimneys
13. Club Rooms
14. Decks
15. Doors
16. Driveways
17. Dry Walls
18. Excavating
19. Fallout Shelters
20. Fences
21. Fire Alarm Systems
22. Fire Escapes
23. Fireplaces
24. Flagstone
25. Floor Laying & Refinishing
26. Foundations
27. Garages
28. Gas Burners
29. Glaziers
30. Grating
31. Guards – Door/Window
32. Hot Tubs – Permanent
33. House Movers
34. Insulation
35. Iron, Ornamental
36. Jalousies
37. Kitchen Cabinets
38. Landscaping
39. Linoleum
40. Locks
41. Marble
42. Mirror Installation
43. Painting
44. Paneling
45. Patios
46. Paving
47. Piers
48. Plastering
49. Plastic Screening
50. Pointing
51. Porch Enclosures
52. Radon Gas Mitigation
53. Railings
54. Replacement of appliances
55. Roofing
56. Sandblasting
57. Screens – Doors/Windows
58. Sealants – Deck/Driveway
59. Sheet Metal Works
60. Shower Bath Enclosures
61. Sidewalks
62. Siding
63. Sinks & Counter Tops
64. Skylights
65. Sod (when landscaping)
66. Solar Film on Windows
67. Solar Systems
68. Stained Glass
69. Stairs
70. Stone – Cast
71. Stone Masonry
72. Storm Windows & Doors
73. Stucco
74. Swimming Pools
75. Tile
76. Terrazzo
77. Vanities
78. Wallpapering
79. Wall Coverings
80. Waterproofing
81. Windows

Appendix 2. Commission Membership

Industry Representatives

John Borz, Chairman

Andrew M. Snyder

Joseph A. Tunney

Consumer Members

James O. Chiracol

Rossana T. Marsh

I. Jean White

Banking and Finance Representative

Marilyn Jumalon

Appendix 3. Montgomery County News Release



MONTGOMERY COUNTY, MARYLAND News Release

For Immediate Release: 3/14/2008

County's Permitting Services to Require Licensing Information from Contractors

Beginning April 1, the Department of Permitting Services (DPS) will require all contractors applying for building permits for home improvement projects to provide their valid Maryland Home Improvement Contractor's license number before a building permit may be issued in their name.

A home improvement is any repair, replacement, remodeling or modernization of a residential property. Under Maryland law, a contractor is required to be licensed to perform these jobs. Permitting Services staff will check that the contractor's license is in good standing with the Maryland Home Improvement Commission (MHIC).

In a letter sent last December, the Secretary of the Maryland Department of Labor, Licensing and Regulation (DLLR) urged all counties in the state to take the following two steps to protect consumers from unlicensed home contractors:

- require the contractor to show proof of his/her MHIC license number and verify that the license is valid; and
- educate homeowners about the risks of using unlicensed contractors.

“Consumers lose millions of dollars to unlicensed, fraudulent contractors and we want it known that this type of activity is not tolerated in Montgomery County,” said County Executive Isiah Leggett. “I commend DLLR Secretary Thomas Perez for his efforts to protect consumers from unlicensed home improvement contractors.”

Permitting Services is partnering with the MHIC and the Montgomery County Office of Consumer Protection to protect homeowners from unlicensed contractors who do not follow-through on the agreed upon services. Unlicensed contractors can cost consumers thousands of dollars resulting from poor or incomplete workmanship.

State law protects the consumer by screening contractors for criminal records, requiring them to have trade experience, and testing contractors to ensure they know how to comply with Maryland's home improvement laws. Most importantly, if they suffer a loss when doing business with a **licensed** contractor, consumers can file a claim of up to \$15,000 from the Home Improvement Guaranty Fund.

Montgomery County's Office of Consumer Protection advises consumers never to hire an unlicensed contractor and to follow these steps before contracting for any home improvement work:

1. Contact the Maryland Home Improvement Commission at 410-230-6309 or online at www.dllr.state.md.us to see if a firm is licensed.
2. Check to see if any complaints have been filed against the contractor with the Office of Consumer Protection by calling 240-777-3636 or go to www.montgomerycountymd.gov/consumer. Also check with the Better Business Bureau at 202-393-8000 or at www.dc.bbb.org. Consult CHECKBOOK Magazine at local public libraries or at www.checkbook.org for recommendations regarding good contractors.
3. Check the Maryland Judiciary Case Search at <http://casesearch.courts.state.md.us/inquiry/inquiry-index.jsp> to see if an individual is involved in any legal actions.
4. Beware of any contractors who solicit business by saying that they "have material left over from another job in the area and can give you a real good price." This is a classic sign that the contractor may be unlicensed and just passing through the area.
5. Read OCP's brochure, "Guide to Home Improvements," before selecting a contractor. By law, a contractor must provide a written contract stating the contractor's license number and he/she cannot charge a down payment that exceeds 33 percent of the total job.

For more information, call the Department of Permitting Services at **240-777-6370** or the Office of Consumer Protection at **240-777-3636**.

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Appendix 4. DLLR News Release

DLLR
STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor
ANTHONY G. BROWN, Lt. Governor
THOMAS E. PEREZ, Secretary
Office of Communications

DLLR Home Page • <http://www.dllr.state.md.us>
DLLR E-mail • mddllr@dllr.state.md.us

For Immediate Release

Contact: Dori Berman
Office: 410.230.6012
Cell: 410.207.6693

MHIC Investigation Helps Secure Restitution for Eastern Shore Widow *Unlicensed contractor sentenced to jail time*

BALTIMORE (June 17, 2009) – Department of Labor, Licensing and Regulation Secretary Thomas E. Perez today announced that the diligent work of the Maryland Home Improvement Commission helped secure \$15,225 in restitution for an elderly widow in Worcester County whose home was damaged by an unlicensed contractor.

Stephen Sawka, who was operating without a license and caused \$10,000 in damage to the victim's home, was sentenced in Worcester County Circuit Court to 18 months in jail, with all but 60 days suspended. He was also ordered to pay \$15,225 in restitution to the victim, and to pay \$470 in fines. The original complaint against Sawka was filed with the Home Improvement Commission, which investigated the case and turned it over to the Worcester County State's Attorney for prosecution. This case was Sawka's second conviction for acting without a license, the first occurring in 1997.

"This case should send the message that we will not tolerate unlicensed contractors preying upon unsuspecting Maryland homeowners, particularly the most vulnerable among us," Secretary Perez said. "I applaud the work of the Maryland Home Improvement Commission investigators in this case."

Each year, MHIC investigates approximately 3,000 complaints against licensed and unlicensed contractors. In the last fiscal year, MHIC recovered close to \$2.5 million for homeowners who were cheated by unlicensed contractors. Acting as a contractor, subcontractor, or selling a home improvement without a license is a misdemeanor and, upon conviction, is subject to a fine up to \$1,000 or imprisonment up to 30 days, or both. Each subsequent conviction is subject to a fine up to \$5,000 or imprisonment up to 2 years, or both.

The Maryland Home Improvement Law requires each contractor, subcontractor and salesperson to possess a home improvement license. To inquire about the licensing status of any individual or company, a homeowner may call MHIC at 410-230-6309 or 1-888-218-5925 or visit www.dllr.state.md.us.

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Appendix 5. Written Comments from the Maryland Home Improvement Commission

December 1, 2009

Michael C. Rubenstein
Principal Policy Analyst
Department of Legislative Services
90 State Circle
Annapolis, MD 21401

Dear Mr. Rubenstein:

On behalf of the Department of Labor, Licensing and Regulation and the Maryland Home Improvement Commission ("MHIC"), I wish to thank you for your letter and the draft copy of the Preliminary Evaluation of the MHIC. I appreciate the support of the Department of Legislative Services and the professional manner in which Michael Vorgetts worked with DLLR staff and stakeholders to complete this report.

We agree with the report's recommendations, including the plan for a full evaluation to evaluate the needs of the Commission to effectively regulate the home improvement industry. The Commissioners are closely monitoring the Guaranty Fund in order to ensure that it remains viable during the current economic downturn. We believe a full evaluation will be a valuable tool for the MHIC as it continues to evolve to meet the challenges of regulating the home improvement industry.

I have several points of clarification, which are attached to this letter. While the majority of these clarifications involve relatively minor details, the Commission believes that other points are important tools that may help inform policy decisions. These clarifications will strengthen an already excellent report.

We look forward to working with your staff to complete the upcoming full evaluation to study the recommendations and other issues that may arise. If you have any questions, please contact me at 410-230-6169.

Sincerely,



Steven Smitson

Maryland Home Improvement Commission

cc: Alexander M. Sanchez, Secretary
Stanley J. Botts, Commissioner
Harry Loleas, Deputy Commissioner
John Borz, Chair, Maryland Home Improvement Commission

