

SUNSET REVIEW: EVALUATION OF THE MARYLAND HOME IMPROVEMENT COMMISSION



DEPARTMENT OF LEGISLATIVE SERVICES
OCTOBER 2010

Sunset Review: Evaluation of the Maryland Home Improvement Commission

**Department of Legislative Services
Office of Policy Analysis
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October 2010

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Karl S. Aro
Executive Director

Warren G. Deschenaux
Director

October 29, 2010

The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
Honorable Members of the General Assembly

Ladies and Gentlemen:

The Department of Legislative Services (DLS) has completed its evaluation of the Maryland Home Improvement Commission as required by the Maryland Program Evaluation Act. This evaluation process is more commonly known as “sunset review” because the agencies subject to review are usually subject to termination; typically, legislative action must be taken to reauthorize them. Last year, DLS conducted a preliminary evaluation of the commission. Statute requires the Legislative Policy Committee (LPC) to decide whether an entity should be waived from full evaluation based on the recommendations contained in the preliminary evaluation. LPC determined that the commission should undergo a full evaluation, primarily to examine the commission’s complaint and Guaranty Fund claim resolution processes, the pervasiveness of unlicensed contractors in the home improvement industry, the commission’s licensing procedures and finances, and the solvency of the Home Improvement Guaranty Fund.

This report has been prepared to assist the committees designated to review the commission – the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee – in making their recommendations to the full General Assembly. DLS finds that the commission performs its statutory requirements in a satisfactory manner. Moreover, there is a continued need for regulation of the home improvement industry. Therefore, DLS recommends that legislation be enacted during the 2011 session to extend the commission’s termination date to July 1, 2022. The commission is scheduled to terminate on October 1, 2012.

DLS finds that the commission responds effectively to consumer complaints regarding substandard or unlicensed practice. However, the complaint resolution process is slowed intolerably by two primary factors: (1) a limited number of investigators to handle the high volume of complaints, which are generally complicated and time-consuming in nature; and (2) limited resources for legal services related to the adjudication of claims against the Guaranty Fund. Consequently, we make several recommendations intended to reduce the number of complaints received by the commission and enhance the commission’s efficiency in managing its backlog of complaints and Guaranty Fund claims.

The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
Honorable Members of the General Assembly
October 29, 2010
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To further improve commission operations and to provide increased consumer protection in the home improvement industry, we also make recommendations related to increasing the criminal penalties for unlicensed practice, instituting a tiered licensing system that would limit the size of projects inexperienced contractors may undertake, increasing licensing fees so that the commission may approximate the costs of regulating the industry, and requiring the commission to report to specified committees of the General Assembly if the Guaranty Fund balance is projected to fall below \$250,000. In total, DLS offers nine recommendations; draft legislation to implement the recommended statutory changes is included as an appendix to the report.

We would like to acknowledge the cooperation and assistance provided by the commission members and staff, as well as staff members of the Department of Labor, Licensing, and Regulation's Division of Occupational and Professional Licensing, throughout the review process. The commission was provided a draft copy of the report for factual review and comment prior to its publication; its written comments are included as an appendix to this report.

Sincerely,

Warren G. Deschenaux
Director

WGD/MTV/ncs

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Executive Summary

Pursuant to the Maryland Program Evaluation Act, the Department of Legislative Services (DLS) has evaluated the Maryland Home Improvement Commission, which is scheduled to terminate October 1, 2012. DLS finds that there is continued need for regulation of the home improvement industry by the State but has identified areas in which the commission could enhance its efforts to protect consumers and operate more efficiently.

The commission licenses and regulates the home improvement industry to the benefit of both homeowners and contractors. Commission investigators respond to and attempt to resolve consumer complaints; commission staff serves consumers as well as the industry by raising awareness of fraudulent home improvement practices through media appearances and press releases. The commission also combats fraud and substandard industry practices by assisting in the prosecution of cases brought against unlicensed home improvement contractors.

All of this activity occurs in a resource-scarce environment. The commission is hampered by reduced funding for staffing and enforcement. The commission has benefitted from an unusually low level of complaints over the last three fiscal years, allowing commission investigators to respond more quickly to the needs of aggrieved homeowners. Yet, the adjudication of Home Improvement Guaranty Fund claims has become protracted due to reduced funding for legal services within the Department of Labor, Licensing, and Regulation's (DLLR) Division of Occupational and Professional Licensing. Given these circumstances, it is

imperative that the commission undertake initiatives designed to decrease substandard home improvement practices so that fewer complaints are filed. If complaint activity returns to the levels experienced in the mid-2000s, commission staff will be unable to effectively serve the needs of consumers or contractors.

Recommendation 1: Statute should be amended to extend the termination date of the Maryland Home Improvement Commission by 10 years to July 1, 2022. In addition, the commission should report by October 1, 2012, to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee regarding the nonstatutory recommendations contained in this report.

The commission has not yet received start-up funding to implement the mold remediation licensing program required by Chapter 537 of 2008, which required mold remediation companies to be licensed by June 1, 2010. In order to ensure that members of this industry are not forced to operate without a license, in contradiction of State law, the date by which licenses are required should be changed through legislation to July 1, 2013, so that the commission may implement the program – assuming the necessary start-up money is received.

Recommendation 2: Statute should be amended to allow mold remediation companies to continue to practice without a commission license until July 1, 2013. The program's evaluation and termination dates under the Maryland Program Evaluation Act should be

changed to July 1, 2018, and July 1, 2019, respectively.

Due to the amorphous nature of the home improvement industry, the commission has difficulty informing homeowners about the consumer protection services it offers. The home improvement contract can be an effective way for the commission's message to reach consumers before they enter into an agreement with a contractor. Home improvement contracts should be required to include a disclaimer that describes the commission's purpose and provides the commission's website address.

A home improvement contract should also include a clause that informs consumers of their right to purchase a performance bond as additional insurance against the abandonment or poor performance of a contractor. If more home improvement contracts are insured with performance bonds, the number of Guaranty Fund claims may decrease. The performance bond itself may encourage contractors to complete the work in a timely, satisfactory manner; further, when disputes arise, consumers would seek restitution through the bond company instead of the commission's Guaranty Fund.

Recommendation 3: Statute should be amended to require that all home improvement contracts include a performance bond clause that would alert homeowners to the availability of additional protection against a contractor's poor workmanship or abandonment of a project. Statute should also be amended to require a "consumer protection" disclaimer, which would include the commission's website address, on all home improvement contracts.

The authority to issue civil citations would allow the commission to fine individuals who do not comply with home improvement laws or regulations. If given such authority, the commission could limit violations that often lead to complaints or claims being filed; further, the commission could use the fines as leverage to bring violators into compliance – particularly in the case of unlicensed contractors. A portion of the revenue raised could be deposited into the Guaranty Fund and earmarked for obtaining expert witnesses for disputes that require their input. Funding for that purpose has been eliminated from the commission's budget due to cost containment measures.

Recommendation 4: Statute should be amended to grant the commission the authority to issue civil citations, with associated fines, to individuals found to be in violation of specified State home improvement laws and regulations. DLLR should design and implement the civil citation program by adopting a schedule of fines enumerated in the Code of Maryland Regulations. Finally, statute should be amended to allow a portion of the revenue generated to be deposited in the Guaranty Fund; these monies should be available to obtain expert witness reports and testimony when the commission determines such assistance is needed to resolve a Guaranty Fund claim.

Current law subjects licensed contractors who violate home improvement law to more severe punishment for a first offense than persons who operate without a license.

Recommendation 5: Statute should be amended to make the criminal penalties for acting as a home improvement

contractor without a license at least as stringent as other penalties that may be assessed to members of the home improvement industry.

Home improvement projects range from small repairs and handiwork to large-scale room additions and renovations; however, nothing in law limits the size of a project that a contractor may undertake. Thus, a contractor can agree to take on large projects, such as building a new room, installing or renovating a bathroom, or repairing a roof, with limited oversight as to whether the contractor is properly experienced, equipped, and capitalized to complete such a project.

A tiered licensing system, such as the system used in Virginia can reduce the incidence of contractors engaging in projects they are not able to complete. A tiered structure restricts a contractor to performing work for which the contractor has the experience and financial resources.

Recommendation 6: The commission should develop a tiered licensing system to replace the State's current licensing structure. Such a system should limit the size of projects that new or inexperienced contractors may undertake while encouraging ease of access into the industry and upward mobility to accept larger projects as a licensee becomes more experienced and better capitalized. DLLR should develop a proposed system and submit a report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2012, outlining the alternative licensing structure – including approximate fees and any bonding

requirements – with requisite draft legislation to amend statute as necessary so that the new licensing system may be implemented by July 1, 2014.

The commission's funding gap is expected to decrease significantly between fiscal 2010 and 2011 due to the reduction in commission expenditures for administrative hearings. DLS estimates that a \$25 fee increase for each license category and the institution of a \$20 processing fee for new licensees would increase the commission's revenues sufficiently to approximate the costs of regulating the industry. DLS estimates that the proposed fee increase would raise commission revenues by approximately \$282,500 annually, based on average rates of renewal and new license applications.

Recommendation 7: Statute should be amended to raise the fees charged by the commission for the licensure of contractors, subcontractors, and salespersons by \$25. Statute should be further amended to require applicants for a new license, in each licensing category, to pay a \$20 processing fee when submitting an application for a new license.

The balance of the Guaranty Fund decreased from \$1.57 million in July 2009 to approximately \$620,000 in July 2010. A recent analysis of the fund's expected claim activity indicates that the fund balance will remain above the statutory threshold of \$250,000 through fiscal 2011. However, the commission should notify specified committees of the General Assembly if the balance of the fund is projected to fall below \$250,000.

Recommendation 8: Statute should be amended to require the commission to report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee if the balance of the Home Improvement Guaranty Fund is projected to fall below \$250,000. The commission's report should include a summary of measures being taken to increase the fund balance and return the fund to a sustainable level.

The average time from the receipt of a Guaranty Fund claim until the claim is ready to be referred to the Office of Administrative Hearings (OAH) is about 18 months. The commission acknowledges that, in most cases, claims should be prepared for adjudication in a shorter length of time. Due to cuts in legal services, claims move more slowly through OAH. The commission has undertaken several initiatives designed to reduce the number of claims that must be referred to OAH. For instance, the commission will attempt to resolve between 100 and 150 claims through mediation over the next year, in lieu of adjudication at OAH. An increase in the number of cases settled through mediation should reduce the backlog of cases referred to OAH and decrease adjudication delays.

Recommendation 9: The commission should submit a report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2012, which summarizes efforts taken to reduce the length of time it takes for a Guaranty Fund claim to be investigated and processed by the commission and referred to OAH. The report should also include (1) an analysis of the effectiveness of initiatives to reduce the number of cases referred to OAH; (2) data regarding the number of Guaranty Fund claims settled through mediation; and (3) an estimate of the impact these measures had on the commission's resources and workload; in particular the commission should report any changes in the number of Guaranty Fund claims filed, and whether or not the average time to resolve Guaranty Fund claims decreased.

Chapter 1. Introduction

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 commission was authorized for another 10 years, with a termination date of October 1, 2012. In 2009, a preliminary evaluation determined that issues relating to the commission were significant enough to require a full evaluation during the 2010 interim.

Home Improvement Industry Is Large and Unorganized

Statute defines home improvement in Maryland to be “the addition to or alteration, repair, or replacement of a building used as a residence.” The definition 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 a homeowner.

Because home improvement contractors are licensed by the State, they 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. Trade experience can be gained through employment with a licensed contractor as a subcontractor or worker under the contractor’s direction and control.

Regulation of this industry is difficult because the nature and size of home improvement projects, and the skills necessary to complete them, vary widely. The home improvement industry includes 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. Regardless, a Maryland contractor's license allows an individual to undertake home improvement projects large and small.

Moreover, the home improvement industry is large and loosely organized. Membership in the Maryland Improvement Contractors Association (MICA) has been shrinking, and the group has its lowest membership level in decades. Therefore, the association has limited resources with which to advocate for the industry. MICA advises that the lack of membership reflects the industry's organization and that home improvement contractors do not see a benefit in being represented by an industry association.

Industry Grew in Mid-2000s; Slowed in Recent Years

The home improvement industry experienced rapid 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, tools, and business cards printed on a home computer, an individual can work as a home improvement contractor.

The amount of home improvement work being done in the State has slowed in recent years due to the economic recession that began in 2008. Nevertheless, the industry is pervasive in the State, and homeowners commonly retain home improvement contractors to make improvements or repairs to their homes. The commission advises that homeowners may knowingly engage with an unlicensed person because that person may offer a low price and/or because the person is a friend or relative or has been recommended by a friend or relative. Some homeowners are not aware of the State's licensure requirement for home improvement contractors or may be under the impression that their contractor is licensed. However, many homeowners intentionally contract with unlicensed persons in order to pay less for their home improvement projects.

The Maryland Home Improvement Commission

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

- licenses home improvement contractors, subcontractors, and salespersons;
- administers an examination that tests the applicant’s knowledge of specific laws and regulations related to operating a home improvement business;
- investigates 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 home improvement contractors licensed with the commission.

The commission was placed under the authority of the Department of Labor, Licensing, and Regulation (DLLR, formerly the Department of Licensing and Regulation) in 1970. The Guaranty Fund was established in 1985. 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 with the advice 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**.

Since the last full evaluation of the commission, which was conducted in 1999, numerous statutory changes affecting the commission have been enacted. Chapter 144 of 2000 increased the amount that an individual may claim from the Guaranty Fund for the acts or omissions of a licensed contractor from \$10,000 to \$15,000; Chapter 272 of 2008 further increased the limit from \$15,000 to \$20,000. Three other legislative changes were enacted in 2008, 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 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 1.1** summarizes legislative changes affecting the commission since the 1999 full evaluation.

Exhibit 1.1
Major Legislative Changes Since the 1999 Full Evaluation

<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.
2010	671	Prohibits the commission from making a Guaranty Fund award in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed.

Source: Laws of Maryland

Research Activities

To complete this evaluation, DLS staff conducted a variety of activities involving data collection and analysis, including:

- reviewing complaint and Guaranty Fund claim files, meeting minutes, budget and financial documents, and other documents from the commission;
- interviewing, and meeting extensively with, commission members and staff;
- interviewing DLLR staff members, including a member of the Attorney General’s Office representing the commission;
- attending commission meeting and hearings;
- accompanying a commission investigator on a site visit to follow up on a homeowner’s complaint;
- reviewing State statutes and regulations regarding the home improvement industry;
- researching regulatory practices used in other jurisdictions and interviewing representatives from agencies similar to the commission in other states; and
- interviewing representatives of an industry association.

Report Organization

This chapter provides a description of the Maryland Home Improvement Commission, summarizes the legislative changes that have impacted the commission over the past 10 years, describes the sunset review process, and lists the research activities undertaken to complete the evaluation. **Chapter 2** provides an overview of the home improvement industry and reviews the commission’s core functions: licensing, administration of the Home Improvement Guaranty Fund, and complaint resolution procedures and enforcement activity. **Chapter 3** examines the commission’s resources, including its finances, staffing, licensing fees, and use of technology. **Chapter 4** concludes the report with the recommendations of the Department of Legislative Services.

As supplements to the report, five appendices are included. **Appendix 1** includes the statutory definition of home improvement and examples of the categories of work that constitute home improvement projects. **Appendix 2** contains a roster of the current members of the commission. **Appendix 3** includes a description of the requirements established by State statute for home improvement contracts. **Appendix 4** contains draft legislation to implement the statutory recommendations contained in this report. The Maryland Home Improvement Commission reviewed a draft of the report and provided the written comments included as **Appendix 5**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in commission comments may not reflect this published version of the report.

Chapter 2. Commission Activities and Core Functions

Commission Regulates Nearly 20,000 Licensees

The Maryland Home Improvement Commission issues licenses to contractors, subcontractors, and salespersons on a staggered, biennial basis. To obtain a contractor's license an individual must submit the required application, pass the licensing examination, pay the Guaranty Fund assessment, provide proof of \$50,000 in liability insurance, and pay the commission's licensing fee. Applicants for a contractor's license must also submit evidence of financial solvency, including a credit report and a personal financial statement. If the commission determines that an individual does not meet the commission's financial solvency standard, the commission may require the applicant to secure a surety bond in order to obtain licensure. Subcontractors and salespersons must submit applications, pass the licensing exam, and pay a licensing fee; subcontractors and salespersons are not required to pay a Guaranty Fund assessment. A licensed subcontractor may work for a licensed contractor but may not contract with a homeowner for home improvement services. A licensed salesperson may sell home improvements for a contractor but may not work for more than two contractors at once.

Exhibit 2.1 shows the number of commission licensees for each year between fiscal 2006 and 2010. The number of licensees increased gradually between fiscal 2006 and 2009 but leveled off in fiscal 2010. The licensing trends reflect the growth in the home improvement industry that occurred prior to 2009 and the industry's decline, largely due to the economic recession. The 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 can reactivate the license without repeating the application process. The number of licensees on inactive status has increased by nearly 100 each year since 2008. The increase in the number of inactive licensees, and the reduced annual rate of growth in the total number of licensed contractors, may result from a decline in available work for home improvement contractors during the economic recession.

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 misclassify workers as independent contractors to avoid paying workers' compensation and unemployment insurance assessments. Because of these and other short cuts, unlicensed contractors have an unfair competitive advantage when bidding on projects. Meanwhile, licensed contractors pay the costs of the commission, which also investigates complaints against unlicensed contractors. 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 for up to 30 days, or both. On a subsequent conviction, unlicensed contractors are subject to a fine of \$5,000, imprisonment for up to two years, or both.

Exhibit 2.1
Licensees by Type of License
Fiscal 2006-2010

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</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

The lack of structure within the industry results in there being little self-regulation; further, the commission's effectiveness is limited by the difficulty in disseminating information to industry participants. These dynamics, combined with the demand for home improvement projects, results in this being a difficult industry to regulate and allows unlicensed individuals to participant more than they may in other industries.

Complaints Have Declined for Three Consecutive Years

Complaint activity between fiscal 2004 and 2010 is displayed in **Exhibit 2.2**. The number of complaints received by the commission dropped sharply from 2,906 in fiscal 2007 to 1,601 in fiscal 2010 – a nearly 45% 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 as a result of the weakened economy since 2007. Complaints were highest between fiscal 2004 and 2007, when home improvement activity in the State was at its peak. Complaints against unlicensed contractors also increased between fiscal 2004 and 2007. In fiscal 2005, complaints regarding unlicensed practitioners increased to 41% of total complaints from 36% in the previous year. By fiscal 2006, the proportion had increased again to 45%. The Department of Labor, Licensing, and Regulation (DLLR) advises that, during the 1990s, the proportion of complaints against unlicensed contractors was about 25%.

Commission investigators completed 2,141 investigations in fiscal 2010; on average, the commission closed 178 cases per month. According to the commission, the average length of time to complaint resolution was 128 days. The commission's seven investigators had an average caseload of 102 open complaints in fiscal 2010; however, by June 2010 the average number of cases per investigator was 82, which is the lowest level in two years.

Exhibit 2.2
Complaint Activity for the Maryland Home Improvement Commission
Fiscal 2004-2010

	Fiscal Year						
	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Total Complaints Received	3,220	3,139	3,030	2,906	2,039	1,839	1,601
Complaints Against Unlicensed Contractors	1,171	1,297	1,353	1,294	856	778	638
Percentage of Total Complaints	36%	41%	45%	45%	42%	42%	40%
Guaranty Fund Claims Received	507	518	465	494	402	351	325
Cases Sent to OAH	311	373	222	304	208	298	161
Appeals from MHIC to Circuit Court	14	21	22	11	12	17	24
Appeals from Circuit Court to Court of Special Appeals	1	1	2	2	0	1	0

Note: OAH = Office of Administrative Hearings; MHIC = Maryland Home Improvement Commission

Source: Maryland Home Improvement Commission

The commission receives various types of complaints as well as Guaranty Fund claims from homeowners, but two common types are related to the abandonment of a project or poor workmanship. The commission advises that many of the complaints it receives arise because homeowners and contractors fail to agree to detailed, stated expectations and timeframes for a project. Homeowners often file complaints claiming poor workmanship if they believe their expectations have not been met. Complaints may arise from, or be aggravated by, a homeowner's high personal expectations, which may not coincide with minimum industry standards. In many cases the quality of the work performed by a contractor is not adequate, but there are also cases where it is unclear whether the homeowner's expectations are too high or

the contractor failed to sufficiently complete the project. Another common issue reported by commission investigators is that contractors present homeowners with obtuse or overly simplified contracts. Such contracts may not clearly elucidate the contractor or homeowner's expectations. Once a complaint is received, a commission investigator must intervene and attempt to resolve the issue either as an intermediary or through more formal channels, such as a commission hearing or within the judicial system.

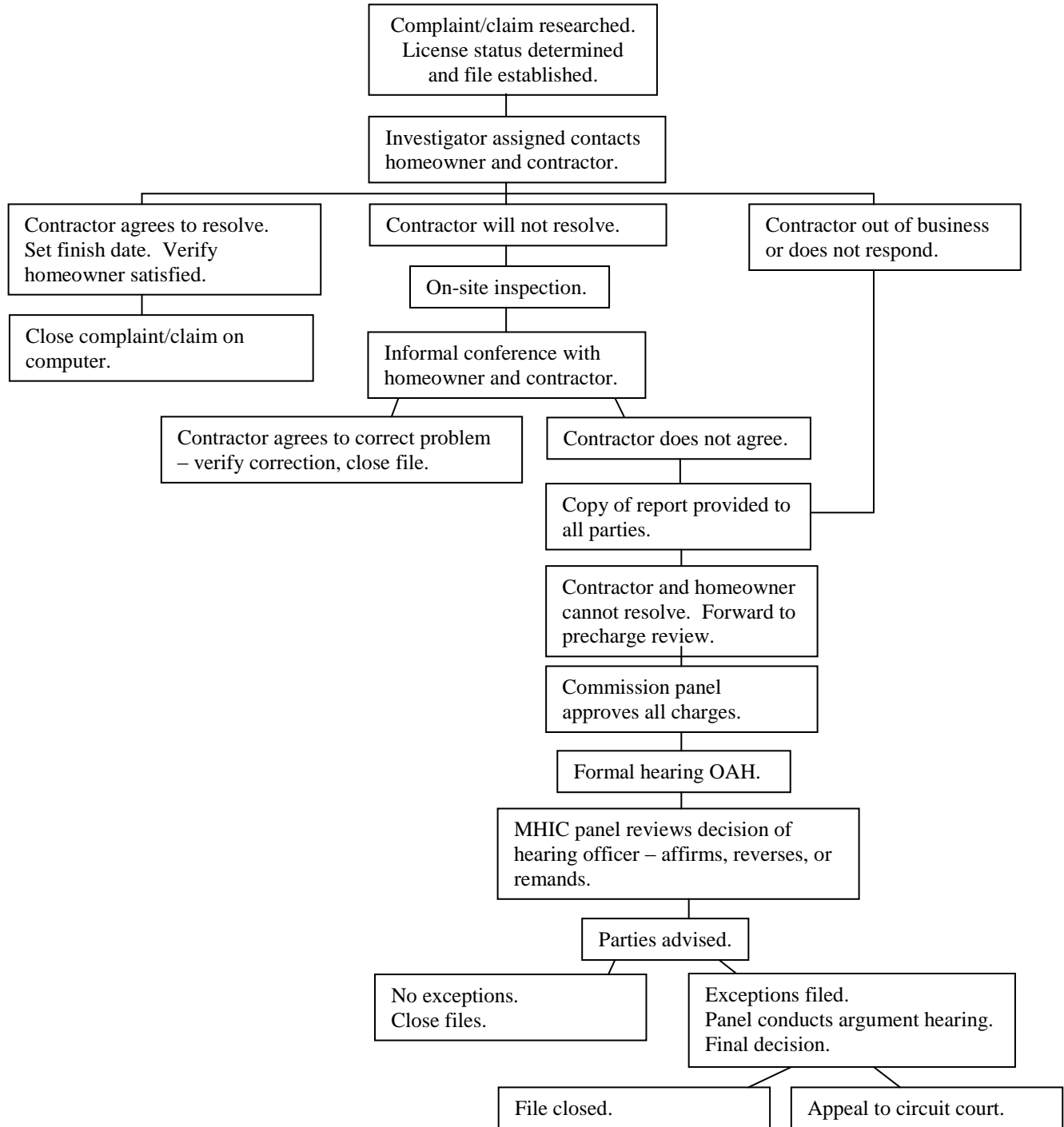
Enforcement Activity

There are two distinct processes for addressing 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. Only complaints filed against licensed contractors are eligible for restitution from the Guaranty Fund. **Exhibits 2.3 and 2.4** illustrate the complaint processes for licensed and unlicensed contractors, respectively.

Many Complaints Against Licensed Contractors Result in Guaranty Fund Claims

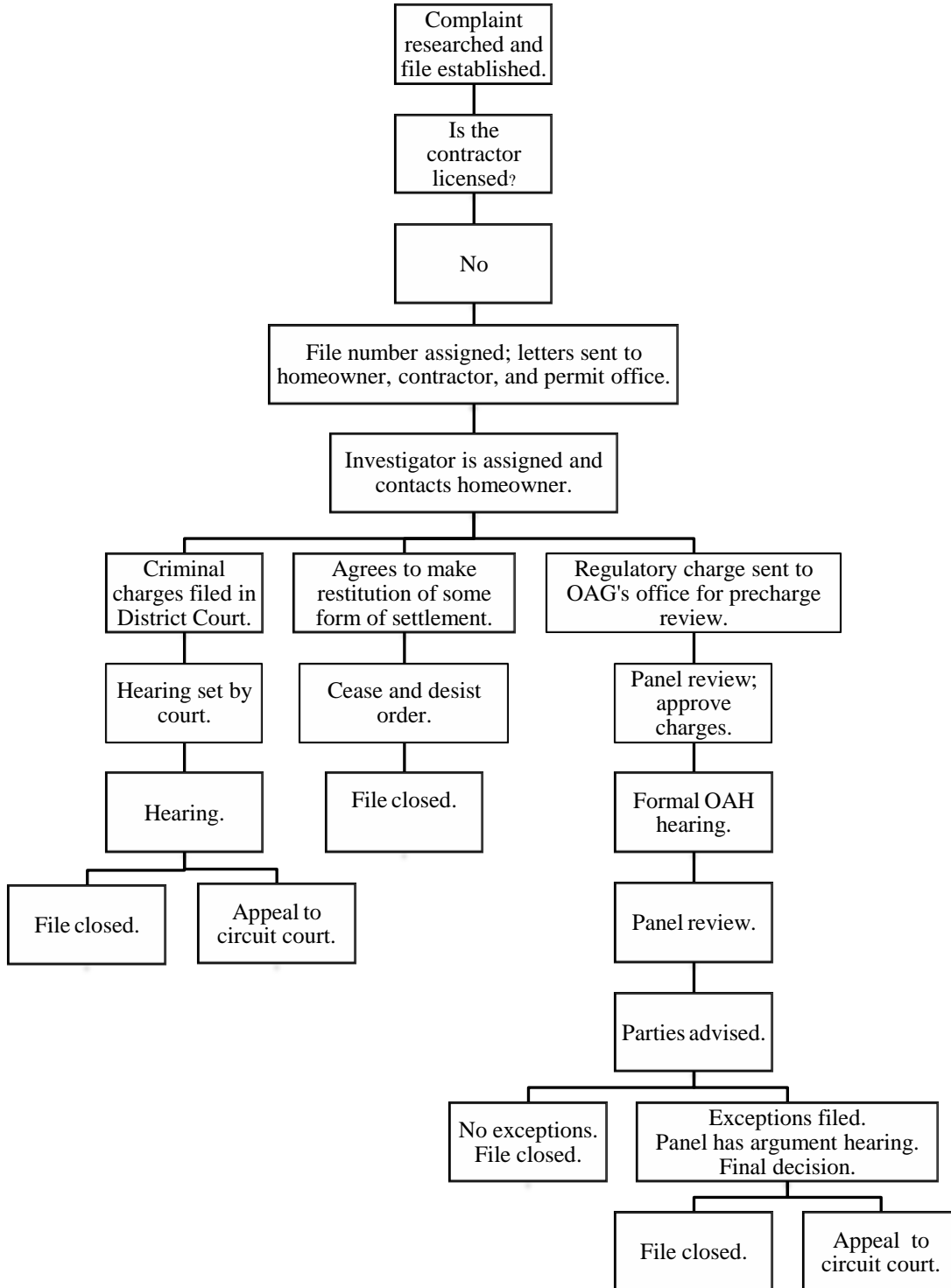
If informal attempts to resolve a complaint are unsuccessful and attempts to engage the parties in alternative dispute resolution fail, homeowners typically files a claim to obtain restitution from the Guaranty Fund. Claims for less than \$5,000 are handled by the commission, but the commission refers 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. A hearing panel, consisting of two commission members, meets monthly to review OAH's recommended decisions and small claims. 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 decision, which may be appealed to the circuit court. Instead of filing a Guaranty Fund claim, homeowners may take the case to District Court to seek a monetary award against the contractor; however, a homeowner may not concurrently seek restitution from the 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 some cases and, for various reasons, is not feasible in others.

Exhibit 2.3
Process for Resolving Consumer Complaint Against Licensed Contractors



Source: Department of Legislative Services; Maryland Home Improvement Commission

Exhibit 2.4
Process for Resolution of Complaints Against Unlicensed Contractors



Limited Resources Delay Adjudication, Payment of Guaranty Fund Claims

The process of filing, investigating, adjudicating, and issuing (or deciding not to issue) Guaranty Fund awards takes over two years from when the claim is filed with the commission. A claim must first be processed by the commission; the commission must notify the involved parties and assign the claim to an investigator. Investigations are often delayed initially while the commission waits for the contractor to respond; once a response is received, the commission forwards it to the homeowner. The investigator then meets with the parties and either resolves the matter informally or recommends it for adjudication at OAH. It typically takes about 18 months from when a claim is received by the commission until it is referred to OAH for an administrative hearing. OAH hears between 45,000 and 50,000 cases per year from various State agencies; due to OAH's demanding docket, hearings are often scheduled four to six months after OAH receives the case. Once a case is heard, the administrative law judge has 90 days to issue a recommended decision. In total, a commission case can take 7 to 10 months to move through the OAH process. Once a recommended decision is issued by the administrative law judge, either party can appeal the decision, which further delays resolution of the claim.

Cost containment measures have reduced funding for legal services allocated to the Division of Occupational and Professional Licensing, which has in turn limited the number of Guaranty Fund cases that can be forwarded to OAH for adjudication. Due to limited legal resources, the commission can only refer about five cases per week to OAH; as of June 2010, there were 187 cases waiting to be forwarded to OAH. At this rate, a commission case that is ready for OAH review is delayed 30 to 40 weeks before being referred to OAH for a hearing. This bottleneck has significantly increased the time it takes for homeowners to receive restitution from the Guaranty Fund. The delay could result in the expiration of the three-year statute of limitations in some cases, which would prohibit a homeowner from seeking additional restitution through the legal system. The commission advises that many homeowners first file a Guaranty Fund claim so that they may use the award as evidence of a contractor's culpability when seeking additional restitution in court. (A homeowner may not concurrently seek restitution from the Guaranty Fund and through the court system.)

The commission has partnered with the Mediation and Conflict Resolution Office of Maryland (MACRO) to assist in handling Guaranty Fund claims. The commission believes that a significant number of Guaranty Fund claims could be resolved through alternative dispute resolution, particularly when the contractors are responsive – such as in cases of disputed workmanship or when there is disagreement over the terms of a contract. The commission received a \$50,000 grant that it may use to mediate 100 to 150 claims within the next year – with the focus being on cases currently awaiting adjudication. The commission referred 72 cases to mediation in fiscal 2010 and plans to put an increased emphasis on mediation in the future as an alternative to having the cases heard at OAH. The grant monies from MACRO will also be used to create informative materials that can be distributed to local permit offices promoting mediation as a means of conflict resolution.

Lack of Funding for Expert Witnesses Also Slows Claim Resolution

The commission no longer has funds to obtain expert witness reports and testimony. Expert witnesses provide credible and impartial analysis that can be critical in helping an administrative law judge when deciding a contested case. Further, because expert testimony is often valued by both parties in a dispute, more claims are settled before they are referred to OAH. Without an expert witness's testimony, a case is less likely to settle out of court. Thus, more cases end up at OAH when 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.

DLLR advises that about \$75,000 per year was available for this purpose during the 1990s; the annual allocation dropped to about \$50,000 per year during the 2000s and has been reduced to zero within the last few years. The commission advises that the lack of expert witnesses makes investigations more difficult, slows claim resolution, and diminishes the commission's ability to protect homeowners and discipline contractors. DLLR advises that the average expert witness charges about \$150 to \$200 per hour and that an average case would require between 5 and 15 billable hours, resulting in an average cost ranging from \$750 to \$3,000 per case.

Remedies Against Unlicensed Contractors

Complaints filed against unlicensed home improvement contractors also go through an investigative process (see Exhibit 2.4). 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 precharge 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 ordered to cease and desist before the file is closed, pending their licensure.

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 Maryland Improvement Contractors Association advises that many legitimate contractors believe the commission's investigation and enforcement of unlicensed activity is lacking. This perception exists because the commission's response to complaints is not

immediate. Licensed contractors report misleading advertisements, work vehicles without a posted commission license number, and suspicious work sites and are often disappointed because they expect the commission to arrest the violator and stop that individual from advertising or working without a license. However, the commission's enforcement resources are constrained and investigators generally prioritize cases where homeowners have suffered significant losses over reports of unlicensed activity at work sites. The commission used to employ more investigators, which allowed at least one investigator to dedicate a portion of his or her time to reviewing home improvement advertisements and investigating suspicious work sites. Due to operational constraints, the commission cannot assign investigators to that kind of work.

Prosecution of Unlicensed Contractors Is Common and Time Consuming

In fiscal 2010, there were 968 prosecutions in the State against unlicensed contractors; commission investigators referred 368 complaints for prosecution during this time. The process of investigating complaints against unlicensed contractors is time-intensive for the commission's investigative staff. If a complaint has merit, the investigator typically files charges in a court of appropriate jurisdiction and spends, on average, the equivalent of one day per case testifying in court through the duration of the case.

The commission advises that prosecutors and judges have increased their attention to adjudicating home improvement cases over the last decade. According to the commission, the State's Attorneys have coordinated closely with commission investigators in recent years to seek equitable case dispositions for injured homeowners, and judges have been inclined to impose more severe sentences or orders for restitution. In many cases, judges have tied an unlicensed contractor's probation to the payment of restitution; thus, if a contractor fails to comply with a court-ordered restitution, the contractor may be subject to jail time.

In fiscal 2010, the courts ordered about \$2.3 million in restitution to homeowners – in cases stemming from complaints filed with the commission – to compensate them for their losses due to the faulty work of unlicensed contractors. In addition, commission investigators were able to recover \$328,818 for homeowners through settlements with contractors.

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 restitution 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 proportionally 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 prohibits an individual with a suspended license from operating in the industry. However, the commission reports that some contractors 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 (CCU). The commission advises that licensees often do not repay the Guaranty Fund and collection is often unsuccessful.

A claim against the Guaranty Fund must be brought within 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. The homeowner carries the burden of proof in all Guaranty Fund claims.

Chapter 671 of 2010 simplifies the Guaranty Fund awards process and should result in lower average awards being issued from the fund. Chapter 671 establishes that a homeowner may not receive an award from the fund that is in excess of the amount paid by the claimant to the contractor against whom the claim is filed. Prior to enacting this law, the commission allowed homeowners to present estimates from licensed contractors summarizing the cost to complete a project that was abandoned or poorly constructed. Awards could be based on those estimates. This process allowed for much more subjectivity when determining the amount of actual loss a homeowner endured. Chapter 671 may also reduce the number of instances where the amount of an award is disputed by the homeowner and appealed to OAH. Chapter 671 is expected to make the determination of awards easier and make it easier for the commission to project future awards in the Guaranty Fund pipeline.

The Guaranty Fund is maintained through assessments 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 the assessment.) Currently, new licensees pay \$100; renewal licensees pay \$150 every two years. In addition, 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.

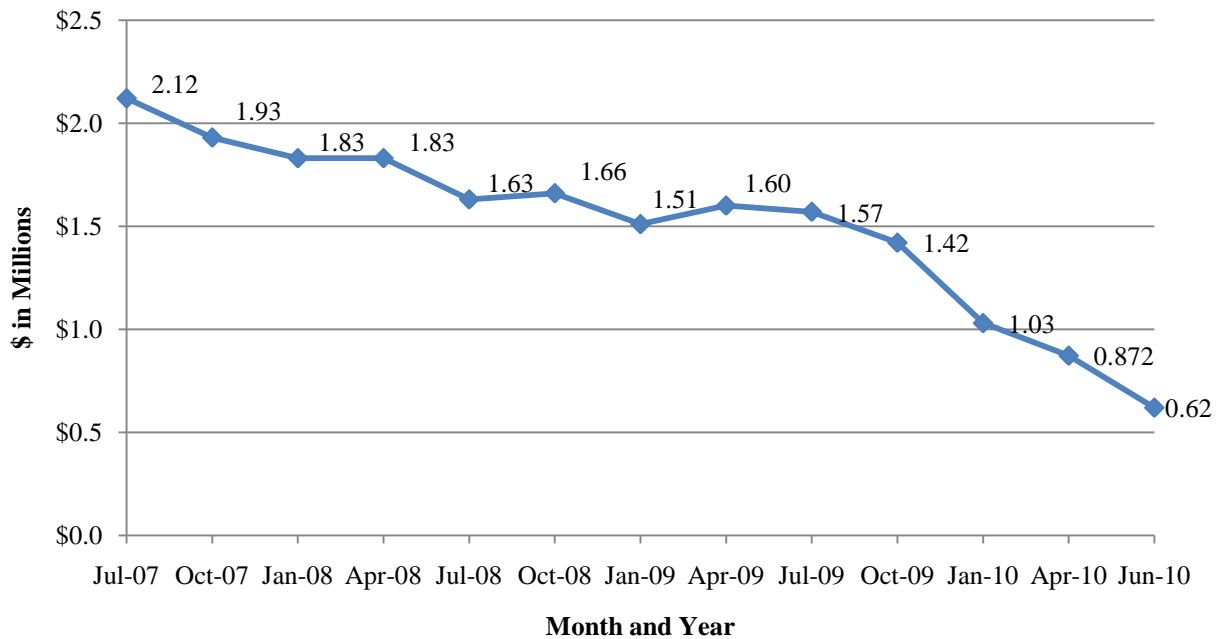
Guaranty Fund Balance Declining

The total amount of awards paid from the Home Improvement Guaranty Fund in fiscal 2010 was approximately \$1.74 million, which is about \$560,000 higher than the \$1.18 million paid out in fiscal 2009. The commission advises that the increase in the amount of awards paid out of the fund can be attributed to several factors, including (1) the fact that the

economic recession has resulted in many contractors going out of business and abandoning projects, and (2) the increase, in 2008, in the maximum amount of a Guaranty Fund award from \$15,000 to \$20,000.

Exhibit 2.5 depicts the decline in the fund balance between July 2007 and July 2010. As of June 2010, the balance of the Guaranty Fund was \$620,356, which is the lowest fund balance in recent years. The decline in the fund's balance cannot be attributed solely to an increase in awards from the fund. The commission tries to keep the fund stable and solvent, while avoiding an unnecessarily high assessment on licensed contractors. In fiscal 2006, with the balance above \$2 million, the commission lowered the assessment on renewal licensees from \$100 to \$75 every two years. In May 2010, with the balance of the fund declining, the commission doubled the assessment to \$150 for renewal licensees.

Exhibit 2.5
Guaranty Fund Balances
July 2007 - June 2010



Source: Maryland Home Improvement Commission

The economic conditions since late 2007 have had a noticeable impact on the home improvement industry. The fund's balance has declined significantly due to an increase in the number of claims filed over the last three years. The commission's banking and finance representative advises that, although the balance is declining, the fund remains relatively stable;

the fund is being impacted by a period of high activity due to the state of the economy. The commissioner's expectation of fund stability is supported by a September 2010 analysis of the Guaranty Fund conducted by DLLR. The analysis determined that the balance of the fund will continue to fall through the second quarter of fiscal 2011 but will be stable at about \$311,000 by June 2011. DLLR's analysis is based on revenue projections from license renewals and claim payout levels based on proposed orders from OAH and the average value of claims that may be paid in the coming months. Nevertheless, if the balance declines more than expected over this time period, the commission may have to again increase its assessment on renewal licensees. The commission can assess contractors up to the statutory cap of \$300 per renewal period if the fund is in imminent likelihood of insolvency; thus, the commission has significant leeway to again increase the assessment.

Recovery Efforts Produce Limited Reimbursement for the Guaranty Fund

In order to maintain an active license, contractors must reimburse the Guaranty Fund for any awards resulting from their poor workmanship or abandonment. Since it takes two years or more from when a claim is filed for an award to be issued from the fund, many contractors are no longer in the industry, and sometimes bankrupt, when the commission contacts them for reimbursement. In fiscal 2010, the fund awarded about \$1.74 million in claims to homeowners but received only \$113,495 in reimbursements from contractors.

If contractors fail to reimburse the fund within 30 days, the commission refers the matter to CCU. CCU advises that the total amount of reimbursements owed to the Guaranty Fund is nearly \$19 million since CCU became involved in collections in 1990. CCU further advises that the active amount of debts – debts that have not been written off by the agency – total about \$11.2 million. In fiscal 2010, CCU recovered \$64,363.

The high amount of uncollected debt indicates that recovering monies owed by contractors is difficult. The commission requires proof of financial solvency both when a license is issued and when a licensee renews biennially. However, because it typically takes more than two years to issue a Guaranty Fund award, contractors – who may have been solvent at license renewal – may be in bankruptcy by the time CCU begins its effort. Furthermore, CCU debts are often the State's third priority for repayment behind unpaid taxes and child support. Thus, few assets may remain for repayment into the fund by the time other debts are addressed.

The commission advises that these circumstances result in stable, established contractors bearing the costs – through higher Guaranty Fund assessments – of restitution for homeowners who incur losses as a result of poor industry practice. This phenomenon does not go unnoticed and is a point of contention within the industry. Established contractors argue that they are often underbid by contractors who cannot finish the work; homeowners then file claims for restitution from the fund while stable contractors underwrite awards to homeowners for the contractors who “outbid” them for projects.

Between June and August of 2010 the commission identified 22 contractors who could not meet the commission's financial solvency requirements but owed debts to the Guaranty Fund; these contractors were required to hold surety bonds. The total debts owed by these contractors amounted to \$220,129. By October, the commission had recovered \$47,212. The commission also expects an additional \$39,500 in debt recovery through surety bonds by the end of the month. The commission advises that it may not be able to recover the entire amount owed in these claims, as some of the insurance companies went bankrupt during the 2008 financial crisis; further, some collections may be significantly delayed or denied due to litigation or a statute of limitations.

Other States Use Tiered Licensing Approach

Some members of the commission argue that a more restrictive licensing system – perhaps similar to the tiered approach used in Virginia – would reduce the instances of abandonment that result in large Guaranty Fund awards because contractors would be limited in the size of projects and the amount of work they could undertake in a given year, at least until they prove their competence and stability. The commission could also require contractors to buy surety bonds to cover potential losses incurred by homeowners due to their poor workmanship or inability to complete a job.

Virginia

The Virginia Board for Contractors regulates businesses that construct or improve facilities on property owned by others. Unlike the commission, the board regulates various industries, including home improvement; plumbing; electrical; and heating, ventilation, air conditioning, and refrigeration contractors. Similar to Maryland, the board formerly issued only one class of license for contractors. A three-tiered licensing system was introduced in the early 1990s to address the financial instability of the housing market; smaller companies were finding it harder to maintain the financial solvency requirements because of the fluctuations in industry demand.

To ease the burden, the board developed three types of licenses. The type of license obtained by a contractor depends on the value of projects – both individually and cumulatively in a given year – that a contractor undertakes. Class A licenses are required for contractors who undertake single projects valued at \$70,000 or more, or if the total value of work in a 12-month period is \$500,000 or more. In addition, the licensee's company must have a net worth of at least \$45,000. Class B licenses are required for contractors who undertake single projects valued between \$7,500 and \$70,000, or if the contractor's total value of work in a 12-month period is more than \$150,000, but less than \$500,000. A Class B licensee's company must have a net worth of at least \$15,000. Class C contractors begin with projects valued at over \$1,000, but less than \$7,500, or the total value of work is less than \$150,000. The Class C license is considered

an entry-level license. This license facilitates entry into the industry without significant monetary outlay.

Both Class A and Class B licenses require the passage of an exam that tests an applicant's knowledge of the state's laws and regulations, and general administrative and business knowledge. The board oversees approximately 100,000 licensees and governs approximately 40 trades.

Virginia's Contractor Transaction Recovery Fund is similar to Maryland's Guaranty Fund. It is available to provide relief to consumers who have suffered monetary loss from a licensed contractor. To be eligible for a claim:

- a judgment must have been awarded against the licensed contractor in a court of competent jurisdiction;
- the judgment must be based on the improper or dishonest conduct of the contractor; and
- the contractor must have been licensed during the period in which the conduct occurred.

Before filing a claim with the Contractor Transaction Recovery Fund, the consumer must have exhausted all legally available remedies to have the assets of the contractor sold. The claim must be filed within 12 months after the final judgment. A single claim is limited to \$20,000 and up to \$40,000 per contractor. The award may include attorney's fees and court costs. When a payment involving a contractor is made from the fund, the contractor's license, in most cases, is revoked.

Tennessee

The Tennessee Board for Licensing Contractors merged with the Home Improvement Commission in 2007 and all home improvement licensees and contractors are regulated by the board. A home improvement license is required to perform remodeling to existing residential homes, where the cost is between \$3,000 and \$25,000. A contractor's license applies to all types of work performed both as a general contractor when the contract or total bid is \$25,000 or more. The board oversees approximately 1,300 home improvement licensees and approximately 20,000 contractors.

Before the merger, the Home Improvement Commission and the Board of Licensing Contractors operated guaranty funds similar to the fund in Maryland. After the merger both funds were dissolved. Licensees are now required to maintain a bond in the amount of \$10,000 for the benefit of the claimant. The bond may be in the form of cash, property, surety, or irrevocable letter of credit. Consumers wishing to receive monetary damages must contact the bond insurance company directly. The board does not have the authority to award monetary damages or force the contractor to make repairs.

California

The California Contractors State License Board requires all businesses or individuals who construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California to be licensed if the total cost, including labor and materials, of one or more contracts on the project is \$500 or more.

California has three license classifications, but classifications do not constitute a tiered licensing system because the licenses do not apply to the same category or licensees. Class A applies to a general engineering contractor whose principal business is in connection with fixed works requiring specialized engineering knowledge and skill. Class B applies to a general building contractor whose principal business is in connection with any structure built, being built, or to be built, requiring in its construction the use of at least two unrelated building trades or crafts. Class C applies to any one of the 41 specialty contractors whose construction work requires special skill and whose principal contracting business involves the use of specialized building trades or crafts.

As a condition of licensure, contractors are required to post some form of security deposit with the board. Surety bonds are the most common, but cash or certificates of deposit are also accepted. The bond or cash deposit must be in the amount of \$12,500. The bond is not per job, but is the amount available for all contracts during the life of the bond. Once the bond is depleted another bond must be purchased for the license to remain in effect. A consumer may file a complaint with the board, the surety company, or both. Unlike in Tennessee, if a surety company pays a claim on a bond, the surety is required by law to report the loss payment to the board. To assist in hearing complaints and making final awards, the board administers a mandatory arbitration program for disputes alleging damages of \$12,500 or less, and a voluntary program for disputes alleging damages between \$12,500 and \$50,000. To participate in the arbitration program, complaints must meet stringent criteria as determined by board staff.

Chapter 3. Resources

The Maryland Home Improvement Commission is general funded and all revenue collected by the commission, with the exception of the assessments that capitalize the Home Improvement Guaranty Fund, 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. As shown in **Exhibit 3.1**, 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 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. 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.

Direct costs represent the commission's annual budgetary allocation; indirect costs and legal services expenditures reflect annual usage of division services and the expenditures are paid from the division's allocation for these activities, which are shared among the division's boards and commissions. Thus, the indirect costs and expenditures for legal services are considered a "paper allocation" as these costs are not included in the commission's budget, but calculated to show the actual costs of regulation.

The Department of Labor, Licensing, and Regulation (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. 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.

New Office of Administrative Hearings Cost Formula Will Reduce Funding Gap in 2011

As depicted in Exhibit 3.1, commission expenditures regularly exceed revenues. Between fiscal 2004 and 2009 the amount of the gap fluctuated but was roughly \$1 million annually. In fiscal 2010, the gap rose to about \$1.8 million. The commission's fiscal 2010 allocation for contested cases heard by the Office of Administrative Hearings (OAH) is about \$1.7 million (see **Exhibits 3.2** and **3.3**). The commission's OAH caseload is by far the highest of any of the agencies within DLLR; thus, the cost of administrative hearings affects the commission to a greater extent than any other agency within DLLR. The annual funding gap can largely be attributed to the commission's expenditures for cases heard by OAH.

Exhibit 3.1
Fiscal History of the Home Improvement Commission
Fiscal 2004-2009
(\$ in Thousands)

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Total Revenues	\$2,066	\$1,855	\$2,175	\$1,907	\$2,244	\$1,938
Direct Costs	2,493	2,155	2,701	2,421	2,470	3,177
Legal Expenditures	0	0	0	0	444	361
O&P Cost Allocation	321	216	314	283	234	N/A*
DLLR Indirect Costs	213	203	166	156	161	160
Total Costs Attributed	3,027	2,575	3,181	2,861	3,309	3,698
Surplus/Gap	(\$961)	(\$720)	(\$1,006)	(\$954)	(\$1,065)	(\$1,760)

*Beginning in fiscal 2010, Occupational and Professional Licensing Costs are calculated within the commission's direct costs; these costs are for services provided by the division, such as the commission's telephone expenses, the use of the central licensing services, and the salaries of certain division staff.

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

OAH receives reimbursable funds from State agencies that have contested cases referred to it for resolution. The Department of Budget and Management allocates funds to these agencies to cover the OAH assessment based on actual caseload data from the preceding fiscal year. A caseload formula is used to calculate the OAH agency assessment based on the average case time in hours for each agency case category in the prior year multiplied by the projected caseload in the allowance year. The percentage of the total caseload hours is applied to the total budget to calculate the individual agency assessment.

Exhibit 3.2
OAH Expenditures for Commission Cases
Fiscal 2007-2011

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	Projected <u>FY 2011</u>
OAH Costs	\$1,237,208	\$1,119,716	\$1,202,378	\$1,664,781	\$323,724

Source: Department of Legislative Services

A February 2009 fiscal compliance audit conducted by the Office of Legislative Audits found that OAH lacked assurance that the allocation of its operating costs to State agencies was proper. In response, OAH conducted a study in the spring of 2009 to examine the actual amount of time it takes to process various types of cases. The study revealed that, in many instances, the actual amount of time from receipt to disposition of certain cases was much higher or lower than originally thought, thus creating new average case hours for most agencies. After conducting its internal study, OAH determined that the average case hours allocated to home improvement cases was higher than the actual amount of time spent on these cases. **Exhibit 3.3** displays the change in average case times and total case hours for commission cases in fiscal 2010 and 2011. As a result of the reformed cost structure for OAH cases, the commission's OAH expenditures will decrease by about \$1.3 million between fiscal 2010 and 2011 for roughly the same number of cases.

Exhibit 3.3
Comparison of OAH Expenditures
Fiscal 2010 and 2011

	<u>Average Case Hours</u>	<u>Total Case Hours</u>	<u>% of OAH Workload</u>	<u>OAH Costs</u>
FY 2010	24.00	5,400	13.1%	\$1,664,781
FY 2011	9.73	2,238	2.6%	\$323,724

Source: Department of Legislative Services

The decline in OAH expenditures will significantly reduce the commission's fiscal 2011 funding gap. The projected funding gap will be approximately \$194,000 in fiscal 2011, and approximately \$371,000 in fiscal 2012. **Exhibit 3.4** depicts the projected revenues and expenditures of the commission for fiscal 2011 and 2012.

The commission's OAH expenditures in future years will be similar to the fiscal 2011 allocation and will not return to prefiscal 2011 levels unless OAH again changes its average case hours rate for commission cases. (OAH advises that it does not anticipate revisiting this issue within the next five years.) The commission's future year OAH expenditures may be lower than the fiscal 2011 allocation as a result of cost containment measures that have reduced the availability of legal resources needed to hear cases at OAH. As a result, the commission can refer fewer cases per week to OAH, which decreases the total number of commission cases heard by OAH annually.

Exhibit 3.4
Projected Commission Revenues and Expenditures
Fiscal 2011 and 2012
(\$ in Thousands)

	<u>FY 2011</u>	<u>FY 2012</u>
Funding Gap	(\$194)	(\$371)
Total Revenues	2,100	1,950
Total Costs	2,294	2,321
Direct Costs	1,773	1,800
Legal Expenditures	361	361
Indirect Costs	160	160

Source: Department of Legislative Services; Department of Labor, Licensing, and Regulation

Fees Unchanged Since 1991

Contractors, subcontractors, and salespersons must pay fees to the commission when they first obtain a license and upon renewal of a license every two years. **Exhibit 3.5** displays the current fees assessed by the commission.

Exhibit 3.5
Commission Licensing Fees

<u>Type</u>	<u>New License</u>	<u>Renewal License</u>
Contractor	\$225	\$225
Guaranty Fund Assessment	<u>100</u>	<u>150</u>
Total	\$325	\$375
Subcontractor	125	125
Salesperson	75	75

Source: Maryland Home Improvement Commission

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 license and \$150 for a renewal license.

The commission's fees were last raised in 1991; the fee for each type of license increased by \$50. Although the fees have not increased over the last 19 years, the Guaranty Fund assessment – paid by licensed contractors only – has fluctuated based on the available balance of the fund. The assessment was raised for individuals renewing a contractor's license from \$75 to \$150 per two-year cycle effective May 1, 2010. Fees for licensed contractors are among the highest of the division's boards and commissions.

Staffing at Minimum Level to Maintain Current Activities

Between fiscal 1995 and 2010, the commission's staff declined by seven positions, as depicted in **Exhibit 3.6**. With a current staff of 17 full-time employees, including 7 investigators, the commission has the largest staff within the Division of Occupational and Professional Licensing. However, this appears to be the minimum level of staffing necessary to handle the commission's annual volume of new and renewal licensees and new complaints and Guaranty Fund claims each year.

Exhibit 3.6
Commission Staffing Declines
Fiscal 1995-2010

	<u>FY 1995</u>	<u>FY 2000</u>	<u>FY 2005</u>	<u>FY 2010</u>
Authorized Positions	24	21	20	17

Source: Department of Legislative Services

DLLR advises that the commission can sustain its activities at its current staffing level as long as the volume of complaints does not revert to the levels experienced before fiscal 2008. Although it can fulfill its current activities related to the regulation of the home improvement industry with its current staff, the commission is unable to undertake certain initiatives designed to reduce violations of State law and regulations; such initiatives could ultimately limit the number of complaints or inquiries received by the commission. For example, an additional investigator could be assigned to investigate reports of unlicensed activity and manage collection efforts against licensed contractors who have not reimbursed the Guaranty Fund. Such endeavors could emphasize compliance with State requirements, prevent undesirable practices, and ensure that habitual violators are not allowed to practice in the industry.

The commission has not yet implemented a licensure program for mold remediation companies, as mandated by Chapter 537 of 2008. Chapter 537 required the companies providing mold remediation services to be licensed by June 1, 2010, in order to continue to provide services. The commission has not received the start-up allocation – roughly \$62,000 – needed to implement the licensing program. Chapter 537 also subjected the mold remediation licensing program to evaluation and reestablishment under the Maryland Program Evaluation Act, with a termination date of July 1, 2016; an evaluation of the licensing program must be conducted by July 1, 2015.

Commission Plans Enhanced Use of E-Government Technology

Since the last full evaluation 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 website 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.

Over the next 12 months, the commission hopes to further improve its online services in several ways, particularly by upgrading its complaint database software, which is about 20 years old. Once this upgrade is complete, the commission expects that consumers will be able to file complaints online. Although the complaint form is currently available on the website, complainants must print it, fill it out by hand, and mail it to the commission. Online complaint filing will allow staff members to manage the complaint resolution process more efficiently as complainants will enter information directly into the commission's database. The new complaint system will also generate many notification letters automatically. Thus, staff members will be able to focus on other issues related to complaint resolution, and consumers will receive a faster initial response from the commission. The upgrade will also allow complainants to check the status of their complaints online, which may reduce the volume of phone calls received by the commission.

Anticipated upgrades to the commission's website, through stimulus grants from the federal government, will allow the commission to offer additional features via the Internet. For example, instead of simply posting links to newspaper articles or press releases to inform homeowners about home improvement issues, the commission could post videos and interact with homeowners using social media applications. The commission may also improve user accessibility for licensees by offering online videos of training courses or the commission's monthly application workshop.

Chapter 4. Findings and Recommendations

Commission Continues to Serve Important Regulatory Purpose

The Maryland Home Improvement Commission (MHIC) strives to license and regulate the home improvement industry to the benefit of both homeowners and contractors. The commission uses various methods to address substandard or fraudulent practice and unlicensed activity. For example, the commission employs seven investigators tasked with responding to and attempting to resolve consumer complaints. If the investigators are unsuccessful in their attempts to resolve the complaints informally, they may assist homeowners in gathering information and preparing the matter for adjudication. In addition, the commission's staff serves consumers as well as the industry by raising awareness of home improvement issues through media appearances and press releases. The commission further serves the needs of industry participants by swiftly processing licensing activities and hosting workshops to inform new applicants about the commission's licensing requirements.

The commission helps to contain substandard industry practices by investigating complaints and assisting in the prosecution of cases brought against home improvement contractors. For instance, commission investigators referred nearly 370 cases against unlicensed contractors for prosecution in fiscal 2010. During this year, 246 contractors were found to be in violation of State home improvement law, and courts ordered that approximately \$2.3 million in restitution be paid to homeowners. Commission investigators were also able to negotiate settlements between homeowners and contractors; in fiscal 2010, investigators recovered about \$329,000 in monetary settlements. In addition, the commission awarded \$1.74 million in Guaranty Fund claims to homeowners for the acts or omissions of licensed contractors in fiscal 2010.

All of this activity occurs in a resource-scarce environment. The commission is hampered by reduced funding for staffing, enforcement, and claim adjudication. The commission has benefitted from an unusually low level of complaints over the last three fiscal years, which has allowed commission investigators to be more responsive to the needs of aggrieved homeowners. Yet, the adjudication of Guaranty Fund claims has become increasingly protracted due to reduced funding for legal services within the Department of Labor, Licensing, and Regulation's (DLLR) Division of Occupational and Professional Licensing. Given these circumstances, it is imperative that the commission undertake initiatives designed to decrease substandard home improvement practices so that fewer complaints are filed. If complaint activity returns to the levels experienced in the mid-2000s, commission staff will be unable to effectively serve the needs of consumers or contractors.

Recommendation 1: Statute should be amended to extend the termination date of the Maryland Home Improvement Commission by 10 years to July 1, 2022. In addition, the commission should report by October 1, 2012, to the Senate Education, Health, and

Environmental Affairs Committee and the House Economic Matters Committee regarding the nonstatutory recommendations contained in this report.

Mold Remediation Licensing Program Should Be Delayed by Two Years

The commission has not yet received needed start-up funding to implement the mold remediation licensing program required by Chapter 537 of 2008. However, these companies are currently in violation of State law, which required mold remediation companies to be licensed by June 1, 2010. In order to ensure that members of this industry are not forced to violate State law to continue performing mold remediation services, the date by which licenses are required should be changed in statute to July 1, 2013, so that the commission may implement the program – assuming the necessary start-up money is received. In accordance with this change, the program’s evaluation and termination dates under the Maryland Program Evaluation Act should also be delayed three years to July 1, 2018, and July, 1 2019, respectively.

The Department of Legislative Services (DLS) estimates that a general fund appropriation of approximately \$61,900 is necessary to implement the program. This estimate reflects the cost of hiring one office secretary to prepare for licensure and regulation and answer inquiries; it also includes the services of a consultant with specialized knowledge of mold remediation services to advise the commission in developing appropriate licensing standards. The commission’s annual expenditures will be between \$50,000 and \$60,000 once the program is implemented; the licensing fees assessed to members of this industry are expected to approximate the costs of regulation.

Recommendation 2: Statute should be amended to allow mold remediation companies to continue to practice without a commission license until July 1, 2013. The program’s evaluation and termination dates under the Maryland Program Evaluation Act should be changed to July 1, 2018, and July 1, 2019, respectively.

Requirements for Home Improvement Contracts Should Be Amended

Due to the amorphous nature of the home improvement industry, the commission has difficulty informing homeowners about the consumer protection services it offers. The home improvement contract can be an effective way for the commission’s message, even in a limited manner, to reach consumers before they enter into an agreement with a contractor. State law establishes standards for home improvement contracts that contractors must follow when a contract is written and presented to a homeowner (see **Appendix 3**). For instance, contractors must include a description of the project, the approximate dates for performance of the work, the agreed-upon price, a statement that contractors and subcontractors must be licensed with the commission, and the telephone number of the commission. These requirements should be

amended to require contracts to include a disclaimer that describes the commission's purpose and provides the commission's website address, in addition to its telephone number.

A home improvement contract should also include a clause that informs consumers of their right to purchase a performance bond as additional insurance against the abandonment or poor performance of a contractor. Contractors are currently not required to offer performance bonds, and homeowners may not be aware of their ability to insure themselves in this manner. Consumers who purchase performance bonds are protected in two ways: (1) they avoid the protracted process of obtaining restitution from the Guaranty Fund; and (2) unlike the Guaranty Fund, which caps restitution at \$20,000 per claim, a performance bond may provide insurance for the full value of the contract.

A performance bond can be included in the contractually agreed-upon price of a home improvement project. The cost of bonds may vary due to many factors. Based on the creditworthiness of a contractor, performance bonds are estimated to cost between 1% and 3% of the price of a contract. Thus, a homeowner could expect to pay between \$500 and \$1,500 for a performance bond on a \$50,000 contract. A performance bond clause would make homeowners aware of the option to purchase additional insurance; it is likely that more homeowners would purchase performance bonds if such an advisory clause were required on home improvement contracts.

If more home improvement contracts are insured with performance bonds, the number of Guaranty Fund claims may decrease. The performance bond itself may encourage contractors to complete the work in a timely, satisfactory manner; further, when disputes arise, consumers would seek restitution through the bond company instead of the commission.

Recommendation 3: Statute should be amended to require that all home improvement contracts include a performance bond clause that would alert homeowners to the availability of additional protection against a contractor's poor workmanship or abandonment of a project. Statute should also be amended to require a "consumer protection" disclaimer, which would include the commission's website address, on all home improvement contracts.

Civil Citation Authority May Reduce Minor Violations, Complaints

The commission advises that many complaints arise due to unclear, poorly written, or otherwise substandard contracts. Commission investigators report that home improvement advertisements often do not contain the required commission license numbers. (Often these advertisements are issued by unlicensed persons.) The commission further advises that a number of these common violations result in complaints or Guaranty Fund claims; however, the commission lacks a swift and effective mechanism to cite the violators for their infractions.

Civil citation authority would allow the commission to efficiently direct fines to individuals who fail to comply with State home improvement laws or regulations. These penalties would encourage them to correct their misdeeds. The violations subject to a civil citation might include (1) failing to write a lawful contract; (2) operating as a home improvement contractor, subcontractor, or salesperson without a license; (3) failing to include MHIC license numbers on a home improvement advertisement; and (4) accepting a deposit of more than one-third of the value of the contract.

If given the authority to issue civil citations, the commission may be able to reduce the instances of such violations that often lead to complaints or claims being filed and use the fines as leverage to bring the violator into compliance – particularly in the case of unlicensed contractors as the fines could be dropped if the contractor becomes licensed. A portion of the revenue raised could be deposited into the Guaranty Fund and earmarked for obtaining expert witnesses for disputes that require their input.

Recommendation 4: Statute should be amended to grant the commission the authority to issue civil citations, with associated fines, to individuals found to be in violation of specified State home improvement laws and regulations. DLLR should design and implement the civil citation program by adopting a schedule of fines enumerated in the Code of Maryland Regulations. Finally, statute should be amended to allow a portion of the revenue generated to be deposited in the Home Improvement Guaranty Fund; these monies should be available to obtain expert witness reports and testimony when the commission determines such assistance is needed to resolve a Guaranty Fund claim.

Criminal Penalties Should Be More Consistent for Licensed and Unlicensed Contractors

Current law subjects licensed contractors to more severe punishment for a first offense than persons who operate without a license. Criminal penalties for unlicensed practice are established in Section 8-601 of the Business Regulation Article. Contractors, subcontractors, or salespersons who operate without a license are subject to misdemeanor penalties, including imprisonment for up to 30 days and a fine of up to \$1,000 for a first offense, and up to a \$5,000 fine and two years imprisonment for a second offense. The criminal penalties that can be applied to licensed persons who violate the State's home improvement laws are established in § 8-623 of the Article: the misdemeanor penalties for such violations subject offenders to potential fines not exceeding \$1,000 and imprisonment up to six months.

The penalty provisions were amended in 1997. Chapters 631 and 632 of 1997, altered the circumstances under which a person may be held criminally liable for violations of home improvement laws by eliminating the requirement that a person must “knowingly and willfully” violate the provisions to be guilty. According to testimony entered at the bill hearing, the knowing and willful standard interfered with the ability of the commission to prosecute

unlicensed contractors. The legislation decreased the penalty for the first conviction of acting without a license to a fine of up to \$1,000 and imprisonment for up to 30 days. The penalty for a second or subsequent violation is a fine of up to \$5,000 and imprisonment for up to two years. Prior to 1997, any conviction carried a potential fine of up to \$5,000 and imprisonment for two years.

Recommendation 5: Statute should be amended to make the criminal penalties for acting as a home improvement contractor without a license at least as stringent as other penalties that may be assessed to members of the home improvement industry.

The Commission Should Transition to a Tiered Licensing System

Home improvement projects range from small repairs and handiwork to large-scale room additions and renovations; however, nothing in law limits the size of a project that a contractor may undertake. Thus, a contractor can agree to build a new room onto a house, install or renovate a bathroom, or repair a roof with limited oversight as to whether the contractor is properly experienced, equipped, and capitalized to complete such a project. The commission reports that there have been many cases where contractors agreed to perform projects, but they could not finish the work and abandoned the job all together. When this occurs, homeowners are left with significant property damage – and, in some cases, an uninhabitable home – and the commission must investigate and follow up on the case, and ultimately issue the homeowner a Guaranty Fund claim.

A tiered licensing system, such as the system used in Virginia, is one approach for reducing the likelihood that contractors engage in projects they may not be able to complete by imposing limits on the size of contracts that contractors are allowed to accept. A tiered structure allows a contractor to perform work that is within the contractor's financial means. The tiered structures used in other states typically involve three tiers. In conjunction with the tiered approach, the commission could consider allowing experienced licensees in good standing (licensees who have limited complaint histories) to renew their licenses less frequently, which could serve to incentivize best industry practices.

A tiered approach could also be implemented in conjunction with adjustments to the administration of the Guaranty Fund. For instance, licensees in the two upper tiers, could be required to obtain surety bonds. The Guaranty Fund could be reserved only for claims against the entry-level licensees, who would not be required to obtain surety bonds as the cost of surety bonds is much higher than the current Guaranty Fund assessment and can inhibit entry into the industry.

Recommendation 6: The commission should develop a tiered licensing system to replace the State's current licensing structure. Such a system should limit the size of projects that new or inexperienced contractors may undertake while encouraging ease of access into the

industry and upward mobility to accept larger projects as a licensee becomes more experienced and better capitalized. DLLR should develop a proposed system and submit a report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2012, outlining the alternative licensing structure – including approximate fees and any bonding requirements – with requisite draft legislation to amend statute as necessary so that the new licensing system may be implemented by July 1, 2014.

Small Increase in Fees Could Eliminate Commission’s Funding Gap

The commission’s funding gap is expected to decrease significantly between fiscal 2010 and 2011 due to the reduction in commission expenditures for administrative hearings. Based on projected revenues and expenditures, it is expected that the commission’s funding gap will be approximately \$194,000 in fiscal 2011 and approximately \$371,000 in fiscal 2012. Although these figures do represent a significant decrease in the commission’s funding gap (the gap was \$1.76 million in fiscal 2010), the commission should take the steps necessary to ensure that it can approximate the costs of regulating the industry.

Fees for contractors, subcontractors, and salespersons are established in statute and have not been raised since 1991. DLS estimates that a \$25 fee increase for each license category and the institution of a \$20 processing fee for new licensees would increase the commission’s revenues sufficiently to approximate the costs of regulating the industry. **Exhibit 4.1** depicts the number of new and renewal licensees between fiscal 2005 and 2010. DLLR advises that roughly 30% of the new and renewal licensees hold a “corporate/partnership” license, which is a duplicative license in the name of a company instead of the actual license holder. The commission does not charge a fee for these licenses.

Exhibit 4.1
New and Renewal Licenses Issued
Fiscal 2005-2010

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
New Licenses	2,394	2,349	2,890	3,176	2,992	2,562
Renewal Licenses	10,471	9,257	11,457	10,527	10,370	11,556

Source: Department of Legislative Services; Department of Labor, Licensing, and Regulation

Exhibit 4.2 displays an estimate of the additional annual revenue generated by the proposed changes to the commission's fee schedule, based on the average number of licenses issued and renewed between fiscal 2005 and 2010. The number of new and renewal licenses included in Exhibit 4.2 are calculated based upon the number of licenses issued during these years; for the purpose of estimating the number of individual licenses – and to avoid double counting licensees who hold a corporate/partnership license – the total number of licenses in each category was reduced by about 30%. DLS estimates that the proposed fee increase would raise the commission's revenues by approximately \$282,500 annually, based on average rates of renewal and new license applications.

Exhibit 4.2
Estimated Annual Revenue Resulting from Proposed Fee Increase

Licenses		<u>Net Increase in Fees</u>	<u>Estimated Revenue</u>
New	2,000	\$45	\$90,000
Renewal	7,700	\$25	\$192,500
Total Licenses Issued	9,700		\$282,500

Source: Department of Legislative Services; Department of Labor, Licensing, and Regulation

The commission has expressed concerns that a major fee increase would discourage contractors from becoming licensed or renewing an existing license, thereby increasing the amount of unlicensed activity. Therefore, any fee increase should not be overly burdensome on the industry. Even though an increase in fees could adversely affect some licensees, a small increase in fees is less onerous than the possible criminal and civil penalties for operating without a license.

Recommendation 7: Statute should be amended to raise the fees charged by the commission for the licensure of contractors, subcontractors, and salespersons by \$25. Statute should be further amended to require applicants for a new license, in each licensing category, to pay a \$20 processing fee when submitting an application for a new license.

Commission Should Report Low Guaranty Fund Balances to the General Assembly

The balance of the Home Improvement Guaranty Fund decreased from \$1.57 million in July 2009 to approximately \$620,000 in July 2010. The commission attributes this decrease largely to a high volume of homeowner claims against the Guaranty Fund that occurred when many contractors went out of business and abandoned projects as a result of the economic downturn in late 2007 and 2008. Additionally, in 2006 the commission lowered the Guaranty

Fund assessment from \$100 to \$75 biennially, which significantly reduced revenues to the fund. A recent analysis of the fund's expected claim activity indicates that the fund will remain above the statutory threshold of \$250,000 through fiscal 2011. However, the commission should notify specified committees of the General Assembly if the balance of the fund is projected to fall below \$250,000 and another assessment will be necessary.

Recommendation 8: Statute should be amended to require the commission to report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee if the balance of the Home Improvement Guaranty Fund is projected to fall below \$250,000. The commission's report should include a summary of measures being taken to increase the fund balance and return the fund to a sustainable level.

The Success of Efforts to Reduce Claim Resolution Delays Should Be Reported to the General Assembly

The average time from the receipt of a claim until the claim is ready to be referred to the Office of Administrative Hearings (OAH) is about 18 months. The commission acknowledges that, in most cases, claims should be prepared for adjudication in a shorter length of time. When a claim reaches OAH, it is often a year or more before the homeowner receives restitution from the fund. The commission advises that it plans to restructure how claims are handled – specifically by assigning two investigators and a support staff member to work exclusively on resolving Guaranty Fund claims. Reassigning staff members in such a manner should increase the efficiency with which the commission processes claims and prepares them for adjudication.

Due to cuts in legal services, claims move more slowly through OAH. The commission has undertaken several initiatives designed to reduce the number of claims that must be referred to OAH. For instance, the commission recently received a \$50,000 grant that it may use to refer Guaranty Fund claims to mediation in lieu of the administrative hearing process. The commission estimates that this grant could be used to send between 100 and 150 claims to mediation over the next year. An increase in the number of cases settled through mediation reduces the backlog of cases referred to OAH and would decrease adjudication delays.

Recommendation 9: The commission should submit a report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2012, which summarizes efforts taken to reduce the length of time it takes for a claim to be investigated and processed by the commission and referred to OAH. The report should also include (1) an analysis of the effectiveness of initiatives to reduce the number of cases referred to OAH; (2) data regarding the number of Guaranty Fund claims settled through mediation; and (3) an estimate of the impact these measures had on the commission's resources and workload; in particular the commission should report any changes in the number of Guaranty Fund claims filed, and whether or not the average time to resolve Guaranty Fund claims decreased.

Appendix 1. Definition of Home Improvement in Maryland

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

(1) “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. Requirements for Home Improvement Contracts

According to § 8-501 of the Business Regulation Article:

Each home improvement contract shall be in writing and legible, describe clearly each document that it incorporates, and be signed by each party to the home improvement contract.

In addition to any other matters on which the parties lawfully agree, each home improvement contract shall contain:

1. the name, address, and license number of the contractor;
2. the name and license number of each salesperson who solicited the home improvement contract or sold the home improvement;
3. the approximate dates when the performance of the home improvement will begin and when it will be substantially completed;
4. a description of the home improvement to be performed and the materials to be used;
5. the agreed consideration;
6. the number of monthly payments and the amount of each payment, including any finance charge;
7. a description of any collateral security for the obligation of the owner under the home improvement contract; and
8. a notice that gives the telephone number of the commission and states that: each contractor and each subcontractor must be licensed by the commission, and anyone may ask the commission about a contractor or subcontractor.

Appendix 4. Draft Legislation

Bill No.: _____
Requested: _____
Committee: _____

Drafted by: White
Typed by: Carol
Stored –
Proofread by _____
Checked by _____

By: **Chair, Education, Health, and Environmental Affairs Committee**

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Home Improvement Commission – Sunset Extension and Program**
3 **Evaluation**

4 FOR the purpose of continuing the Maryland Home Improvement Commission in
5 accordance with the provisions of the Maryland Program Evaluation Act (sunset
6 law) by extending to a certain date the termination provisions relating to the
7 statutory and regulatory authority of the Commission; continuing the Maryland
8 Mold Remediation Services Act in accordance with the provisions of the sunset
9 law by extending to a certain date the termination provisions relating to the
10 statutory and regulatory authority of the Commission under the Maryland Mold
11 Remediation Services Act; requiring that an evaluation of the Commission and
12 the statutes and regulations that relate to the Commission and the Maryland
13 Mold Remediation Services Act be performed on or before a certain date;
14 requiring the Commission to submit certain reports about a certain fund to
15 certain committees of the General Assembly under certain circumstances;
16 altering certain fees; expanding the notice requirements for home improvement
17 contracts; altering certain criminal penalties for certain individuals; authorizing
18 the Commission to issue certain civil citations under certain circumstances;
19 authorizing a certain hearing for civil citations; authorizing the Commission to
20 establish certain violations and fines by regulation; creating a certain separate
21 account within the Home Improvement Guaranty Fund for collection of certain
22 money; specifying the disposition of the money collected as a civil citation;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 extending the date by which certain companies or firms providing mold
2 remediation must be licensed by the Commission; requiring the Commission to
3 submit a certain report to certain committees of the General Assembly on or
4 before a certain date; and generally relating to the Maryland Home
5 Improvement Commission.

6 BY repealing and reenacting, with amendments,
7 Article – Business Regulation
8 Section 8–303(a), 8–308(d), 8–312(a), 8–403, 8–501, 8–601(d), 8–620, 8–718, and
9 8–802
10 Annotated Code of Maryland
11 (2010 Replacement Volume and 2010 Supplement)

12 BY repealing and reenacting, without amendments,
13 Article – Business Regulation
14 Section 8–707(a)
15 Annotated Code of Maryland
16 (2010 Replacement Volume and 2010 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article – State Government
19 Section 8–403(a)
20 Annotated Code of Maryland
21 (2009 Replacement Volume and 2010 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – State Government
24 Section 8–403(b)(29) and (39)
25 Annotated Code of Maryland
26 (2009 Replacement Volume and 2010 Supplement)

27 BY repealing and reenacting, with amendments,
28 Chapter 537 of the Acts of the General Assembly of 2008
29 Section 3

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
31 MARYLAND, That the Laws of Maryland read as follows:

1 **Article – Business Regulation**

2 8–303.

3 (a) (1) An applicant for a license shall:

4 (i) submit to the Commission an application on the form that
5 the Commission provides;

6 (ii) submit to the Commission with the license application proof
7 of compliance with the insurance requirement of § 8–302.1 of this subtitle, if the
8 applicant is applying for a contractor license;

9 (iii) pay into the Fund the fee required under § 8–404(a) of this
10 title, if the applicant is applying for a contractor license; and

11 (iv) pay to the Commission an application fee.

12 (2) The application fee:

13 (i) for a contractor license is [~~\$225~~] **\$250** for each place of
14 business of the contractor;

15 (ii) for a subcontractor license is [~~\$125~~] **\$150**; or

16 (iii) for a salesperson license is [~~\$75~~] **\$100**.

17 (3) [~~To cover the cost of~~] **THE FEE FOR** processing an application[,
18 \$15 of the application fee is nonrefundable] **IS \$20**.

19 8–308.

20 (d) (1) Before a license expires, the licensee periodically may renew it for
21 an additional 2–year term, if the licensee:

22 (i) otherwise is entitled to be licensed;

1 (ii) submits to the Commission a renewal application on the
2 form that the Commission provides;

3 (iii) submits to the Commission proof of compliance with the
4 insurance requirement of § 8-302.1 of this subtitle, if the licensee is renewing a
5 contractor license;

6 (iv) submits to the Commission the Department of the
7 Environment lead paint abatement accreditation number and accreditation expiration
8 date, if the licensee provides lead paint abatement services; and

9 (v) pays to the Commission a renewal fee.

10 (2) The renewal fee:

11 (i) for a contractor license is [~~\$225~~] **\$250** for each place of
12 business of the contractor;

13 (ii) for a subcontractor license is [~~\$125~~] **\$150**; or

14 (iii) for a salesperson license is [~~\$75~~] **\$100**.

15 (3) Notwithstanding paragraph (2) of this subsection, a licensee that is
16 incorporated or has its principal office in another state shall pay to the Commission
17 the fee imposed in that state on a similar nonresident business if that fee is higher
18 than the renewal fee under paragraph (2) of this subsection.

19 8-312.

20 (a) Except as otherwise provided in § 10-226 of the State Government
21 Article, before the Commission takes any final action under § 8-311 of this subtitle,
22 **OR IF REQUESTED UNDER § 8-620(C) OF THIS TITLE**, it shall give the person
23 against whom the action is contemplated an opportunity for a hearing before the
24 Commission or, as provided under § 8-313 of this subtitle, a hearing board.

25 8-403.

26 (a) The Commission shall:

1 (1) establish a Home Improvement Guaranty Fund; [and]

2 (2) keep the Fund at a level of at least \$250,000; AND

3 (3) SUBMIT A REPORT DETAILING ACTIONS BEING TAKEN TO
4 RESTORE THE BALANCE OF THE FUND TO A SUSTAINABLE LEVEL TO THE
5 SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE
6 AND THE HOUSE ECONOMIC MATTERS COMMITTEE WITHIN 30 DAYS OF
7 PROJECTING THAT THE FUND BALANCE WILL BE LESS THAN \$250,000.

8 (b) (1) [The] EXCEPT AS OTHERWISE PROVIDED BY LAW, THE
9 Commission shall deposit all money collected to the credit of the Fund with the State
10 Treasurer for placement in a special account.

11 (2) (I) THE COMMISSION SHALL ESTABLISH AND MAINTAIN
12 WITHIN THE FUND A SEPARATE ACCOUNT TO BE HELD WITH THE STATE
13 TREASURER FOR THE PAYMENT OF NECESSARY EXPENSES FOR EXPERT
14 WITNESSES USED TO RESOLVE CLAIMS AGAINST THE FUND.

15 (II) ONE-HALF OF THE MONEY COLLECTED UNDER §
16 8-620(C) OF THIS TITLE SHALL BE CREDITED TO THE ACCOUNT ESTABLISHED IN
17 SUBPARAGRAPH (I) OF THIS PARAGRAPH.

18 (III) ONE-HALF OF THE MONEY COLLECTED UNDER §
19 8-620(C) OF THIS TITLE SHALL BE CREDITED TO THE GENERAL FUND OF THE
20 STATE.

21 [(2)](3) (i) The State Treasurer shall invest the money in the
22 Fund in the same way that money in the State Retirement and Pension System is
23 invested.

24 (ii) Investment earnings shall be credited to the Fund.

25 (c) The Commission shall administer the Fund in accordance with this
26 subtitle.

27 8-501.

1 (a) A home improvement contract that does not comply with this section is
2 not invalid merely because of noncompliance.

3 (b) Each home improvement contract shall:

4 (1) be in writing and legible;

5 (2) describe clearly each document that it incorporates; and

6 (3) be signed by each party to the home improvement contract.

7 (c) (1) In addition to any other matters on which the parties lawfully
8 agree, each home improvement contract shall contain:

9 (i) the name, address, and license number of the contractor;

10 (ii) the name and license number of each salesperson who
11 solicited the home improvement contract or sold the home improvement;

12 (iii) the approximate dates when the performance of the home
13 improvement will begin and when it will be substantially completed;

14 (iv) a description of the home improvement to be performed and
15 the materials to be used;

16 (v) the agreed consideration;

17 (vi) the number of monthly payments and the amount of each
18 payment, including any finance charge;

19 (vii) a description of any collateral security for the obligation of
20 the owner under the home improvement contract; **[and]**

21 (viii) a notice that gives the telephone number **AND WEB SITE** of
22 the Commission and states that:

1 1. each contractor and each subcontractor must be
2 licensed by the Commission; and

3 2. anyone may ask the Commission about a contractor or
4 subcontractor; AND

5 **(IX) A NOTICE SET BY THE COMMISSION BY REGULATION**
6 **THAT:**

7 **1. SPECIFIES THE PROTECTIONS AVAILABLE TO**
8 **CONSUMERS THROUGH THE COMMISSION; AND**

9 **2. ADVISES THE CONSUMER OF THE RIGHT TO**
10 **PURCHASE A PERFORMANCE BOND FOR ADDITIONAL PROTECTION AGAINST**
11 **LOSS.**

12 (2) If payment for work performed under the home improvement
13 contract will be secured by an interest in residential real estate, a written notice in not
14 smaller than 10 point bold type that is on the first page of the contract shall state in
15 substantially the following form: "This contract creates a mortgage or lien against your
16 property to secure payment and may cause a loss of your property if you fail to pay the
17 amount agreed upon. You have the right to consult an attorney. You have the right to
18 rescind this contract within 3 business days after the date you sign it by notifying the
19 contractor in writing that you are rescinding the contract."

20 (3) The notice under paragraph (2) of this subsection shall be
21 independently initialed by the homeowner.

22 (d) Before the performance of a home improvement begins, the owner shall
23 be given a copy of the home improvement contract signed by the contractor.

24 (e) A salesperson or other agent or employee of a contractor may not make a
25 change in a home improvement contract for an owner.

26 8-601.

27 (d) A person who violates this section is guilty of a misdemeanor and, on first
28 conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding [30

1 days] **6 MONTHS** or both and, on a second or subsequent conviction, is subject to a fine
2 not exceeding \$5,000 or imprisonment not exceeding 2 years or both.

3 8-620.

4 (a) The Commission may impose on a person who violates this title,
5 including § 8-607(4) of this subtitle, a civil penalty not exceeding \$5,000 for each
6 violation, whether or not the person is licensed under this title.

7 (b) In setting the amount of a civil penalty, the Commission shall consider:

8 (1) the seriousness of the violation;

9 (2) the good faith of the violator;

10 (3) any previous violations;

11 (4) the harmful effect of the violation on the complainant, the public,
12 and the business of home improvement;

13 (5) the assets of the violator; and

14 (6) any other relevant factors.

15 (c) (1) **THE COMMISSION MAY ESTABLISH BY REGULATION A**
16 **SCHEDULE OF VIOLATIONS AND FINES TO BE USED FOR CIVIL CITATIONS ISSUED**
17 **UNDER THIS TITLE.**

18 (2) **A CITATION ISSUED BY THE COMMISSION SHALL INCLUDE:**

19 (I) **THE NAME AND ADDRESS OF THE PERSON CHARGED;**

20 (II) **THE NATURE OF THE VIOLATION;**

21 (III) **THE LOCATION AND TIME OF THE VIOLATION;**

22 (IV) **THE AMOUNT OF THE FINE;**

1 (V) THE MANNER, LOCATION, AND TIME IN WHICH THE FINE
2 MAY BE PAID;

3 (VI) THE CITED PERSON'S RIGHT TO A HEARING FOR THE
4 VIOLATION; AND

5 (VII) A WARNING THAT FAILURE TO PAY THE FINE OR TO
6 CONTEST LIABILITY IN A TIMELY MANNER IN ACCORDANCE WITH THE CITATION:

7 1. IS AN ADMISSION OF LIABILITY; AND

8 2. MAY RESULT IN AN ENTRY OF A DEFAULT
9 JUDGMENT THAT MAY INCLUDE THE FINE, COURT COSTS, AND ADMINISTRATIVE
10 EXPENSES.

11 (3) THE COMMISSION SHALL RETAIN A COPY OF THE CITATION.

12 (4) ALL MONEY COLLECTED UNDER THIS SUBSECTION SHALL BE
13 PAID IN ACCORDANCE WITH § 8-403(B) OF THIS TITLE.

14 8-707.

15 (a) Except as otherwise provided in this subtitle, a company or firm shall be
16 licensed by the Commission before the company or firm provides mold remediation
17 services in the State.

18 8-718.

19 Subject to the evaluation and reestablishment provisions of the Maryland
20 Program Evaluation Act, this subtitle and all regulations adopted under this subtitle
21 shall terminate and be of no effect after July 1, [2016] 2019.

22 8-802.

23 Subject to the evaluation and reestablishment provisions of the Maryland
24 Program Evaluation Act, this title and all regulations adopted under this title shall
25 terminate on [October 1, 2012] JULY 1, 2022.

1 **Article – State Government**

2 8–403.

3 (a) On or before December 15 of the 2nd year before the evaluation date of a
4 governmental activity or unit, the Legislative Policy Committee, based on a
5 preliminary evaluation, may waive as unnecessary the evaluation required under this
6 section.

7 (b) Except as otherwise provided in subsection (a) of this section, on or before
8 the evaluation date for the following governmental activities or units, an evaluation
9 shall be made of the following governmental activities or units and the statutes and
10 regulations that relate to the governmental activities or units:

11 (29) Home Improvement Commission, Maryland (§ 8–201 of the
12 Business Regulation Article: July 1, [2011] **2021**);

13 (39) mold remediation services, licensing and regulation of (§ 8–701 of
14 the Business Regulation Article: July 1, [2015] **2018**);

15 **Chapter 537 of the Acts of 2008**

16 SECTION 3. AND BE IT FURTHER ENACTED, That on or before [June 1,
17 2010] **JULY 1, 2013**, a company or firm providing mold remediation services shall be
18 licensed by the Maryland Home Improvement Commission, subject to the qualification
19 and application requirements of this Act.

20 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1,
21 2012, the Maryland Home Improvement Commission shall submit a report to the
22 Senate Education, Health, and Environmental Affairs Committee and the House
23 Economic Matters Committee, in accordance with § 2–1246 of the State Government
24 Article, on the implementation of nonstatutory recommendations contained in the
25 Sunset Review: Evaluation of the Maryland Home Improvement Commission
26 conducted by the Department of Legislative Services, specifically:

27 (1) the implementation of multiple licensing levels, in order to:

28 (i) encourage ease of access into the industry;

1 (ii) facilitate upward mobility for licensees to accept larger
2 projects based on experience and capital;

3 (iii) limit the size of projects that inexperienced contractors may
4 accept;

5 (iv) reserve use of the Home Improvement Guaranty Fund for
6 claims against new entry-level licensees; and

7 (v) require surety bonds for licensees in the upper tiers;

8 (2) a summary of efforts taken to reduce the investigation and
9 processing times for claims referred to the Office of Administrative Hearings;

10 (3) data regarding the number of Fund claims settled through
11 mediation; and

12 (4) any changes in the number of Fund claims filed and whether or not
13 the average time to resolve Fund claims decreased after implementing certain
14 measures.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 June 1, 2011.

**Appendix 5. Written Comments of the
Maryland Home Improvement Commission**

October 28, 2010

Warren G. Deschenaux
Director
Department of Legislative Services
Office of Policy Analysis
Maryland General Assembly
90 State Circle
Annapolis, MD 21401-1991

Re: Home Improvement Commission Sunset Review

Dear Mr. Deschenaux:

Pursuant to your letter of October 14, 2010, I am pleased to present this response on behalf of the Department of Labor, Licensing and Regulation and the Maryland Home Improvement Commission regarding the draft sunset report forwarded to us for review and comment. As requested we have advised Michael Vorgetts of any factual corrections to the draft. Our substantive response to the draft report is attached, with comments referenced by recommendation number.

The Department appreciates the professional manner in which Mr. Vorgetts and Erica White conducted the review. Please feel free to contact me if you have any questions regarding this response.

Sincerely,



Harry Lofeas
Deputy Commissioner

cc: Alexander M. Sanchez, Esq., Secretary
Leonard Howie, Assistant Secretary
Stanley J. Botts, Commissioner
Steven Smitson, Executive Director
John Borz, Chairman of Maryland Home Improvement Commission
Jackie Lichter, Director of Legislative and Intergovernmental Affairs

COMMENTS OF
THE DEPARTMENT OF LABOR, LICENSING AND REGULATION AND
THE MARYLAND HOME IMPROVEMENT COMMISSION
REGARDING THE SUNSET EVALUATION OF
THE MARYLAND HOME IMPROVEMENT COMMISSION
BY THE DEPARTMENT OF LEGISLATIVE SERVICES

Recommendation 1: Statute should be amended to extend the termination date of the Maryland Home Improvement Commission by 10 years to July 1, 2022. In addition, the commission should report by October 1, 2012 to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee regarding the nonstatutory recommendations contained in this report.

- The Department and the Commission support the continuation of the Maryland Home Improvement Commission as an effective tool to uphold the professional standards of the home improvement industry in Maryland. The Commission will be pleased to report to the General Assembly on the status of the nonstatutory recommendations made in the report as requested.

Recommendation 2: Statute should be amended to allow mold remediation companies to continue to practice without a commission license until July 1, 2013. The program's evaluation and termination dates under the Maryland Program Evaluation Act should be changed to July 1, 2018 and July 1, 2019, respectively.

- The Department and the Commission support postponing the implementation of the mold remediation licensing requirement until July 1, 2013, and the corresponding extension of the program's evaluation and termination dates under the Maryland Program Evaluation Act to July 1, 2018 and July 1, 2019, respectively. .

Recommendation 3: Statute should be amended to require that all home improvement contracts include a performance bond clause that would alert homeowners to the availability of additional protection against a contractor's poor workmanship or abandonment of a project. Statute should also be amended to require a "consumer protection" disclaimer, which would include the commission's website address, on all home improvement contracts.

- The Department and the Commission support amending the statute to require that all home improvement contracts include a clause to inform homeowners of the option of purchasing additional protection against a contractor's poor workmanship or abandonment of a project. The Commission believes this requirement could be limited to contracts above \$20,000, the current limit for an award from the Guaranty Fund. The Commission also supports amending the statute to require that each home improvement contract contain the commission's website address, along with the advisory information currently required.

Recommendation 4: Statute should be amended to grant the commission the authority to issue civil citations, with associated fines, to individuals found to be in violation of specified State home improvement laws and regulations. DLLR should design and implement the civil citation program by adopting a schedule of fines enumerated in the Code of Maryland Regulations. Finally, statute should be amended to allow a portion of the revenue generated to be deposited into the Home Improvement Guaranty Fund; these monies should be available to obtain expert witness reports and testimony when the commission determines such assistance is needed to resolve a Guaranty Fund claim.

- The Department and the Commission support amending the statute to grant the Commission the authority to issue civil citations with a corresponding schedule of fines. In addition, the Commission supports allowing part of the revenue generated from the citation being deposited into the Guaranty Fund and used to support expert witnesses. In this way, violators of the home improvement statutes will help protect the Fund by providing resources to hire objective experts to evaluate the validity of homeowners' claims against the Fund. DLLR has put in place certain electronic infrastructure to support civil citation authority granted to the Boards of Barbers and Cosmetologists which would facilitate implementation of similar authority if granted to the Commission. The Department has historically opposed the dedication of penalty revenues directly to a Commission's budgetary needs, due to concerns about the perception that a regulator might be imposing a fine strictly to augment its budget. However the virtual elimination due to cost-containment of funding for expert witnesses causes us to believe that the previous opposition to such funding dedication should be reconsidered.

Recommendation 5: Statute should be amended to make the criminal penalties for acting as a home improvement contractor without a license consistent with other penalties that may be assessed to members of the home improvement industry.

- The Commission believes that the current penalties for acting as an unlicensed contractor in the State should be increased, including for subsequent violations of the statute. Due to the ease with which unlicensed contractors obtain work, the Commission believes that an increased penalty will serve as an effective deterrent to individuals who would otherwise be inclined to seek work as unlicensed contractors. The Commission notes that a number of unlicensed contractors have also been successfully prosecuted for failure to perform the contract in cases where they have failed to complete a home improvement project or have taken deposits from homeowners and not performed the work. The existing penalty structure was put in place nearly 15 years ago and merits reconsideration.

Recommendation 6: The commission should develop a tiered licensing system to replace the State's current licensing structure. Such a system should limit the size of projects that new or inexperienced contactors may undertake while encouraging ease of access into the industry and upward mobility to accept larger projects as a

licensee becomes more experienced and better capitalized. DLLR should develop a proposed system and submit a report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2012, outlining the alternative licensing structure – including approximate fees and any bonding requirements – with requisite draft legislation to amend statute as necessary, so that the new licensing system may be implemented by July 1, 2014.

- The Department and the Commission support the recommendation of studying the feasibility of creating an alternative licensing structure and reporting the findings to the General Assembly as requested. The Department believes that a tiered license may increase the professional standards of the industry, while also increasing accessibility for new contractors. The Commission also notes that a tiered license structure could benefit the thousands of contractors that operate professionally each year by allowing the identification of those contractors to the public.

Recommendation 7: Statute should be amended to raise the fees charged by the commission for the licensure of contractors, subcontractors, and salespersons by \$25. Statute should be further amended to require applicants for a new license, in each licensing category, to pay a \$20 processing fee when submitting an application for a new license.

- The Department and the Commission support the recommendation of amending the statute to raise the fees for the licensure of contractors, subcontractors, and salespersons by \$25 and to implement a \$20 processing fee for new applicants. These changes are modest and practical, especially because licensing fees have not been raised since 1991. In addition, the Commission also supports amending the statute to increase the fee for certifying under seal the licensing status of a person from \$1 to \$5. The additional revenue would put the Commission closer to meeting the standard of covering the direct and indirect costs of operating the regulatory program.

Recommendation 8: Statute should be amended to require the commission to report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee if the balance of the Home Improvement Guaranty Fund is projected to fall below \$250,000. The commission's report should include a summary of measures taken to increase the fund balance and return the fund to a sustainable level.

- The Department and the Commission support the recommendation to amend the statute to require the commission to report to the General Assembly if the balance of the Guaranty Fund is projected to fall below \$250,000. The Commissioners have studied the Fund's activities closely during the current economic downturn and will continue to closely monitor the Fund's viability. The Commissioners are acutely aware that the Fund needs to remain viable while also balancing the

need to impose additional assessments against contractors. The Department shares these concerns and will work closely with the Commission to address issues related to the Fund's viability.

Recommendation 9: The commission should submit a report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2012, which summarizes efforts taken to reduce the length of time it takes for a claim to be investigated and processed by the commission and referred to OAH. The report should include (1) an analysis of the effectiveness of initiatives to reduce the number of cases referred to OAH; (2) data regarding the number of Guaranty Fund claims settled through mediation; and (3) an estimate of the impact these measures had on the commission's resources and workload; in particular the commission should report any changes in the number of Guaranty Fund claims filed, and whether or not the average time to resolve Guaranty Fund claims decreased.

- The Department and the Commission support the recommendation that a report be submitted to the General Assembly by October 1, 2012, that summarizes efforts to reduce the length of time it takes for a claim to be investigated and processed by the commission and referred to OAH. While the Commission has made good progress with respect to the pre-investigation and investigative components of complaint management, budgetary issues have made the OAH component less susceptible to better management and speedier resolution of complaints and claims.