

## **Preliminary Evaluation of the Licensure of Mold Remediation Services**

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**Recommendations:**                      **Extend the deadline for licensure to July 1, 2019.**

**If funding is not provided to implement the program, authorization for the program should terminate as scheduled on July 1, 2019, without further evaluation under the Maryland Program Evaluation Act or further action by the General Assembly. If funding is provided prior to scheduled termination, the Department of Labor, Licensing, and Regulation should submit departmental legislation to reauthorize the program.**

**Date Established:**                      2008

**Most Recent Prior Evaluation:**    None

**Composition:**                         Not Implemented

**Staff:**                                     Not Implemented

**Regulatory Activities:**             Not Implemented; intended to license and regulate firms that provide mold remediation services.

**Authorizing Statute:**                Title 8, Business Regulation Article

**Evaluation Completed by:**         Jared Sussman, Department of Legislative Services, 2016

## **Legislative History of the Licensure of Mold Remediation Services**

Chapter 537 of 2008 established the licensure of companies or firms that provide mold remediation services by the Maryland Home Improvement Commission (MHIC), which is housed in the Department of Labor, Licensing, and Regulation (DLLR) (See **Appendix 1**). The statute defines mold remediation, in part, as “the removal, cleaning, sanitizing, demolition, or other treatment of mold or mold-contaminated matter.” It does not include mold assessments to detect the presence of mold, nor does it include the repair of structures damaged by mold following remediation. The purpose of Chapter 537 is to protect consumers from firms that lack proper qualifications performing mold remediation services. Specifically, it requires that firms providing mold remediation services (1) have liability insurance in the amount of at least \$1 million and (2) employ only individuals who have the relevant certification by an accreditation body to provide mold remediation services. The legislation originally required that all companies or firms providing mold remediation services be licensed by June 1, 2010.

Chapter 537 was never implemented because funding for implementation was not provided. The Department of Legislative Services (DLS) estimated that implementation of the program would require start-up funding of \$61,900 in fiscal 2009 to support a new position, one-time consulting services, and ongoing operating expenses. MHIC advises that it cannot implement the licensing program without the start-up funding because it lacks staff to administer the licensing program and requires expert consultants to advise it on appropriate licensing standards for the mold remediation industry.

Chapter 333 of 2011 extended the deadline for companies or firms to acquire a license to July 1, 2013. The extension was recommended by the 2010 sunset evaluation of MHIC. In the absence of a licensing process, the extension allowed companies or firms to operate without violating the law. The July 1, 2013 deadline passed, yet no funding was provided to implement the mold remediation licensure process. As a result, firms currently providing mold remediation services are technically in violation of the statutory licensing requirement.

## **Mold Remediation Is Practiced in Maryland Even Though Licensure Has Not Been Implemented**

Absent implementation of Chapter 537, mold remediation services are provided in Maryland with no regulation by the State. The cleaning and demolition aspects of mold remediation require expertise and knowledge of best practices in order to ensure that the mold has been removed safely and effectively. The licensure program is meant to serve as a consumer protection measure by ensuring that contractors providing these services are certified by an accreditation body and insured. Otherwise, damaging mold may not be adequately removed and consumers may pay for unnecessary or excessive repairs. DLS notes, however, that MHIC reports not receiving any substantive consumer complaints regarding inadequate mold remediation services since Chapter 537 was enacted. MHIC does not have information on the number of firms providing such services.

The mold remediation licensure program created under Chapter 537 regulates the demolition and cleaning aspects of a mold remediation project, but not the reconstruction of structures damaged or infected by mold. MHIC currently licenses and regulates all home improvement contractors for work that includes alteration, remodeling, repair, and replacement of those damaged structures. Any home improvement work done over the course of a mold remediation project is already regulated under the MHIC contractor license.

## **Stakeholder Perspectives**

When enacted, Chapter 537 had considerable support from industry representatives, but there has been little involvement by industry representatives in pursuing its implementation following enactment. As noted above, representatives from MHIC recall only occasional inquiries from consumers, consumer advocates, or industry representatives, and no substantive complaints from consumers regarding mold remediation services.

Six industry representatives testified in favor of licensure of mold remediation services during the 2008 legislative session. In preparation for the sunset evaluation, DLS attempted to contact the industry representatives who testified in favor of the legislation in 2008. DLS received only one response from an out-of-state company, which supported implementing and enforcing the legislation. The company's response highlighted five key issues with the lack of licensure of mold remediation services that would be resolved if companies were required to meet the licensing requirements under Chapter 537:

- (1) companies without adequate knowledge, education, and experience are offering mold remediation;
- (2) companies are creating a conflict of interest by offering to do a free mold assessment, then convincing homeowners that they require remediation;
- (3) mold remediation companies are not adhering to industry standards;
- (4) companies are promoting certifications they have received that do not qualify under Chapter 537; and
- (5) companies are operating without adequate insurance.

## **Conclusions and Recommendations**

Mold remediation licensure may serve a valuable consumer protection function. Although the industry response highlights potential abuse, such instances have not been reported to MHIC. The Governor and the General Assembly may not be aware that the program was not implemented as there has been no reporting on the issue since the 2010 sunset evaluation of MHIC. The Governor and General Assembly should fund the program, if they desire to maintain the licensure requirement. It is likely too late for the Governor to include funds in the fiscal 2018 budget to be

submitted to the General Assembly to implement the program, but funding can be included in a supplemental budget. Alternatively, the Governor can include funds in the fiscal 2019 budget, or the General Assembly can restrict funds for this purpose in either fiscal 2018 or 2019. That would allow enough time for the General Assembly to reauthorize the program prior to the existing July 1, 2019 expiration date. **If funding is not provided under the scenarios described above, DLS recommends that the program be allowed to terminate without further evaluation under the Maryland Program Evaluation Act or further action by the General Assembly. If funding is provided, DLLR should submit departmental legislation to reauthorize the program.**

The amount of start-up funding required to implement the program is higher now than when it was calculated in 2008 due to inflation. DLS estimates that MHIC requires \$72,700 in fiscal 2018, compared with the original estimate of \$61,900 for fiscal 2009. The new estimate is sufficient for one administrative position (\$37,521 in salary and fringe benefits), consulting services (\$25,000), and operating expenses (\$10,179). The cost diminishes in future years due to the termination of one-time costs, most notably the consulting services.

Additionally, the deadline for licensure needs to be extended to prevent mold remediation contractors from operating in violation of the law. **DLS recommends extending the deadline for licensure to July 1, 2019.** This extension allows sufficient time for MHIC to establish the program and begin issuing licenses. If the program terminates on the same date, the licensing requirement also terminates.

**Appendix 1.**  
**Legislative History of the Licensure of Mold Remediation Services**

| <u>Year</u> | <u>Chapter</u> | <u>Change</u>   |
|-------------|----------------|---|
| 2008        | 537            | <p>Establishes the licensure of companies or firms that provide mold remediation services by MHIC.</p> <p>Requires that companies or firms hold a license by July 1, 2010.</p> <p>Requires an applicant to provide proof of certification by an accreditation body and maintain insurance of at least \$1 million.</p> <p>Establishes penalties for operating without a license.</p> <p>Designates July 1, 2016 termination date.</p> |
| 2011        | 333            | <p>Extends implementation of licensing requirement to July 1, 2013.</p> <p>Delays evaluation and termination dates to July 1, 2018, and July 1, 2019, respectively.</p>   |

Source: Laws of Maryland

**Appendix 2.**  
**Written Comments of the**  
**Maryland Home Improvement Commission**

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The commission reviewed a draft of this preliminary evaluation and provided these written comments. The comments were provided on an earlier version of the report, and therefore may not reflect the final text and recommendations.

October 20, 2016

Michael C. Rubenstein, Principal Policy Analyst  
Office of Policy Analysis  
Department of Legislative Services  
90 State Circle  
Annapolis, MD 21401-1991

Dear Mr. Rubenstein:

The Department of Labor, Licensing and Regulation and the Maryland Home Improvement Commission have received the draft of the preliminary evaluation of the commission's mold remediation program conducted by the Department of Legislative Services pursuant to the Maryland Program Evaluation Act. We appreciate the time and attention that was spent reviewing the commission's operations.

The commission respectfully requests that the evaluation and findings as noted in the report reflect the commission's position to allow the mold remediation program to sunset as intended. Considerable research has been performed to determine the consumer and industry demand for such a program and the fiscal viability. Our research has revealed a lack of consumer interest or demand for oversight and a lack of budget appropriation to support a viable program. In the past three fiscal years, fewer than five industry inquiries have been made regarding the program and the requirements for licensure. In that same time frame, no complaints have been received that were directly related to mold remediation licensing.

When the Mold Remediation Services Act was enacted in 2008, the fiscal note provided \$61,853 in general funds for administrative staffing, consultant support and general operating expenditures. When positions and funding were not included in the FY2009 budget, the commission decided to delay implementation of the program until adequate funding was available. Absorbing the cost for the mold remediation program within the commission's existing appropriation was not possible without causing deficiencies in other areas of the commission's staffing and funding. The cost of implementing the program is disproportionate to the demand for implementation and far surpasses the initial fiscal note estimate.

The department and the commission would like to express appreciation for the professionalism provided by your staff members while conducting this review. We look forward to working with the legislative staff addressing issues that were raised in the report as well as future issues that may arise. If your office should require additional information, please do not hesitate to contact Mr. Finneran at (410) 230-6169 or david.finneran@maryland.gov.

Sincerely,

David Finneran  
Executive Director  
Maryland Home Improvement Commission

Joseph A. Turney  
Chairman  
Maryland Home Improvement Commission

JTP/df/jt

cc: Kelly M. Schulz, Secretary, Labor, Licensing and Regulation  
Victoria L. Wilkins, Commissioner, Occupational and Professional Licensing  
Warren G. Deschenaux, Executive Director, Legislative Services