Update on the Preliminary Evaluation of the Elevator Safety Review Board

Recommendations: **Waive from Full Evaluation**

Extend Termination Date by Five Years to July 1, 2019

During the 2011 interim, the Department of Legislative Services (DLS) conducted a preliminary evaluation of the Elevator Safety Review Board as required by the Maryland Program Evaluation Act (§ 8-401 *et seq*. of the State Government Article). DLS recommended that a recommendation to the Legislative Policy Committee (LPC) regarding waiver from full evaluation be deferred until the submission of a follow-up report to be prepared by the Department of Labor, Licensing, and Regulation (DLLR). DLS has received and reviewed the follow-up report, copies of which are available upon request. Thus, this report presents our final findings and recommendations regarding the board.

Summary of the 2011 Preliminary Evaluation of the Elevator Safety Review Board

Although the Elevator Safety Review Board was required to issue licenses to elevator mechanics and contractors effective October 1, 2001, due to budgetary constraints, the board had only recently begun issuing licenses at the time of the preliminary evaluation. The board had been meeting regularly since February 2011 and was beginning to meet its statutory responsibilities for the first time. Due to the absence of licensees, the board had not received or processed any consumer complaints regarding licensees.

After conducting the preliminary evaluation, DLS determined that it could not fully assess the financial stability of the board or the Elevator Safety Review Board Fund due to the unreliable revenue data provided by DLLR. From fiscal 2009 through 2011, revenues for the board were generated exclusively from nonlicensure activities, namely registration fees for third-party elevator inspectors and inspection fees for two types of elevator safety inspections. These revenues were generated by the Division of Labor and Industry (DLI) within DLLR and transferred to the fund. However, due to coding errors in accounting for that revenue, additional revenues generated by DLI that should have been deposited in the State's general fund were inadvertently commingled with monies transferred to the Elevator Safety Review Board Fund. Therefore, at the time, DLLR could not provide a reliable estimate or projection of the revenue generated exclusively from those three activities for the benefit of the board.

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While the revenue generated by DLI enabled the board to cover its start-up costs, the board advised that, going forward, it did not intend to rely solely on those sources of revenue to maintain its operation. Instead, it set licensing fees to fully support the board's licensing activity as if it were not receiving additional revenue. To the extent that the DLI revenue provides excess revenue, the bulk of it will revert to the general fund under a statutory reversion provision established by Chapter 484 of 2008. In accordance with the statutory reversion, revenues in excess of 10% of the board's direct and indirect costs revert to the general fund at the end of each fiscal year. It is possible, however, that the board will need the DLI revenue to cover its expenditures during its "off-cycle" year, given the biennial license renewal cycle. In the absence of reliable revenue data, however, DLS could not accurately assess the fund's stability and viability.

DLS recommended that DLLR submit a report to DLS by October 1, 2012. The report was to provide:

- a thorough and detailed explanation of the accounting errors that led to the commingling of other DLI revenues with revenues designated for the Elevator Safety Review Board Fund;
- to the extent feasible, an accurate accounting for fiscal 2009 through 2012 of the revenue generated from registration fees for third-party elevator inspectors, fees charged for follow-up elevator inspections, and fees charged for elevator inspections in which pre-inspection criteria have not been met;
- projections for fiscal 2013 of the revenues to be generated from those same sources;
- the number and type of licenses issued during fiscal 2012 and a projection of the number of new and renewal licenses expected to be issued in fiscal 2013;
- the number of consumer complaints, if any, received by the board during fiscal 2012 and the status of those complaints; and
- an update on the sufficiency of the fund balance to maintain board licensure activity on a biennial cycle, including fiscal 2012 revenue generated by the issuance of elevator mechanic and elevator contractor licenses.

The report was to specifically address whether the funding sources will produce a stable stream of revenue and whether revenue from these sources will be sufficient to support the board's operations. It was also to address whether the statutory fee caps are appropriate given the actual number of licensees. In addition, the report was to address whether keeping a surplus of only 10% of the board's direct and indirect costs is sufficient to support the board's operations.

DLS deferred a recommendation to LPC on whether to waive the board from full evaluation and for what period of time to extend the board's termination date until receiving the board's follow-up report. If the report was not submitted, DLS was to automatically conduct a full evaluation of the board during the 2013 interim. LPC adopted these recommendations at its December 2011 meeting.

The 2012 Follow-up Report

After granting an extension to DLLR to complete the required report, DLS received the follow-up report submitted jointly by DLLR and the board on November 7, 2012. The report addressed all of the issues requested by DLS.

Overview of Accounting Errors and Comingling of Funds

DLLR reports that the comingling of various types of funds in the Elevator Safety Review Board Fund occurred over several years due to a series of miscommunications, a lack of oversight of deposits and how those deposits were recorded in the accounting system, and turnover at the Office of Budget and Financial Services (OBFS) in DLLR.

DLLR reports that it is clear that for several years DLI deposited boiler inspection fees and miscellaneous fine or citation revenues into the fund along with elevator fees and other revenue required by law to be deposited in this fund. Apparently, DLI and OBFS officials did not have an understanding regarding which party was responsible for ensuring that the monies were separated and deposited into the correct program cost accounts, which would result in elevator monies being directed to the newly created special fund and other monies being deposited in the State's general fund.

In calendar 2011, OBFS hired a new chief of accounting and deputy chief of accounting. According to DLLR, the new accounting team has dedicated a significant amount of time to reviewing and analyzing the fund and the comingling of monies that occurred for several fiscal years.

DLLR concludes that the lingering issues with proper disposition of funds have been resolved for fiscal 2013. OBFS and DLI have worked closely to develop rigorous standards and practices to ensure that monies are deposited accurately and information is shared effectively. Effective July 1, 2012, DLI has instituted a procedure requiring all deposits to be tracked carefully and entered into an internal database. Every three months, DLI will issue a report to OBFS and the Division of Occupational and Professional Licensing that lists total special and general fund deposits. The first report was recently issued by DLI. OBFS advises that it evaluated the DLI report and found that the amount of revenue due to the special fund matched the amount that appeared in the board's program cost account. The remaining monies were directed to the general fund, as specified in State law.

Accounting History for Fiscal 2009 through 2012 and Fiscal 2013 Revenue Projection

Due to the commingling of funds in prior years, DLLR is able to provide data only for fiscal 2011. In that year, $46,031 was generated from registration fees for third-party elevator inspectors, fees charged for follow-up elevator inspections, and fees charged for elevator inspections in which pre-inspection criteria have not been met, but $125,646 was credited to the Elevator Safety Review Board Fund. DLI believes most of the excess funds were ultimately deposited into the general fund because of the reversion provision governing the fund.

Based on the limited data available, the Division of Occupational and Professional Licensing projects that the fund will receive approximately $52,000 in revenues from DLI in fiscal 2013.

Licensing Totals for Fiscal 2012, Projection for Fiscal 2013, and Complaint Activity

The board issued 290 new elevator mechanic licenses and 10 new elevator contractor licenses in fiscal 2012, for a total of 300 licenses issued. The division notes that the board is poised to undertake a major licensing initiative in this fiscal year; the board expects to issue nearly 700 new licenses in fiscal 2013. The board received no complaints through October 2012.

Sufficiency of the Fund Balance and Fiscal 2012 Elevator Mechanic and Contractor Licensing Revenues

The 300 licenses issued in fiscal 2012 resulted in $61,000 in revenue in that fiscal year. The division expects licensing revenues to be significantly higher in fiscal 2013 as the bulk of individuals who are required to be licensed by the board will achieve licensed status during this fiscal year. Thus, the division projects about $137,500 in licensing revenue in fiscal 2013.

The fact that the majority of licensees will achieve licensed status during fiscal 2013 creates a difficult fiscal situation as the board has a lapsing special fund. Unlike other special funds, which may accrue a fund balance, the Elevator Safety Review Board Fund may only carry a surplus equal to 10% of its direct and indirect costs. Thus, due to the anticipated licensing renewal trends, the sufficiency of the board revenues is less certain than it would be if the special fund were nonlapsing. Nevertheless, the division projects that board revenues will be sufficient to cover anticipated expenditures through fiscal 2017, and DLS concurs.

Recommendations

Based on the information provided in the follow-up report, DLS is satisfied that the board continues to make progress in meeting its statutory responsibility of licensing elevator mechanics and contractors. As the board continues to issue more licenses, there will be more revenue from licensing fees and more reliable revenue data provided by DLLR, enabling DLS to accurately assess the fund's stability and viability in the future.

DLS recommends that LPC waive the board from full evaluation and that legislation be enacted to extend the board's termination date by five years to July 1, 2019. This will give DLS the opportunity to assess the stability and viability of the Elevator Safety Review Board Fund following five years of licensing activity. Waiting any longer to assess the fund may result in insufficient resources for the board to maintain its operations. DLS also finds that there is no need for the board to submit any additional follow-up report.