

**Department of Legislative Services**  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 409

(Chair, Economic Matters Committee)(By Request -  
Departmental - Labor, Licensing and Regulation)

Economic Matters

Education, Health, and Environmental Affairs

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**Home Improvement Commission - Guaranty Fund Jurisdiction**

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This departmental bill establishes that a homeowner may not receive an award from the Home Improvement Guaranty Fund that is in excess of the amount paid by the claimant to the contractor against whom the claim is filed.

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**Fiscal Summary**

**State Effect:** Potential minimal decrease in general fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) in FY 2013 due to a reduction in the department's expenses for cases heard at the Office of Administrative Hearings (OAH). Potential significant decrease in general fund expenditures for DLLR beginning in FY 2014 due to annualization. Potential minimal special fund expenditure decrease due to lower average awards from the Guaranty Fund. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** DLLR has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment as discussed below. (The attached assessment does not reflect amendments to the bill.)

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**Analysis**

**Current Law:** The Maryland Home Improvement Commission (MHIC) 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 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.

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 proportionately among injured homeowners. Actual loss does not include attorney’s fees, personal injury, court costs, interest, consequential damages, or punitive damages. Claims must be made within three years after the discovery of loss or damage. The homeowner carries the burden of proof in all Guaranty Fund claims.

Homeowners may make claims against the Guaranty Fund only if they reside in the home against which the claim is made or own fewer than four residences.

**Background:** The Guaranty Fund is maintained through fees charged to licensed home improvement contractors at the time of their original licensure and when they renew their licenses. Currently, new licensees pay \$100; renewal licensees pay \$75 every two years. The commission may assess each contractor up to \$150 in a calendar year if the fund balance is likely to drop below the statutory minimum of \$250,000. As of June 2009, the balance of the Guaranty Fund was about \$1.5 million.

DLLR advises that, by limiting awards from the Guaranty Fund to the amount a homeowner paid a contractor, the bill simplifies the process of determining the amount of actual loss suffered by a homeowner. MHIC does not have the resources necessary to hire experts to evaluate and estimate the cost of repairing or completing an unworkman-like or abandoned home improvement project. Legislative Services estimates that about 225 home improvement-related cases will be heard by OAH in fiscal 2010. Without the reports or testimony of expert witnesses, it is time consuming and difficult for homeowners and administrative law judges to determine the amount of actual loss. Homeowners may present numerous estimates from licensed home improvement contractors in order to prove the amount needed to complete a project.

### **State Expenditures:**

#### *Potential Significant Expenditure Decrease to DLLR Beginning in Fiscal 2014*

The bill alters the definition of actual loss so that a homeowner cannot collect more from the Guaranty Fund than the homeowner paid to the contractor who failed to properly execute the home improvement contract. This statutory change simplifies the process by which claims are determined; thus, the number of claims heard by OAH, and the amount

of time an administrative law judge must spend on each case, may be reduced. As mentioned above, OAH will hear approximately 225 MHIC cases in fiscal 2010, which is estimated to account for about 5,400 OAH case hours and roughly 13% of its hearing schedule. The cost to DLLR for OAH hearings is about \$1.7 million. Legislative Services cannot reliably estimate by how much the bill reduces the annual number of case hours OAH spends hearing MHIC cases; however, Legislative Services advises that the decrease in expenditures due to the bill may be significant. *If, for illustrative purposes only*, the amount of OAH case hours decreased by 15% (assuming a constant OAH allocation in future years), general fund expenditures for DLLR decrease by approximately \$255,000 annually.

Nevertheless, DLLR will not experience the full fiscal effect of this decrease until fiscal 2014, as the department's OAH allocation each year is based on OAH's actual caseload during the second preceding fiscal year. For example, the OAH allocation assessed to DLLR in fiscal 2010 is based on OAH's actual caseload in fiscal 2008. Legislative Services assumes that only a small number of new claims filed against the Guaranty Fund in fiscal 2011 (after the bill's effective date) will receive hearings in OAH in the same fiscal year. Therefore, any potential reduction in DLLR's OAH costs for fiscal 2013 (which are based on fiscal 2011 caseloads) is minimal. However, any reduction in case hours related to Guaranty Fund claims experienced in fiscal 2012 because of this bill may significantly reduce DLLR expenditures for OAH beginning in fiscal 2014.

#### *Home Improvement Guaranty Fund Effect*

The bill may decrease the average claim paid to a homeowner, as it is assumed that claims are lower in cases where a homeowner's money is refunded than it would be if a homeowner receives a claim that is intended to cover the costs of repairing, replacing, or finishing an earlier project. The extent to which expenditures from the Guaranty Fund decrease due to the bill is difficult to estimate as any such decrease depends on the reduction in the average claim awarded by MHIC. Legislative Services assumes the impact is minimal.

**Small Business Effect:** Home improvement contractors that are small businesses benefit because the bill limits their liability to the Guaranty Fund to the payments they received from a homeowner. The bill also simplifies the process by which claims are resolved, which may reduce the time a contractor spends disputing a claim. Legislative Services estimates the impact on small businesses in the State to be minimal.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 22, 2010  
mpc/mcr Revised - House Third Reader - April 5, 2010

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## ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Home Improvement Commission – Guaranty Fund Jurisdiction

BILL NUMBER: HB 409

PREPARED BY: Department of Labor, Licensing and Regulation

### PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

### PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.