

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1102 (Delegate Reilly, *et al.*)
 Economic Matters

Maryland Home Improvement Commission - Contractors and Subcontractors -
 License Suspension and Permits

This bill requires the Maryland Home Improvement Commission (MHIC), subject to existing hearing requirements, to suspend the license of an individual who is found liable in a civil action for failing to pay a subcontractor. The license must remain suspended until the licensee pays the total amount of the judgment. Unless MHIC agrees to accept the surrender of the license, the license remains in effect while it is suspended under the bill. Generally, a local government building and permits department may not transfer or release a permit issued to a subcontractor on receipt of a Statement of Contractor Breach, containing specified information, from the subcontractor. However, a local department may transfer or release a permit suspended under the bill in specified circumstances.

Fiscal Summary

State Effect: General fund revenues decrease by \$40,500 in FY 2020, escalating to \$112,000 by FY 2024, as discussed below. Overall expenditures are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	(\$40,500)	(\$64,800)	(\$77,800)	(\$93,300)	(\$112,000)
Expenditure	0	0	0	0	0
Net Effect	(\$40,500)	(\$64,800)	(\$77,800)	(\$93,300)	(\$112,000)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local building and permit offices potentially experience operational delays due to the administrative processes established for permit suspension under the bill. Overall local government finances are likely not materially affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: A Statement of Contractor Breach must be on a form specified by a local government building and permits department, include a signed and notarized affidavit from a subcontractor alleging breach of contract by a contractor for failure to pay, and contain other identifying information.

A local department may transfer or release a permit suspended under the bill (1) on receipt of an Authorization to Release a Suspended Permit form jointly signed by the contractor or subcontractor or (2) on the voluntary withdrawal of a Statement of Contractor Breach by the subcontractor who filed the statement. Each local building and permit office must develop the permit release form.

Current Law/Background: MHIC issues two licenses: contractor and salesperson. The subcontractor license was repealed by Chapter 370 of 2016. MHIC regulations specify that it is the nondelegable duty and obligation of the prime contractor to pay the subcontractors, workers, and individuals who provide materials.

Subject to specified hearing provisions, MHIC may deny a license to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee or the management personnel of the applicant or licensee, in addition to other prohibited actions:

- often fails to perform home improvement contracts;
- falsifies an account or engages in fraud;
- as a contractor, fails to show financial solvency, based on specified criteria;
- as a contractor lacks competence, as shown by the performance of an unworkmanlike, inadequate, or incomplete home improvement;
- violates or attempts to violate the Maryland Home Improvement Law or violates MHIC regulations; or
- fails to comply with (1) the terms of a State or local permit, license, or approval issued for home improvement or (2) any State or local law, an approved plan, or other legal requirement.

Instead of or in addition to reprimanding a licensee or suspending or revoking a license, MHIC may impose a civil penalty of up to \$5,000 for each violation of the Maryland Home Improvement Law, subject to certain considerations.

Local Building and Permits Departments

Except for a permit for a home improvement to be performed by a property owner, the building and permits department of a county or a municipality may not issue a permit for

a home improvement unless the permit includes the license number of a licensed contractor.

State Fiscal Effect: MHIC’s operating costs are paid out of the MHIC Special Fund. At the end of each fiscal year, any unspent and unencumbered portion of the special fund in excess of \$100,000 (*i.e.*, the operating surplus) reverts to the general fund. For example, if the fund had \$130,000 at the end of a fiscal year, then \$30,000 would revert to the general fund. Based on MHIC’s projected surplus, the bill’s implementation costs require MHIC to spend money that would have otherwise reverted to the general fund. This has no effect on total special fund expenditures, but reduces general fund revenues.

MHIC is one of the largest regulatory entities at the Department of Labor, Licensing, and Regulation (DLLR), with approximately 31,500 licensees and a significant complaint volume. DLLR advises that, although the bill largely codifies an existing prohibition and potential remedy, it likely increases the number of hearings related to nonpayment by contractors. Based on DLLR’s estimate, the costs associated with increased hearings, which are also phased in over time to reflect increased subcontractor awareness of the remedy, are \$40,500 in fiscal 2020, which reflects the bill’s October 1, 2019 effective date, and then escalate to \$112,000 by fiscal 2024. As noted above, due to the existing operating surplus reversion requirement, these costs reduce the amount of the reversion and thus decrease general fund revenue.

Local Fiscal Effect: The local policing of home improvement primarily occurs through locally issued permits and locally conducted inspections, issued and overseen by local building and permits departments. Local building and permit offices potentially experience operational delays due to the administrative processes established to “freeze” or keep a permit from being transferred or released. Overall local government finances are likely not materially affected.

Small Business Effect: Small home improvement businesses are negatively affected by the potential loss of their home improvement contractor license and the freezing of local permits. Conversely, in the event of a legitimate claim of nonpayment by a subcontractor, the bill further encourages payment.

Additional Comments: DLLR advises that, in addition to the effects on governments and small businesses, the bill’s requirement that building permits not be transferred or released from a subcontractor may result in delayed completion of home improvement projects until the matter of payment to a subcontractor has been resolved. Due to the fact that there may be hearings and appeals, a homeowner may be left without a resolution and may have a partially finished project for a long period of time.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Kent, Montgomery, and Worcester counties; cities of Salisbury and Westminster; town of Leonardtown; Maryland Municipal League; Department of Legislative Services

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