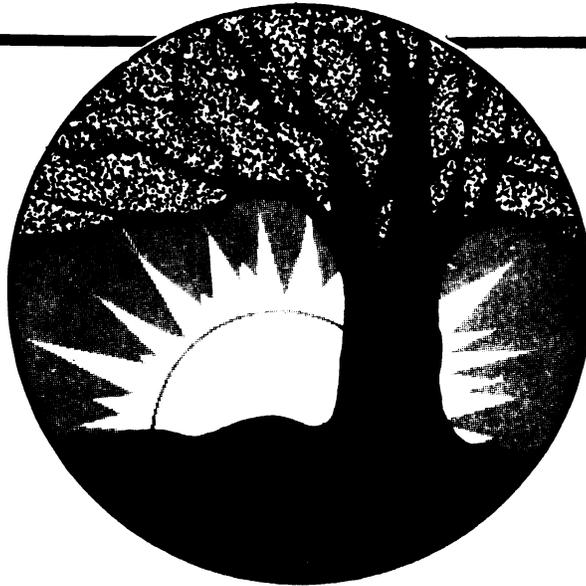


PERFORMANCE AUDIT

**Board for Licensing Contractors
Home Improvement Commission**

December 2006



**John G. Morgan
Comptroller of the Treasury**



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John G. Morgan
Comptroller

December 29, 2006

The Honorable John S. Wilder
Speaker of the Senate
The Honorable Jimmy Naifeh
Speaker of the House of Representatives
The Honorable Thelma M. Harper, Chair
Senate Committee on Government Operations
The Honorable Mike Kernell, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Board for Licensing Contractors and the Home Improvement Commission. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the board and the commission should be continued, restructured, or terminated.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/dlj
06-030

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Board for Licensing Contractors
Home Improvement Commission
December 2006

AUDIT OBJECTIVES

The objectives of the audit were to determine the following: the authority and responsibility mandated to the board and commission by the General Assembly; the effectiveness of the complaint-handling processes of the board and commission; whether the public has adequate, easy access to information on contractors with past disciplinary actions; whether there are backlogs in processing new licenses and license renewals; whether board and commission members sign annual conflict-of-interest statements; what measures the board has taken to ensure the security of contractor files; the need for the board to improve its efforts against unlicensed activities by contractors; whether the board has adequate policies and procedures to enforce licensing standards; if the board's operations could be made more efficient and effective by allowing the board to waive interviews of highly qualified new applicants; if all checks received by the board are restrictively endorsed upon receipt; what efforts the commission has taken to expand its jurisdiction; and whether board Rule 0680-1-.10 has been updated. Additional objectives were to summarize and assess information documenting the board's and commission's compliance with Title VI requirements and to recommend possible alternatives for legislative or administrative action that might result in more efficient and effective operation of the board and the commission.

FINDINGS

The Board for Licensing Contractors, the Home Improvement Commission, and the Division of Consumer Affairs Need to Expedite Complaint Processing

The Board for Licensing Contractors, the Home Improvement Commission, and the Department of Commerce and Insurance's Division of Consumer Affairs all have roles in handling complaints concerning alleged contractor misconduct. We randomly selected 20 board and five commission complaints received in January 2005 to determine the timeliness of their processing. The complaints in our sample took significantly more time to process than the 180-day standard specified in the Department of Commerce and Insurance's September 2005 strategic plan. The average processing time for the board cases (which were either sent to the board or the division for

resolution) was 319 days. Without timely processing of complaints, the Board for Licensing Contractors and the Home Improvement Commission are limited in the extent to which they can meet their roles in protecting the consumer against contractor misconduct (page 14).

Contractor Licensing Files Are Not Securely Maintained

Neither the Board for Licensing Contractors nor the Home Improvement Commission has taken adequate actions to ensure the physical security of contractor license files. While complaint files are secure, the contractor license files are maintained in open, unlocked shelves within the board's office. The file security issue was first raised in a December 1993 Division of State

Audit investigative report, and is a repeat finding from the board's 1997 performance audit. The 1993 report found significant internal control weaknesses in the issuance of licenses, and the 1997 audit found that "the location of the files, with no walls and with other regulatory boards' office space on either side, makes it very difficult to ensure file security." Since the prior audit, the file arrangement has improved for complaint files but has not changed for license files (page 17).

Board and Commission Members Have Not Signed Conflict-of-Interest Statements Annually

Neither the members of the Board for Licensing Contractors nor the Home Improvement Commission have annually updated conflict-of-

interest statements. In August 2004, the department developed and implemented a conflict-of-interest statement to be signed by members of all regulatory boards. Board and commission members completed conflict-of-interest statements in 2004 but have not updated them since that time. The annual review and signing of a conflict-of-interest statement helps ensure that members are aware of prohibited activities (i.e., activities that would be considered a conflict of interest) as well as the actions to take if a conflict arises or if the member has questions regarding a potential conflict of interest (page 19).

OBSERVATIONS AND COMMENTS

The audit also discusses the following issues: the Home Improvement Commission's lack of financial self-sufficiency; not all licenses being processed within time guidelines; statutes pertaining to the collection of unpaid civil penalties; and the need to improve certain policies and procedures. The following topics are also discussed: check endorsement, interview waiving, the Home Improvement Commission's jurisdiction, public information, the use of inspectors and investigators, and Board for Licensing Contractors Rule 0680-1-.10 (page 6).

ISSUES FOR LEGISLATIVE CONSIDERATION

The General Assembly may wish to consider passing legislation authorizing the Department of Commerce and Insurance to collect unpaid civil penalties for the Board for Licensing Contractors and the Home Improvement Commission without the involvement of district attorneys, either through direct court action or the use of collection agencies. The General Assembly may wish to consider allowing this legislation to cover unpaid civil penalties of other boards and commissions under the jurisdiction of the department's Division of Regulatory Boards.

The General Assembly may wish to consider whether expansion of the commission's jurisdiction would improve consumer protection and, if so, whether the law should be amended to expand the commission's jurisdiction into some or all of the counties that have not yet elected to come under commission jurisdiction.

**Performance Audit
Board for Licensing Contractors
Home Improvement Commission**

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
Purpose and Authority for the Audit	1
Objectives of the Audit	1
Scope and Methodology of the Audit	2
Organization and Responsibilities	3
OBSERVATIONS AND COMMENTS	6
Home Improvement Commission’s Lack of Financial Self-sufficiency	6
Not All Licenses Were Processed Within Time Guidelines	6
Statutes Pertaining to the Collection of Unpaid Civil Penalties	7
Policies and Procedures Should Be Improved	9
Additional Audit Work Performed	10
FINDINGS AND RECOMMENDATIONS	
1. The Board for Licensing Contractors, the Home Improvement Commission, and the Division of Consumer Affairs need to expedite complaint processing	14
2. Contractor licensing files are not securely maintained	17
3. Board and commission members have not signed conflict-of-interest statements annually	19
RECOMMENDATIONS	20
Legislative	20
Administrative	20
APPENDICES	21
Appendix 1 – Licensing Requirements and Fees	21
Appendix 2 – Title VI Information	22
Appendix 3 – Complaint Handling Standard Operating Procedure, Submitted by the Department of Commerce and Insurance in response to Finding 1	24

Performance Audit
Board for Licensing Contractors
Home Improvement Commission

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Board for Licensing Contractors and the Home Improvement Commission was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-228, the board is scheduled to terminate on June 30, 2007, and the commission is scheduled to terminate on June 30, 2008, pursuant to Section 4-29-229. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the board and commission and to report the results to the Joint Government Operations Committee of the General Assembly. This performance audit is intended to aid the committee in determining whether the board and the commission should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to determine the authority and responsibility mandated to the board and commission by the General Assembly;
2. to determine the effectiveness of the complaint-handling processes of the board and commission including whether board members have adequate information to make decisions in complaint and disciplinary cases;
3. to evaluate whether the public has adequate, easy access to information on contractors with past disciplinary actions;
4. to assess whether there are backlogs in processing new licenses and license renewals;
5. to ascertain whether board and commission members sign annual conflict-of-interest statements;
6. to determine what measures the board has taken to ensure the security of contractor case files, especially files dealing with complaints, applications, and renewals;

7. to determine the need for the board to improve its efforts against unlicensed activities by contractors;
8. to evaluate whether the board has adequate policies and procedures to enforce licensing standards;
9. to determine if the board's operations could be made more efficient and effective by allowing the board to waive interviews of highly qualified new applicants;
10. to determine if all checks received by the board are restrictively endorsed upon receipt;
11. to assess efforts taken by the commission to expand its jurisdiction;
12. to evaluate whether board Rule 0680-1-.10 has been updated to match Section 62-6-116, *Tennessee Code Annotated*, requirements that license renewal applicants with monetary limits greater than \$1.5 million submit reviewed or audited financial statements;
13. to summarize Title VI-related information for the board and commission; and
14. to recommend possible alternatives for legislative or administrative action that may result in more efficient and effective operation of the board and the commission.

SCOPE AND METHODOLOGY OF THE AUDIT

We reviewed the board's and commission's activities and procedures, focusing on fiscal years 2004 through 2006. The audit was conducted in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. The methods used included

1. review of applicable legislation, and board and commission rules, policies, and procedures;
2. examination of the board's and commission's records;
3. examination of prior performance audit and financial and compliance audit reports on the board and commission, as well as such reports from other states;
4. interviews of board and commission members and their staff; and
5. interviews with other Department of Commerce and Insurance staff who interact with the board and commission and their staff.

ORGANIZATION AND RESPONSIBILITIES

Board for Licensing Contractors

The General Assembly created the first State Board for Licensing Contractors by Chapter 70 of the Public Acts of 1931. The purpose of the board is to regulate the contracting industry and to safeguard life, health, and property by licensing properly qualified contractors. According to Section 62-6-102, *Tennessee Code Annotated*,

“Contractor” means any person or entity who undertakes to, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down, or furnishing labor to install material or equipment for any building, highway, road, railroad, sewer, grading, excavation, pipeline, public utility structure, project development, housing, housing development, improvement, or any other construction undertaking for which the total cost of the same is twenty-five thousand dollars (\$25,000) or more.

The board is administratively attached to the Department of Commerce and Insurance, Division of Regulatory Boards. Board staff are supervised by an executive director. An attorney from the Department of Commerce and Insurance serves as the board’s staff attorney. (See page 22 for a breakdown of staff by title.) As of May 2006, approximately 20,000 contractors had active licenses issued by the board.

The board consists of nine members serving staggered seven-year terms. Eight of the nine members are to be actively engaged as licensed contractors in the following classifications:

- At least three residential contractors
- At least two commercial building contractors
- At least one mechanical contractor
- At least one electrical contractor
- At least one highway, railroad, or airport contractor

At least one member cannot be engaged as a contractor in any county of this state (i.e., a public member). All board members who are required to be in the business of contracting shall have been actively engaged in the business for a period of not less than ten years immediately preceding their appointment and shall be licensed in the classification in which such member is serving upon the board. No more than one board member representing a classification (e.g., residential contractor) may be from a particular grand division of the state, and no more than three board members may reside in any one grand division. There should be at least one member who is 60 years of age or older and at least one member of a racial minority. The board meets six times a year, meeting in each grand division at least once a year.

The Board for Licensing Contractors had expenditures of \$2,058,748 and revenues of \$2,659,764 in fiscal year 2006, including collections of \$143,900 in penalties. Expenditures were \$1,947,068 and revenues were \$2,950,931 in fiscal year 2005. In fiscal year 2004, the board had expenditures of \$1,961,677 and revenues of \$2,349,671. As of June 30, 2006, the board had a reserve account balance of over \$6 million. (Revenues, expenditures, and reserve balances for limited licensed electricians and [for 2006] limited licensed plumbers are included in the above totals.) The board's revenues are derived solely from license fees and penalties. The major categories of expenditure in fiscal year 2006 were as follows:

Categories of Expenditure for Fiscal Year 2006

Category of Expenditure	Amount	Percent of Total Board Expenditures
Regular Salaries	\$710,069	34%
Longevity	\$34,800	2%
Overtime	\$2,574	0%
Employee Benefits	\$311,283	15%
Travel	\$76,780	4%
Printing, Duplicating & Binding	\$18,645	1%
Communications	\$46,176	2%
Maintenance, Repairs & Service	\$970	0%
Professional Services & Dues	\$28,734	1%
Supplies & Materials	\$31,787	2%
Rentals and Insurance	\$68,760	3%
Grants and Subsidies	\$1,631	0%
Professional Services & Dues—State	\$112,340	5%
Cost Backs	\$614,199	30%
Total	\$2,058,748	100%*

*Total does not add to 100 because of rounding.

See Appendix 1 for additional information regarding board licensing requirements and fees.

Home Improvement Commission

The General Assembly created the Home Improvement Commission by passing Chapter 851 of the Public Acts of 1988. The five-member commission's main mission is "to safeguard and protect the homeowner against abuses by home improvement contractors through regulating the home improvement business and by the licensing of persons engaged in such business," according to Section 62-37-102, *Tennessee Code Annotated*. The commission oversees construction jobs of over \$3,000 up to \$24,999 in existing homes. (See page 10 for a discussion of the commission's jurisdiction.) The commission is administratively attached to the Department of Commerce and Insurance and shares an executive director with the Board for Licensing Contractors. In addition to the executive director, the commission had two staff, as of July 2006. As of May 2006, approximately 1,200 active contractor licenses had been issued by the commission.

The Home Improvement Commission members, three contractors and two public members, serve staggered four-year terms. During fiscal year 2005, the commission met four times, as required by statute. During fiscal year 2006, the commission met only three times (one less than the required number of annual meetings). According to Department of Commerce and Insurance management, the commission had scheduled the required four meetings. However, one of the planned meetings was canceled because there were insufficient discussion items to justify meeting (the previous meeting had only lasted one hour), particularly in light of the commission's difficulties in achieving financial self-sufficiency (see below).

In fiscal year 2006, the commission had expenditures of \$153,292 and revenues of \$166,363, including collections of \$1,500 in penalties. The commission had expenditures of \$172,411 and revenues of \$161,958 in fiscal year 2005. In fiscal year 2004, the commission had expenditures of \$187,588 and revenues of \$180,346. The commission's revenues are derived solely from license fees and penalties. The major categories of expenditure in fiscal year 2006 were as follows:

Categories of Expenditure for Fiscal Year 2006

Category of Expenditure	Amount	Percent of Total Commission Expenditures
Regular Salaries	\$39,632	26%
Longevity	\$3,100	2%
Overtime	\$159	0%
Employee Benefits	\$16,896	11%
Travel	\$1,133	1%
Printing, Duplicating & Binding	\$2,983	2%
Communications	\$516	0%
Rentals and Insurance	\$8,226	5%
Professional Services & Dues—State	\$884	1%
Cost Backs	\$79,763	52%
Total	\$153,292	100%

See page 6 for information regarding the commission's lack of financial self-sufficiency. See Appendix 1 for additional information regarding commission licensing requirements and fees.

OBSERVATIONS AND COMMENTS

The issues discussed below did not warrant findings but are included in this report because of their effect on the operations of the Board for Licensing Contractors and the Home Improvement Commission.

HOME IMPROVEMENT COMMISSION'S LACK OF FINANCIAL SELF-SUFFICIENCY

Pursuant to Sections 4-29-121 and 4-3-1011, *Tennessee Code Annotated*, all regulatory boards should be financially self-sufficient over a two-year period. However, the Home Improvement Commission (which, by statute, is a subdivision of the Board for Licensing Contractors) ran deficits for both fiscal years 2004 and 2005. Specifically, the commission had expenditures of \$187,588 and revenues of \$180,346 in fiscal year 2004. For fiscal year 2005, the commission had expenditures of \$172,411 and revenues of \$161,958. Consequently, the commission had deficits of \$7,242 in fiscal year 2004 and \$10,453 in fiscal year 2005, resulting in a two-year deficit of \$17,695. For fiscal year 2006, the commission was self sufficient, with expenditures of \$153,292 and revenues of \$166,363. As of June 30, 2006, the commission had a negative reserve account balance of over \$650,000. The commission's revenues are derived solely from license fees and penalties.

Through House Bill 2635 and Senate Bill 2561 (both filed in February 2006), some members of the General Assembly attempted to merge the Home Improvement Commission with the Board for Licensing Contractors. (The board's revenues substantially exceeded its expenditures during fiscal years 2004 and 2005 [see page 4].) However, the bills failed to pass during the 104th General Assembly, which ended in May 2006. The General Assembly has formed a legislative study committee (which had not met as of early October 2006 but expected to meet after the first week in November) to develop language for a new bill to combine the efforts of the Board for Licensing Contractors and the Home Improvement Commission in some manner. Until new legislation is drawn up and passed, management of the Division of Regulatory Boards should review the commission's operations and identify ways to increase revenues (e.g., by raising fees) and/or decrease expenditures.

NOT ALL LICENSES WERE PROCESSED WITHIN TIME GUIDELINES

On average, the Board for Licensing Contractors met (or came close to meeting) the time guidelines for processing new license and license renewal applications. However, a third of the renewal applications reviewed exceeded the time guidelines. We took two judgmental samples, one of new license applications and one of license renewal applications, approved by the Board for Licensing Contractors. The sample of new license applications came from applications

received by the board in calendar years 2005 and 2006, while the sample of renewal applications came from applications relating to licenses originally approved in February 2004.

We used application processing time guidelines from the Department of Commerce and Insurance's September 2005 strategic plans. These guidelines require a 60-day processing time for new license applications and a 30-day processing time for license renewal applications. The average processing time for new applications was 44 days, with 3 of the 20 files reviewed exceeding the 60-day processing guideline. The 3 files exceeded the guideline by only a few days, ranging from 3 days to 9 days. The average processing time for renewal applications was 32 days, two days over the time guideline. Six of the 18 files reviewed exceeded the 30-day processing guideline. The number of days the six files exceeded the guideline ranged from 6 days to 90 days. The board and the board's executive director should review staff's processing activities and the procedures for processing applications and make changes as needed to meet the time guidelines, particularly for renewal applications, more consistently.

Department of Commerce and Insurance's Comment

It should be noted that performance standards require that the application or renewal be "complete" under the 60-day processing time for new applications (Division Program Plan) and a 30-day processing time for renewals (Department Strategic Plan). It should also be noted that the Division of Regulatory Boards created the position of Licensing Manager in Summer 2006. Each board, including the Board for Licensing Contractors and the Home Improvement Commission, developed and implemented licensing Standard Operating Procedures to ensure compliance with the timelines. Currently, the renewals for complete applications are issued within one week.

The plans apply to the department and division as a whole and not necessarily each individual program. While each individual program works diligently to achieve the goals, it is understood that some programs may surpass the goals while others may not quite reach them. Due to the complexity of the Board for Licensing Contractors' licensing process, the program will be working diligently to reach the department's goals. It should be noted that the board must review and approve most applications, which can delay the process. Also, a weekly report is generated for staff that outlines each application that may be over the 60-day mark.

STATUTES PERTAINING TO THE COLLECTION OF UNPAID CIVIL PENALTIES

As of March 2006, the Board for Licensing Contractors had \$50,000 in unpaid civil penalties (e.g., citations and consent orders). This amount involved a total of 68 individual penalties averaging \$735 each. The oldest penalty was issued in fiscal year 2001. The board collected \$398,750 in civil penalties from fiscal years 2003 to 2006, up to March 2006 (see Table 1). The Home Improvement Commission had two unpaid citations and five unpaid consent orders totaling \$5,500, as of March 2006.

Table 1
Board for Licensing Contractors
Civil Penalties Collected
Fiscal Years 2003 Through 2006

Fiscal Year	Amount Collected
2003	\$96,700
2004	\$126,850
2005	\$102,800
2006*	\$72,400
Total	\$398,750

* Penalties collected up to March 31, 2006.

The board's and the commission's process for collecting unpaid civil penalties includes first trying to collect the funds through a formal hearing process. If a licensed contractor refuses to pay a civil penalty, the board or commission can, after a formal hearing, refuse to renew the license or take action to revoke the license. However, most of the unpaid civil penalties result from unlicensed activity. In such cases, a formal hearing would still be held, but the board's/commission's ability to collect funds from an unlicensed contractor is more limited since such a contractor does not have an economic incentive (i.e., maintaining an active license) to comply. If formal hearings don't succeed, then the unpaid penalties are transferred to the Attorney General's Office for collection, which may involve trying to get local district attorneys interested in prosecuting the contractors.

We reviewed statutes pertaining to the collection of unpaid civil penalties by other state agencies in order to determine ways to improve the collection process. We found two state departments, the Departments of Environment and Conservation and Labor and Workforce Development, which have statutory authority to collect civil penalties without using district attorneys.

Section 69-7-307, *Tennessee Code Annotated*, allows the Commissioner of Environment and Conservation to issue civil penalties against violators of statutes and/or rules and regulations pertaining to water management. Section 69-7-307(f), *Tennessee Code Annotated*, allows the commissioner to "initiate an action in any court of competent jurisdiction seeking a judgment for any unpaid penalties." In addition, Section 69-7-307(h), states the following: "Any person intentionally violating, or failing, neglecting, or refusing to comply with, any of the provisions of this part or rules or regulations commits a Class C misdemeanor. Each day upon which such violation occurs is a separate offense." Thus, there is a financial disincentive for a violator to delay payment of a civil penalty.

Section 50-3-107, *Tennessee Code Annotated*, requires the Commissioner of Labor and Workforce Development to refer any fine or penalty in the area of Occupational Safety and Health unpaid for more than six months to the Attorney General's Office. Section 50-3-107 authorizes the Attorney General's Office to contract with private collection agencies to collect the funds. In addition to authorizing that interest be paid on late payments, the statute requires a 10 percent penalty for every 30 days that pass with no payment up to a maximum of 30 percent

of the unpaid amount. Any interest or penalties charged and collected will be used to offset the cost of the collection of fines and penalties.

The General Assembly may wish to consider passing legislation authorizing the Department of Commerce and Insurance to collect unpaid civil penalties for the Board for Licensing Contractors and the Home Improvement Commission without the involvement of district attorneys, either through direct court action or the use of collection agencies. The General Assembly may wish to consider allowing this legislation to cover unpaid civil penalties of other boards and commissions under the jurisdiction of the department's Division of Regulatory Boards.

POLICIES AND PROCEDURES SHOULD BE IMPROVED

Based on issues identified during planning work for this performance audit, we reviewed the need for the Board for Licensing Contractors to implement policies and procedures in the following areas: (1) under what circumstances to issue license suspensions, revocations, and civil penalties, to ensure consistency and fairness when judging alleged violations; (2) the maximum amount of time after the alleged incident(s) a consumer can file a complaint; and (3) what constitutes a single project versus multiple projects for the purpose of judging whether a contractor exceeded his or her license's monetary limit per project. Interviews with board members, the board's executive director, and the board's staff attorney indicated no consensus regarding the need for such policies and procedures. In addition, our review of board minutes did not identify significant inconsistencies in the board's actions because of the lack of formal policies and procedures.

Department of Commerce and Insurance management noted that each case is considered on its own individual merits and circumstances. However, we believe that some board procedures need to be documented and available, and that board members (particularly newer members) would benefit from formal guidance when making regulatory decisions. For example, regarding the question of what constitutes a single project versus multiple projects, both board members and staff mentioned a procedure used by the board to make such determinations, but no one could provide us with a copy of this guidance or knew exactly where the procedure was documented (if it was). Regarding the "statute of limitation" on filing a complaint, the board's complaint form does mention that there "is a one (1) year 'implied warranty' on cosmetic items and a 'statute of limitations' of four (4) years on structural issues." However, those interviewed gave a variety of answers about whether some limitation existed, what it was, and whether it was needed. As noted above, regarding disciplinary actions, interviewees had varying comments regarding the need for additional guidance. It seems, though, that all board members would benefit from additional guidelines regarding what disciplinary actions are appropriate given certain types of violations and situations. The board currently has some newer members and some members who have extensive experience on the board, and both perspectives would be very helpful in developing guidance, particularly for less experienced and future board members.

The board's executive director and staff attorney should work with board members to formally document current practices and develop guidance regarding appropriate disciplinary actions. All board members and staff should receive copies of the resulting guidelines/policies and procedures.

ADDITIONAL AUDIT WORK PERFORMED

Check Endorsement

The September 1997 performance audit included a finding that the Board for Licensing Contractors did not restrictively endorse checks that it received with application or renewal forms. The board no longer receives checks. The department took steps to ensure that payments are made and received in a central location (the Cashier's Office) within the Department of Commerce and Insurance's Fiscal Division. The department also instituted a system of safeguards including ensuring that the least possible number of individuals handle funds, segregating staff duties, and improving documentation and controls.

Interview Waiving

The September 1997 performance audit found that the Board for Licensing Contractors was requiring each applicant to pass a written examination and an interview with a board member. The audit stated that "developing criteria for exemption, and decreasing the number of applicants required to pass through the interview process, could make the board's operations more efficient." The board can now waive interviews of highly qualified applicants, following a change in board rules in November 2005. In order to qualify for such a waiver, an applicant must meet several criteria, including attaining scores of 75 percent or higher on applicable examinations, submitting a complete application (that raises no questionable issues regarding finances, ownership, etc.), demonstrating adequate experience in the license classification requested, and having no complaints on file in Tennessee.

Home Improvement Commission Jurisdiction

Although the Home Improvement Commission has tried in the recent past to expand the number of counties within its jurisdiction, the commission does not appear to be taking any related actions currently. As of March 2006, the commission had jurisdiction in nine counties in the state, (Bradley, Davidson, Hamilton, Haywood, Johnson, Knox, Robertson, Rutherford, and Shelby). These counties contain 44 percent of the state's population, according to the 2000 Census. Pursuant to Section 62-37-126, *Tennessee Code Annotated*, an individual county elects to come under the commission's jurisdiction by a two-thirds majority vote of its legislative body.

Both the commission's chair and commission staff stated that expansion of the commission's jurisdiction would help protect consumers from abuses by contractors. The commission sent out a letter in February 2003 to all county commissioners about the existence of the commission and how useful the commission was in protecting consumers against unscrupulous contractors. Only Haywood County took action, making it the ninth county in the

commission's jurisdiction. The commission does not appear to have taken any actions to increase its jurisdiction since that time.

An increase in the commission's jurisdiction would seem to be a positive step in protecting consumers throughout the state. Such an expansion would also increase licensing revenues (see page 6 regarding the commission's lack of self-sufficiency) but would also likely result in increased expenditures (e.g., because of additional staff needed). The General Assembly may wish to consider whether expansion of the commission's jurisdiction would improve consumer protection and, if so, whether the law should be amended to expand the commission's jurisdiction into some or all of the counties that have not yet elected to come under commission jurisdiction.

Public Information

The general public can contact the Board for Licensing Contractors by phone to obtain information on past disciplinary actions against specific contractors. In addition, the public can obtain such information from three types of documents on the Internet at three different Department of Commerce and Insurance websites. The board's website has a link to the *List of Revoked and Suspended Licenses*. In addition, the websites of the board and the Divisions of Regulatory Boards and Consumer Affairs provide links to the *Problem Contractor List*. The *Problem Contractor List* is comprised of contractors who have failed to respond to complaints filed with the Division of Consumer Affairs or have failed to perform in good faith. The Division of Regulatory Boards also has links to monthly Disciplinary Action Reports going back to October 2001. These reports list the disciplinary actions of all regulatory boards.

Some of these documents have links to the other documents. The *List of Revoked and Suspended Licenses* has links to both the Division of Consumer Affairs' *Problem Contractor List* and the Division of Regulatory Boards' Disciplinary Action Reports. The *Problem Contractor List* has a link to the *List of Revoked and Suspended Licenses*. However, this link was not properly functioning, as of October 2006.

During fieldwork, the board added another document to its website, *Sound Construction, Sound Quality: A Consumer Guide to Selecting a Contractor*, published in 2002. The two-page document appears to be a brief, but adequate, consumer guide in hiring a building contractor. However, the document now appears sideways on the Internet, requiring the viewer either to make an adjustment on the web or to print it. In addition, the contact people listed in the brochure no longer work with the board or the department.

We anonymously made three phone calls to the board, inquiring about three contractors who had already been disciplined by the board. Board staff did provide the information about disciplinary actions but did not mention how the callers could obtain additional information on the Internet on these or any other disciplined contractors.

Board management should work with board staff to ensure they provide callers with requested information about contractors as well as other available sources of information. Management should also work with department staff to ensure that documents on the board's web site have up-to-date information that is easily accessible.

Department of Commerce and Insurance's Comment

The "Consumer's Guide to Selecting a Contractor" has been repositioned on the website. A revised version is currently being updated with the Graphic Art Division. The Division of Regulatory Boards requires that each program's website be reviewed on a weekly basis to identify and correct any links that are malfunctioning or have outdated information. Each program has a website liaison that is responsible for the program's website layout and content. The Board for Licensing Contractors and the Home Improvement Commission have a staff member who performs this function as part of his/her responsibilities. It should also be noted that the Division of Regulatory Boards holds regular customer service trainings for all frontline staff. Employees get advice on how to handle situations that may occur in person, over the phone, or via written correspondence.

Use of Inspectors and Investigators

In an effort to improve the productivity, effectiveness, and accountability of its investigation and inspection processes, the Division of Regulatory Boards has moved many of the investigators/inspectors for individual boards under the management and supervision of the director of the division's Investigations Section. All ten of the Board for Licensing Contractors' inspectors were transferred to the Division of Regulatory Boards' Investigations Section in November 2004, according to the section's director. As of July 2006, there were eight inspectors (and two vacant inspector positions) specifically assigned to conduct inspections and investigate complaints concerning contractors (including home improvement contractors). These employees are still paid by the Board for Licensing Contractors but are supervised by the director and assistant director of the Investigations Section. In addition, the Investigations Section also has investigators who conduct investigations for a number of professional regulatory boards, including the Board for Licensing Contractors and the Home Improvement Commission. Requests for work to be performed by the inspectors and/or the investigators come from the staff attorney to the board and commission or from the Division of Consumer Affairs. (See page 14 for a description of the board's, the commission's, and Consumer Affairs' roles in handling complaints.)

Because both an inspector and an investigator may be conducting inspections/investigations for the same case, we interviewed division staff and reviewed job descriptions to assess the possible duplication of effort by the inspectors and the investigators. Based on our review, there does not appear to be significant duplication. Although both inspectors and investigators conduct complaint-related investigations, these investigations are different in nature. Inspectors conduct investigations of the actual construction, determining if the construction meets building codes and contractors had appropriate licenses. Investigators, on the other hand, although not designated law enforcement officials, may have a law enforcement background and perform more of a law enforcement function, conducting interviews and taking affidavits to determine if illegal acts had occurred (e.g., fraud and unlicensed activity).

The job descriptions for the inspector and investigator positions are substantially different. An inspector is required to have only a high school degree and four years' experience

in building construction or building codes inspection. An inspector “inspects construction sites to determine contractor compliance with state regulations and reviews and monitors the issuance of building permits for compliance with classification and monetary limits.”

An investigator, on the other hand, is required to have a bachelor’s degree and two years’ experience in governmental criminal investigations, law enforcement involving criminal investigation, or investigating violations of governmental regulatory boards’ regulations. One year of qualifying work experience can substitute for one year of the required education, up to a maximum of four years. An investigator “performs a variety of professional investigations of alleged legal violations by licensees of state regulatory boards.” While conducting such investigations, an investigator “documents procedures and methods used during the investigative process to justify the legitimacy of the investigation as well as the admissibility of the gathered evidence; outlines chronologically the investigative process and the laws and regulations pertinent to the case.”

As current inspectors/investigators retire or resign, the Division of Regulatory Boards may wish to consider hiring staff who meet the qualifications for an investigator but also have knowledge of (or could be cross-trained in) construction practices and building codes.

Board for Licensing Contractors Rule 0680-1-.10

According to Board for Licensing Contractors Rule 0680-1-.10, any person, firm or corporation desiring to renew a license with the board for a monetary limitation greater than \$1,000,000 must submit with the renewal application a reviewed or audited financial statement prepared by a licensed accountant. (Board staff use the statements to determine the appropriateness of the requested monetary limitation, i.e., given the applicant’s plant, equipment, net worth, and working capital, etc.) If a renewal applicant requests a monetary limitation of \$1,000,000 or less, he may submit a notarized statement that the information contained in his financial statement is true and correct. However, Section 62-6-116, *Tennessee Code Annotated*, only requires a reviewed or audited financial statement when a renewal applicant requests a monetary limit over \$1,500,000. A contractor cannot go beyond his or her license’s monetary limit per project. As of June 2006, the board had not updated Rule 0680-1-.10 to match Section 62-6-116’s financial requirements (which were amended during the 2004 legislative session).

FINDINGS AND RECOMMENDATIONS

1. The Board for Licensing Contractors, the Home Improvement Commission, and the Division of Consumer Affairs need to expedite complaint processing

Finding

The Board for Licensing Contractors, the Home Improvement Commission, and the Department of Commerce and Insurance's Division of Consumer Affairs all have roles in handling complaints concerning alleged contractor misconduct. The roles of the board and the commission are identical, except that the board handles complaints involving projects costing \$25,000 or more while the commission handles complaints involving projects costing between \$3,001 and \$24,999 in existing homes.

All complaints first come into the board's office. Board staff determine whether a complaint is under the jurisdiction of the board or commission (for example, complaints involving monetary disputes, out-of-state projects, or projects that do not require a contractor's license are not in the jurisdiction of either entity). If the complaint is within jurisdiction, the staff then determines if the complaint should be forwarded to the board or commission for resolution or to the Division of Consumer Affairs for mediation. The board staff's determination as to which entity is to deal with the complaint is then sent to the board's staff attorney for final approval. Both the board's staff attorney and the Division of Consumer Affairs may request assistance from board inspectors and/or investigators in the Division of Regulatory Boards' Investigations Section. (See page 12.)

The complaint is a board or commission issue if it is a licensing matter. For example, a contractor does not have a license, the license does not cover the project (e.g., outside work classification or monetary limit), or the license has expired. If the complaint involves a mediation issue, then it is sent to the Division of Consumer Affairs. Such complaints are structural or cosmetic in nature and could be addressed by repairs performed by the contractor. The division's Contractor/Homeowner, Accountability and Mediation Program (CHAMP) is responsible for the mediation process. If mediation is unsuccessful, the division sends the complaint back to the board or commission for resolution. In addition, the division sends back the complaint if it determines that a license violation, contractor misconduct, or gross negligence has occurred; if litigation is filed during the mediation process; or if the consumer complainant is only seeking monetary satisfaction (as opposed to the correction of the problem).

We randomly selected 20 board and five commission complaints received in January 2005 to determine the timeliness of their processing. Nine board complaints and no commission complaints were transferred to CHAMP for mediation. Of these complaints, two were returned to the board for resolution. Two of the nine complaints did not have paper files or computer files in either the board's or CHAMP's computer system, so dates of the complaints' resolution, if they were resolved, could not be determined. According to department management, this

problem occurred because one employee did not adhere to established procedures. Prior to the audit, management discovered the problem and reassigned the responsibilities to another employee.

In order to determine timeliness, we used the 180-day standard to resolve complaints, as specified in the Department of Commerce and Insurance’s September 2005 strategic plan. There is a difference in the 180-day standard between Volume 1 and Volume 2 of the strategic plan. In Volume 1, the department’s goal is to resolve 75% of consumer complaints within 180 days of receipt, by fiscal year 2009. The goals for fiscal years 2006 and 2007 are 63% and 67% of complaints, respectively. On the other hand, Volume 2 gave an estimate of 85% complaint resolution within 180 days for fiscal year 2006, with an 85% goal for fiscal year 2007.

The complaints in our sample took significantly more time to process than 180 days. (See Table 2.) Neither the board, the commission, nor the division came close to closing complaint cases within 180 days. The average processing time for the 18 board cases (which were either sent to the board or the division for resolution) was 319 days. Five of these cases were still open as of May 18, 2006. The board staff took an average of 106 days to transfer the nine cases that went to Consumer Affairs for mediation. Table 3 indicates the percentage of the cases meeting the 180-day standard. Without timely processing of complaints, the Board for Licensing Contractors and the Home Improvement Commission are limited in the extent to which they can meet their roles in protecting the consumer against contractor misconduct. Board members indicated that they received adequate information to process complaints. Board staff and members mentioned the large number of complaints and the number and length of steps in the process as issues contributing to long processing times.

**Table 2
Complaint Processing Times
All Cases**

	Entity Resolving Complaint		
	Board for Licensing Contractors	Home Improvement Commission	Division of Consumer Affairs
Average Processing Time (Days) *	339	392	266
Processing Time Range for Closed Cases (Days)	82 to 477	122 to 459	115 to 494
Processing Time Range for Open Cases (Days) *	486 to 498	N.A.	N.A.
Number of Cases **	13	5	5

* Five of the 13 cases sent to the board for resolution were still open as of May 18, 2006. This date was used to measure the number of days these cases were open.

** Nine cases were sent to the division for resolution. Two of these cases were returned to the board for resolution, while records were missing for another two cases so processing times could not be determined.

**Table 3
Percentage of Cases Closed Within 180 days**

Percentage of all cases closed within 180 days	30% (7 of 23 cases)
Percentage of cases closed within 180 days by the board or the commission	28% (5 of 18 cases)
Percentage of cases closed within 180 days by the Division of Consumer Affairs	40% (2 of 5 cases)
Fiscal year 2006 goal (Strategic Plan, Volume 1)	63%
Fiscal year 2007 goal (Strategic Plan, Volume 1)	67%
Fiscal year 2007 goal (Strategic Plan, Volume 2)	85%

Recommendation

The Board for Licensing Contractors and Home Improvement Commission, in cooperation with the board’s attorney and the Division of Consumer Affairs, should take steps to (1) meet the 180-day complaint-processing standard in the Department of Commerce and Insurance’s strategic plan and (2) track all complaints’ progress throughout the process to ensure that all complaints are resolved and appropriate documentation is maintained, whether by the board/commission or the division. The department should also resolve the contradictions regarding the 180-day standard (i.e., in performance measures).

Management’s Comment

We concur. The Department of Commerce and Insurance was aware of this problem and the Division of Regulatory Boards took measures, prior to this audit, to restructure the complaint process. An Administrative Manager now oversees the complaint program for the board and a revised Standard Operating Procedure (SOP) was developed with a strict and specific timeline for the processing of complaints. In April 2005, the board fully applied this process in conjunction with the Division of Consumer Affairs’ “Contractor Homeowner Accountability and Mediation Program (CHAMP).”

The revised SOP (see Appendix 3) requires the complaint coordinator to act within one day of receipt of a complaint. This initial action includes review by legal counsel to identify potential licensing violations which will stay with the board for regulatory action, or recommend to the CHAMP Coordinator for mediation. Investigations and inspections requested by legal counsel are carefully monitored; if it takes more than 30 days to finish an investigation, the staff attorneys must be given written notice and approve the extension.

To ensure the program complies with the SOP, the division’s Consumer Ombudsman performs biannual audits to improve practices and correct deficiencies. An audit conducted in

August 2006 reviewed 35 complaints. The audit revealed that the board staff performance was almost in complete compliance, making significant improvements from a previous audit completed in January 2006.

A weekly report is provided to the program of each complaint pending for more than 180 days. The Division of Consumer Affairs issues a monthly CHAMP update, and all CHAMP cases are reviewed with the board's legal staff at a monthly meeting. The board's Director meets routinely with the Assistant Commissioner for Regulatory Boards and the Director of Consumer Affairs to assess the CHAMP program.

As a result of the full implementation of the complaint SOP and the administrative changes outlined above, the board has greatly improved the timeliness of its processing of complaints. Of the complaints received since January 2006, only 12% have not been resolved within 180 days as of November 15, 2006. Any remaining discrepancies in the program's strategic plan measures will be resolved before the department submits its agency strategic plan in July 2007.

Resolution of consumer complaints in a timely manner is a top priority for the department. The board will continue to implement procedures that ensure that appropriate and timely action is taken to benefit the consumer and protect the safety and welfare of the public.

2. Contractor licensing files are not securely maintained

Finding

Neither the Board for Licensing Contractors nor the Home Improvement Commission has taken adequate actions to ensure the physical security of contractor license files. While complaint files are secure, the contractor license files are maintained in open, unlocked shelves within the board's office.

The file security issue was first raised in a December 1993 Division of State Audit investigative report and is a repeat finding from the board's 1997 performance audit. The 1993 report found significant internal control weaknesses in the issuance of licenses, and the 1997 audit found that "the location of the files, with no walls and with other regulatory boards' office space on either side, makes it very difficult to ensure file security." The department concurred with the finding, attributing the problem to limited space assigned to the board, which limited its ability to secure files. Since the prior audit, the file arrangement has improved for complaint files but has not changed for license files.

Based on a review of the file security, it appears security measures are adequate for complaint files maintained by the board, the commission, and Department of Commerce and Insurance's Division of Consumer Affairs, but not for files containing licensing information. (See finding 1 for information on the division's role in the complaint-handling process.) Current board and commission contractors' license files are maintained within the board's office in

unsecured and unlocked, open shelves that are accessible to the public. Limited licenses for electricians and plumbers are maintained separately in file drawers in the cubicles of the individual board staff responsible for their maintenance. These drawers are not locked, according to board management. The current configuration of the board offices allows easy access to the files by anyone passing through, as the board's main office door is not locked during the day or after normal business hours. Given this arrangement, the board cannot guarantee the security of personal contractor information contained within the files.

According to board management, no actions have been taken to address the security weaknesses identified in the prior audit relating to license files.

Recommendation

The board, the commission, and the department should take the necessary measures (e.g., maintaining the files in drawers that could be locked when not in use) to improve the physical security of all contractor license files.

Management's Comment

We concur. The security of licensee files and information is an important concern for the program. The board's records are maintained in an area not easily accessible to the general public and monitored by a staff member. All visitors to the building must register with security personnel, obtain a photo identification sticker, and produce their driver's license. When visitors enter the board office area, there are at least two staff members present to serve the public. Visitors are monitored and are not allowed in areas other than the general board lobby area.

In the coming months, the department will be making several adjustments to ensure all files are securely maintained. An imaging system is being installed to transfer all paper documents to secure electronic documents. Furthermore, the department expects to acquire additional space in the Davy Crockett Tower, allowing additional work space for each program. Because of the volume of licensees and related files and the impending acquisition of additional space in the Davy Crockett Tower, it would be cost prohibitive to construct a hard wall to secure these files. However, the department will construct a six-foot office landscape wall with a locking door to secure these files temporarily.

3. Board and commission members have not signed conflict-of-interest statements annually

Finding

Neither the members of the Board for Licensing Contractors nor the Home Improvement Commission have annually updated conflict-of-interest statements. In August 2004, the department developed and implemented a conflict-of-interest statement to be signed by members of all regulatory boards. Board and commission members completed conflict-of-interest statements in 2004 but have not updated them since that time. The annual review and signing of a conflict-of-interest statement helps ensure that members are aware of prohibited activities (i.e., activities that would be considered a conflict of interest) as well as the actions to take if a conflict arises or if the member has questions regarding a potential conflict of interest.

All nine current Board for Licensing Contractors members have a signed conflict-of-interest statement on file with the department. Eight of the members last signed a statement between September 7 and November 8, 2004. The ninth member signed a statement after taking his seat on the board in January 2006. All three current Home Improvement Commission members have a signed conflict-of-interest statement on file. Their three forms were signed between September 8 and December 23, 2004.

Recommendation

The department should ensure that board and commission members update conflict-of-interest statements annually.

Management's Comment

We do not concur. We take conflict-of-interest issues very seriously. The department requires all board and commission members to sign a conflict-of-interest statement each term, prior to participating in their first meeting. While the conflict-of-interest policy for staff requires an annual disclosure, the policy for board members is intended to be signed once a term. The board member conflict-of-interest statement only outlines the policy and they sign that they have received and understand the policy. Since most board or commission members work in the industry they regulate, requiring disclosure of all potential conflicts would be unproductive. Thus, we believe that the current policy is appropriate and will continue the practice of requiring that all board and commission members sign a conflict-of-interest statement each term. Board chairs will be required to review the policy at the first meeting of each year.

RECOMMENDATIONS

LEGISLATIVE

This performance audit identified the following areas in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Board for Licensing Contractors' and the Home Improvement Commission's operations.

1. The General Assembly may wish to consider passing legislation authorizing the Department of Commerce and Insurance to collect unpaid civil penalties for the Board for Licensing Contractors and the Home Improvement Commission without the involvement of district attorneys, either through direct court action or the use of collection agencies. The General Assembly may wish to consider allowing this legislation to cover unpaid civil penalties of other boards and commissions under the jurisdiction of the department's Division of Regulatory Boards.
2. The General Assembly may wish to consider whether expansion of the commission's jurisdiction would improve consumer protection and, if so, whether the law should be amended to expand the commission's jurisdiction into some or all of the counties that have not yet elected to come under commission jurisdiction.

ADMINISTRATIVE

The Board for Licensing Contractors, the Home Improvement Commission, and the Department of Commerce and Insurance should address the following areas to improve the efficiency and effectiveness of the board's and commission's operations.

1. The Board for Licensing Contractors and Home Improvement Commission, in cooperation with the board's attorney and the Division of Consumer Affairs, should take steps to (1) meet the 180-day complaint-processing standard in the Department of Commerce and Insurance's strategic plan and (2) track all complaints' progress throughout the process to ensure that all complaints are resolved and appropriate documentation is maintained, whether by the board/commission or the division. The department should also resolve the contradictions regarding the 180-day standard (i.e., in performance measures).
2. The board, the commission, and the department should take the necessary measures (e.g., maintaining the files in drawers that could be locked when not in use) to improve the physical security of all contractor license files.
3. The department should ensure that board and commission members update conflict-of-interest statements annually.

Appendix 1
Licensing Requirements and Fees for the Board for Licensing Contractors and the Home Improvement Commission

	Board for Licensing Contractors	Home Improvement Commission
Jurisdiction	Statewide	Jurisdiction in nine counties only
License Requirement	License required for projects of \$25,000 or more Required for residential, commercial and industrial projects Required for electrical, plumbing and HVAC projects	License required for projects from \$3,001 to \$24,999 Required for residential improvements only Not required to perform electrical, plumbing, or HVAC
Examination Requirement	Examinations required	No examinations required
Financial Requirement	Financial statement by CPA	\$10,000 financial responsibility (bond)
License Approval	Licenses approved by board (applicant may be interviewed in addition to exam)	Licenses approved by staff
Contractor's License Fees	New/Initial—\$250 Renewal—\$200 biennially	New/Initial—\$150 Renewal—\$125 annually
License Fees for Limited Licensed Electricians*	New/Initial—\$50 Renewal—\$50 biennially	
License Fees for Limited Licensed Plumbers*	New/Initial—\$75 Renewal—\$50 biennially	

*In addition to contractor's licenses, the board also issues limited licensed plumber and limited licensed electrician licenses.

**Appendix 2
Title VI Information**

Title VI of the Civil Rights Act of 1964 requires that “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance.” In response to a request from members of the Government Operations Committee, we compiled information concerning the Board for Licensing Contractors’ and Home Improvement Commission’s efforts to comply with Title VI requirements. The results of the information gathered concerning the gender and ethnicity of the board and commission membership, as well as the board and commission staff, are summarized below. Neither the board nor commission receives federal funding. The board and commission had received no Title VI-related complaints for fiscal years 2005 and 2006.

**Gender and Ethnicity of Board and Commission Members
As of July 17, 2006**

Entity	Female	Male	Asian	Black	Hispanic	Indian	White	Vacant	Total
Board for Licensing Contractors	1	8	0	1	0	0	8	0	9
Home Improvement Commission	0	3	0	1	0	0	2	2	5
Total	1	11	0	2	0	0	10	2	14
Percent	8%	92%	0%	17%	0%	0%	83%		

**Board for Licensing Contractors Staff
By Title, Gender, and Ethnicity
As of July 17, 2006**

Title	Gender		Ethnicity					
	Female	Male	Asian	Black	Hispanic	Indian	White	Vacant
Account Clerk	1	0	0	0	0	0	1	0
Accounting Technician 2	1	0	0	0	0	0	1	0
Administrative Manager Regulatory Board	1	0	0	0	0	0	1	0
Administrative Assistant Regulatory Board 1*	2	0	0	1	0	0	1	2
Administrative Assistant Regulatory Board 2	2	0	0	1	0	0	1	0
Attorney	1	1	0	0	0	0	2	0
Auditor 2**	0	0	0	0	0	0	0	1
Auditor 3	1	0	0	0	0	0	1	0
Contractor Inspector	0	8	0	0	0	0	8	2
Licensing Technician	7	0	0	4	0	0	3	2
Regulatory Board Executive Director	1	0	0	0	0	0	1	0
Secretary	0	0	0	0	0	0	0	1
Total	17	9	0	6	0	0	20	8
Percent	65%	35%	0%	23%	0%	0%	77%	

* One of the two vacancies was a position yet to be formally established.

** The position has yet to be formally established.

**Home Improvement Commission Staff
By Title, Gender, and Ethnicity
As of July 17, 2006**

Title	Gender		Ethnicity					
	Female	Male	Asian	Black	Hispanic	Indian	White	Vacant
Administrative Assistant Regulatory Board 1	0	0	0	0	0	0	0	1
Administrative Assistant Regulatory Board 2	1	0	0	1	0	0	0	0
Licensing Technician	0	1	0	0	0	0	1	0
Total	1	1	0	1	0	0	1	1
Percent	50%	50%	0%	50%	0%	0%	50%	

Appendix 3

Complaint Handling Standard Operating Procedure Submitted by the Department of Commerce and Insurance in Response to Finding 1

**DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF REGULATORY BOARDS
COMPLAINT HANDLING STANDARD OPERATING PROCEDURE**

Form of complaint

Complaints shall be in writing and should fully explain the allegation.

Who can initiate a complaint?

A complaint may be initiated by any member of the general public. Complaints may also be initiated by the Division's staff, the Department's legal staff or Board members. Anonymous complaints should be discouraged and shall be reviewed on a case-by-case basis to determine what, if any, action they merit.

Request for complaint form

Staff shall forward a complaint form to requestor either by mail or email within one (1) day¹ of request. A cover letter from the Program Director shall be included explaining the program's complaint process and the program's legal authority. This letter shall include a statement that Regulatory Board Division programs cannot require restitution or specific performance.

Upon receipt of complaint

- 1) Initial review to determine whether complaint has been filed with correct program, and whether additional Division program or other state regulatory programs should be made aware of the complaint. Incorrectly filed complaints should be forwarded to the correct program within one (1) day of receipt of complaint. A copy of the complaint should be sent to any other state regulatory programs with an interest in the complaint within one (1) day of receipt of complaint.
- 2) Program Director shall determine within one (1) day of receipt of complaint whether the alleged conduct poses an imminent danger to the public health, safety and welfare. Complaints which reasonably indicate such danger should be given a high priority status, and the Staff Attorney should be notified immediately. In consultation with the Staff Attorney, the Program Director shall determine the appropriate course of action and shall advise the Assistant Commissioner of Regulatory Boards of all complaints with a high priority status within one (1) day of determination.
- 3) Complaint Coordinator shall enter complaint into the Regulatory Boards Case/Complaint System (RBCCS) within one (1) day of receipt of complaint. The RBCCS will automatically assign a complaint number to the complaint.
- 4) Complaint Coordinator shall send a copy of the complaint, via certified mail, to the Respondent within two (2) days of receipt of complaint. Respondent shall be given ten (10) days from date of receipt of the complaint to respond. Respondent may be granted an additional ten (10) days for response if request for additional time is made in writing to the Program Director with valid reason for request.

¹ All references to "day" or "days" are references to working days

- 5) Notification of receipt of complaint shall be sent to Complainant via regular mail within two (2) days of receipt of complaint.

No response or return of certified mail card within ten (10) days of first notice

If there is no response from Respondent within ten (10) days² after complaint is received (as indicated on returned certified mail card), a second copy of the complaint with request for response shall be sent by certified and regular mail within one (1) day of this ten (10) day deadline. A copy of the second notice should be sent to the Complainant via regular mail. This process shall also be followed if the certified mail card is not returned within ten (10) days of mailing.

Upon receipt of response to complaint

Within one (1) day of receipt of response to complaint, the Complaint Coordinator shall:

- 1) Update the RBCCS
- 2) Forward copy of complaint and response to Program Director
- 3) Unless otherwise directed by Staff Attorney, forward copy of response to the Complainant

Within one (1) day of Program Director's receipt of complaint and response, a new matter transmittal shall be forwarded from the Director to the Staff Attorney.

Upon referral to Legal staff

- A. New matter transmittals are to be opened and transmitted to the assigned attorney within five (5) working days after being date-stamped in. New matter transmittals should be opened in RBS as cases, jacketed in a manila file folder with label, have a Legal Status Tracking Memorandum completed and placed in the file and logged into the master log BEFORE the file is given to the assigned attorney. It is acceptable to group the functions (i.e. open a series of cases in RBS, then make all the labels), but the entire case-opening process is not to extend past the day on which it is started. Completing the entire opening process before moving on to the next project helps ensure that steps are not skipped.
- B. Cases are to be closed and filed within five (5) working days after their receipt. After a final action on a case, the attorney will complete the Legal Status Tracking Memorandum for that case, write in the description of the final action (e.g. dismissed, letter of caution, formal hearing/revocation) and the date of the final action, paper clip the Memorandum to the front of the file folder and place the file folder in the basket designated for "Closed Files." The case is to be close in RBS, two (2) copies of the Memorandum made (one (1) for the closed file and one (1) for the program area), distributed to the program area and re-filed in the black binders, recorded in the master log and filed in the closed file cabinets. As with the case-opening process, it is acceptable to group the functions, but the entire case-closing process is not to extend past the day on which it is started.

² time deadlines are to be used unless the specific program's law or rules specifically provide otherwise

Referral to investigations

Investigative requests shall be completed within thirty (30) days of referral to investigations. Additional time for completion of investigative requests shall be made in writing by the Director of Investigations to the Staff Attorney making the request within the last five (5) days of the thirty (30) day period.

Final action

Upon completion of final action taken in response to a complaint, the RBCCS will be updated by legal staff. If compliance is required by Respondent, the deadline for compliance shall be reflected in the Board or Division's final order. In cases where informal settlement is authorized (e.g., consent order), Respondent shall be given 30 days from receipt of the offer of settlement to respond. If Respondent fails to respond to offer within the aforementioned 30 day period, legal staff shall prepare the case for the next appropriate action (e.g., filing of formal charges).

Legal staff shall close cases in the RBCCS within five (5) days upon entry of a final order or the final disposition by the Board or Division.

Closure of complaint

Upon closure of a complaint, legal staff shall send a closure memo to agency staff within three (3) days of notice of compliance by respondent. If no compliance is required, legal staff shall send the closure memo within one (1) day of final action.

Agency staff shall notify Complainant of circumstances regarding closure within one (1) day of receipt of closure memo from legal staff.

Reporting

The following reports are due from each program, to be submitted to Consumer Ombudsman:

- 1) *Each Friday before noon*: number of open complaints, including unlicensed activity
- 2) *First workday of each month before noon*: disciplinary action report
- 3) *Each quarter (to be scheduled with each program)*: meeting with Assistant Commissioner, Program Director and Staff Attorney to review complaint patterns, i.e., oldest complaints, repeat offenders, unpaid citations, non-compliant respondents

Acknowledgement of receipt and understanding of Complaint Handling Standard Operating Procedure:

Carolyn Lazenby, Executive Director
Board for Licensing Contractors
Home Improvement Commission