

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1540 (Delegate Henson, *et al.*)
Environment and Transportation

Environment - Mold Inspections - Standards, Reporting, and Penalties

The bill requires the Maryland Department of the Environment (MDE), in consultation with the Maryland Department of Health (MDH), the Maryland State Department of Education (MSDE), the Department of Housing and Community Development (DHCD), and the Department of General Services (DGS), to adopt regulations that establish uniform standards for mold assessment and remediation, as specified, by June 1, 2022. Among other things, the regulations must require local jurisdictions to conduct annual mold inspections at public and private school facilities; licensed child care centers; nursing homes; assisted living facilities for the elderly; and rental dwellings. The bill also establishes provisions relating to (1) enforcement and penalties and (2) rent escrow rights and protections for specified tenants. **The bill takes effect June 1, 2020.**

Fiscal Summary

State Effect: General fund expenditures increase significantly, likely by more than \$1.0 million annually, beginning in FY 2021. General fund revenues increase as early as FY 2022 from third-party inspector verification fees and as early as FY 2023 from penalties.

Local Effect: Local expenditures increase, likely significantly in some jurisdictions, beginning as early as FY 2022, to conduct the required inspections and perform any required remediation. Local revenues are not directly affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Relevant Definitions

“Mold” means a form of multicellular fungi that lives (1) on a plant or animal matter or (2) in an indoor environment. A “mold hazard” is (1) a concentration of mold or mold spores that exceeds the standards established pursuant to the bill or (2) an adverse human health effect associated with mold exposure, including allergic reactions, asthma, and other respiratory complaints. “Mold remediation” means (1) removing, cleaning, sanitizing, demolishing, or any other treatment performed to address a mold hazard, mold, or dampness or (2) abatement of the underlying cause of a mold hazard, mold, or dampness.

Mold Assessment and Remediation

The regulations adopted pursuant to the bill must:

- establish standards for (1) habitable dampness; (2) identifying and evaluating the presence of mold, including visible mold inspection and testing; (3) mold remediation that are at least as stringent as specified standards issued by the U.S. Environmental Protection Agency (EPA); and (4) best practices to eliminate the risk of mold hazards;
- require a local jurisdiction to conduct an annual mold inspection of the following facilities located within the jurisdiction: (1) public and private school facilities; (2) licensed child care centers; (3) nursing homes; (4) assisted living facilities for the elderly; and (5) rental dwellings;
- authorize the mold inspection to be performed in conjunction with another inspection;
- establish a process for a third-party inspector to perform the required inspection, including processes for (1) MDE to verify that a third-party inspector is qualified to perform the inspection and (2) the establishment of a registry that lists verified inspectors;
- require the landlord of a rental dwelling to disclose the results of the required mold inspection to a current or prospective tenant;
- prohibit a current or prospective tenant from waiving the disclosure requirement; and
- require, by July 1 each year beginning in 2023, a local jurisdiction to submit to MDE an annual indoor air quality summary report that summarizes the annual mold inspections required by the bill.

MDE (1) may charge a fee of up to \$100 for verifying a third-party inspector and (2) must maintain the registry of third-party inspectors established pursuant to the regulations adopted under the bill. MDE must also develop and make available on its website and in print resource materials regarding mold hazards, mold, and dampness.

By December 1 annually, beginning in 2023, MDE must submit an annual indoor air quality report to the Governor and the General Assembly on indoor air quality and the results of the required mold inspections.

Enforcement and Penalties

A person who violates the regulations adopted pursuant to the bill is subject to an administrative penalty of up to \$250 per violation, not exceeding \$10,000. Each day a violation continues constitutes a separate offense. The bill establishes factors that must be considered when assessing the administrative penalty.

The bill's penalty provisions do not prevent a person from filing a civil action for a potential violation of the regulations adopted pursuant to the bill or from receiving a court-granted award in a civil action.

A local jurisdiction, county attorney, or municipal attorney may enforce the bill's provisions regarding mold assessment and remediation.

Rent Escrow

If a landlord fails to comply with the regulations adopted under the bill or the disclosure requirements, the tenant may deposit the tenant's rent in an escrow account with the clerk of the district court, as specified. Prior to depositing rent in escrow, the tenant must provide notice of the mold hazard, mold, or dampness to the landlord in a reasonable manner. The right of a tenant to deposit rent in an escrow account does not preclude the tenant from pursuing any other right or remedy available to the tenant at law or equity.

The bill establishes terms and conditions under which money deposited in an escrow account pursuant to the bill must be released. A lessee may not be evicted, the tenancy may not be terminated, and the rent may not be raised for a lessee who elects to seek remedies through use of an escrow account under the bill. Further, the bill establishes a presumption that any attempt to evict the tenant, to terminate the tenancy, or to raise the rent (except for nonpayment of rent) within two months after compliance with the regulatory requirements adopted pursuant to the bill is in retaliation for the lessee's proceeding under the bill's escrow provisions, and is voidable.

The bill's escrow provisions preempt any public local law or ordinance concerning the deposit of rent into an escrow account based on the existence of mold in a rental dwelling unit in the State and disposition of that rent.

Current Law/Background: There are no statewide requirements to conduct mold assessments or remediation at public and private school facilities, licensed child care centers, nursing homes, assisted living facilities for the elderly, and rental dwellings. Below is a summary of some relevant provisions of current law and associated background information.

Maryland Department of the Environment – General Duties

The Secretary of the Environment must carry out and enforce the provisions of the Environment Article and the rules and regulations adopted under the article. The Secretary is authorized to delegate duties, powers, and functions to a health officer for a county or to another county official authorized to administer and enforce environmental laws.

Except as otherwise provided, the Secretary must pay all money collected by MDE under the Environment Article into the general fund.

Public and Nonpublic Schools in the State, the Interagency Commission on School Construction, and the Maintenance of Public Schools

According to MSDE, as of September 30, 2018, there were 1,428 public and 1,310 nonpublic schools in the State.

The Interagency Commission on School Construction (IAC) is an independent commission within MSDE. Among other things, IAC is charged with establishing sufficiency standards, or a uniform set of criteria and measures for evaluating the physical attributes and educational suitability of public elementary and secondary school facilities in the State. IAC is in the process of conducting an initial statewide facilities assessment using these sufficiency standards, which was statutorily required to be completed by July 1, 2019, but has been delayed. The fiscal and policy note for Chapter 14 of 2018 estimated that the one-time cost of this facilities assessment by a third-party vendor would be \$3.5 million.

IAC must also conduct periodic inspections of school buildings and report on their condition. Each local school system must develop and adopt preventative maintenance schedules for their public schools that are based on industry standards. IAC's sample inspection forms include 35 items, including air conditioning; ventilation equipment; steam distribution; heating, ventilation, and air-conditioning controls; plumbing fixtures/equipment; and restrooms. Although mold is not a specific inspection item, mold is one of the conditions upon which IAC comments and rates schools.

MSDE's Division of Early Childhood

MSDE's Office of Child Care inspects and licenses all child care centers and family child care providers in the State. According to data available on the office's website, in August 2017, there were 8,642 regulated facilities.

Nursing Home Administrators and Assisted Living

Federal law requires that both nursing homes and nursing home administrators in all states be regulated. The State Board of Examiners of Nursing Home Administrators is the licensing authority of nursing home administrators in the State. The Office of Health Care Quality's (OHCQ) long-term care unit within MDH ensures that nursing homes in the State are compliant with federal survey and certification standards, State licensure regulations, and local regulations, through unannounced on-site surveys, follow-up visits, and compliant investigations. According to OHCQ's 2019 annual report, there were 227 licensed nursing homes in the State.

Assisted living is regulated by the State and generally does not have specific federal requirements. In Maryland, assisted living programs are licensed by OHCQ. In 2020, there are 1,558 licensed assisted living programs in the State.

Rent Escrow and Residential Rental Defects

In order to use specified remedies available when serious and dangerous defects are present in residential dwelling units, a tenant must notify the landlord of the existence of the defects or conditions using specified methods.

If the landlord refuses to make the repairs or correct the conditions, or if after a reasonable time the landlord has failed to do so, the tenant may (1) bring an action of rent escrow to pay rent into court because of the asserted defects or conditions or (2) refuse to pay rent and raise the existence of the asserted defects or conditions as an affirmative defense to an action for distress for rent or to any complaint proceeding brought by the landlord to recover rent or the possession of the leased premises.

After rent escrow has been established, the court must, after a hearing (if ordered by the court or requested by the landlord), order that the money in the escrow account be disbursed to the landlord after the necessary repairs have been made. Other permissible actions by the court are also specified in statute.

U.S. Environmental Protection Agency Technical Guidance

EPA has a host of programs and an extensive list of resources to help states assist school systems and commercial buildings. Among other things, these resources include information on [mold and indoor air quality in schools](#) and a guide to [mold remediation in schools and commercial buildings](#). EPA advises that there are no federal standards or threshold limit values for mold or mold spores, which means that sampling cannot be used to check a building's compliance with federal mold standards. However, surface sampling may be useful to determine if an area has been adequately cleaned or remediated. Similarly, MDE does not have any exposure limit standards for indoor concentrations of mold or mold spores.

Centers for Disease Control and Prevention Facts about Mold and Dampness

According to the [Centers for Disease Control and Prevention](#) (CDC), molds are common in buildings and homes. Mold will grow in places with a lot of moisture, such as around leaks in roofs, windows, or pipes, or where there has been flooding. Mold grows well on paper products, cardboard, ceiling tiles, and wood products. Large mold infestations can usually be seen or smelled. Some people are sensitive to molds. For these people, exposure to molds can lead to symptoms such as stuffy nose, wheezing, and red or itchy eyes or skin. CDC's primary recommendation for preventing mold is to control humidity levels, ideally to between 30% and 50%.

State Expenditures:

Maryland Department of the Environment

MDE estimates that its general fund expenditures increase by \$2.7 million in fiscal 2021, and by a minimum of \$2.0 million annually thereafter, to hire 28 additional employees (23 environmental compliance specialists, 2 assistant attorneys general, 1 environmental program manager, 1 administrative specialist, and 1 paralegal) for a new division within MDE and for contractual costs to (1) establish policies and procedures for the inspection and remediation of mold and mold hazards; (2) promulgate regulations in consultation with MDH, MSDE, DHCD, and DGS; (3) develop a process for third-party inspectors to conduct inspections, establish a methodology to verify inspectors are qualified, and develop a registry that lists verified third-party inspectors; (4) develop and make electronic and print materials available; and (4) generally enforce the bill. MDE advises that this estimate is based off the department's lead program, the number of rental dwellings affected under that program, and program staff in the lead program. MDE estimates that there are close to 500,000 properties affected by the bill.

The Department of Legislative Services (DLS) concurs that general fund expenditures for MDE increase significantly beginning in fiscal 2021 to hire additional staff to implement the bill. In particular, the tracking responsibilities required to coordinate required inspections and remedial actions are expected to be significant. It is assumed that MDE will be the lead agency in charge of this effort, but DLS notes that it could be shared among the State agencies involved with the implementation of the bill and/or local governments. Without actual experience under the bill, DLS is unable to independently verify MDE's estimate at this time.

Because it is assumed that MDE is the lead State agency, this analysis assumes MDH, MSDE, DGS, and DHCD can consult with MDE to develop the required regulations using existing budgeted resources.

Judiciary (Administrative Office of the Courts)

The Judiciary advises that in fiscal 2019, there were 2,602 rent escrow filings and 669,427 landlord/tenant actions filed in the District Court. Under the bill, landlord/tenant forms, brochures, and website information must be updated. There may also be an increase in both rent escrow filings and civil case filings from the expansion of tenant's remedies established under the bill as well as subsequent actions brought against landlords to handle the disputes. However, any potential minimal increase in expenditures due to additional clerical and court time is not anticipated to materially affect the finances of the Judiciary.

State Revenues: General fund revenues increase due to third-party inspector verification fees, beginning as early as fiscal 2022. The bill authorizes MDE to charge a fee of up to \$100 for verifying a third-party inspector. Given the anticipated number of buildings that need to be inspected each year, there is likely a large demand for third-party inspectors under the bill. Thus, fee revenues could be significant. However, it is unlikely that fee revenue offsets the expenditures MDE is expected to incur under the bill.

General fund revenues may also increase from the bill's administrative penalty provision. Penalties are likely not assessed before fiscal 2023.

Because the bill is silent with regard to where any fee and penalty revenue must be deposited, this analysis assumes that any revenue collected under the bill is deposited into the general fund.

Local Fiscal Effect: Depending on who is responsible for conducting the required inspections, and whether local jurisdictions already conduct annual inspections of affected buildings, the bill could result in a significant increase in expenditures for local governments, local health departments (LHDs), and local school systems in particular. According to the Maryland Association of Counties, most local governments only conduct

mold inspections on a complaint basis. Requiring inspections on an annual basis likely increases costs significantly, at least in some jurisdictions. Some jurisdictions may hire additional inspectors to conduct the inspections in-house, while others may use verified third-party inspectors. The bill is silent with regard to inspection fees, so it is unknown whether a local jurisdiction can recoup inspection costs through fees.

Local entities provided the following information regarding the potential fiscal effect of the bill:

- The Maryland Association of County Health Officers advises that if LHDs conduct the required inspections, the estimated costs for LHDs to conduct inspections at affected schools, daycares, nursing homes, and assisted living facilities is approximately \$3.0 million to \$5.0 million annually; this does not include costs to inspect rental dwellings.
- Baltimore City estimates that the county must hire 143 new employees, at a cost of between \$17.9 million to \$18.9 million annually, to conduct and track inspections. This is based on an estimated 207 public and private schools, more than 800 licensed child care centers, and more than 130,000 occupied rental properties in the city that must be inspected each year. Baltimore City advises that current inspectors do not have expertise or equipment to test for mold.
- Harford County Public Schools estimates that inspection and sampling costs increase by \$183,329 annually. Costs increase further for mold remediation efforts.
- Baltimore County Public Schools reports that the bill requires significant additional resources to conduct inspections, sampling, analysis, and remediation.
- The City of College Park advises that the city already inspects all rental properties but only inspects some apartments and condo apartments biannually. The city expects that it can withhold a rental occupancy permit pending receipt of a third-party certification mold report but that the bill poses logistical challenges since mold can be a recurring problem. The city anticipates that it can submit the annual report with existing resources.
- Montgomery and Wicomico counties did not provide specific estimates but anticipate that costs could be significant.

It is assumed that local school systems are responsible for costs incurred to comply with the mold assessment and remediation regulations. Costs could be significant.

Small Business Effect: The bill likely has a meaningful impact on small businesses that own or operate affected facilities/rental dwellings to the extent they must pay for mold inspections and remediation. The bill also likely results in a meaningful increase in business opportunities for mold inspectors and mold remediation businesses in the State,

since a large number of facilities/dwellings throughout the State will need these services as a result of the bill.

Additional Comments: Nonpublic schools also incur potentially significant additional costs to conduct inspections and complete any required remediation.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 1067 (Senator Patterson) - Rules.

Information Source(s): Baltimore County Public Schools; Baltimore City; Harford, Montgomery, and Wicomico counties; Maryland Association of Counties; City of College Park; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Interagency Commission on School Construction; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Maryland Association of County Health Officers; Department of Housing and Community Development; Maryland Department of Aging; U.S. Environmental Protection Agency; Centers for Disease Control and Prevention; Department of Legislative Services

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