

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 902

(Senators Muse and Zirkin)

Education, Health, and Environmental Affairs

Environmental Matters

Statewide Building Codes - Maryland Accessibility Code - Enforcement

This bill allows, subject to specified notification requirements, an occupant, a dependant of an occupant, or a prospective tenant who otherwise meets the requirements for tenancy to commence a civil action in District Court or circuit court to obtain relief for a violation of the Maryland Accessibility Code (MAC) with regard to a building of four or more dwelling units that is subject to MAC, except for specified “historic properties.” In an action brought under the bill, if the court finds that a violation of MAC has occurred, the court may (1) grant relief as the court considers appropriate, including injunctive relief; (2) award the prevailing party reasonable attorney’s fees and costs; and (3) award the prevailing party actual damages. The bill does not apply to an aggrieved individual who has an existing private right of action against a housing authority to enforce accessibility requirements under specified federal laws.

Fiscal Summary

State Effect: The District Court can handle any increase in civil cases with existing budgeted resources. The Department of Housing and Community Development (DHCD) can implement the bill with existing budgeted resources.

Local Effect: The circuit courts can handle any increase in civil cases with existing resources.

Small Business Effect: Minimal.

Analysis

Bill Summary: At least 30 days before filing a complaint under the bill, an occupant, a dependent of an occupant, or a prospective tenant who otherwise meets the requirements for tenancy must provide written notice to the property manager, landlord, or rental agent

that (1) states that the individual needs accessibility; (2) identifies the location of the multifamily building that is alleged to be noncompliant; and (3) states that the owner of the multifamily building has 30 days from the date of the notice to make arrangements to bring the building into compliance.

“Historic property” means a qualified historic building or facility that is (1) listed or eligible for listing in the National Register of Historic Places (NRHP) or (2) designated as historic under State or local law.

Current Law: DHCD must adopt by regulation a State building code to make buildings and facilities accessible and usable by individuals with disabilities to the extent feasible. MAC is enforceable by local governments or any other governmental units with authority over buildings or facilities. DHCD must decide interpretations of the code, and may authorize waivers or exemptions under the code.

Unless otherwise specified, MAC applies to all new construction, additions, alterations, and changes of use of buildings and facilities in the State. Among others, residential buildings consisting of less than four dwelling units are not covered under the code. DHCD regulations specify that MAC is not intended to grant or imply a private cause of action to an individual against the State, DHCD, its employees, agents, or assignees for violations of the code.

If DHCD determines that a violation of MAC exists, the department may resolve any issue related to the violation by mediation and conciliation. DHCD may also bring an action for equitable or other appropriate relief in a court in the jurisdiction in which the violation occurred, including an action to enjoin the construction, renovation, or occupancy of a building or facility that violates MAC. The Attorney General may prosecute civil cases that arise under the bill that are referred to the Attorney General by DHCD.

A person who violates MAC is guilty of a misdemeanor and is subject to a maximum penalty of a \$500 fine for each day the violation exists and/or three months imprisonment. A penalty imposed under these provisions is in addition to and not a substitute for any other penalty imposed under federal, State, or local law.

Background: There is also federal law governing many of the buildings and facilities covered by MAC. DHCD regulations specify that, to the extent that federal law is more restrictive, federal law applies. Federal law also governs some buildings and facilities which are not covered by MAC. For example, the Americans with Disabilities Act requires owners of existing buildings to make changes that are “readily achievable to accommodate individuals with disabilities.”

The Maryland Register of Historic Properties is the statutorily mandated compilation of designated historic properties under State law. The Maryland register must include all properties listed in, or determined by the Maryland Historical Trust to be eligible for listing in, NRHP. To be listed in NRHP, properties must be found to demonstrate significance in (1) association with significant events or trends; (2) association with individuals who made a demonstrable and lasting contribution; (3) architectural merit; or (4) the potential to yield information that will contribute to a better understanding of our past. In addition to demonstrating significance, a property must retain physical integrity to reflect that significance; therefore, it cannot be altered to the extent that it no longer accurately or adequately reflects that significance.

Additional Information

Prior Introductions: None.

Cross File: HB 1279 (Delegate Niemann, *et al.*) - Environmental Matters.

Information Source(s): Department of Housing and Community Development, Judiciary (Administrative Office of the Courts), Maryland Historical Trust, Department of Legislative Services

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