

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 234 (Delegate Grammer)
Environment and Transportation

Land Use – Public Nuisance – Surety Bond Requirement
(Developer Accountability Act)

This bill requires a specified surety bond to be filed in connection with certain development of property, with the surety bond intended and authorized to be used by a local jurisdiction to safeguard the property.

Fiscal Summary

State Effect: The bill does not directly affect State finances.

Local Effect: Local government expenditures and, in limited instances, local government revenues, may increase by an indeterminate amount.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill makes approval of specified subdivision plats, or other zoning or land use applications, conditioned on a requirement that the applicant file a specified surety bond that is (1) intended and may be used by the local jurisdiction to ensure that necessary measures are maintained to safeguard the property and (2) in the amount of at least \$1 million. The bill applies only to subdivision plats, or other zoning or land use applications, for proposed developments with which a “responsible person” is affiliated.

“Responsible person” is a person found responsible for a “public nuisance,” which is defined as a condition or use:

- of a property that is vacant or in severe disrepair;
- for which a notice of correction or a citation has been issued; and
- that contributes to (1) a serious physical injury to or death of an individual or (2) smoke or other fire-related negative effects on another property located within one-half mile of the nuisance property or on a resident or user of the other property.

“Responsible person” is also defined to include (1) an owner of a nuisance property; (2) any person that directly or indirectly controls, or is controlled by, or is under common control with, a responsible person; (3) an individual who is an officer, a director, or a partner of a responsible person, or who occupies a similar position or performs a similar function; and (4) a spouse, child, parent, brother, or sister of a responsible person.

Current Law/Background:

Government Regulation of Nuisances

The State has the authority to abate nuisances (generally, conditions that adversely affect others, through injury, discomfort, or other means) in the exercise of its police power and has authorized local governments to similarly guard against and address nuisances. There are various provisions, of varying applicability, throughout State statute addressing nuisances and their abatement.

Surety Bonds

A surety bond is a three-way agreement in which a surety, in exchange for payment of premiums (by the principal, mentioned below), takes on an obligation to pay a sum of money, or provide some other performance, to one party (“obligee”) on behalf of another party (“principal”) who has the primary obligation to the obligee. The Surety & Fidelity Association of America indicates that most large property and casualty insurance companies have surety departments and there are also some companies for which surety bonds make up all or most of their business. Surety bonds are often required in the context of construction projects to ensure a contractor follows through on its obligations.

Local Fiscal Effect: Because the bill requires a surety bond to be filed in certain circumstances, and the surety bond is intended and may be used by the local jurisdiction to ensure that necessary measures are maintained to safeguard a property, local government revenues and expenditures may increase to the extent a surety bond pursuant to the bill is used for that purpose. It is unclear, however, to what extent surety bonds will be filed under the bill and to what extent they will be collected by the local government. It appears

likely that collection and use of a surety bond under the bill by a local government will only occur in limited instances at most.

Local government expenditures may also increase to implement and enforce the surety bond requirement, though it is unclear how it will need to be enforced and how often surety bonds will need to be filed. Establishing the specific obligation the surety bond is ensuring and, if the bond needs to be collected, establishing the amount the local government is entitled to collect will require time and resources of the local government.

Small Business Effect: Small business developers and builders may be meaningfully impacted in circumstances in which a surety bond is required to be filed pursuant to the bill in order to secure approval for a proposed development. The magnitude of the impact depends on the cost of the premium paid for the surety bond (which is affected by multiple factors) and whether a surety bond can be obtained at all. Limited financial capacity of a small business applicant, or other factors associated with the circumstances that lead to the bond requirement, may prevent a surety from issuing a bond on behalf of the development project applicant.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Anne Arundel, Charles, Montgomery, and Somerset counties; cities of Frederick and Havre de Grace; Maryland Building Industry Association; NAIOP (Maryland Chapter); Surety & Fidelity Association of America; National Association of Surety Bond Producers; Department of Legislative Services

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