

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 154

(Senator Hettleman, *et al.*)

Judicial Proceedings and Budget and Taxation

Rules and Executive Nominations

Landlord and Tenant - Residential Tenants - Access to Counsel

This bill establishes, subject to the availability of funding, access to legal representation for individuals meeting specified qualifications (“covered individuals”) in specified landlord-tenant proceedings. To facilitate this access, the bill establishes the Access to Counsel in Evictions Program, administered by the Maryland Legal Services Corporation (MLSC), to organize and direct services and resources in order to provide all covered individuals with access to legal representation. The bill also establishes (1) an Access to Counsel in Evictions Task Force and (2) an Access to Counsel in Evictions Special Fund, which is a special fund to be administered by MLSC for the purpose of providing funding to fully implement civil access to legal representation in evictions and other related proceedings in the State. The access to legal representation established by the bill must be phased in over time as determined appropriate by MLSC, with a goal of being fully implemented before October 1, 2025. The bill also makes procedural changes in failure to pay rent cases by requiring landlords to provide written notice to tenants prior to filing a complaint in the District Court.

Fiscal Summary

State Effect: General fund expenditures increase *significantly* beginning in FY 2022 to capitalize the fund and implement the access to legal representation in specified proceedings. Special fund revenues and expenditures increase correspondingly. Minimal decrease in general fund revenues and special fund revenues associated with filing fees, as discussed below.

Local Effect: The bill is not anticipated to directly affect local government operations or finances, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Selected Definitions

“Community group” means a nonprofit entity with the capacity to conduct tenant outreach and provide engagement, education, and information.

“Covered individual” means an individual who (1) occupies a residential property under a claim of legal right other than the owner, including a tenant in a building owned, operated, or managed by a public housing authority and (2) is a member of a household with an income that is not greater than 50% of the State median income, as specified.

“Designated organization” means a nonprofit entity designated by MLSC with the ability to provide legal representation to covered individuals.

“Legal representation” includes all representation by an attorney beyond brief legal advice and is not limited to the formal entry of appearance in court.

Access to Counsel in Evictions Proceedings

The bill establishes an Access to Counsel in Evictions Program administered by MLSC to organize and direct services and resources in order to provide all covered individuals in the State with access to legal representation.

Under the program, MLSC must provide a covered individual with access to legal representation for a judicial or administrative proceeding to evict or terminate the tenancy or housing subsidy of a covered individual. Legal representation may extend to the first appeal in proceedings if the dedicated organization determines there are sufficient legal grounds for the appeal.

A designated organization must ensure that a covered individual receives access to legal representation in a covered proceeding as soon as possible after (1) a landlord provides notice to a tenant to terminate a tenancy; (2) the initiation of an eviction proceeding; or (3) the determination by a designated organization that a proceeding related to a constructive eviction on behalf of a covered individual should be initiated. If feasible, legal representation should begin no later than the first appearance in a proceeding.

The program of legal representation must be phased in – as determined appropriate by MLSC – with the goal of full implementation by October 1, 2025. Priority in funding during the phase-in period will be given to tenants in a local jurisdiction that provides or

agrees to provide significant additional local funding to effectuate an access to counsel in the local jurisdiction. Access to legal representation as provided in the bill is subject to the availability of funding.

Public Outreach and Reporting Requirements

MLSC must develop an informational pamphlet in English and other appropriate languages describing (1) the legal rights of tenants; (2) the access to counsel established under the bill; and (3) information on resources available to tenants. A sheriff or constable must provide a copy of the pamphlet when serving process in accordance with specified eviction-related proceedings.

MLSC must designate and contract with appropriate community groups to conduct relevant public outreach and education, to tenants locally and throughout the State, regarding tenants' rights and the access to legal representation provided in the bill.

Annually by August 31, MLSC must report to the Governor and the General Assembly on (1) the number of covered individuals provided legal representation during the previous calendar year; (2) information on and metrics evaluating case outcomes; and (3) a summary of the engagement and education of tenants.

Access to Counsel in Evictions Task Force

The bill establishes an Access to Counsel in Evictions Task Force. The task force consists of up to 15 members appointed by the Office of the Attorney General (OAG). The Attorney General must designate the chair of the task force. OAG must staff the task force. The task force must (1) evaluate the provision of services provided under the bill; (2) study potential funding sources; and (3) make recommendations to improve implementation of the provisions in the bill, including necessary policy and statutory changes. A member of the task force may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget. The task force may apply for grants from public and private entities to carry out its duties.

By January 1, 2022, and annually thereafter, the task force must submit an annual report of its findings and recommendations to the Governor and the General Assembly.

Access to Counsel in Evictions Special Fund

The Access to Counsel in Evictions Special Fund established by the bill is a special, nonlapsing fund that is only to be used (1) for services provided by a designated organization or activity by a community group to implement the program, as specified in the bill; (2) if a local jurisdiction enacts a similar program, as authorized under the bill, to

implement access to counsel in eviction proceedings (including all costs associated with required legal representation in any proceeding and any outreach and education activities); (3) for administrative expenses of MLSC; and (4) for expenses related to the study and evaluation of services, activities, funding amounts, and sources necessary to fully implement the program, as provided under the bill.

Local Jurisdictions

Local jurisdictions may enact local laws providing for legal representation in eviction proceedings. If a local jurisdiction enacts a substantially similar program, MLSC must direct funding that would have been allocated under the bill's provisions for the benefit of that jurisdiction's tenants to the local program.

Procedural Alterations in Failure to Pay Rent Actions

The bill requires that, prior to filing a failure to pay rent action against a tenant, the landlord must provide written notice of the landlord's intent to file a claim in the District Court to recover possession of the residential premises if the tenant does not cure within 10 days after the notice is provided.

The notice must be in a form created by the Judiciary and occurs once the notice is (1) sent by first-class mail; (2) affixed to the door of the premises; or (3) if elected by the tenant, delivered by either electronic mail message, text message, or an electronic tenant portal. A landlord that files an action under a failure to pay rent claim must include a statement that states and affirms that the required notice was provided. A tenant may challenge any assertions made by the landlord related to the written notice and the court may dismiss the complaint on a showing of sufficient cause.

To facilitate implementation of the notice requirements, the Judiciary must, by October 1, 2021, develop and publish a form on its website titled "Notice of Intent to File a Complaint for Summary Ejectment." The form must include:

- the date of the notice and a description of the manner of delivery of the notice;
- a description of the past-due rent in dispute, including the amounts of rent and late fees due to the landlord, excluding charges related to utilities, services, other fees, fines, or court costs, and the specific periods of time to which the past-due rent and fees correspond;
- a statement informing the tenant that, on request of the tenant, the landlord will promptly provide an itemized accounting of debts and credits;

- a statement containing information on rental assistance programs;
- a statement that the landlord may initiate an action for repossession in the District Court if the tenant does not cure within 10 days after delivery of the written notice and that the tenant has the legal right to dispute the charges; and
- contact information for the landlord, nonprofit legal services organizations that may provide legal advice or representation to the tenant (as compiled by the Maryland Legal Services Corporation), the Alternative Dispute Resolution Office, and the Self-Help Center.

Miscellaneous Provisions

The bill contains a severability provision.

Current Law: Tenants are not entitled to legal representation in landlord-tenant proceedings and notice is not required prior to a landlord filing a complaint in a failure to pay rent action. In general, a landlord seeking to evict a tenant initiates the process by filing the appropriate action (*e.g.*, failure to pay rent, breach of lease, etc.) in the District Court. If awarded a judgment by the court, the landlord files a warrant of restitution, which, once reviewed and signed by the court, authorizes an eviction. The warrants of restitution are forwarded to the local sheriff's office, who is then authorized to carry out the evictions. Statute sets forth numerous specific requirements for such actions, including those related to written notice prior to filing certain actions, and, in failure to pay rent cases, a four-day waiting period between receiving a judgment of possession and filing a writ of restitution.

MLSC, as established in Title 11 of the Human Services Article, has the purpose of receiving and distributing funds to “grantees” that provide legal assistance to eligible clients in civil proceedings or matters. A grantee means a nonprofit organization that is (1) qualified under § 501(c)(3) of the Internal Revenue Code; (2) provides legal assistance to eligible clients; and (3) receives financial assistance, as specified, from MLSC.

State Fiscal Effect: General fund expenditures increase *significantly* to capitalize the fund and implement the legal representation made available by the bill. Special fund revenues to and expenditures from the fund increase correspondingly.

Because the access to counsel is to be phased in it is not possible to reliably predict expenditures for specific fiscal years, as the impact will depend on decisions made by MLSC and the availability of funding. Furthermore, the Department of Legislative Services (DLS) notes that the fund created by the bill is also specifically authorized to be used for expenses related to *the study of funding amounts* and sources necessary to fully effectuate an access to counsel in eviction proceedings. Nevertheless, DLS advises that costs

associated with the full implementation of this access are significant, particularly considering the large volume of landlord-tenant matters filed annually (more than 650,000 cases).

Representation Costs

Although a reliable estimate of expenditures is not available, information provided by local jurisdictions is helpful to illuminate the magnitude of expenditures related to such an access to counsel. For example, Anne Arundel County advises that it has used a portion of funding received from the Coronavirus Aid, Relief, and Economic Security Act, to assist individuals with legal representation for eviction proceedings. Anne Arundel County has provided legal assistance to 200 clients over the past six months and anticipates annual expenditures of up to \$175,000 if a similar number of clients is served during the next six months. Frederick County advises that *total* costs associated with implementing a local program to serve approximately 5,500 individuals annually would exceed \$1.8 million annually (accounting for State and local funding). An independent report analyzing the potential costs associated with fully implementing a similar program in Baltimore City estimated expenditures of \$5.7 million annually, based on an *additional* 6,900 tenants receiving free representation each year (the analysis also assumed that existing funding sources already providing assistance to some individuals would continue).

Administrative and Other Costs

In addition to the significant funding referenced above, the bill likely necessitates additional MLSC staff for the administration of the fund. MLSC anticipates the need for at least one attorney and one administrative staff to oversee the program and, therefore, estimates initial implementation costs of at least \$250,000, which also includes staffing costs and expenses related to the study and evaluation required in the bill. Ongoing salary costs are estimated to be *at least* \$140,000, exclusive of fringe benefits. MLSC employees are not State employees. Costs are likely also incurred to develop and print the pamphlets, which must be made available for distribution. Accordingly, special fund expenditures increase further (along with general fund expenditures and special fund revenues).

Related Impacts on the Judiciary

The Judiciary advises that, given the large number of cases affected by the bill, the bill has an operational and potential fiscal impact. Generally, the District Court plans dockets with the assumption that a large number of cases will result in default judgment or dismissal. If more tenants (accompanied by counsel) instead appear, more clerical time and judicial attention is required. However, the bill may also lead to fewer filings as landlords may alter filing habits (*e.g.*, postpone filing until more rent is due) if they are aware that the opposing party will have representation. Any impact on the number of cases filed has a

corresponding impact on general fund filing fee revenues collected by the Judiciary (as well as to special fund revenues from surcharges imposed on filing fees). Furthermore, to the extent that the bill's notice provisions decrease the number of landlord-tenant cases filed (as tenants may be able to cure rent deficiencies before court action is initiated if given notice and specific information regarding rental assistance programs), general/special fund revenues decrease. For purposes of this fiscal and policy note, it is assumed that general/special fund revenues decrease *at least* minimally from fewer filings.

It is assumed that the Judiciary can develop and publish the "Notice of Intent to File a Complaint for Summary Ejectment" form, as required under the bill, using existing resources.

Other Provisions

Special fund revenues increase minimally from investment earnings of the new fund. It is also assumed that OAG can staff the task force using existing resources.

Local Fiscal Effect: As noted above, pursuant to MLSC's existing statutory authority (which is unchanged by this bill), its purpose is to receive and distribute funds to specified "grantees," which are nonprofit organizations. Although the bill includes requirements for MLSC to direct funding that would have been allocated for the benefit of a local jurisdiction's tenants to a local program, if a local program is enacted, it is assumed that local jurisdictions that elect to establish a program similar to the program under the bill will not *directly* be provided funding from MLSC. Instead, it is assumed that eligible nonprofit entities within these jurisdictions receive funding from MLSC for services rendered in landlord-tenant disputes for the benefit of the local jurisdiction's tenants.

Small Business Effect: Landlords are subject to more stringent requirements in failure to pay rent actions, due to the notice requirements prior to filing. However, landlords may avoid costs associated with enforcement if the notice provisions in the bill facilitate the payment of past-due rent without court involvement. Landlords may also benefit to the extent that more tenants are referred to programs that facilitate rent assistance.

Additional Comments: DLS notes that a funding source for a *Right to Counsel* in Evictions Special Fund has been proposed in separate legislation (House Bill 31, as passed by the House of Delegates and reflecting the special fund established in the first-reader version of this bill). Specifically, that legislation would assess a surcharge of up to \$68 in summary ejectment cases; of that surcharge, \$30 would be deposited into the *Right to Counsel* in Evictions Special Fund. Assuming that the maximum surcharge is assessed, up to \$15.4 million in fiscal 2022 (which reflects the October 1, 2021 effective date) and \$20.6 million annually would be available for the fund. To the extent this funding is available, the general fund impact is mitigated.

However, that estimate is based on surcharge revenues collected in fiscal 2019. While the number of case filings varies each year, the estimate assumes that the number of cases to which the surcharges are imposed remains constant and that the maximum surcharge is imposed. DLS notes, however, that the significant increase in the summary ejectment surcharge coupled with that bill's provision restricting courts or landlords from passing the surcharge on to the tenant may deter landlords from filing as many failure to pay rent cases, or waiting longer periods before filing. Any such impact has not been accounted for in the relevant analysis, but may materially affect overall filings. Accordingly, the potential special fund revenues illustrated above indicate the *maximum* revenues anticipated to be available, should House Bill 31 be enacted.

Finally, DLS also notes that although House Bill 31 (as passed by the House of Delegates) directs funding to the *Right to Counsel in Evictions Special Fund*, it does not include separate provisions to establish the fund nor is House Bill 31 contingent on the passage of this bill.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 18 (Delegate W. Fisher, *et al.*) - Judiciary.

Information Source(s): Anne Arundel, Charles, Frederick, and Montgomery counties; Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Maryland Legal Services Corporation; Department of Legislative Services

Fiscal Note History: First Reader - January 27, 2021
rh/jkb Third Reader - April 12, 2021
Revised - Amendment(s) - April 12, 2021
Revised - Updated Information - April 12, 2021

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