

Department of Legislative Services  
 Maryland General Assembly  
 2021 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 729

(The Speaker)(By Request - Office of the Attorney General)

Judiciary

Landlord and Tenant - Eviction Actions - Filing Surcharge and Prohibited Lease Provisions

This bill increases a surcharge that is applied to specified landlord-tenant filings in the District Court. Specifically, the authorized surcharge for summary ejection cases increases from a *maximum* of \$8 to a *minimum* of \$120. The bill also establishes that this minimum surcharge of \$120 is applicable to other specified landlord-tenant actions (tenant holding over or breach of lease) that seek a judgment for possession of residential property. The surcharge, if assessed, must be assessed against a landlord and may not be awarded or assigned by the District Court as a fee or cost against a residential tenant. The bill also prohibits leases from containing provisions that obligate a tenant to be responsible for such surcharges. **The bill takes effect June 1, 2021.**

Fiscal Summary

**State Effect:** Special fund revenues, combined, increase by approximately \$4.7 million and general fund revenues decrease by \$57,200 in FY 2021 to reflect the increased surcharge and the associated impact on case filings for one month during the year. Future years reflect annualization. General fund expenditures increase by \$29,200 in FY 2021 only. Special fund expenditures are not directly affected, as discussed below.

(\$ in millions)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
GF Revenue	(\$0.06)	(\$0.69)	(\$0.69)	(\$0.69)	(\$0.69)
SF Revenue	\$4.68	\$56.21	\$56.21	\$56.21	\$56.21
GF Expenditure	\$0.03	\$0	\$0	\$0	\$0
Net Effect	\$4.60	\$55.53	\$55.53	\$55.53	\$55.53

Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

**Local Effect:** Potential decrease in local revenues, particularly in Baltimore City, to the extent that the bill results in fewer filings. Any operational impact due to fewer evictions potentially being executed by sheriffs is not anticipated to materially affect local government expenditures or operations.

**Small Business Effect:** Meaningful.

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## Analysis

### Current Law:

#### *Maryland Legal Services Corporation Fund and Related Surcharges*

Money from the surcharge affected by the bill is deposited into the Maryland Legal Services Corporation (MLSC) Fund, which is used to finance civil legal services to indigent clients.

In addition to applicable filing fees, the Chief Judge of the District Court must assess a surcharge of up to \$8 for summary ejectment (failure to pay rent) cases and \$18 for all other civil cases (including breach of lease and tenant holding over actions). In the District Court, additional surcharges of up to \$3 for summary ejectment cases and \$8 for all other civil cases are also assessed for the benefit of the Circuit Court Real Property Records Improvement Fund. In Baltimore City, further surcharges are applied to certain landlord-tenant cases; these funds are remitted to the city to enhance the service of domestic violence orders.

A judge may waive the prepayment of filing fees and other costs due to indigence.

The MLSC Fund also receives a \$55 surcharge for civil cases filed in the circuit courts. In addition to funding from the surcharges on civil cases, the MLSC Fund receives a required distribution of \$2.0 million annually from the State's Unclaimed Property Fund. Attorneys are also required to place small or short-term client trust funds into an Interest on Lawyer Trust Accounts account, the interest on which is paid into the MLSC Fund.

#### *Eviction Proceedings – Generally*

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.

In failure to pay rent actions, if judgment is in favor of the landlord and the tenant does not return the premises to the landlord or otherwise satisfy the judgment by paying the applicable rent and late fees within 4 days, as specified, the court must, at any time after 4 days have elapsed, issue a warrant of restitution. The court may, upon presentation of a certificate signed by a physician certifying that surrendering the property within the 4-day period would endanger the health or life of the tenant or other occupant, extend the time for surrender of the premises as justice may require up to 15 days. Statutory provisions also authorize stays of execution in other specified circumstances, such as in the event of extreme weather conditions.

If the landlord does not order a warrant of restitution within 60 days from either the date of judgment or the expiration date of any stay of execution (whichever is later), then (1) the judgment for possession must be stricken and (2) the judgment must generally count toward the threshold for the number of judgments at which a tenant no longer has the right to redemption of the leased premises, as specified.

**Background:** According to Attorney General Brian E. Frosh, the State's current system for landlord-tenant disputes is unfair to tenants. In a recent op-ed, Attorney General Frosh highlighted the State's low barriers for filing claims against tenants that could lead to eviction as an outlier compared with neighboring states. Eviction filing rates in neighboring states range from 5.3% in Pennsylvania to 16.9% in Delaware. Rates in New Jersey, the District of Columbia, and Virginia range from 12.5% to 15.7%. Comparatively, Maryland's rate is over 80%. In some counties, the filing rate is 100%, meaning that more eviction actions are brought than there are homes for rent.

The Attorney General further noted that procedurally, in most states, tenants have an opportunity to seek rental assistance, work out payment plans, or find other housing before judicial action is initiated. However, in Maryland, the first step is a court filing. Frosh noted that a landlord's cost of filing is \$15, one of the lowest nationwide. Some states impose fees totaling more than \$300; the average is \$122.

**State Fiscal Effect:** Net special fund revenues for the MLSC Fund increase by \$4,727,158 in fiscal 2021, which reflects the bill's June 1, 2021 effective date, and by \$56,725,896 annually thereafter. However, special fund revenues for the Circuit Court Real Property Records Improvement Fund decrease by \$47,873 in fiscal 2021 and by \$514,470 annually thereafter; likewise, general fund revenues decrease by \$57,163 in fiscal 2021 and by \$685,960 annually thereafter. General fund expenditures increase by \$29,241 in fiscal 2021 only for computer programming costs. Special fund expenditures are not directly impacted, as discussed below.

### *Increased Surcharge Revenues for the Maryland Legal Services Corporation Fund*

According to the Administrative Office of the Courts, in fiscal 2019, summary ejectment cases in the District Court generated approximately \$5.5 million in surcharge revenues for the MLSC Fund. Other civil cases in the District Court to which the surcharges affected by this bill were applied generated an estimated \$84,222. Due to the significant increase in the surcharge amount, this analysis assumes that filings from summary ejectment cases decrease by at least 25%. This reflects an assumption that, when subject to higher costs associated with filing such cases and prohibited from passing the higher costs on to the tenant, landlords will alter filing behavior. For example, landlords may wait until larger amounts of past due rent have accrued before filing. While the number of case filings varies each year, this estimate assumes that the number of cases to which the surcharges are imposed remains constant each year, after accounting for the 25% decrease. Although the bill establishes that the surcharge must be at least \$120, for purposes of this analysis, the surcharge is assumed to be \$120. Accordingly, net MLSC Fund revenues increase by approximately \$4.7 million in fiscal 2021, which reflects the bill's June 1, 2021 effective date, and by \$56.7 million annually beginning in fiscal 2022. To the extent filings decrease more significantly, the revenue increase is moderated but still significant (for example, a 50% decrease in such filings still results in a \$35.6 million increase in special fund revenues on an annualized basis).

While the bill does not require additional spending, the MLSC Fund is used to finance civil legal services to indigent clients. Accordingly, the bill results in *significant* additional funding available for that purpose.

### *Circuit Court Real Property Records Improvement Fund*

As noted above, in addition to the surcharge for MLSC, an additional surcharge of \$3 is imposed and credited to the Circuit Court Real Property Records Improvement Fund, which is used to support all personnel and operating costs within the land records offices of the clerks of the circuit courts. Under the assumptions discussed above, special fund revenues decrease by \$42,873 in fiscal 2021 and \$514,470 annually to reflect a reduction in summary ejectment case filings. It is assumed that, even with the funding decrease, special fund revenues are sufficient to sustain the fund without the need for general funds. To the extent that filings decrease more significantly, the revenue decrease is further exacerbated (for example, a 50% decrease in such filings results in a \$1.0 million decrease in special fund revenues on an annualized basis).

### *General Fund Revenues*

In addition to the surcharges, a flat filing fee of \$4 is imposed on summary ejectment cases. Accordingly, general fund revenues decrease by \$57,163 in fiscal 2021 and \$685,960

annually thereafter to reflect the assumed reduction in summary ejectment case filings. To the extent that filings decrease more significantly, the revenue decrease is exacerbated (for example, a 50% decrease in such filings results in a \$1.4 million decrease in general fund revenues on an annualized basis).

### *Judiciary*

General fund expenditures increase by \$29,241 in fiscal 2021 only for computer programming costs. To the extent that fewer cases are filed, thereby reducing the workload of the District Court, operational efficiencies may be realized.

**Local Fiscal Effect:** As noted above, additional surcharges are imposed on landlord-tenant actions filed in Baltimore City. To the extent that overall filings decrease in Baltimore City as a result of the increased surcharge, Baltimore City revenues decrease. Fee revenues associated with service of process in landlord-tenant actions may also further decrease in Baltimore City and other jurisdictions. While expenditures strictly associated with evictions may decrease, resources are assumed to be directed elsewhere so that there is no material effect on local government expenditures.

**Small Business Effect:** Landlords and management companies filing summary ejectment cases can no longer pass on certain imposed surcharges, which are significantly increased by the bill, to tenants. Likewise, they can no longer pass on certain imposed surcharges for tenant holding and breach of lease cases.

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## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 530 (The President, *et al.*) (By Request - Office of the Attorney General) - Judicial Proceedings.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Office of the Attorney General; *Baltimore Sun*; Department of Legislative Services

**Fiscal Note History:** First Reader - February 17, 2021  
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