

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 298

(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 for summary ejectment, tenant holding over, or breach of lease cases for possession of residential property against a residential tenant from a *maximum* of either \$8 or \$18, depending on the type of case, to a *maximum* of \$73. 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, 2022.**

Fiscal Summary

State Effect: Special fund revenues, combined, increase by approximately \$2.3 million and general fund revenues decrease by \$48,800 in FY 2022 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 \$30,100 in FY 2022 only. Special fund expenditures are not directly affected, as discussed below.

(\$ in millions)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
GF Revenue	(\$0.05)	(\$0.59)	(\$0.59)	(\$0.59)	(\$0.59)
SF Revenue	\$2.26	\$27.17	\$27.17	\$27.17	\$27.17
GF Expenditure	\$0.03	\$0	\$0	\$0	\$0
Net Effect	\$2.19	\$26.58	\$26.58	\$26.58	\$26.58

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. Expenditures are not materially affected.

Small Business Effect: Meaningful.

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 \$8.0 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 must file 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. This includes specific requirements for written notice prior to initiating a failure to pay rent action.

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: In a 2021 op-ed, Attorney General Brian E. Frosh addressed numerous concerns with the State’s system for landlord-tenant disputes and 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 \$2,300,741 in fiscal 2022, which reflects the bill’s June 1, 2022 effective date, and by \$27,608,895 annually thereafter. However, special fund revenues for the Circuit Court Real Property Records Improvement Fund decrease by \$36,573 in fiscal 2022 and by \$438,876 annually thereafter; likewise, general fund revenues decrease by \$48,764 in fiscal 2022 and by \$585,168 annually thereafter. General fund expenditures increase by \$30,126 in fiscal 2022 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

Based on updated information for fiscal 2019, the Administrative Office of the Courts advises that more than 551,400 summary ejectment cases filed in the District Court generated several million dollars 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 less than \$85,000. Due to the (1) significant increase in the surcharge amount and (2) new provisions enacted during the 2021 legislative session requiring specific notice to be provided to tenants ([Chapter 746 of 2021](#)), this analysis assumes that filings from *only* summary ejectment cases decrease by at least 25%, but that they would have otherwise increased slightly from their pre-pandemic levels. Summary ejectment cases do represent a significant portion of landlord-tenant actions filed in the State. This reflects an assumption that, when subject to higher costs associated with filing such cases, being prohibited from passing the higher costs on to the tenant, and being required to provide specific notice to tenants, 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. However, this estimate does not anticipate that the increase in the surcharge will affect the volume of tenant holding over or breach of lease cases. Although the bill establishes that the surcharge may not exceed \$73, for purposes of this analysis, the surcharge is assumed to be \$73. Accordingly, *net* MLSC Fund revenues increase by approximately \$2.3 million in fiscal 2022, which reflects the bill's June 1, 2022 effective date, and by \$27.6 million annually beginning in fiscal 2023. 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 net increase of \$16.9 million in special fund revenues on an annualized basis). Likewise, to the extent the maximum surcharge is not imposed, the revenue increase is moderated. 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 \$36,573 in fiscal 2022 and \$438,876 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 an \$878,000 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 \$48,764 in fiscal 2022 and \$585,168 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 \$1.2 million decrease in general fund revenues on an annualized basis).

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General fund expenditures increase by \$30,126 in fiscal 2022 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, tenant holding over, or breach of lease cases can no longer pass on certain imposed surcharges, which are significantly increased by the bill, to tenants.

Additional Information

Prior Introductions: SB 530 of 2021, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 729, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: SB 223 (The President)(By Request - Office of the Attorney General) - Judicial Proceedings..

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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