

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 469 (Delegate Stein)
Environmental Matters

Public Safety - Building Codes - Balcony Inspections (Jonathan's Law)

This bill requires a political subdivision to require an inspection of every multifamily dwelling with a balcony at least once every 10 years in order to ensure that each balcony meets the requirements of the applicable local housing code or the Minimum Livability Code. An initial inspection of each multifamily dwelling with a balcony that is at least 10 years old is required by October 1, 2014. A political subdivision may charge a property owner a fee for each periodic balcony inspection. The bill does not require a political subdivision that conducts balcony inspections before October 1, 2013, to alter its method of conducting inspections; however, any subsequent change to balcony inspection methods must comply with the bill.

Fiscal Summary

State Effect: The bill's requirements can be absorbed within existing budgeted resources. Any additional criminal penalties assessed as a result of the bill are not anticipated to materially affect State finances.

Local Effect: Some local governments may experience an increase in expenditures to implement the required inspections. Local revenues may increase as a result of any inspection fees assessed pursuant to the bill's authority. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A political subdivision may (1) conduct the required inspections; (2) authorize a third party to conduct the inspections for the political subdivision; or (3) require inspections to be conducted and certified to the political subdivision by a professional inspector employed by the owner of the multifamily dwelling. Certifications must meet specified requirements. Inspections must begin no later than 10 years after the balcony is constructed.

The bill defines “multifamily dwelling” as a building containing two or more dwelling units, including an apartment house, a boarding house, a convent, a dormitory, a fraternity or sorority house, a hotel or motel, a monastery, and a vacation time-share property. A “professional inspector” for the purposes of conducting and certifying balcony inspections means (1) a licensed professional engineer or a licensed architect with specified experience and knowledge or (2) a qualified person with at least five years of experience in multifamily dwelling operations, upkeep, and maintenance.

Current Law: The Department of Housing and Community Development (DHCD) is required to adopt a “Minimum Livability Code,” which sets baseline property standards for all residential structures located in the State except for owner-occupied single-family housing units or specified housing exempted by DHCD. The Minimum Livability Code must contain minimum standards for the safe and sanitary maintenance of residential structures and premises.

The Minimum Livability Code incorporates the 2009 International Property Maintenance Code (IPMC). IPMC sets requirements for the conditions and maintenance of property, buildings, and structures that are essential to ensure that structures are safe, sanitary, and fit for human occupation and use. IPMC requires that every exterior balcony be structurally sound, in good repair, with proper anchorage, and capable of supporting the imposed loads. Every interior balcony must be maintained in sound condition and good repair. Additionally, every portion of a balcony that is more than 30 inches above the floor or grade must have guards at least 30 inches above the floor of the balcony.

Each political subdivision in the State must also adopt a local housing code that sets minimum property maintenance standards for housing within the subdivision. DHCD’s Minimum Livability Code does not apply to housing located in a political subdivision that has adopted a substantially similar local housing code. Each political subdivision is responsible for enforcing the Minimum Livability Code and may charge a property owner a fee for an inspection made to enforce the code.

A property owner may apply for a waiver of the Minimum Livability Code. A political subdivision is authorized to issue a waiver if (1) each tenant of the unit is given adequate

notice in the form and manner specified by the political subdivision; (2) each tenant is given an opportunity to comment on the application in writing or in person; and (3) the waiver would not threaten the health or safety of any tenant. A political subdivision may also issue a waiver on the basis of the religious practices of a rental housing unit's tenant. DHCD decides questions of interpretation of the Minimum Livability Code, including questions that relate to uniform enforcement by political subdivisions, and may authorize waivers or exemptions under the Minimum Livability Code.

DHCD may provide matching grants and technical assistance to political subdivisions in order to implement the Minimum Livability Code.

A property owner who willfully violates the Minimum Livability Code is guilty of a misdemeanor and, upon conviction, is subject, for each violation, to imprisonment for up to three months or a fine of up to \$500 for each day the violation exists, or both. Any such penalty is not a substitute for any other penalty authorized under federal, State, or local law.

Background: The bill stems from a 2008 incident in Massachusetts in which a 32-year-old man died after a railing on his apartment's balcony collapsed. His death led to the passing of a similar law in Massachusetts.

Local Fiscal Effect: Local expenditures increase if a political subdivision hires an additional inspector or contracts with a third party to perform the required balcony inspections. However, local expenditures may be mitigated to the extent that a political subdivision chooses to require that inspections be conducted and certified to the political subdivision by a professional inspector employed by the owner of the multifamily dwelling, rather than conducting or contracting for the inspections directly.

Although conducting balcony inspections may increase local expenditures, a political subdivision may offset its additional costs by charging a property owner an inspection fee as authorized by the bill. For example, Carroll County anticipates minimal increases in expenditures to provide additional inspections and corresponding increases in revenues from inspection fees. However, although a political subdivision is authorized to charge an inspection fee, some local jurisdictions may choose not to implement such a fee. For example, Harford County notes that any inspection fee proposal would face considerable resistance from the business community, and thus currently does not plan on charging an inspection fee despite the authority provided in the bill.

Multiple local governments, including Baltimore County and the City of Havre de Grace, indicate that they intend to contract with a third party to conduct the required inspections. Baltimore County advises that it will collect a fee from property owners to offset its contract costs.

Several local governments also advise that the bill results in an administrative burden. For example, even though Montgomery County anticipates requiring inspections to be conducted and certified by a professional inspector employed by the multifamily dwelling owner, it still expects an increase in costs to develop a registration form, identify all properties, and create a database. Montgomery County licenses and inspects every three years approximately 64,000 residential multifamily units, of which approximately 10,000 have balconies. The bill also applies to approximately 60 hotels or motels in the county.

The City of Frederick advises that it anticipates the need to hire an additional administrator to implement the bill, and, if the city decides to conduct its own inspections, hire two additional inspectors.

Any additional criminal penalties assessed as a result of the bill are not anticipated to materially affect local finances.

Small Business Effect: Small businesses subject to inspections incur increases in costs to pay any inspection fees established as a result of the bill or to hire professional inspectors to conduct the inspections. Particularly, hotels and motels may incur a meaningful increase in expenditures to pay for the inspections. However, it is assumed that any increase in costs will be passed on to customers in the form of higher prices.

Additional Information

Prior Introductions: SB 196 of 2012 received a favorable with amendments report from the Senate Education, Health, and Environmental Affairs Committee but failed on third reading in the Senate.

Cross File: Although SB 18 (Senator Young – Education, Health, and Environmental Affairs) is designated as a cross file, it is different.

Information Source(s): Baltimore, Carroll, Harford, and Montgomery counties; cities of Havre de Grace and Frederick; Department of Housing and Community Development; Department of Health and Mental Hygiene; Maryland State Department of Education; University System of Maryland; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2013
mlm/lgc

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