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FISCAL AND POLICY NOTE
First Reader

Senate Bill 1015 (Senator Patterson, *et al.*)
Education, Health, and Environmental Affairs

Prince George's County - New Homes - Correction of Drainage Defects
PG 408-19

This bill requires the governing body of Prince George's County to establish a specified program for the correction of drainage defects in new homes in the county. If a home builder is found to be responsible for a drainage defect, *the county* must (1) arrange to complete the required correction within one year of the date of the filing of the complaint and (2) seek reimbursement from the home builder for the correction of the drainage defect. **The bill takes effect October 1, 2020.**

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: Prince George's County expenditures increase, potentially significantly, as discussed below. Revenues increase to the extent the county is able to receive reimbursement for the correction of drainage defects from home builders. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: "Drainage defect" means improper grading, poor soil composition, or any other design or workmanship defect attributable to a home builder that results in a flooded yard or water in the basement of a new home. "Home builder" means a person that builds a new home. "New home" means a newly constructed, single-family dwelling unit, and it includes a custom home as defined in § 10-501 of the Real Property Article or a mobile

home as defined in § 8A-101 of the Real Property Article. “Owner” means the purchaser of a new home who uses the home primarily for residential purposes.

Notwithstanding any other provision of law, the governing body of Prince George’s county must establish a program for the correction of drainage defects in new homes in the county. The program must include (1) a claims procedure for an owner to file a complaint for the correction of a drainage defect and (2) an evaluation procedure for determining whether the home builder is responsible for the drainage defect that is the basis of a complaint.

Current Law: Statute does not specifically address the correction of a drainage defect by a builder of a new home or require a county to correct the defect and seek reimbursement from a builder.

Express and Implied Warranties

Generally, in addition to any express warranty made by a builder, in every sale, warranties are generally implied that, at the time of completion, any improvement is:

- free from faulty materials;
- constructed according to sound engineering standards;
- constructed in a workmanlike manner; and
- fit for habitation.

If any express or implied warranty is breached, a court may award legal or equitable relief, or both, as justice requires. Unless an express warranty specifies a longer period of time, express or implied warranties generally expire one year after the delivery of the home or after the taking of possession by the original purchaser, whichever occurs first. Warranties for structural defects expire two years after the date of completion, delivery, or taking possession, whichever occurs first. Warranties do not expire on the subsequent sale of a dwelling. However, the warranties do not apply to any defect *caused* by the original purchaser.

Additionally, in Baltimore City and all counties except Montgomery County, prior to entering into a contract for sale or construction of a new home, the builder must disclose in writing to the owner whether (1) the builder participates in a new home warranty security plan through which the builder must provide the owner with a new home warranty or the builder may provide a new home warranty to the owner at the owner’s option or (2) the builder does not participate in a new home warranty security plan.

In Montgomery County, builders are required to provide specified disclosures, including notice of specified performance standards and the existence of a specified new home warranty.

Additional notice and disclosure requirements apply, statewide, to contracts for the initial sale or resale of residential real property.

Home Builder Guaranty Fund

The Home Builder Guaranty Fund is overseen by the Consumer Protection Division (CPD) within the Office of the Attorney General (OAG). The fund allows consumers to seek compensation for losses resulting from an act or omission by a registered builder who constructs a new home for a consumer. When a home builder applies for a building permit, \$50 of the cost of that permit is used to fund the Home Builder Guaranty Fund. Builders are permitted to pass this cost on to the consumer.

A consumer who entered into a contract with a registered builder to construct a new home in the State of Maryland on or after January 1, 2009, may file a claim against the fund. Claims may not be filed by the spouse or immediate relative of the registered builder, an employee or principal of the registered builder, or an immediate relative of an employee or principal of a registered builder. The fund pays for the actual loss which results from an act or omission by a registered builder as determined by CPD or a court of competent jurisdiction. Generally, “actual loss” means the costs of restoration, repair, replacement, or completion that results from the incomplete construction of a new home, a breach of an express or implied warranty, or a failure of the builder to meet certain construction standards or guidelines. OAG has advised that the fund may award up to \$50,000 to any one claimant for acts of any one registered builder and up to \$300,000 for all claims against the same registered builder, unless that builder first reimburses the fund for monies paid on his or her behalf.

Background: U.S. Census Bureau data shows that, in 2017, 1,714 single-family housing units were authorized for construction in Prince George’s County.

CPD advised in response to previous legislation that the Home Builder Guaranty Fund disbursed \$598,884 in fiscal 2017 and ended the fiscal year with a balance of \$2.1 million. Prince George’s County advises that it has established stringent requirements related to the drainage of residential homes, including prohibiting the construction of basements below the groundwater elevation and requiring specified drains and stormwater systems to be installed, depending on conditions at the location. Additionally, the county advises, to address surface drainage, specific grading requirements are in place.

The county further advises that, prior to the issuance of a use and occupancy permit for a residential home, a professional engineer is required to inspect and certify that the lot is built and graded to conform to county requirements. Further, when development projects are under permit, the county requires builders and developers to remedy drainage defects that are reported to the county, even if the homeowner has moved into the home.

Local Expenditures: Prince George's County expenditures increase, potentially significantly, beginning in fiscal 2021 to correct drainage defects related to new homes in the county and to recover expenditures from home builders. Prince George's County advises that requiring the county to correct the construction defects of private home builders would likely divert resources from other public works and transportation projects. Additionally, once the defects have been corrected, Prince George's County expenditures increase further to attempt to recover costs from home builders. Because the bill does not provide a new mechanism authorizing the county to recover expenditures from home builders beyond the mechanism currently available to *consumers* under current law, the likelihood of success in any attempt to receive reimbursement for the repair of defects is unclear. Expenditures may increase further to attempt to recover expenditures in court.

Small Business Effect: Home builders that qualify as small businesses may incur significant costs to reimburse Prince George's County for the repair of drainage defects not otherwise covered under express or implied warranties or a new home warranty security plan.

Additional Information

Prior Introductions: None.

Cross File: HB 219 (Prince George's County Delegation) - Environment and Transportation.

Information Source(s): Prince George's County; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); U.S. Census Bureau; Department of Legislative Services

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