

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader - Revised

Senate Bill 70 (Senator Patterson)
Education, Health, and Environmental Affairs

Environment - Mold Inspections - Standards, Reporting, and Penalties

This bill requires the Maryland Department of the Environment (MDE), in consultation with the Maryland Department of Health (MDH), the Department of Housing and Community Development (DHCD), and the Department of General Services (DGS), to adopt regulations that establish uniform standards for mold assessment and remediation, as specified, by June 1, 2023. Among other things, the regulations must require local jurisdictions to conduct annual mold inspections at all rental dwellings within the jurisdiction. The bill also establishes provisions relating to (1) enforcement and penalties and (2) rent escrow rights and protections for specified tenants. **The bill takes effect June 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase significantly beginning in FY 2022. General fund revenues increase as early as FY 2023 from third-party inspector verification fees and as early as FY 2024 from penalties.

Local Effect: Local expenditures increase, likely significantly in some jurisdictions, beginning as early as FY 2023, to conduct the required inspections. Because landlords must pay the cost of inspections, it is assumed that inspection costs are recouped. However, it is unclear to what extent local governments may incur other related costs not able to be recouped. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Relevant Definitions

“Mold” means a form of multicellular fungi that lives (1) on a plant or animal matter or (2) in an indoor environment. A “mold hazard” is (1) a concentration of mold or mold spores that exceeds the standards established pursuant to the bill or (2) an adverse human health effect associated with mold exposure, including allergic reactions, asthma, and other respiratory complaints. “Mold remediation” means (1) removing, cleaning, sanitizing, demolishing, or any other treatment performed to address a mold hazard, mold, or dampness or (2) abatement of the underlying cause of a mold hazard, mold, or dampness.

A “rental dwelling unit” is a room or group of rooms that form a single independent habitable rental unit for permanent occupation by one or more individuals that has living facilities equipped with permanent provisions for living, sleeping, eating, cooking, and sanitation. A rental dwelling unit does not include (1) an area not used for living, sleeping, eating, cooking, or sanitation, such as an unfinished basement; (2) a unit within a hotel, motel, or other similar seasonal or transient facility; (3) an area that is secured and inaccessible to occupants; or (4) a unit not offered for rent.

Mold Assessment and Remediation

The regulations adopted pursuant to the bill must:

- establish standards for (1) habitable dampness; (2) identifying and evaluating the presence of mold, including visible mold inspection and testing; and (3) mold remediation standards that are at least as stringent as specified standards issued by the U.S. Environmental Protection Agency (EPA);
- establish a risk reduction standard for mold hazards;
- require a local jurisdiction to conduct an annual mold inspection of all rental dwelling units within the jurisdiction;
- authorize the mold inspection to be performed in conjunction with another inspection;
- establish a process for a third-party inspector to perform the required inspection, including processes for (1) MDE to verify that a third-party inspector is qualified to perform the inspection and (2) the establishment of a registry that lists verified inspectors;

- require the landlord of a rental dwelling to (1) pay the cost of the required mold inspection and (2) disclose the results of the inspection to a current or prospective tenant; and
- prohibit a current or prospective tenant from waiving the disclosure requirement.

MDE (1) may charge a fee of up to \$100 for verifying a third-party inspector and (2) must maintain the registry of third-party inspectors established pursuant to the regulations adopted under the bill. MDE must also develop and make available on its website and in print resource materials regarding mold hazards, mold, and dampness.

Annually by December 1, beginning in 2024, MDE must submit a report to the Governor and the General Assembly on indoor air quality and the results of the required mold inspections.

Enforcement and Penalties

A person who violates the regulations adopted pursuant to the bill is subject to a civil penalty of up to \$250 per violation, not exceeding \$10,000. Each day a violation continues constitutes a separate offense. The bill establishes factors that must be considered when assessing the civil penalty.

A local jurisdiction, county attorney, or municipal attorney may enforce the bill's provisions regarding mold assessment and remediation.

Rent Escrow

If a landlord fails to comply with the regulations adopted under the bill or the bill's disclosure requirements, the tenant may deposit the tenant's rent in an escrow account with the clerk of the District Court, as specified. Prior to depositing rent in escrow, the tenant must provide notice of the mold hazard, mold, or dampness to the landlord in a reasonable manner. The right of a tenant to deposit rent in an escrow account does not preclude the tenant from pursuing any other right or remedy available to the tenant at law or equity.

The bill establishes terms and conditions under which money deposited in an escrow account pursuant to the bill must be released. A lessee may not be evicted, the tenancy may not be terminated, and the rent may not be raised for a lessee who elects to seek remedies through use of an escrow account under the bill. Further, the bill establishes a presumption that any attempt to evict the tenant, to terminate the tenancy, or to raise the rent (except for nonpayment of rent) within two months after compliance with the regulatory requirements adopted pursuant to the bill is in retaliation for the lessee's proceeding under the bill's escrow provisions, and is voidable.

The bill's escrow provisions preempt any public local law or ordinance concerning the deposit of rent into an escrow account based on the existence of mold in a rental dwelling unit in the State and disposition of that rent.

Current Law: There are no statewide requirements to conduct mold assessments or remediation of rental dwelling units. Below is a summary of some relevant provisions of current law.

Maryland Department of the Environment – General Duties

The Secretary of the Environment must carry out and enforce the provisions of the Environment Article and the rules and regulations adopted under the article. The Secretary is authorized to delegate duties, powers, and functions to a health officer for a county or to another county official authorized to administer and enforce environmental laws.

Except as otherwise provided, the Secretary must pay all money collected by MDE under the Environment Article into the general fund.

Rent Escrow and Residential Rental Defects

In order to use specified remedies available when serious and dangerous defects are present in residential dwelling units, a tenant must notify the landlord of the existence of the defects or conditions using specified methods.

If the landlord refuses to make the repairs or correct the conditions, or if after a reasonable time the landlord has failed to do so, the tenant may (1) bring an action of rent escrow to pay rent into court because of the asserted defects or conditions or (2) refuse to pay rent and raise the existence of the asserted defects or conditions as an affirmative defense to an action for distress for rent or to any complaint proceeding brought by the landlord to recover rent or the possession of the leased premises.

After rent escrow has been established, the court must, after a hearing (if ordered by the court or requested by the landlord), order that the money in the escrow account be disbursed to the landlord after the necessary repairs have been made. Other permissible actions by the court, including ordering that some or all of the money in the escrow account be paid to the landlord or the tenant for the purpose of making the necessary repairs, are also specified in statute.

U.S. Environmental Protection Agency Technical Guidance

EPA has a host of programs and an extensive list of resources to help states assist school systems and commercial buildings. Among other things, these resources include a guide to

[mold remediation in schools and commercial buildings](#). EPA advises that there are no federal standards or threshold limit values for mold or mold spores, which means that sampling cannot be used to check a building's compliance with federal mold standards. However, surface sampling may be useful to determine if an area has been adequately cleaned or remediated. Similarly, MDE does not have any exposure limit standards for indoor concentrations of mold or mold spores.

State Expenditures:

Maryland Department of the Environment

MDE estimates that its general fund expenditures increase by approximately \$660,000 in fiscal 2022, and by a minimum of \$857,000 annually thereafter, to hire 12 additional employees (10 environmental compliance specialists, 1 environmental program manager, and 1 administrative specialist) for a new program within MDE and for contractual costs to (1) establish policies and procedures for the inspection and remediation of mold and mold hazards; (2) promulgate regulations in consultation with MDH, DHCD, and DGS; (3) develop a process for third-party inspectors to conduct inspections, establish a methodology to verify inspectors are qualified, and alter an existing database to develop a registry that lists verified third-party inspectors; (4) develop and make electronic and print materials available; and (5) generally enforce the bill. MDE advises that this estimate is based off the department's lead program, the department's asbestos worker accreditation program, the number of rental dwellings affected under that program, and program staff in the lead and asbestos worker accreditation programs. MDE estimates that there are several hundred thousand properties affected by the bill.

The Department of Legislative Services (DLS) concurs that general fund expenditures for MDE increase significantly beginning in fiscal 2022 to hire additional staff to implement the bill. In particular, the tracking responsibilities required to coordinate required inspections and remedial actions are expected to be significant. It is assumed that MDE will be the lead agency in charge of this effort, but DLS notes that it could be shared among the State agencies involved with the implementation of the bill and/or local governments. Without actual experience under the bill, DLS is unable to independently verify MDE's estimate at this time.

Because it is assumed that MDE is the lead State agency, this analysis assumes MDH, DGS, and DHCD can consult with MDE to develop the required regulations using existing budgeted resources.

Judiciary (Administrative Office of the Courts)

The Judiciary advises that in fiscal 2019 (the last full fiscal year unaffected by restrictions on court operations due to COVID-19), there were 2,602 rent escrow filings and 669,427 landlord/tenant actions filed in the District Court. There is likely to be an increase in both rent escrow filings and civil case filings from the expansion of tenant's remedies established under the bill as well as subsequent actions brought against landlords to handle the disputes. However, any potential minimal increase in expenditures due to additional clerical and court time, as well as costs associated with updating website information and relevant forms, is not anticipated to materially affect the finances of the Judiciary.

State Revenues: General fund revenues increase due to third-party inspector verification fees, beginning as early as fiscal 2023. The bill authorizes MDE to charge a fee of up to \$100 for verifying a third-party inspector. Given the anticipated number of buildings that need to be inspected each year, there is likely a large demand for third-party inspectors under the bill. Thus, fee revenues could be significant.

General fund revenues may also increase from the bill's civil penalty provision. Penalties are likely not assessed before fiscal 2024.

Because the bill is silent with regard to where any fee and penalty revenue must be deposited, this analysis assumes that any revenue collected under the bill is deposited into the general fund.

Local Fiscal Effect: Depending on whether local jurisdictions already conduct inspections for affected rental dwelling units, costs for local governments and/or local health departments may increase significantly. Requiring inspections on an annual basis likely increases costs significantly, at least in some jurisdictions. Some jurisdictions may hire additional inspectors to conduct the inspections in-house, while others may use verified third-party inspectors. Because landlords must pay the cost of the required mold inspections, it is assumed that a local jurisdiction can recoup any inspection costs incurred. It should be noted, however, that the bill does not provide *explicit* authority for local governments to set and collect inspection fees from landlords. In addition, it is unclear at this time to what extent local governments may incur other related costs (such as administrative costs) not able to be recouped from landlords.

Local entities provided the following information regarding the potential fiscal effect of the bill:

- Prince George's County estimates that the county must hire 105 new inspectors and 15 supervisors at an annual cost of at least \$14 million to conduct annual inspections of all rental dwelling units in the county. The county advises that currently, although

a portion of the rental dwelling units in the county are inspected annually, the county does not remediate mold on surfaces or in the air, and there are no standards for mold-related violations. However, the county cites affected units for unsanitary conditions upon receiving a mold-related complaint. Then, the rental dwelling unit owner or short-term rental owner must obtain a certificate of mold remediation from a certified company that indicates the mold has been treated and rendered undetectable in the unit. The county has more than 160,000 affected units and currently inspects approximately 5% (8,000) of the units annually. Prince George's County anticipates recouping its costs from landlords.

- Caroline County estimates that local expenditures increase by at least \$120,000 annually to hire two new employees and provide requisite training and equipment. The county notes that there are no current registration or inspection requirements for rental properties in the county. The county also notes that it has significant financial restraints and anticipates that even adding a new half-time position would likely require an increase in tax rates.
- The City of Annapolis already conducts annual or biannual inspections of rental dwelling units, but the city estimates that costs increase to provide additional training for current inspectors and to hire an additional inspector to conduct annual inspections of all units.

Small Business Effect: The bill may have a meaningful impact on small businesses that own or operate affected rental dwelling units to pay for mold inspections and remediation. The bill also likely results in a meaningful increase in business opportunities for mold inspectors and mold remediation businesses in the State, as a large number of rental dwelling units throughout the State will need these services to comply with the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 129 (Delegate Henson) - Environment and Transportation.

Information Source(s): Caroline and Prince George's counties; City of Annapolis; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Department of General Services; Department of Housing and Community Development; Maryland Department of Health; Maryland Association of County Health Officers; U.S. Environmental Protection Agency; Department of Legislative Services

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