

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 446

(Delegate Conroy, *et al.*)

Economic Matters

Education, Health, and Environmental Affairs

Municipal Corporations - Regulation of Nudity and Sexual Displays

This bill authorizes the legislative body of each municipal corporation to adopt ordinances for licensing, control, location, or maintenance of a business that allows on its premises an activity involving nudity and sexual displays, as defined in Article 2B. Violators of such an ordinance would be guilty of a misdemeanor and subject to a fine of at least \$500 and imprisonment for up to six months. Each day the ordinance is violated is a separate offense.

The bill takes effect July 1, 2005.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provision.

Local Effect: Potential minimal increase in licensing revenues, as well as a potential minimal increase in expenditures due to the bill's penalty provision.

Small Business Effect: Potentially significant impact for those adult entertainment businesses in municipalities that adopt ordinances regulating such businesses.

Analysis

Current Law: In Allegany, Anne Arundel, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Kent, Queen Anne's, St. Mary's, Washington (with a limited exception), Wicomico, and Worcester counties, an alcoholic beverage

licensee is subject to having its alcoholic beverage license revoked if it permits nudity and sexual displays on its premises.

It is a crime in Allegany, Anne Arundel, Charles, Howard, Somerset, Wicomico, and Worcester counties for a person to perform or otherwise participate in any kind of live obscene performance or exhibition in the presence of paid observers. Additionally, in these same counties, and owner, lessee, or manager of a building, garden, place, room, structure, or theatre may not knowingly allow or assent to the use of the premises for these types of exhibitions. A first-time violator is guilty of a misdemeanor and is subject to a fine of up to \$1,000, imprisonment for up to one year, or both. For each subsequent violation, the offender is subject to a fine of up to \$5,000, imprisonment for up to three years, or both.

Background: There are 156 municipalities in Maryland. Baltimore and Howard counties are the only jurisdictions in Maryland that do not have any municipalities.

Many municipalities are able to control the location of adult entertainment businesses through amendments to their local zoning authority. In some instances, however, municipalities do not have planning and zoning authority, and an ordinance may be necessary to regulate the location of adult entertainment businesses within their jurisdiction. In Montgomery and Prince George's counties, for example, 38 of the 46 municipalities do not have planning and zoning authority, since these municipalities lie within the planning and zoning jurisdiction of the Maryland-National Capital Park and Planning Commission. Municipalities in Montgomery and Prince Georges's counties that have planning and zoning authority include: Brookeville, Gaithersburg, Laytonsville, Barnesville, Poolesville, Rockville, Washington Grove, and Laurel.

State Fiscal Effect: Since the bill declares that a violation of the ordinance would be a misdemeanor, general fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court. General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2006 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction.

Local Fiscal Effect: To the extent that a municipality passes ordinances regulating adult entertainment businesses, monitoring compliance could be handled with existing resources in most cases; however, this would vary by municipality. If a municipality

begins licensing adult entertainment businesses, municipal revenues could potentially increase.

County expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2006.

Additional Information

Prior Introductions: None.

Cross File: SB 224 (Senator Exum, *et al.*) – Education, Health, and Environmental Affairs.

Information Source(s): City of Laurel, City of Greenbelt, Town of La Plata, Baltimore City, Montgomery County, Prince George's County, Department of Legislative Services

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